



New England Regional Midweek Update
1/11/2023

Dear Stewart Partners,

Since April of 2020, we have provided our Massachusetts agents with a Massachusetts Mid-Week Update every Wednesday. It was initially created as a resource during COVID in an effort to provide timely information to our agents about underwriting bulletins and registry information. The Mid-Week Update now contains information regarding upcoming webinars, recent underwriting bulletins, newsworthy articles, case/legal updates, and timely information on hot topics in our industry. We are pleased to announce that beginning this week, we are expanding our topics to include those matters which are of interest to our entire New England agency base and are likewise expanding distribution to all of you. We hope you find this information helpful and informative. Should you ever have any questions about the content, please reach out to your local underwriting counsel or account representative.

In this week's update we are including information relating to cybersecurity, which is an ever present business concern in our industry. ALTA recently published an article reporting that although cybercrimes, particularly wire fraud, are not decreasing, the recovery of diverted funds has improved. This is likely due to policies and processes that have been adopted by many closing and settlement agents allowing them to act quickly upon the discovery of a wire fraud. ALTA has many resources available, including ALTA's Rapid Response Plan for Wire Fraud Incidents, which can be customized for your office. The article and ALTA's resources are linked below.

In addition, for those Massachusetts and Rhode Island practitioners, we are highlighting two cases recently decided in these jurisdictions, which may be of interest to you.



Cybersecurity and ALTA Resources

A recent ALTA survey indicates that cybersecurity attacks have stayed the same or increased when compared to 2020. The good news is that recovery of diverted funds is getting better. While 78% of the 2020 survey respondents recovered nothing, 94% of the 2021 survey respondents reported at least partial recovery of funds, with 17% recovering the full amount diverted.

Cyber losses to U.S. Consumers totaled \$6.9 billion in 2021. ALTA has developed a myriad of resources to help you create your own guidelines and response plans. ALTA has available a Cybersecurity Incident Response Plan, an Outgoing Wire Preparation Checklist,

and a Rapid Response Plan for Wire Fraud Incidents as well as videos and other educational materials. Much of this material is available for members and non-members alike.

To access this material, follow this link: [Alta Wire Fraud Resources Link](#)

To read the full article follow this link: [Cyberattacks Against Industry Mount Article](#)



Massachusetts Case Summary - Diplomat Property Manager, LLC v. James A. Lozano (AC 21-P-690)

The Appeals Court recently affirmed a Housing Court decision which allowed a motion for summary judgment granting possession of a condominium unit to the Plaintiff after a foreclosure.

By way of background, the defendants had purchased a condominium unit and financed the purchase with a mortgage. The purchase money mortgage was subsequently assigned to “Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as separate trustee for PennyMac Loan Trust 2012-NPL1” (Christiana Trust). The defendant borrowers defaulted on their loan. Christiana Trust subsequently conducted a foreclosure sale, at which time Christiana Trust was the high bidder. After acquiring title at the foreclosure sale, Christiana Trust transferred the unit by quitclaim deed to PNMAC Mortgage Co., LLC and then it was subsequently transferred by quitclaim deed to the defendant Diplomat. During this time, the foreclosed property remained occupied by the defendant borrowers. After acquiring the property from PNMAC Mortgage Co., LLC, Diplomat served the defendants with notice to vacate and later with a summary process summons and complaint seeking possession and use and occupancy charges.

The Housing Court considered whether Christiana Trust, as “a division of Wilmington” could take title to the mortgage and note and authorize its servicer to foreclose on the unit. The judge determined that Christiana Trust was a trade name of Wilmington Savings Fund Society, FSB (WSF) and therefore Christiana Trust’s title to the unit and its subsequent foreclosure process were valid.

The defendants also argued that Diplomat lacked standing to bring a summary process action because it did not purchase the unit at the foreclosure sale and is therefore a “remote purchaser.” The court acknowledged the broad authority of the Housing Court to hear not just challenges to the validity of the foreclosure, but challenges to title and other claims, defenses, and counterclaims in summary process matters. “As a result, the narrow application of the summary process statute urged on us by the defendants no longer applies. For this reason, courts hearing summary process actions, including the Housing Court, have jurisdiction to hear numerous challenges to foreclosure, including cases involving foreclosures initiated by so-called ‘remote’ purchasers. ... Accordingly, Diplomat had standing to bring this action.”

This is an important reminder for real estate attorneys that insuring title to occupied properties presents litigation risk, and that challenges to the underlying ownership and

propriety of the foreclosure sale and standing of the parties are valid matters for the Housing Court to consider in a summary process action.

If you are being asked to insure title to property that was subject to a recent foreclosure and the property remains occupied, please contact a member of our underwriting team for guidance on insurability of the transaction.

<https://www.mass.gov/files/documents/2022/12/30/w21P0690.pdf>



Rhode Island Case Summary – Kevin G. Aubee & Carrie A. Aubee v. Selene Finance LP & Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust (1st Circuit 20-1321)

The First Circuit Court of Appeals recently decided this appeal of the District Court’s dismissal of the Plaintiffs’ complaint that alleged the foreclosing lender had not strictly complied with the requirements of Paragraph 22 of the standard FNMA/FHLMC mortgage document, which requires the foreclosing lender to send the borrowers a notice of default, prior to initiating foreclosure process. The Plaintiffs (the borrowers) alleged that the notice of default sent to them was confusing because it contained language in addition to what was required under Paragraph 22 of the mortgage.

The Court followed the RI Supreme Court’s decision in *Woel v. Christiana Trust, as Trustee for Stanwich Mortgage Loan Trust Series 2017-17, et al.* 228 A.3d 339 (*Woel*), requiring strict compliance with paragraph 22, and then went further to clarify which cases would fall under the prospective decision of the RI Supreme Court. *Woel* specifically said that it applies to “...the case at bar and to cases pending in the Superior Court in which this this specific issue has been, or may be, raised.” *Woel* at 348. The Defendants in *Aubee* argued that the decision should not apply to their case because it was pending appeal, not pending in the Superior Court. The First Circuit found that the prospective application of the *Woel* decision also includes matters that were pending on appeal.

The case is important for conveyancers and title attorneys in Rhode Island as it provides a good reminder that foreclosures in Rhode Island must comply with the contractual provisions of the mortgage. In order to insure a transaction in Rhode Island where the title discloses a recent foreclosure, off-record documents must be obtained and reviewed. This includes the notice of default for all foreclosures initiated on or after June 2, 2020. Should you have questions about insuring title to foreclosed property, please reach out to our Rhode Island counsel.

[Case Link: AUBEE v. SELENE FINANCE LP FSB \(2022\)](#)

[Case Link: WOEL v. CHRISTIANA TRUST, RI: Supreme Court 2020](#)

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