

## Stewart – Massachusetts Mid-Week Update – September 2, 2020

Dear Stewart Partners,

We've crossed into September and are heading into a long weekend. It is a little hard to believe all that we've experienced and worked through in the past 6 months. Labor Day marks the un-official end of summer and the start of a new school year (although for many students that is a bit delayed this year). We hope that all of you will be able to enjoy the holiday with family and friends and take a small breather from the whirlwind pace of work that seemed to consume most of the spring and summer months.

In this week's update we want to share with you two recent cases that you may find interesting. The first case is an appeals court decision that delved into lake front water rights and the derelict fee statute. The second case, also an appeals court decision, tackled the question of whether an award of monetary damages for the violation of a restriction is appropriate. We also wanted to alert you to news on the foreclosure moratorium front which extends various federal moratoriums.

- *Kubic v. Audette, 2020 Mass.App.Lexis 126. (Docket: 19-P-371)*

Like many real estate cases, this one started with a dispute among neighbors. The issues involved claims of legal ownership to a right of way which led down to Webster Lake. To resolve the dispute the court delved into the application of the derelict fee statute and water rights of property that abut Great Ponds. The case includes a good discussion about ownership over portions of lakefront property when the boundary of the lake has shifted. The full decision can be viewed here: <https://www.mass.gov/files/documents/2020/08/28/r19P0371.pdf>

- *Wellesley Conservation Council, Inc. v. Robert W. Pereira, II, Trustee, et al., 98 Mass. App.Ct. 194 (2020).*

The case centered on a conservation restriction which burdened the defendants' parcel. The restriction's stated purpose was to "preserve the locus in its natural, scenic, and open condition." The defendants admitted to violating the restriction by clearing trees and vegetation, including destroying 23 mature trees and installing a sports court with lights and fencing. The defendants agreed to restore the area through a landscape remediation plan. The defendants, however, did not agree that the law permitted an award of damages against them for the violations. The lower court agreed, and the Wellesley Conservation Council, Inc. appealed. The court found in favor of the Council and held M.G.L. c. 184, s. 32 does not limit enforcement to injunctive relief alone and remanded the case. The full decision can be viewed here: <https://www.sociallaw.com/services/slip-opinions/slip-opinion-details/wellesley-conservation-council-inc.-vs.-robert-w.-pereira-second-trustee-1-others-2>

- *Federal Foreclosure Moratorium Extensions*

To no one's surprise, the federal moratorium on foreclosures that was scheduled to expire on August 31, 2020 has once again been extended – this time, through December 31, 2020. The U.S. Department of Housing and Urban Development, Fannie Mae, Freddie Mac, Veterans' Administration, and the USDA each have their own bulletins or memos announcing the extension, but the bottom line is this: with few exceptions, no foreclosure of a federally-related mortgage loan on residential property is allowed during this moratorium. The Massachusetts foreclosure and eviction moratorium is currently set to expire in mid-October, but can be unilaterally extended by Governor Charlie Baker. If you want to issue title policies on a property

for which a foreclosure took place during the period of March 1, 2020 through the present, please contact one of the Stewart underwriters first.

Links to updated bulletins:

HUD: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-27hsgml.pdf>

Fannie Mae: <https://singlefamily.fanniemae.com/media/22261/display>

Freddie Mac: <https://guide.freddiemac.com/app/guide/bulletin/2020-34>

VA: <https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-20-30.pdf>

USDA: <https://content.govdelivery.com/accounts/USDARD/bulletins/29c3b20>

- Stewart Webinars

- Probate Perils and Perfecting Title on **September 16, 2020 at 10 AM**

To register follow this link:

<https://www.stewart.com/content/dam/stewart/Microsites/massachusetts/pdfs/Webinar-Invitation-Form-updated-August.pdf>

If you missed our most recent webinar “**No Stress Distressed Properties**” or are interested in other webinars we’ve hosted this year, check out our local Massachusetts Stewart site to view the

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

- Stewart’s Massachusetts COVID-19 Resource Page

Please view our resource page which contains all the local information relative to underwriting guidance, affidavits, registry closures and frequently asked questions. This site will be updated regularly. To access click [HERE](#) and make it a favorite on your web-browser. You can also copy the following URL and paste it into your web

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



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