

Dear Stewart Partners,

We hope you all enjoyed the long weekend while celebrating the July 4th holiday!

Although there are no more long weekends until September, July does bring us Amazon Prime Day. Many of us look forward to the great deals that can be had during this time, but it is also a time that scammers try to steal your Amazon login credentials. Read below for some tips on keeping your account safe.

We are also including in this week's update a summary of a recently decided case by the Massachusetts Supreme Judicial Court involving trusts and powers of attorney. The case is important and will impact the validity of a trust if created by an agent under a power of attorney. The summary and a link to the full decision can be found below. Lastly, we've included a link to Massachusetts Lawyers Weekly's annual Reader Rankings. One of the categories is title insurance, and we are asking you to vote for Stewart Title Guaranty as your title insurer of choice. Thanks so much!



Amazon Prime Day Scams - Be Alert!

Amazon Prime day is July 12-13 this year. As many of us use this day to grab deals being offered by Amazon, cybercriminals have targeted this shopping event to perpetrate scams on unsuspecting consumers. Scammers may try tricking you into clicking on a link by alerting you to a shipping delivery delay or asking for confirmation of other order details. If you fall for their tricks, you could unwittingly be providing your credentials, which includes the payment credentials saved in your account. The security awareness and training company KnowBe4 has provided the tips below on how to keep your Amazon account secure.

- If you receive an email from Amazon about an upcoming delivery or an account update, don't click any links in the email. Instead, log in to your Amazon account directly from your browser to check on the issue.
- Enable multi-factor authentication (MFA) on your Amazon account. MFA adds an additional layer of security by requiring you to present two or more verification factors to log in to your account.
- Cybercriminals often use scare tactics to trick you into clicking links without thinking. If you receive an email that urges you to take immediate action, stop and evaluate the message before you click any links.



Barbetti v. Stempniewicz, 490 Mass. 98 (2022) – Creating a Trust Under a Power of Attorney

The recent decision by the SJC in the case of Barbetti v. Stempniewicz is important to both conveyancing and estate planning attorneys. The lawsuit itself stems from an inter-family dispute over estate assets. In its decision, the SJC focused solely on two counts of a 14-count complaint: first,

whether a trust created by an agent acting under a power of attorney was valid; and second, whether the court should declare a constructive trust with respect to the assets that were transferred into the trust.

As to whether the trust was valid, the court held that it was void *ab initio*. The court noted that the ability of a settlor to delegate the power to create a trust is an issue of first impression in Massachusetts. Under the Massachusetts Uniform Trust Code, MGL c. 203E, s. 401, there are three methods by which a trust can be created, none of which involve an agent acting under power of attorney. Under section 402 of the MUTC a trust can only be created if the settlor has both the “capacity to create a trust” and “indicates an intention to create the trust.”

The court noted that the MUTC allows a principal to delegate certain trust functions to an agent, namely, the power to revoke or amend the trust or to distribute trust assets, provided both the trust and the power of attorney expressly authorize those actions. MGL c. 203E, s. 602. Delegation of creation of a trust is not addressed in the MUTC so the SJC looked to laws in other states to reach its decision. The Court observed that several states have adopted the Uniform Power of Attorney Act (UPAA), which specifically allows a principal to authorize an agent to create a trust, and other states have passed statutes with similar language. Based upon its review, the SJC found one “underlying principle: where the power to create a trust is delegable, either pursuant to a statute or judicial opinion, it is only so where there is an express grant of the power to create a trust in the power of attorney.”

Applying this reasoning to the power of attorney in question, the Court found that there was no authorization to create a trust. While the POA authorized the agent to transfer assets to a trust created by the principal, and to act for the principal as beneficiary of any trusts, the express authority to create a trust was lacking. The Court noted that powers of attorney are to be strictly construed, and a general grant of authority will not be interpreted to “provide more authority than absolutely necessary to effectuate the purpose of the power, absent some additional express authorization.” Citing precedent, the Court also stated that “[a]uthority to conduct a transaction includes authority to do acts which are incidental to it.... However, authority to conduct incidental transactions only arises where authority has been granted in the first instance to conduct a primary transaction.”

Having found that there was no authority by the agent to create the trust, the court turned to the question of whether to impose a constructive trust on the assets that had been transferred to the trust. The court held that since the trust was void *ab initio*, the transfers of the assets to the trust were similarly void and the assets should be returned to the persons from whom they were received.

The court made a specific point to say that powers of attorney and trusts may be used as a mechanism to take advantage of the elderly and vulnerable. It also noted that the legislature is considering whether the UPAA should be adopted in Massachusetts, and, therefore, the court left to the legislature the question of whether to allow trusts to be created under powers of attorney and, if so, how that should be done.

While this case addresses trust creation, it also serves as a reminder that powers of attorney are strictly construed. If the agent is attempting to enter into a transaction which is not expressly authorized in the POA or the title for the current owner relies on an act by an agent without express authority in the POA, you should contact your Stewart underwriter before insuring.

To read the full decision, follow this link: <https://www.mass.gov/files/documents/2022/06/28/y13149.pdf>



Vote for Stewart in the Lawyers Weekly Reader Rankings

Massachusetts Lawyers Weekly has opened up its annual Reader Rankings survey. Among the categories is title insurance. Please vote for Stewart in this category.

Here's the link: <https://masslawyersweekly.com/reader-rankings-2022-voting/>

Thanks in advance for your vote!



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