

Dear Stewart Partners,

As always, we hope you, your families and co-workers are well and thank you for your partnership with Stewart. We have a lot to celebrate this week. COVID numbers are on the downswing, it's the start of the second week of Black History Month, Valentine's Day is right around the corner, and, for most of us, this is the first time we've seen weather above freezing in weeks!

This week, we wanted to alert you that "remote ink acknowledgement" may be coming back to Massachusetts for a limited time. We are also sharing an article from Bankrate on low rates for jumbo mortgages. In our continuing "In Case You Missed It" series, we are reviewing the *In re Mbariza* decision regarding acknowledgements from the First Circuit. As a reminder, Jutta Deeney and Shannon Coleman are hosting a webinar at 10 AM today on the new 2021 ALTA loan policy forms and we're providing a link to register if you haven't already.

- [Remote Ink Acknowledgement Included in the Massachusetts Budget](#)

The fiscal year 2022 budget bill is sitting on Governor Baker's desk waiting to be signed. Section Twelve of the bill includes the so-called "remote ink acknowledgement" that was in force during the pandemic. We will issue a formal Bulletin updating you when the bill is signed.

- [Low Rates on Jumbo Mortgages](#)

Historically, so-called jumbo mortgages have had higher mortgage rates than conventional mortgages backed by Fannie and Freddie. Last year, however, that trend changed. With the rise of the treasury bond rates, there's been a corresponding increase in traditional mortgage rates. On the flip side, investors are looking to invest in the jumbo mortgage market given that the borrowers generally have higher credit ratings and more favorable debt to income ratios. That's good news for the borrower who needs a jumbo mortgage. To read the article, click here: <https://www.bankrate.com/mortgages/jumbo-rates-fall-below-conforming-rates/>

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

#### **US Bank v. Desmond (In re Mbazira) 15 F.4<sup>th</sup> 106 (1st Cir. 2021)**

This case addressed a defective acknowledgment clause on a mortgage. Although this was not the first case addressing the issue, it is important because it was the first reported decision from the First Circuit Court of Appeals that addressed the issue relative to registered land. From a title perspective, the distinction between registered and recorded land would appear important, as one might presume that the registered land system, with the oversight of the Land Court, might result in a higher or distinct burden as to notice once a document is accepted for filing.

In this case, the borrower signed the mortgage, initialed each page, but the notary failed to insert the borrower's name into the acknowledgment clause. The property was registered land, and the mortgage was accepted for filing and noted on the certificate of title. There was no evidence that the borrower did not in fact appear, or that she did not sign the document voluntarily. The borrower filed for Chapter 11 Bankruptcy, and, as the debtor in possession, asserted that the mortgage she gave was unsecured due to the lack of inclusion of her name in the acknowledgment clause. An adversary proceeding followed, which resulted in the appeal to the First Circuit.

The First Circuit affirmed the Bankruptcy Court's judgment, allowing the borrower to avoid the mortgage. This decision is important because, unlike a defective acknowledgment that is part of a recorded mortgage, which will cure itself 10 years from the date of recording under G.L. 184 sec. 24, a registered land mortgage does not have the benefit of this statute, as the statute specifically excludes registered land. Additionally, it is not always possible to record a scrivener's affidavit with the land court relative to registered land which, has become a common way to cure a defective acknowledgment.

This decision is a reminder to our agents that care must be taken when completing the certificate of acknowledgment on mortgages. Any defect, including the omission of the identity of the signer, or failing to set forth that the mortgagor executed the document voluntarily, can result in significant losses if the borrower files for bankruptcy. To read the decision, follow this link: <https://casetext.com/case/us-bank-v-desmond-in-re-mbazira>

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