

Dear Stewart Partners,

We hope all of you are enjoying the last few weeks of August. Temperatures are dipping today, but the forecasters are predicting a warm weekend, which seems perfect for soaking in these last few weekends before September starts.

In this week's update we've included a case summary from the Superior Court, which we found interesting. It addressed the contractual obligations of an estate under a purchase and sale agreement when the seller dies prior to closing. Although this is a lower court case and not binding, it's a good reminder on when contracts, signed by an individual who subsequently dies, can be enforced. We've also included a link to the monthly newsletter, OUCH!, published by SANS. Please feel free to share this with friends and family as it always provides useful information and elevates awareness of cyber-fraud for all.

Lastly, we wanted to let you know about an upcoming webinar presented by Stewart's Legal Team. The webinar will provide a review of the 2021 ALTA policy developments and 2021 ALTA policy case law updates. For more details and registration information, see below.



Liberty Hill, LLC v. Fernald (Mass. Super. Ct. 2022)

A recent decision from the Middlesex Superior Court serves as a reminder of the legal requirements in Massachusetts when a seller dies after having signed a purchase and sale agreement but before the closing has occurred.

In this case, the buyer and seller (after protracted negotiations) entered into a purchase and sale agreement on March 25, 2022. The seller died less than two weeks later, prior to the closing. After the seller passed away, the buyer learned that the personal representative had listed the property for sale with a real estate broker and had received an offer that exceeded the original purchase price. The buyer asked for – and the court granted – a temporary restraining order. The personal representative of the seller's estate maintained that he was required to obtain the highest price for the property pursuant to MGL c. 202, s. 38. The PR also argued that he could not sell the property without first receiving a license from the court since the decedent died without a will. The buyer maintained that the PR was obligated to sell the property under MGL c. 204, s. 1.

The court agreed with the buyer in holding that the P&S executed by the seller prior to his death was enforceable against the estate. M.G.L. c. 204, s. 1 grants superior courts (along with probate courts and the SJC) the authority to enforce specific performance of agreements to convey real estate and further instructs courts to order the PR to make the conveyance if the testator would have been required to make the conveyance were he living. Further relying on MGL c. 204, s. 1 the court stated that no license of the probate court is required – instead, the superior court could order the sale.

The Court stated that the PR's reliance on M.G.L. c. 202, ss. 19 and 38 was misplaced because the duty to obtain the highest possible price on the property primarily applies in cases where the heirs cannot agree on what to do with the property. We're guessing many probate and conveyancing attorneys would take issue with this statement. The Court also noted that although a fiduciary does have an obligation to obtain the highest price for the property, it would not insert that provision into the P&S in this case.

This case serves as a reminder that the decedent's estate is obligated to honor an agreement to convey property made by the decedent prior to his death.



OUCH! The SANS Security Awareness Newsletter

We've included a link to the August SANS newsletter which contains helpful tips on detecting and avoiding Charity or Disaster Scams. The article highlights that cyber criminals will use the occurrence of a traumatic event, whether it is local or international to scam you out of your money. These scams can occur through emails and telephone calls. Read the newsletter to find out how to detect and defend against becoming a victim. <https://www.sans.org/newsletters/ouch/charity-disaster-scams/>



Upcoming Webinar – New ALTA 2021 Policy Updates and Case Law Developments

Join this one-hour webinar as our Stewart Legal Team of experts, Jim Gosdin, Marsha Laner and Lisa Delvecchio provide a review of the new 2021 ALTA policy developments and ALTA policy case law update.

DATE: Tuesday, August 23, 2022
TIME: 1:00PM
FORMAT: TEAMS Webinar

[Click here to register](#) for this webinar. You will receive a You've Been Registered email from Microsoft Teams which will include your link to join this event. Click on the attachment in the email to add the event to your calendar. For more information or questions about how to register, please contact Gloria Prinz, Agency Training Manager at gprinz@stewart.com



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