

Dear Stewart Partners,

In this week's Midweek Update we are including information on the Massachusetts Homestead statute, and since Halloween is right around the corner, we thought what better time to discuss zombie mortgages. We are also providing a link below to a recent Stewart Bulletin which provides information on the renewed FinCEN Geographic Targeting Order, along with a Special Alert issued for property in Maine, in case you missed it.



Massachusetts Homestead Update By: Tracie Kester, Associate Senior Underwriting Counsel, Massachusetts

The "Affordable Homes Act" signed into law on August 6, 2024 contained several provisions of interest to practitioners, including voluntary withdrawal from Land Court registration and zoning relief. It also doubled the declared homestead exemptions under MGL c. 188. Effective as of the August 6 date, the amount of the declared exemption increased from \$500,000 to \$1,000,000. Elderly and disabled persons can still "stack" the exemption, and are able to protect up to \$2,000,000 in equity in their principal residence from creditors.

The amount of the so-called "automatic" homestead exemption remains at \$125,000.

As a reminder, in late 2022 the Massachusetts Homestead law was amended to allow additional people to declare a homestead – specifically, remaindermen and lessee shareholders of residential co-ops are entitled to automatic or declared homestead exemptions, provided the property is their principal residence.

The 2022 amendment also included additional ways to terminate or release homestead rights in deeds. The law now states that a good faith purchaser for value may rely upon the following language in a deed to terminate homestead rights of the grantor and grantor's spouse, if any:

1. a recitation that grantor is unmarried;
2. a recitation that the property is not a home;
3. a recitation that the property is not the grantor's home;
4. a statement certified under penalties of perjury that there is no spouse or former spouse entitled to an estate of homestead; or
5. a statement certified under penalties of perjury that property is not the home of grantor's spouse or former spouse.

As always, if you have any questions regarding whether a deed is sufficient to release homestead rights, please contact your Stewart underwriting counsel.



Zombie Mortgages By: Rhonda Duddy, Massachusetts and New Hampshire Underwriting Counsel

The term “zombie mortgage” originated from the aftermath of the financial crisis in 2008 when there was an increase in residential mortgage loans that defaulted. In a typical scenario, the mortgage servicer would start the foreclosure process, but then stop all communication with the homeowner and not follow up because the servicer didn’t believe they would be able to recoup their investment, so it wasn’t worth their effort. Because of the lack of communication, and other likely financial pressures, some homeowners may not have prioritized payment obligations or thought that their mortgage was forgiven or rolled in with a first mortgage during a refinance or other loan modification. Unfortunately, that was not the case and that debt along with the encumbrance continued to exist. After remaining silent for years, the mortgages then came back from the dead, so to speak, when the mortgage servicer resumed collection efforts or foreclosure processes were initiated and that is why these resurrected mortgages are sometimes referred to as “zombie mortgages.”

Although the term “zombie mortgage” has been around for years, you may have been hearing them mentioned more frequently lately. That could be due to the \$10 million dollar settlement that was reached on October 3, 2024 between the Massachusetts Attorney General and Franklin Credit Management Corporation (Franklin Credit). In addition to the settled Massachusetts case, articles have recently been published that discuss the reason for the increased interest in zombie mortgages. For instance, a recent New York Times article stated that the latest focus on zombie mortgages is due to the rise in home prices. The article stated that the median home sale price has hit another record high, but mortgage rates have declined. Since a rise in property values increases equity, that increase could put a mortgage holder in a good financial position. Also, a recent NPR investigation analyzed foreclosure data in several states and found that in the past two years there were at least 10,000 second mortgages in New York alone whereupon foreclosure activity had been initiated for mortgages that were originated between 2004 to 2008. Even the CFPB has defined the term in its consumer information page.

(<https://www.consumerfinance.gov/ask-cfpb/what-is-a-zombie-second-mortgage-en-2133/>)

Clearly, some mortgage holders believe now is the time to take action in order to recoup their investments.

Massachusetts Attorney General Andrea Campbell recently released a statement that the settlement with Franklin Credit was the first of its kind in the Commonwealth. According to the statement, the settlement resolves allegations that the company violated Massachusetts consumer protection laws by improperly attempting to collect on debts in its portfolio of primarily second mortgages after failing to communicate with borrowers as well as failing to comply with critical foreclosure-prevention measures in accordance with MGL c. 244, §35B. Section 35B prohibits a lender from publishing a notice of foreclosure sale with respect to “certain mortgage loans” without first having taken reasonable steps and made a good faith effort to avoid foreclosure. The Attorney General claims that Franklin Credit severely

delayed communicating with borrowers, including delaying sending required 35B notices, which prevented borrowers from obtaining assistance until their unpaid balance was too large to allow a successful modification of the loan. The Attorney General further alleged that when Franklin Credit did send the required 35B notices, it failed to take required steps to respond to and assist borrowers, and in some instances unlawfully charged up-front payments as a prerequisite to entering a modification, further impeding borrowers' ability to cure or modify their mortgages.

Under the settlement agreement, Franklin Credit will cease collecting and attempting to collect the debts of its entire Massachusetts mortgage loan portfolio. The company also will not transfer or sell any of these loans to another entity, effectively relieving the burden of over \$10 million in debt for hundreds of Massachusetts borrowers. In addition, Franklin Credit will make a monetary payment of \$300,000 to the Commonwealth and change its business practices to comply with state laws if it seeks to service any future mortgages in Massachusetts.

Franklin Credit Management denied all of the allegations and stated that they are pleased to have resolved the matter and believe the settlement is in the best interests of the company. To read Attorney General's press release on the settlement, follow this link: <https://www.mass.gov/news/in-precedent-setting-settlement-ag-campbell-protects-homeowners-from-zombie-second-mortgages>



In Case You Missed It

FinCEN Geographic Targeting Order (GTO) renewed:

On October 16, 2024 Stewart issued Bulletin SLS2024015 that provides information on the renewed FinCEN Geographic Targeting Order, which is now effective through April 14, 2025. As set forth in the GTO issued in April of 2024, the Massachusetts counties of Suffolk, Middlesex, Bristol, Essex, Norfolk and Plymouth are included, as are the Connecticut counties of Fairfield and Litchfield. To view this Bulletin, follow this link: [Bulletin SLS2024015](#)

Stewart Special Alert Bulletin – 395 Gary Moore Road, Ellsworth, Maine

Special Alert: Yesterday, the Company issued a Special Alert SA2024318 involving property in Ellsworth, Maine. Issuing agents are instructed not to issue commitments or policies involving the individual or property without approval. To read the full bulletin, follow this link: [Special Alert SA2024318](#)



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