

Dear Stewart Partners,

As always, we hope you, your colleagues, and your families are doing well, beginning to enjoy the warmer temperatures and meeting up with people in person. Our local team at Stewart is looking forward to two upcoming in-person events. The first is the REBA Spring Conference on May 2, 2022, and the second is the Women's Lunch Place fundraising event, hosted by the REBA's Women's Networking Group on May 17, 2022.

Chris Provost, Massachusetts Associate Senior Underwriting Counsel at Stewart, will be presenting at REBA's spring conference, and we hope you have a chance to check out the informative practical skills session she will be a part of. Our Massachusetts underwriting and sales teams will be there as well, so we hope you stop by our booth and say hello. We've included information on the conference below. Later in the month of May, we will also be celebrating the good work of the Women's Lunch Place at Debevino Winery in Walpole. Stewart is proud to be a Gold Sponsor of this event. We hope to see you there. Information about tickets and sponsorship is below.

We're also including in this week's update a summary of a recently decided case by the Supreme Judicial Court. The Court overturned the Land Court's decision in a partition case, where the original petitioner, who was a joint tenant, died during the proceedings. Lastly, we are including registration information for an upcoming Stewart Agency Webinar that will be presented by Genady Vishnevetsky today at noon. Genady, Stewart's Vice President of Information Security, will be discussing the current trends in cyberattacks and new techniques hackers are using to outsmart their victims.



### **Chris Provost, Esq. at REBA's Spring Conference**

Chris Provost will be presenting at REBA's Spring Conference on May 2, 2022, at the Four Points by Sheraton Hotel in Norwood. Chris and her co-presenter will take an in depth look at self-dealing and trustee certificates after the MUTC and MUPC and review the recent revisions to REBA Title Standards 23 and 68. Join them to see how the Uniform Codes have broadened the way to have statutorily compliant trustee certificates and clarified what constitutes self-dealing. The revised title standards will be discussed with examples to demonstrate what to do and not to do in the record title when holding property in trust. For details and registration information follow this link:

<https://reba.net/about-us/2022-spring-conference/>



### **A Toast to the Women's Lunch Place**

Join the Stewart Team as we toast the good work of the Women's Lunch Place in May. The Women's Networking Group of REBA is hosting a fundraiser for the WLP on May 17, 2022, at the Debevino Winery in Walpole, from 6 PM to 8 PM. Debevino Winery is easy to get to on Route 1 near Gillette Stadium. In past years the event was held at the day shelter run by WLP in Boston, but

this year's event will be taking place in Walpole. The venue has indoor and outdoor space, making it an ideal spot to gather in a safe way and toast a great organization. Tickets can be purchased through WLP's website. Each registered guest will receive two drink tickets, and lite bites and desserts are included. Stewart is proud to be a sponsor of the event and we hope to see you there too.

<https://womenslunchplace.org/donate-reba>



**Case Alert: Battle v. Howard, SJC -13177 (Mass. Apr. 7, 2022)**

Last week, the Massachusetts SJC issued its decision in the case of Battle v. Howard, which involved the question of when during the course of a partition action a joint tenancy is severed. The decision is important not only because of the Court's ruling in the case, but also its overview of the law of partition actions in Massachusetts.

The facts of the case are fairly simple. Charles Dunn and Barbara Howard took title to two adjacent lots in Dorchester as joint tenants in 1993. In July 2020, Mr. Howard filed a Petition to Partition in the Land Court. In September 2020 the Land Court Judge determined that the property could not be divided and a Commissioner was appointed. Two months later, in December 2020, the Court issued a warrant authorizing the Commissioner to market the property for sale. The warrant contained a provision that any purchase and sale agreement would be subject to review and approval by the Court. In late January 2021, the Commissioner accepted an offer to purchase the property, and the Court scheduled a hearing on February 17, 2021, to review the offer and the proposed purchase and sale agreement. The petitioner Mr. Dunn passed away on February 16, 2021, one day prior to the hearing.

The parties to the instant action are Ms. Howard (the surviving joint tenant), and the personal representative of Mr. Dunn's estate on behalf of his heirs. Ms. Howard filed a motion to dismiss the partition action based upon her position that upon Mr. Dunn's death she became the sole owner of the property by virtue of being the surviving joint tenant. On March 4, 2021, the Land Court denied the motion to dismiss and approved the sale to the third party. However, the judge also stayed the proceedings to allow Ms. Howard to appeal the interlocutory order, which she did. The SJC transferred the matter from the Appeals Court to answer two distinct questions: first, whether the Commissioner's acceptance of an offer to purchase was sufficient to sever the joint tenancy; and second, whether the partition statute gave the Land Court jurisdiction to continue to hear the case after Mr. Dunn's death.

Ultimately the SJC agreed with Ms. Howard that the acceptance of an offer to purchase was not sufficient to sever the joint tenancy. Rather, a severance would occur at the time the Commissioner conveyed the property to a buyer. In its decision, the Court reviewed both the law of joint tenancies and partition actions in Massachusetts. As to joint tenancies, the court looked to the four unities and stated that the tenancy would be severed if one of the unities was destroyed by conveyance or by partition. The ultimate question before the SJC, therefore, was at what point in the partition action the joint tenancy was severed.

The Court noted that the parties to the partition action could discontinue it at any time up until the Commissioner gave a deed to the buyer, and if they did so their ownership interest would remain unchanged. Further, since the warrant in this case stated that any purchase and sale agreement would be subject to the parties' right to object to it and to final Land Court approval, it alone was not sufficient to sever the tenancy.

The SJC also tackled the interpretation of Section 26 of the partition statute, which states that if a party to the partition action dies during the proceedings, his heirs or devisees would be entitled to a portion of the proceeds. While on its face this section appears to support the argument of Mr. Dunn's heirs, the Court ultimately determined that reading Section 26 in conjunction with the remainder of the partition statute suggested that it was procedural in nature and was intended to deal with other forms of joint ownership, not joint tenancies. A contrary reading would result in "the abolition of the right of survivorship" according to the SJC.

Finally, the SJC rejected the argument that the Land Court's equitable powers gave it the authority to continue to exercise jurisdiction over the matter even after Mr. Dunn's death. Because there was no severance of the joint tenancy, the heirs of Mr. Dunn did not have standing to maintain the partition action, and any ruling to the contrary by the Land Court was in error.

The decision is important to practitioners who may be advising parties to a partition action. If Mr. Dunn had conveyed his interest in the property prior to filing the partition action, the outcome of this case would have been entirely different. It is also a reminder to conveyancing attorneys that when dealing with property that is the subject of ongoing litigation, it is important to wait until a court order becomes final (i.e., all appeal periods have passed) before insuring.

To read the full decision, follow this link:

<https://www.mass.gov/files/documents/2022/04/07/k13177.pdf>



### **Upcoming Agency Webinar**

Cybersecurity Update Q1-2022

During this one-hour webinar, our speaker will review existing cyber threats and share some new techniques hackers are using in their attacks.

Presented by: Genady Vishnevetsky, Vice President, Information Security

Date: Wednesday, April 13, 2022

Time: 12:00 pm (Eastern Time Zone)

Registration link:

<https://stewart.webex.com/stewart/k2/j.php?MTID=tb93520998b370aa9323c5023b0e69e4e>

After registering, you will immediately receive a SAVE THIS STEWART EMAIL meeting confirmation from messenger@WebEx.com which will provide your individual webinar login access link and the instructions to select your audio options.

For questions, please contact: Gloria Prinz, Agency Training Manager, (703) 927-1406, gprinz@stewart.com



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