

Dear Stewart Partners,

As always, we hope you, your colleagues and staff are doing well and remain busy. The rise in interest rates has no doubt impacted the volume of buyers and borrowers in the market and we know many offices are seeing decreases in volume. As the pace of work is more moderate, this is a great time to catch up on staff training and education. If you are looking for a refresher on any title topic or commitment and policy preparation, reach out to one of our underwriters or your Stewart account representative, and we'd be happy to arrange an in-office or virtual "lunch & learn."

In this week's update we are highlighting a recent land court case which addressed whether a buyer could enforce a purchase and sale agreement if one of the two trustees who owned the property failed to sign the agreement and objected to the sale of real estate. It isn't a binding decision, but a good reminder that the commonly contained "conclusive reliance" provision in a trust may not save the day.

We are also sharing with you an article that we found interesting and which you can share with your Realtors and clients. The article, featured on Realtor.com, analyzed a survey completed last year that revealed that 51% of the 1,000 people surveyed had a real estate deal that didn't close after it went under contract. It provides some great advice and insight for buyers, sellers, and Realtors in today's market.

Lastly, we are including information on the United States Postal Service (USPS) 2022 Holiday Peak Shipping Surcharge. This temporary surcharge will be effective from October 2, 2022 through January 22, 2023. For more details read below.



**Menayrji, et al. v. Aniello, et al. (Norfolk Land Court) (Docket no. 22 MISC 000317)**

This case involves a dispute over a purchase and sale agreement the buyers were seeking to enforce. They sought to resolve the case with a motion for summary judgment, which the court denied, citing that there existed a question of material fact as to whether the plaintiffs had knowledge that one of the two trustees who owned the property did not consent to the sale.

The facts of the case are not complicated. The defendants in this case are Albert, who retained a life estate in the real estate, and Nadine and Marlene, as trustees of the Aniello Irrevocable Home Trust ("Trust"). The purchase and sale agreement was signed by Albert and one of the trustees (Nadine). Marlene, the other trustee, did not sign because she opposed the sale of the real estate.

In their motion for summary judgment, the plaintiffs argued that the contract was binding on both trustees because the Trust document allowed for one trustee to act unilaterally. The Trust states in pertinent part that "[a]ll acts done, and all deeds, drafts, notes or checks or other instruments executed by an individual Trustee on behalf of the Trust shall be conclusive evidence of authority to do and execute same and shall be binding upon Trust [sic] and all conveyances shall transfer title." Albert and Marlene, the two defendants who signed the agreement joined in support of the plaintiff's motion for

summary judgment. The other defendant, Nadine, contended that although one trustee can act, that action must be taken based on the unanimous decision in the exercise of any Trust power.

The court, analyzing the authority of one trustee to bind the other, pointed to Massachusetts law which creates a rebuttable presumption that co-trustees may only carry out their joint power by majority decision. This presumption can be overcome if the trust document specifically grants the power to do so. The court disagreed with the plaintiffs that the specific terms of the trust granted one trustee the ability to make a decision when the other trustee didn't consent. The court stated that "[n]owhere in the Trust does it unambiguously state that the ability of third parties to rely on the signature of a single trustee grants the power to each individual trustee to carry out their powers under the trust without concurrence from their co-trustee."

The court then addressed the "conclusiveness provision" because the purchase and sale agreement falls within the category of documents that third parties are entitled to rely upon if signed by only one trustee. The court noted that this provision is inapplicable if the party seeking to rely on this provision has **actual knowledge** that the co-trustee(s) have not consented to the sale. The court noted that although the plaintiffs had no duty to inquire as to whether the co-trustee consented, if they nonetheless acquired knowledge that the consent wasn't given, they could not use the conclusive reliance language in the trust to claim the contract was binding. Because there remained a question as to the buyer's knowledge of Marlene's objection to the sale, there exists a genuine issue of material fact and at this time the dispute cannot be resolved by summary judgment.

We will continue to monitor this case and report developments in our midweek update. The analysis in the summary judgment decision is important to real estate and title attorneys as a reminder that actions taken by a trustee must be done at the direction of the majority of the trustees, unless the trust specifically allows a trustee to exercise the powers granted to the trustees singularly and without consent of the others. It is also a reminder that the reliance on conclusiveness provisions of a trust does not negate actual knowledge, which cannot be ignored

The summary judgment decision can be read in its entirety by accessing the case on the attorney portal at [www.masscourts.gov](http://www.masscourts.gov). If you would like a copy of the decision emailed to you, please reach out to one of our Massachusetts underwriting counsels



## **4 Surprising Reasons Homebuyers' Real Estate Deals Fall through Today – Realtor.com**

In this recently published article on Realtor.com, the author cites four reasons why deals aren't closing and provides tips to both buyers and sellers to avoid falling out of contract. The #1 reason cited by the article is not qualifying for financing. The article suggests locking in interest rates as soon as possible. A good strategy for homebuyers who are still looking to buy is to get a new pre-qualification to make sure the purchase budget is realistic. To read the full article and review three additional reasons why sales contracts don't make it to closing, follow this link:

<https://www.realtor.com/advice/buy/reasons-homebuyer-real-estate-deals-are-falling-through-today/>



## **2022 USPS Rate Change for the Holiday Peak Shipping Season**

A reminder for all who use the United States Postal Service for shipping and mailing services – beginning on October 2, 2022, the Postal Service will be implementing a shipping surcharge. The surcharge will be in effect through January 22, 2023. The surcharge will affect Priority Mail and Priority Mail Express shipments as well as first class packages. The surcharges vary from 25 cents to \$3.25 depending on the type of service and size of the package. To view the list of surcharges follow this link:

<https://www.pitneybowes.com/us/postal-information/holiday-peak-surcharges.html?cid=holidayannouncementemailsept2022saas>

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