

Dear Stewart Partners,

Happy Lunar New Year! Yesterday marked the beginning of both a new month, and Lunar New Year. For those of you who will celebrate the Lunar New Year during the next several weeks, we hope you are able to connect with family and friends during this important holiday.

In this week's update we've included two Stewart underwriting bulletins which have been issued this past week. Details of both are below. Also, as we've been doing since the beginning of January, we are continuing with our section "In Case You Missed It" and are highlighting the *Kettle Brook Lofts Condominium* decision that addresses the parameters of phasing rights held by developers. Lastly, we've included a registration link for our upcoming webinar if you haven't already signed up.

- [Stewart Bulletin SLS2022002 – 2022 Reminder Bulletin](#)

This bulletin provides a list of key bulletins issued in 2021 and earlier, along with links to access them. To view, follow this link to Stewart's Virtual Underwriter:

<https://www.virtualunderwriter.com/en/bulletins/2022-1/sls2022002.html>

- [Stewart Special Alert SA2022002 – Special Alert for property in the Village at Bedford Woods Condominium](#)

We've issued a special alert relating to insuring property at the **Village at Bedford Woods Condominium** located on Albion Road, Bedford, Massachusetts. Prior to issuing an owner or loan policy for any condominium units at this property, you must contact one of Stewart's underwriting counsel in Massachusetts for approval. To view this bulletin, follow this link: <https://www.virtualunderwriter.com/en/bulletins/2022-1/sa2022002.html>

- [In Case You Missed It – important cases from 2021](#)

**Kettle Brook Lofts, LLC v. Specht, 100 Mass. App. Ct. 359 (2021)**

In this decision, the latest in a series involving this condominium project, the Appeals Court analyzed the ability of a condominium developer to unilaterally extend phasing rights to add units based on powers the developer reserved in the Master Deed.

Kettle Brook Lofts, LLC was the owner of several tracts of land in Worcester. The LLC submitted the land to G.L. c. 183A by filing a Master Deed which created 33 condominium units. The Master Deed allowed the declarant/developer to add additional units over a period of 7 years, for a total of 109 units if completed. The Master Deed also provided that only those units which were substantially complete could be phased into the condominium and that the failure to phase the units within that time period would result in a waiver of the declarant/developer's phasing rights.

The Master Deed contained a common provision relative to amendments, whereby the declarant/developer retained the unilateral right to amend the Master Deed so long as he owned either a unit or owned unexpired phasing rights, with the caveat that the amendment would not substantially increase the burdens of any unit owner, or substantially decrease the benefits conferred upon any unit owner.

The dispute arose between the unit owners and the developer after the declarant/developer amended the Master Deed – just one day prior to the expiration of his phasing rights – to extend the time to exercise the phasing rights, and he did so under the general power to amend as

described above. On the same day, the declarant/developer added 56 units to the condominium. These units were only partially built, although in the phasing documents the units were described as substantially complete. The condominium owners challenged the validity of the submission of the 56 units as well as the amendments to the Master Deed.

The Appeals Court held that the submission of the 56 units was improper because they were not substantially complete and therefore did not comply with the reserved rights in the Master Deed, which required that any additional units to be phased in must be substantially complete at the time they are added to the Condominium. Further, the court held that the amendments made to the Master Deed, including the extension of phasing rights, were also improper because the developer may not use the general reserved rights to expand the scope of phasing rights. The Court stated, “without the consent of all affected unit owners, any attempt to extend the scope or duration of the phasing provisions of the master deed would violate the [condominium enabling] statute.” The Court explained that it is possible a Master Deed could allow a developer to retain such rights, however any provision allowing such an extension of phasing rights would “have to be written with sufficient specificity to allow the units owners to make ‘an accurate determination’ of the scope of the declarant’s power in this regard at the time they purchased their units.”

This decision provides important guidance for real estate attorneys when drafting documents for developers who want to retain broad phasing rights, as well as conveyancing attorneys when evaluating whether a unit has been properly phased into a condominium, particularly where such phasing occurred based on an extension of such rights. To read this decision follow this link: <https://law.justia.com/cases/massachusetts/court-of-appeals/2021/20-p-738-amp-ac-20-p-739.html>

- *Upcoming Education from Your Local Stewart Underwriters*
  - Date: February 9, 2022 at 10 AM  
Topic: **2021 Basic and Expanded Loan Policy Forms – What You Need to Know**  
Speakers: Jutta Deeney and Shannon Coleman  
To Register for this Webinar, follow this link:  
<https://stewart.webex.com/stewart/k2/j.php?MTID=tbe0abc309eb773f482d774b752b577fb>

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