

Dear Stewart Partners,

We are almost at the middle of the month, and it seems like retailers have embraced the end of summer and are pushing out those Halloween and fall decorations. We aren't quite ready to celebrate fall yet, but instead are enjoying the last official week of summer and hope you are too.

In this week's update we wanted to let you know about an exciting new offering from CertifID called Payoff Protect. This new tool from CertifID validates the authenticity of mortgage payoff instructions. Read below and check out the video for more details. We've also included a case summary of a recently decided case by the Supreme Judicial Court involving mechanic's liens and the application of filing deadlines tolled by the SJC's emergency COVID-19 orders. It is an important case as it addresses how the COVID-19 orders tolling certain deadlines impact liens recorded at the Registry of Deeds. Lastly, we wanted to share an article that predicts some positive news for the residential housing market.



### **PayoffProtect by CertifID**

CertifID has added a new tool in its suite of wire fraud protection services called PayoffProtect. With PayoffProtect, CertifID validates mortgage payoff instructions received from various parties in the transaction. With PayoffProtect you no longer need to call lenders to confirm the authenticity of the instructions you've received. PayoffProtect confirms the instructions for you in a streamlined and automated way. To see how it works check out this video:

<https://www.youtube.com/watch?v=LzN0uKyMUGw>

CertifID is offering Stewart Agents special pricing for this new product. Talk with your Account Service Representative for more information.



### **Graycor Construction Company, Inc. v. Pacific Theatres Exhibition Corp. et al. (SJC-13142)**

A recent SJC case clarifies that not all statutes of limitation were tolled by the Court's orders issued in connection with the COVID pandemic. The plaintiff in the case is a contractor that had filed a Notice of Contract and a Statement of Account under MGL c. 254, the Massachusetts mechanic's lien statute. The documents were recorded on April 27, 2020. Unfortunately for the contractor, the Notice and Statement had the incorrect name of the property owners. The lien documents also identified the wrong property. These were fatal errors in the filings. When the contractor discovered the error, it recorded an amended Notice and Statement which did include the correct property owner. The amendments containing the correct information were recorded on September 9, 2020, more than 90 days after the March 4, 2020 date the contractor ceased to perform work at the property. As such, the Notice was untimely under MGL c. 254, s. 2.

The contractor filed suit to perfect its lien, arguing that the SJC's so-called COVID tolling orders tolled the statute of limitations in the mechanic's lien statute and as such the amended Notice was filed timely. The trial court judge agreed with the contractor and denied the defendant property owner's motion to

dismiss. The judge also reported the decision to the Appeals Court. The SJC subsequently granted the owner's application for direct appellate review.

The SJC examined both the mechanic's lien statute and its own COVID tolling orders. The court noted that the opening paragraphs of the orders clearly stated that they were issued to oversee court operations and were for the purpose of limiting the number of people who could be present in courthouses because of the public health emergency. It also noted that the orders were limited to addressing electronic filing of pleadings, requiring non-emergency matters to be held virtually, limiting the number of people who could be present at those emergency hearings that were in person, and postponing jury trials. Based on this, the Court stated that the tolling was "designed to encompass only those statutory deadlines that affect court operations, i.e., deadlines in cases pending in court or to be filed in a court."

The SJC said that the orders "did not purport to supervise executive agencies such as the registry of deeds." Instead, the orders "tolled only those statutory deadlines that pertained to court proceedings." Because the initial steps to perfect a mechanic's lien involve the recording of a Notice of Contract and Statement of Account at the registry of deeds, and not a court filing (at least at the outset), the amended documents were not timely filed and the contractor could not claim a lien on the property.

The importance of this decision to practitioners – particularly those who represent creditors such as mortgagees or holders of an attachment or execution – is not to count on an extension of the time limit to bring forward an attachment or execution, or file the extension of the mortgage or an affidavit that it has not been paid.

You can read the case here: <https://www.mass.gov/files/documents/2022/09/12/p13142.pdf>



## **Realtor.com Reports that the Housing Market has Begun to Correct Itself**

According to a recent article published by Realtor.com, the housing market has begun to correct itself and buyers will remain in the market to purchase in the coming months. According to a survey conducted by Realtor.com, 46% of homebuyers still plan on purchasing property in the next six months, notwithstanding higher interest rates and talk of a slowing economy. This figure is higher than the share of buyers surveyed in July of 2019. Some contributing factors to buyers staying in the market to purchase include fewer bidding wars for buyers and more inventory.

To read the article follow this link: <https://www.realtor.com/news/trends/the-market-has-begun-to-correct-itself-house-hunters-say-theyre-ready-to-buy-in-the-next-six-months-even-in-a-recession/>



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