



New England Regional Midweek Update
1/31/2024

Dear Stewart Associates,

It's hard to believe, but we are already through the first month of 2024! That means that the spring real estate market – and warmer weather – are just around the corner.

In this week's update, we are reminding agents who issue policies in Massachusetts and Connecticut about the requirements of the FinCEN Geographic Targeting Order (and the expansion of counties in Massachusetts that became effective late last year).

We have also included information on a recent Massachusetts SJC decision that clarifies when MassHealth can recover against the real estate of someone who receives benefits, both during lifetime and after death.

We also want to alert you to a new – and scary – scam that the KnowBe4 Security Team brought to our attention involving fake law enforcement officers. Also, Apple has released an update to iOS 17 that includes important security updates, and a new feature – Stolen Device Protection. For more information, read on!



Reminder: FinCEN GTO Filing Requirements for MA and CT
Policy Issuing Agents

By: Mark A. Jones, Associate Senior Underwriting
Counsel, Massachusetts and Rhode Island

Agents in Massachusetts and Connecticut are familiar with the requirements of the FinCEN GTO, which requires reporting when certain requirements are triggered. As a reminder, the GTO was expanded in late 2023 to also include the Massachusetts counties of **Bristol, Essex, Norfolk and Plymouth**. If you haven't had to comply with the GTO requirements yet, a summary is below.

What is the GTO?

The Financial Crimes Enforcement Network (FinCEN) through its Geographic Targeting Order (GTO) requires issuing title agents to report transactions that are "Covered Transactions" if they meet the following parameters:

- Residential real property is purchased by a Legal Entity (excluding trusts)
- The purchase price of the residential real property is in the amount of \$300,000 or more in the following New England areas:

1. Connecticut – Fairfield and Litchfield Counties
 2. Massachusetts – Suffolk, Middlesex, Bristol, Essex, Norfolk, and Plymouth Counties
- The purchase is made without a bank loan or other similar form of external financing by a financial institution; and
 - The purchase is made, at least in part, using currency or a cashier's check, a certified check, traveler's check, personal check, business check, money order in any form, a funds transfer, or virtual currency.

What's new from the October 2023 order?

The new order includes four new counties in Massachusetts: Bristol, Essex, Norfolk, and Plymouth Counties

FinCEN's new GTO is in effect from October 22, 2023, until April 18, 2024. For the recently added counties, the new Order is in effect beginning November 21, 2023, until April 18, 2024.

Here is a link to the most recent GTO: [Fincen GTO](#)

What do you need to do as an agent?

First, if you have a transaction involving property in one of the listed counties, you'll want to include in the title commitment the following requirement:

This Company is required by Federal Law to collect certain additional information from you and the parties representing you regarding the purchase of real property. US Code Title 31- Sec 5326 authorizes the U.S. Department of Treasury to collect information about the certain transaction as specified in various geographic targeting orders for the purpose of preventing evasion of the Bank Secrecy Act. As a result of a Geographic Targeting Order ("GTO") issued by the United States Department of Treasury, Financial Crimes Enforcement Network ("FinCEN"), this transaction may be responsive to the requirements of the GTO. You may be required, as a condition of the issuance of the policy to provide additional information that will be reported to FinCEN. Please contact this company and provide the details of this transaction in order to comply with the GTO.

If the transaction meets the reporting requirement, you will be asked to provide information on the identity of the parties to the transaction, which will be reported to FinCEN. This company is prohibited from issuing its policy if the transaction is reportable and the information is not provided for reporting. Additional exceptions and/or requirements may be raised.

Second, if all of the requirements of the GTO are met, a covered transaction must be reported to FinCEN within 30 days of closing.

How can Stewart help?

To help our agents comply with the GTO, Stewart facilitates the filing of reportable transactions for its agents. This service is provided at no charge. All you need to do is complete the ALTA information collection form ([ALTA information collection form](#)) and email it to fincenreports@stewart.com along with supporting identification from the buyers such as a driver's license or passport. A Stewart representative will input the information into the

filing portal established by the Treasury Department and send you a copy of the filing for your records. To learn more about this service, contact your account service representative.



Massachusetts SJC issues decision clarifying MassHealth estate recovery By: Tracie M. Kester, Associate Senior Underwriting Counsel, Massachusetts

On December 13, 2023 the Massachusetts Supreme Judicial Court issued its decision In the Matter of the Estate of Frances R. Mason dealing with MassHealth's ability to recover for benefits paid under its State-administered Medicaid program. The case is the latest in a series of decisions involving MassHealth's estate recovery efforts.

The facts of the Mason case are as follows. Frances Mason owned property in South Yarmouth, Massachusetts. In 2008, she received nursing home care for which MassHealth paid benefits. In May of 2008, MassHealth recorded a lien against the South Yarmouth property at the Registry of Deeds. In August of 2008, Ms. Mason passed away. More than 9 years later, in June 2017, the Personal Representative ("PR") named in Ms. Mason's Will filed a petition to probate the Will. MassHealth timely filed its notice of claim with the probate court. The property was sold in 2021, with sale proceeds held in escrow pending a determination on MassHealth's claim. After the sale, the PR filed a motion to strike both the lien recorded with the registry of deeds and the notice of claim filed in the probate court.

Notably, during the nine-year period between Ms. Mason's death and the filing of the petition to probate her estate, Massachusetts enacted its version of the Uniform Probate Code, codified at MGL c. 190B (the "MUPC"). The MUPC contains a limitation on the time to file a probate petition – it must be filed within three years of the date of death; otherwise, a so-called "late and limited" proceeding is required. See MGL c. 190B, s. 3-108. That section also states that a PR in a late and limited proceeding "shall have no right to possess estate assets ... beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be present against the estate." *Id.* [Emphasis supplied].

In the probate court proceeding, the judge ruled that because the property had not been sold during Ms. Mason's lifetime, the lien recorded with the registry of deeds was not enforceable against the property. The judge also ruled that the three-year statute of limitations in MUPC Section 3-108 prohibited MassHealth from collecting from Ms. Mason's estate because she died more than 3 years prior to the claim being filed. MassHealth appealed, and the SJC transferred the case from the appeals court on its own initiative.

The SJC agreed with the probate court judge that the so-called "lifetime lien" recorded at the Registry of Deeds was not enforceable against the real estate. However, the SJC found that MassHealth could recover from Ms. Mason's probate estate for benefits paid because she died prior to the enactment of the MUPC in 2012, and the three-year statute of limitations in Section 3-108 was not retroactive.

The Mason decision is the second time in less than five years that the SJC has reviewed the MassHealth estate recovery program. In 2020, the SJC issued the Kendall decision, in

which the Court held that Section 3-108 of the MUPC prohibited MassHealth from filing a claim in a late and limited proceeding. See In the Matter of the Estate of Jacqueline Ann Kendall, 486 Mass. 522 (2020). The primary difference in the two cases is the date of death – in Mason, the decedent died prior to the 2012 enactment of the MUPC; in Kendall, the decedent died after it was enacted.

There are two primary takeaways from the Mason case. First, if MassHealth has recorded a so-called “lifetime lien” against a MassHealth recipient at the Registry of Deeds, and the property was not transferred or sold during the lifetime of the recipient, upon that recipient's death the lien is no longer enforceable. MassHealth must instead look to recover from the member's probate assets. Second, if a MassHealth recipient died prior to the 2012 date of the enactment of the MUPC, but a probate isn't opened until after 2012 (post MUPC), MassHealth can file a notice of claim and collect from the member's probate assets – the statute of limitations is 50 years from date of death. As the Kendall case states, however, if the member died after the 2012 effective date of the MUPC, and more than 3 years has passed since the member's date of death such that a late and limited proceeding is required, MassHealth cannot collect from the estate.

Keep in mind that if MassHealth has recorded a lien at the Registry of Deeds, and the MassHealth recipient transfers or sells that property, the lien does continue and the transferee's title is still subject to that lien. Therefore, if you encounter a MassHealth lien in your chain of title, you must confirm that the MassHealth member died prior to any transfer of the property. If you are representing someone buying property from a MassHealth recipient with a recorded lien, you will need to obtain a release of the lien from MassHealth.

You can read the full case here: <https://casetext.com/case/in-re-estate-of-mason-9>

As always, if you have any questions regarding insuring property where MassHealth has recorded a lien or filed a notice of claim, please contact your underwriting counsel.



Fake App Scam – from KnowBe4.com

The Security Team at KnowBe4 recently circulated a warning regarding a new scam involving fraudsters impersonating police officers to trick you into providing your financial information. The scammers contact people and tell them their bank accounts may be involved in financial fraud. They then ask the person to download a mobile app to help the “investigation.” The fraudsters then provide a case number, and when people put that number into the app it will return documents that appear to be legal forms with their names on them. The hackers use these seemingly legitimate documents to gain the victim's trust, and then coax them into providing additional financial information.

But wait – there's more. The app also blocks other calls and text messages without the victim's knowledge. If the bank or financial institution tries to contact them to ask about any unusual activity, the call or text won't go through, giving the scammers more time to abscond with the money.

Some tips to stay safe include:

- Only download apps from a known or trusted publisher (remember that anyone can publish an app).
- Beware of calls, emails, or texts from unknown numbers or addresses that try to give you a sense of urgency. While anyone would be concerned if they were contacted by law enforcement and told their money was at risk, any legitimate police officer or investigator will provide you with verifiable information so that you can confirm his or her identity.



New Apple Software Update – Stolen Device Protection

If you use an iPhone for your personal or business matters (or both), you'll want to make sure to update the Operating System to version 17.3. In addition to containing patches addressing security vulnerabilities, iOS 17.3 includes a new feature known as "Stolen Device Protection" that can help with recovery if your iPhone is stolen. When this feature is turned on, the iPhone may require additional verification or impose a delay on a password change if these actions are taken when your phone is not in its usual location (i.e., your home or office). This feature can be turned on in settings. For more information, see the following on Apple's website: <https://support.apple.com/en-us/HT212510>



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