

Stewart – Massachusetts Mid-Week Update – March 17, 2021

Dear Stewart Partners,

Happy St. Patrick's Day! (And for those of you who live or work in Suffolk County, happy Evacuation Day!) We've now passed the one-year anniversary of the State of Emergency enacted by Governor Baker in response to the COVID-19 pandemic. At this time last year, we had put our plans for an open house event at our new Springfield office on hold for what we thought would be a few weeks. As the pandemic unfolded, a few weeks became a few months, and it's now been a full year. During that year, we've seen your creative solutions to keep closings moving forward – from picnic tables in the parking lot to plexiglass shields at the closing table, you never cease to amaze us. We know that it's been a very busy year for all of you, and we appreciate all that you've done and continue to do.

In this week's update, we've chosen to highlight some of the legal developments and underwriting considerations caused by the pandemic and the various orders and laws that were enacted. As always, if you have any questions, please contact one of our underwriters by telephone or by sending an e-mail to massuwing@stewart.com.

- *Extensions of Statutes of Limitation*

On April 1, 2020, the Supreme Judicial Court issued an order regarding court operations and closures. One of the important provisions contained in that order was a tolling of various statutes of limitations starting on March 17, 2020. As a result, if you are relying on a statute of limitations to have expired, and the expiration date was March 17, 2020 or thereafter, you should add 106 days to the expiration date. The 106 days represents the time period during which the statutes were tolled under the court's order. This includes the limitations contained in MGL c. 260, s. 33, the so-called obsolete mortgage statute, MGL c. 223, s. 49A relating to executions, and MGL c. 184, s. 24 relating to errors in acknowledgements and corporate authority. For more information on the suspension of deadlines, you can view our Massachusetts underwriting bulletin MA2020005 here:

<https://www.virtualunderwriter.com/en/bulletins/2020-3/ma2020005.html>. You can also review our quick reference guide on commonly used statutes of limitation here: <https://www.stewart.com/content/dam/stewart/Microsites/massachusetts/pdfs/ma-sol-reference-guide-12.7.2020.pdf>.

- *Options to Purchase under MGL c. 61, 61A, 61B*

On April 3, 2020, Governor Baker signed "An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19." Of particular importance to real estate practitioners is a provision in the Act extending the time period for the City or Town to respond to a notice of intent to sell or convert property which is being taxed under Chapter 61, 61A or 61B. Unlike the extension enacted by the SJC, this extension is ongoing and will not expire until 90 days after the Governor terminates the state of emergency. In other words, you may no longer rely on the passing of 120 days after the notice to sell or convert to cut off the time for the municipality to exercise its right of first refusal. From an insurability standpoint, unless a City or Town responds in writing to the notice of intent to sell or convert, you may not insure without exception for the municipality's right of first refusal if notice was sent to the municipality after November 10, 2019. Receiving a response to the statutorily required notice is now critical. For further information, see our underwriting bulletin MA2020002 here: <https://www.virtualunderwriter.com/en/bulletins/2020-3/ma2020002.html>.

- *Virtual Acknowledgements*

Like many states, Massachusetts enacted a temporary provision allowing for virtual notarization of documents during the state of emergency. The process is a so-called “remote ink notarization” because original “wet ink” signatures on documents are still required. Although some find the law to be cumbersome, we do know that it is still being used by conveyancers. While you may issue policies based upon a deed or mortgage that has been signed using the Massachusetts virtual notarization process, strict compliance with the statute is required. For a quick refresher on the requirements, see our May 12, 2020 bulletin entitled “Permissible Methods of Notarization for Massachusetts Transactions” here: <https://www.virtualunderwriter.com/en/bulletins/2020-4/ma2020006.html>.

You can also read Bulletin MU2020004 for a more in-depth review of the Act’s requirements: <https://www.virtualunderwriter.com/en/bulletins/2020-3/ma2020004.html>.

As a reminder, all parties must consent to the use of the virtual notary process. In other words, if you are representing a buyer and the deed signed by the seller was acknowledged virtually, you will need the consent of both the buyer and the buyer’s lender, if applicable. Further, if you are issuing a policy in excess of \$1,000,000 and any document in the chain of title was (or will be) acknowledged virtually, you will need prior underwriting approval.

- *Closing “on the Gap”*

Although other states routinely closed with a gap between disbursement of funds and recording of documents, it is not common here in Massachusetts, particularly in residential transactions. That changed with the Registry closures caused by the pandemic. While most documents are being recorded electronically, there may be some closings where you will need to issue title policies prior to the documents being recorded. In rare instances, there have also been issues with the online records at the registry not being updated. If you are dealing with either situation, please make sure to comply with the requirements contained in our March 18, 2020 Bulletin on Town Hall and Recording Office Closures, which can be viewed here: <https://www.vuwriter.com/en/bulletins/2020-2/mu2020002.html>. If you have a closing where the requirements of the bulletin cannot be met, please contact an underwriter to determine whether you may insure the gap. The required gap indemnification and affidavit form for Massachusetts properties can be downloaded here: <https://www.stewart.com/content/dam/stewart/Microsites/massachusetts/docs/Gap-indemnity-MA-specific.docx>. For general questions on gap coverage, please view our FAQ here: <https://www.stewart.com/content/dam/stewart/Microsites/massachusetts/pdfs/Mind%20the%20Gap%20FAQ.pdf>

As a reminder, all of the bulletins and forms mentioned in this update, as well as other information relating to the COVID-19 pandemic, can be viewed on our Massachusetts COVID-19 Info and Resources page, which can be viewed here:

<https://www.stewart.com/content/stewart/stewartcom/en/stg/massachusetts/underwriting-resources/forms-policy-information/covid-19-info-resources.html>.

You can also review a list of the current Stewart underwriting Bulletins in our 2021 Reminder Bulletin, here: <https://www.vuwriter.com/en/bulletins/2021-1/sls2021003.html>.



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