

Dear Stewart Partners,

We hope you all enjoyed the long holiday weekend and were able to enjoy some relaxing time off with family and friends after a very busy summer season.

In this week's update, we want to share with you two important decisions from the Supreme Judicial Court that will impact your practice. The first deals with the SJC's extension of statutes of limitations in response to the COVID pandemic. The Court confirmed that all statutes of limitation were extended, not just those that would have expired during COVID. The second case addresses the enforceability of older orders of condition. Although the title policy does not cover orders of condition unless a violation is on record, this case is very important to real estate practitioners. Lastly, Stewart's agency division is hosting a webinar that will focus on using Stewart's Storefront, which is a marketing portal open to all agents and provides pass-through marketing material for agents to use and customize. Sign up details for the webinar are below.

- *Shaw's Supermarkets, Inc. v. Melendez (SJC 13054)*

Some of you may remember that we highlighted this case when it was first decided by the lower court and again in April when the Supreme Judicial Court heard oral arguments. Last week, the Court issued its opinion upholding the lower court's interpretation of the order extending all statutes of limitations, not just those that would have expired during the tolling period. As you may recall, the orders extended statutes of limitations and deadlines which affected enforcement time periods. In this case, Shaw's argued that the extension only applied to those statutes of limitations that would have expired during the time period the order was in effect. The appellee, Melendez, argued that the extension applied to all cases, not just those on the verge of expiring. Although the underlying claim by Melendez in this case involves a personal injury she suffered while shopping, the decision is important to the real estate conveyancing bar because it impacts when certain liens will become unenforceable. To read the full decision, follow this link: <https://www.mass.gov/files/documents/2021/09/03/p13054.pdf>

As a reminder, when calculating whether a recorded lien continues to affect title, it is necessary to add **106 days** to all expiration deadlines for liens on title, unless they expired prior to March 17, 2020. To view our statutes of limitation chart, follow this link:

<https://www.stewart.com/content/dam/stewart/Microsites/massachusetts/pdfs/ma-sol-reference-guide-12.7.2020.pdf>

- *Conservation Commission of Norton v. Pesa, 488 Mass. 325 (2021)*

Many of you are familiar with orders of conditions issued by local Conservation Commissions in the course of land development. Once recorded, the orders provide notice that an owner of land has been given permission to construct or alter the property in accordance with certain conditions designed to preserve and protect wetlands on or near the property. Although these orders are recorded with the Registry, they are not a defect in title, nor do they affect the marketability of the title, as was explained in *Lyon v. Duffy*, 77 Mass. App. Ct. 860 (2010). The orders require the owner to obtain a certificate of compliance, which would confirm that the work was completed in compliance with the order.

In this case, the Conservation Commission of Norton sought an enforcement action against the current owner of the property based upon an order of conditions issued in 1979. The Commission first became aware of the potential violation of the order in 1984 and notified the then owner (who had undertaken the work at the property), but nothing further was done. In 1996, he conveyed the property to himself and his wife as tenants by the entirety. In 2014, his surviving spouse sold the property to the current owners, the Pesas. The Pesas and the Conservation Commission engaged in discussions regarding the requirements to obtain the certificate of compliance, which included completion of certain work required by the original order; however, they disagreed on whether certain fill needed to be removed. In 2015, the Conservation Commission brought an enforcement order seeking removal of the fill and ordering the property to be returned to its original condition.

The Pesas claimed that the time period to bring an enforcement action expired, based on their interpretation of the statute of repose contained in GL c. 131, s. 40. They argued that the statute required actions be brought within three years after the first subsequent owner purchased the property, and in this case because the original owner had already transferred the property to himself and his wife in 1996, any enforcement action needed to be brought within three years after that first transfer. As the third owner of the property after issuance of the order of conditions, the Pesas argued that that the Conservation Commission was barred from bringing the action. The lower court agreed with the Pesas, and the Commission appealed.

The Supreme Judicial Court overturned the lower court's decision and held that the statute of repose in GL c. 131, s. 40 is personal and doesn't run with the land. Rather, the three-year time period begins anew with each conveyance of the property. It is important to note that the statute does not provide a time limit during which a conservation commission must bring an action to enforce; instead the statute prohibits a conservation commission from bringing an enforcement action against an owner three years after recording of the deed into that owner.

This decision has an impact for purchasers of lands which are subject to an order of conditions, as liability for an existing violation can be imposed for a period of three years after the buyer acquires title. This could also present a problem for a seller with an open order of conditions, even if the seller has owned the property for more than three years, because buyers may not want to assume that liability. To read the full decision, follow this link:

<https://www.mass.gov/files/documents/2021/08/31/s13058.pdf>

- *Upcoming Webinar: Stewart Marketing Storefront – Increase Business & Generate Sales*

On September 16, 2021, at 2 PM, Stewart Marketing is presenting a webinar for Stewart agents. You and your team are invited to attend this one-hour webinar training session. As an independent title agency, finding more ways to increase business and generate sales are always ongoing goals. Stewart's dedicated marketing professionals have created a variety of quality materials available to help make your job just a little easier.

[Click here to register](#) for this webinar. You will receive a **You're Registered** email from Microsoft Teams which will include your link to join this event.

- [Stewart's Massachusetts COVID-19 Resource Page & Information Page – URL CHANGE](#)

Our easy reference page, which provides you quick access to all our Mid-Week updates, gap coverage affidavits, and bulletins that specifically relate to COVID and other emergency orders, has moved. Save this new URL as bookmark in your web browser for easy access: <https://www.stewart.com/en/state-pages/massachusetts-agents/tools-and-resources/covid-19.html>

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