REBA news
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Emerging Leader Award established to recognize new and young lawyers

BY NICHOLAS P. SHAPIRO AND KENDRA L. BERARDI

On July 13, REBA's board of directors voted to establish a commendation for new members, the Emerging Leader Award.

The award will honor those new members of REBA, who have been members of the bar for 10 years or less and who have demonstrated a level of involvement, excellence, collegiality, ethics and integrity that exceeds expectations for practitioners at their experience level.

As the award's name suggests, honorees are young or new lawyers in the real estate bar who have exhibited promise as future leaders of the association.

REBA's adoption of the Emerging Leader Award comprises the latest step taken by the association toward greater new and young lawyer outreach. It also reflects the changing reality of the practice of law, during what was an incredibly difficult economic time for the profession in the last decade, the effects of which are still being felt by junior lawyers today.

With this award, REBA's leadership has acknowledged that the changing economic landscape has created new challenges for advancement.

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The conventional carrier trajectory of joining a practice, apprenticing under a good mentor, focusing on being a good lawyer and paying your dues, is no longer sufficient for newer and younger peers.

That is not to say that good mentoring and a focus on good lawyering are unimportant – they remain vital – but are not enough to allow young lawyers to thrive. Today, based on the explosion in size of annual law school classes in the mid-2000s and the significant employment contraction that recently besieged our industry, all of these courses of action remain necessary; however, more is now expected.

New and young lawyers are expected to do all of these things, but also to formulate business plans and marketing strategies earlier in their careers, as the legal market has continued to get more competitive, through the economic downturn and ascendancy of social media as a potent marketing tool for all small and large businesses.

And, while the particulars and formalities of these demands may change depending on the size of firm, we can attest as attorneys at big and small firms, a significant added focus towards client development and marketing, from the start, is something that distinguishes this moment in the practice of law.

Added to these pressures is the staggering student debt that many new and young lawyers experience as a result of hyperinflation in higher education costs. It is truly a tough time to be a new or young attorney. To its immense credit, REBA's leadership has recognized that, with these added demands, new and young members of Massachusetts' real estate bar, who, despite these additional pressures, contribute in a meaningful way to REBA's mission and focus, deserve additional recognition with the Emerging Leader Award.

This award is not the first step REBA has taken in heeding the needs of its newer and younger membership, and in responding to significant changes and trends in the legal marketplace.

In 2013, REBA created the New Lawyers Committee, now Section. Since that time, REBA New Lawyers Section has put on various substantive open meetings and programs, geared to the unique needs of new and

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CFPB's McClung to deliver keynote at annual meeting

Tricia McClung will deliver the luncheon keynote address at REBA's Annual Meeting and Conference on Nov. 7 at the Four Points by Sheraton in Norwood.

An expert on the Consumer Financial Protection Bureau's TRID (TILA-RESPA Integrated Disclosure) Rule, McClung is assistant director for mortgage markets at the bureau and a frequent speaker on residential mortgage regulatory matters.

TRICIA MCCLUNG

McClung is responsible for articulating a fact-based, up-to-date perspective on current and future dynamics on the markets for origination and servicing of mortgages and home equity loans. Communicating with various mortgage industry participants, she is deeply involved in the bureau's rule-making process, particularly in the TRID rule, implemented last October. McClung will discuss pending revisions to the TRID rule on its one year anniversary.

Prior to joining the bureau, Tricia served at the Federal Housing Administration in various senior leadership positions responsible for FHA credit policy, technology, outreach and communications in the administration's single-family loan endorsement business.

The bulk of McClung's mortgage market career, more than 23 years, was spent at Freddie Mac, where she led numerous strategic efforts implementing policy, systems, product development, training, industry outreach, marketing and mission.

To register for REBA's Annual Meeting and Conference, go to https://intus.reba.net/intus/event3/signup.asp?event_id=388

Business email scams target real estate lawyers

BY MICHAEL P. KELLY

Editor's note: Michael Kelly will be a panelist hosting an hour-long breakout session, "Cyber Scams Targeting Real Estate Attorneys," at REBA's Annual Meeting and Conference on Nov. 7 at the Four Points by Sheraton in Norwood. To register for the program, go to www.reba.net.

The FBI Boston Division is warning of a dramatic rise in business e-mail compromise scams or "BECs," which target businesses of all sizes and types, and have resulted in massive financial losses in Boston and other cities. Globally, since October 2013, more than $3.1 billion in actual and attempted losses have been reported.

The scammers go to great lengths to spoof a company e-mail or use social engineering to assume the identity of the CEO, a trusted vendor, or a person in a position of authority within a company.

They research employees who manage money and use language specific to the company they are targeting, then they request a wire transfer to an account controlled by them. Common recipients of these e-mails are real estate agents, title companies and attorneys in the midst of real estate transactions, bookkeepers, accountants, controllers and chief financial officers.

The perpetrators of this fraud, believed to be members of international organized crime groups, primarily target businesses that work with foreign suppliers or regularly perform wire transfers, and they use domestic bank accounts to funnel money off shore.

According to the Internet Crime Complaint Cen-

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Inside this issue

Keep your feet on the ground

President's Message

SUSAN B. LAROSE

"Don't get on the roller coaster." These are words of wisdom that were imparted to the parents of my son's middle school class that I repeat to myself on a daily basis.

The real estate world can be tumultuous, and speaking with lawyers across the state, many are experiencing a virtual roller coaster ride.

Many factors contribute to the current dynamics in our profession. The economy, while improving, still concerns us. In most markets, there is limited residential inventory available and many buyers compete for those properties.

Sellers want everything their way and many buyers don't understand what it means to be buying in a seller's market. Of course, the CFPB regulations have created uncertainty for everyone. And the upcoming presidential election has done little to calm the anxieties of the general public.

How do we manage in an environment that feels like a perpetual roller coaster ride? We simply keep our feet on the ground. We can watch the ride and enjoy the excitement, while always staying grounded.

Those of us who have been practicing for many years are familiar with the cyclical nature of the market. We have up cycles, down cycles and occasional periods of calm. Regardless of our experience, we must resist the temptation to jump on the roller coaster and avoid being unwillingly dragged on.

I have spoken with several attorneys, nearing retirement age, who have decided to retire early. I have met with several new attorneys who now question their decision to enter the real estate field.

Many feel overwhelmed, overworked, underpaid, frustrated and discouraged. What do they all have in common? You guessed it – they have been unable to keep their feet on the ground and are on the roller coaster.

Real estate is never dull, never predictable. It requires a continuing commitment to educating ourselves and raising the bar on expectations for professionalism among our sisters and brothers in the profession. We must focus on the end goal, not the tumultuous ride.

> We must focus on the end goal, not the tumultuous ride.

As John Lennon said, "Everything will be okay in the end. If it's not okay, it's not the end."

Plans announced to form committee sections

The board of directors, in consultation with various committee chairs and in light of the expanded number and breadth of REBA's committees, has determined that the time has come for certain of those committees to form "sections" as anticipated by the association's by-laws. Those sections would be open to all members of the association and will reflect the greater inclusiveness that has already occurred within many of REBA's committees, most notably those that serve primarily an educational and/or networking function and that already hold regular educational meetings open to all members of the association.

Our two governance committees, the Executive Committee and the Nominating Committee, would remain as by-law designated committees, with membership on those committees determined in accordance with the by-laws.

Also, the committees that set policy or serve primarily operational functions for the association, such as the Amicus, Long-Term Planning, Strategic Communications, Title Standards, and Unauthorized Practice of Law Committees, would remain invitational due to the unique nature and mission of those committees. Membership on those committees would be determined by the chairs or co-chairs of each of those committees.

All other committees would also remain in place to serve a core or leadership function for the larger section to be formed by each such committee. The committee will be charged with planning the section's programs and meetings and, where applicable, advising the Executive Committee and the board on matters of policy falling within the areas of expertise of the particular committee. Membership on each committee shall be at the invitation of the chair or co-chairs of the committee, similar to the process for selecting and approving members of the operational and policy-setting committees as noted above.

Membership in the section formed by each committee, as also noted above, will be open to all members in good standing with the association.

It is anticipated that certain committees will maintain an active agenda with regular meetings of their own, in addition to holding section meetings open to all members of the section and to all REBA members, while other committees may meet infrequently to plan section activities.

CATIC opens national commercial services office

Connecticut Attorneys Title Insurance Company has opened a national commercial services office in downtown Hartford.

"For the first time in CATIC's 50-year history, we now have an office in downtown Hartford. The office will be dedicated to servicing the title insurance needs of commercial real estate attorneys and law firms. The primary focus of CATIC's new commercial division will be on real estate transactions in the $5 million to $500 million range. The office is fully staffed with experienced counsel and underwriters and is operational," said James M. Czapiga, CATIC's president and CEO.

CATIC, New England's only bar-related title insurance company, is an underwriting member of the American Land Title Association, the New England Land Title Association, as well as the North American Bar-Related® Title Insurers.

Amy Arcano, vice president and National Commercial Services manager, will lead the new CATIC division with a five-person staff. Collectively, the members of this team will focus on expanding CATIC's existing commercial underwriting footprint.

With its corporate headquarters located in Rocky Hill, Connecticut, CATIC, the major operating subsidiary of its parent holding company, CATIC Financial, Inc., now has eight offices throughout New England and is currently licensed in Connecticut, Massachusetts, Rhode Island, Vermont, Maine and New Hampshire.

The company issues its title policies through a network of more than 2,000 attorneys, providing high-quality professional services to policy-issuing attorneys, insured lenders, home buyers and other members of the real estate community.

CATIC is also pleased to announce the addition of the following CATIC National Commercial Services employees: VP & Commercial Underwriter/ National Commercial Services Manager Amy Arcano; VP & State Counsel Eliot Streim; Senior Title Counsel John Thomas; Title Counsel Anthony Lombardi; VP & National Commercial Sales Manager Michael Shannon; and Agent Services Coordinator Denise Boucher.

For more information about CATIC National Commercial Services, please contact Amy Arcano at AArcano@catic.com or call (866) GO-CATIC. For more information about the company or to become a CATIC agent, please visit www.CATIC.com.

REBA
THE REAL ESTATE BAR ASSOCIATION
for Massachusetts

295 Devonshire Street, Sixth Floor,
Boston, MA 02110-1266
www.reba.net

MISSION STATEMENT

To advance the practice of real estate law by creating and sponsoring professional standards, actively participating in the legislative process, creating educational programs and material, and demonstrating and promoting fair dealing and good fellowship among members of the real estate bar.

MENTORING STATEMENT

To promote the improvement of the practice of real estate law, the mentoring of fellow practitioners is the continuing professional responsibility of all REBA members. The officers, directors and committee members are available to respond to membership inquires relative to the Association's Title Standards, Practice Standards, Ethical Standards and Forms with the understanding that advice to Association members is not, of course, a legal option.

Postmaster: Send address changes to REBA, 295 Devonshire Street, 6th Floor, Boston MA, 02110

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SJC's 'Rego' clarifies role of foreclosure counsel

BY THOMAS J. SANTOLUCITO

Last May, the Supreme Judicial Court issued its long-awaited decision in *Federal National Mortgage Corp. v. Rego*, 474 Mass. 329 (2016). The SJC's decision eliminates a common challenge to mortgage foreclosures in summary process cases, clarifies the role of foreclosure counsel and expands the jurisdiction of the Housing Court in post-foreclosure summary process cases, to entertain ancillary claims that do not affect title.

Massachusetts law identifies six distinct parties or roles that may foreclose a mortgage using the statutory power of sale. One of the authorized parties is an "attorney duly authorized by writing under seal."

In *Rego*, the former owners facing eviction argued that the mortgagee's legal counsel, as its "attorney," must produce written authority to publish and mail statutory notices and perform other administrative tasks in the name of its client. Since the mortgagee's law firm did not produce written authority prior to performing the acts at issue, the former borrowers argued that the foreclosure sale was void.

In the 1984 decision of *Fairhaven Savings Bank v. Callahan*, the SJC rejected a similar challenge, finding that this argument came "perilously close to being frivolous." Despite the SJC's clear and emphatic directive in *Callahan*, the issue resurfaced in recent years as a defense to post-foreclosure summary process cases.

While most trial courts rejected this argument, a small minority found in favor of the borrowers and set aside completed foreclosures due to foreclosure counsel's inability to produce evidence of specific written authority to execute its responsibilities.

In a unanimous decision, the SJC concluded that the statutory reference to an "attorney duly authorized by writing under seal" pertained to an agent foreclosing in its own name under a power of attorney, not the mortgagee's legal counsel conducting the foreclosure in the mortgagee's name.

The SJC analyzed the differences between attorneys in fact and attorneys at law, considering authoritative sources at the time the Legislature amended the foreclosure statute to include the relevant statutory phrase, and found that this unique provision of the statute regulated the conduct of an agent foreclosing a mortgage in its own name, under a power of attorney. Accordingly, the SJC concluded that a mortgagee's legal counsel need not produce formal written authorization to perform the acts necessary to exercise the statutory power of sale in the name of the mortgagee.

> The decision represents both a correct interpretation of the statute and a recognition of a counsel's limited role when representing a foreclosing mortgagee.

A contrary ruling would have not only imposed a writing requirement, but also would have treated foreclosure counsel as the party exercising the power of sale. Attorneys that practice in this area expressed significant concerns about being treated as a foreclosing entity, given the risks and responsibilities inherent in that role. The SJC's decision represents both a correct interpretation of the statute and a recognition of a counsel's limited role when representing a foreclosing mortgagee.

A second issue addressed in *Rego* was the Housing Court's jurisdiction to entertain issues in summary process that do not challenge a foreclosing owner's title. In *Rego*, the Housing Court dismissed the former borrower's c. 93A claim after determining that Fannie Mae possessed the requisite title and right to possess the property. On appeal, the former borrowers argued that dismissal of the c. 93A claim was premature and the Housing Court should have entertained the issue on its merits, irrespective of the court's determination of the right to possession.

The SJC has long held that a former borrower may challenge a foreclosing owner's legal title in summary process proceedings. Prior to 2013, a challenge to title was limited to the mortgagee's compliance with statutory foreclosure requirements. Defenses grounded in equity and fairness were not permitted.

In its 2013 decision in *Bank of America v. Rosa*, the SJC found that the Housing Court could entertain all defenses and counterclaims (including equitable defenses) by former owners in summary process that challenge title to the property. *Rosa* stressed that modern notions of judicial economy and the need to litigate mortgage disputes in one forum, outweighed the need to limit the issues available in summary process to keep possessory actions simple, expedited and inexpensive as envisioned by the Uniform Summary Process Rules.

Following *Rego*, it became unclear whether summary process courts could entertain claims and defenses by former borrowers that do not attack the validity of the foreclosure, but could support a claim for money damages or some other relief.

In *Rego*, the SJC held that summary process courts possess jurisdiction to consider non-title claims. A summary process court may now sever a case and award possession to the foreclosing owner upon a sufficient showing of legal title, while also retaining the ability to determine issues unrelated to title in a separate civil proceeding.

Rego represents a further expansion of the Housing Court's jurisdiction and reach beyond its traditional role, likely cementing the Housing Court's status as the primary forum for adjudicating mortgage disputes after a completed foreclosure.

Tom Santolucito has led Harmon Law Office's landlord/tenant and housing litigation practice since 2014. He recently assumed oversight of the firm's title and condominium litigation practice. He has served as a discussion panelist and guest speaker at client and industry events focusing on housing law. Tom can be contacted at tsantolucito@harmonlaw.com.

REBA's LaRose joins WFG National Title Insurance Company

WFG National Title Insurance Company has named Susan B. LaRose, REBA's 2016 president, to serve as underwriting counsel in its New England Agency Region.

LaRose will provide underwriting support, guidance and education for the underwriter's New England region title agents.

She comes to WFG National Title having most recently been a partner in the law firm of Doucette & LaRose, LLC in Oxford. In addition to her duties as REBA's president, LaRose serves on the Association's Title Insurance and National Affairs Committee and its Residential Conveyancing Committee.

LaRose is also one of the founders of REBA's affiliate program to residential conveyancers in local bar associations in Barnstable, Berkshire, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk and Plymouth counties. She is a leader of the REBA Women's Real Estate Networking Group and a frequent panelist on Massachusetts Continuing Legal Education programs and at break-out sessions for REBA's twice-yearly conferences.

"Having worked closely with Susan for a number of years in REBA's leadership, I know that she has well-established skills as a natural educator and effective communicator to WFG," said Tom Bhisitkul, REBA's immediate past president. "We congratulate her and wish her success in her new endeavors."

Taxation on forest, farming and recreational land

Editor's note: Gene will be a panelist hosting an hour-long breakout session, "Agricultural/Horticultural Liens — A Practical Skills Session" at REBA's Annual Meeting and Conference on Nov. 7 at the Four Points by Sheraton in Norwood. To register for the program, go to www.reba.net.

BY EUGENE GURVITS

It is fall in New England. The leaves on the trees are changing colors; the farmers markets are bursting with corn, tomatoes, pumpkins and other produce; and kids are home from summer camps.

If you are a conveyancing geek, like I am, fall is a perfect time to revisit the laws of taxation on forest, agricultural and recreational property. Effective March 2007, the laws have been amended, thus changing our approach to analyzing titles for sales and mortgages of these types of land.

It has long been understood in this Commonwealth that the use of land for forestry, farming and recreation is of great benefit to society. Almost by necessity, these activities require large areas and, to induce the continued use of the land for these purposes, the legislature enacted G.L. chapters 61, 61A, and 61B.

Chapter 61 deals with forest land, chapter 61A covers agricultural and horticultural use and chapter 61B regulates the use of recreational land. In all cases, the owners have a right to have land declared subject to the appropriate chapter by application to the town where the property is located. Once so designated by the town, the land is taxed at a lower rate than land not subject to these chapters.

If a title examiner finds a recorded notice of forest, agricultural or recreational lien, it simply means that the land is assessed for these purposes and a change in use will trigger the payment of roll-back taxes and/or conveyance taxes. A notice of such lien must always appear as an exception on Schedule B of the policy unless the town releases its lien.

In addition to collecting roll-back taxes, the towns also have rights of first refusal. These rights were extensively revamped in the 2006 amendments to chapters 61, 61A, and 61B. The amendments became effective on March 22, 2007.

Prior to the amendment, the town would have a right of first refusal if the land "valued, assessed and taxed" as protected use land was sold for or converted to other purposes. Therefore, my position with respect to the town rights was that, once the town released its lien and the land was no longer taxed as forest, agricultural or recreational land, it became free of the town's right of first refusal. This is no longer the case.

The sale or conversion provisions of the statutes may be found in section

8 of chapter 61, section 14 of chapter 61A, and section 9 of chapter 61B. The revisions to these sections are identical. It appears that the drafters of the revision to the statutes simply created the amendment for chapter 61 dealing with forest land and then used it verbatim for amending chapters 61A and 61B because those two chapters retained the reference to forest land all the way until a 2014 amendment.

As a result, a discussion of the amendment to one of the chapters and its effect on our underwriting standards, will apply to all three chapters. For the purpose of this article, I will analyze section 8 of chapter 61.

Under the amended provisions of section 8 of chapter 61, the town is entitled to receive the notice of sale for or conversion to residential, industrial, or commercial use as long as the land is taxed as forest land and for one year after it is no longer taxed as such. The use of a portion of the land as a residence of the owner, members of his or her family, or their employees in the forest use of the land is not considered to be a conversion. The statute goes on to describe the specific elements of the proper notice.

The notice of sale or conversion has to include a statement of the intent to sell or convert, a statement of the proposed use of the land, the location and acreage of the land as shown on a map with the same scale as the assessor's map and the name, address and the phone number of the owner.

Additionally, the notice of the intent to sell has to include a certified copy of the purchase and sale agreement of the land subject to this chapter (and only of that land; if a contiguous non-forest land is also to be sold, the notice to the town must include a separate purchase and sale agreement for the non-forest parcel).

The offer to purchase must be a bona fide offer, not contingent on zoning changes or potential development of the land, from a party not affiliated with the land owner and for fixed consideration payable on the delivery of the deed.

A notice to convert must also include the name, address and telephone number of the owner's attorney. The notice has to be sent by certified mail or hand-delivered to the mayor and city council, or board of selectmen. The statute also provides for the notice to be sent to the

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Tax title procedure in the state's Land Court

Editor's note: John Harrington will be a panelist hosting an hour-long breakout session, "Municipal Tax Takings and Tax Title Foreclosures," at REBA's Annual Meeting and Conference on Nov. 7 at the Four Points by Sheraton in Norwood. To register for the program, go to www.reba.net.

BY JOHN R. HARRINGTON

The Land Court has had exclusive jurisdiction over proceedings to foreclosure rights of redemption under tax titles since 1915. The statutory provisions which govern these actions are found in G.L.c. 60, §64-75. Through the years, the overwhelming majority of these cases have been brought with respect to tax takings, tax collector's deeds and assignments of both of these.

However, foreclosure of the rights of redemption may also be sought with respect to takings made by private parties assigned tax receivables, statements of entry into tax deferral and recovery agreements and takings by water and sewer commissions.

The official statistics for fiscal years 2011-2015 reveal a trend of incremental growth each year in the number of new tax lien cases. The most notable development in recent years has been the substantial increase in the number of TL lien cases filed by private plaintiffs to whom or to which municipalities have sold the right to collect overdue taxes on particular parcels taken for unpaid real estate taxes.

Filing the complaint

If the instrument of taking or collector's deed has been recorded within sixty days of the taking or the collector's sale and at least six months have elapsed since the taking or sale, then the holder of the lien may file a complaint to foreclose. Municipalities may include up to five separate takings on a single complaint provided all the affected property is in common record ownership at the time of filing of the complaint.

The court has established forms, which should be used for complaints, notices of filing complaints, motions to withdraw, affidavits as to military service, motions for general default and motions and notices of hearing. Only the last two are available on the court system website (www.mass.gov/courts). All forms are available at the front counter of the Land Court. The court expects plaintiff's counsel to name as the defendant(s) the current equity owner(s). It is permissible, but not obligatory, to list as defendants other parties with valid recorded or registered interests in the property.

For each new case, the court must receive a deposit of $515 from which the filing fees and other court costs will be deducted while the case is pending. These are described in the Land Court section of the website. As soon as possible after initiating the case, counsel should complete the notice of filing complaint and have it recorded or registered.

Reference to the examiner

Immediately after each new tax lien case is filed, the court appoints a Land Court examiner to prepare a title report. Examiners are appointed in compliance with SJC Rule 1:07 from sequential lists containing the names of all Land Court examiners who have expressed a willingness to do this work. Examiners have 60 days to submit their reports or face automatic revocation of their appointments. They are paid at the rate of $150 per taking.

A title report for a tax lien case is sometimes called a mini-abstract because the purpose is to provide a list of those parties with valid interests of record in the subject property junior to the tax lien. For this reason, examiners are not expected to begin their searches farther back than 20 to 25 years before the recording or registration of the taking or collector's deed.

However, the starting point must always be a deed from a grantor other than a court-appointed fiduciary for unregistered land and the certificate of title outstanding on the relevant date of assessment for registered land. These requirements mean that on occasion examiners have to begin their searches decades before the taking or collector's deed.

Citation

As soon as possible after the submission of each tax lien title report, a staff attorney at the court will read it and determine whether it provides the information the court needs in order to issue notice to the parties identified as the equity owners or as having interests junior to the municipal lien. If additional information required for this purpose is needed, the court sends to the examiner or plaintiff's counsel memoranda which the court has traditionally called checklists and notes as such in docket entries. The court cannot send notice to interested parties until all information sought through these checklists has been provided.

Although the Rules of Civil Procedure apply to tax lien cases, chapter 60 mandates a significant variation as far as service of process upon defendants is concerned. Section 66 requires the court itself to provide this notice initially by certified mail. In the event such service to particular parties is unsuccessful, the court will require further notice to be served by deputy sheriff or newspaper publication. Return days are set so that recipients of these citations have about eight weeks to submit an answer.

As a courtesy, the court provides copies of all citations to plaintiffs' counsel as they are issued. Also by statute, any answer should first state the nature of the interest claimed in the land and then make an offer to redeem and/or present a challenge to the validity of the tax title.

Docket entries are made to show whether or not each effort to serve an interested party has been successful. Plaintiffs' counsel are expected to request service by deputy sheriff or provide better addresses whenever the effort to serve has failed.

Publication of a citation in a newspaper circulating in the locality where the land lies is required for:

- decedents without allowed Massachusetts probates
- individuals who cannot be found
- headless or terminated trusts
- dissolved business entities

The official statistics for fiscal years 2011-2015 reveal a trend of incremental growth each year in the number of new tax lien cases.

Before publication can take place in any case with defendants in one or more of these categories, plaintiff's counsel has to submit a letter of diligent search for approval by the court.

The court expects any diligent search to encompass probate and vital statistics records in Massachusetts as well as any relevant internet resources like obituaries. Place of death must be provided for any individuals known to be deceased and current addresses once confirmed must be stated for heirs, devisees, trust beneficiaries (if known) or former corporate officers.

The court will name parties with known addresses in the notice to be published and also attempt to serve them by certified mail. Should any defendants not be reached at their last known addresses, a letter must be presented to the court for approval of the notice already published as being sufficient for these parties. A letter of this type (often called in the court a prior publication letter) must specify counsel's efforts to date to find current addresses and explain that these have proved futile.

Withdrawing a case

If redemption from the tax lien occurs at any point while a case is pending, plaintiff's counsel must submit a motion to withdraw the case. After allowance of the withdrawal, an attested copy of the withdrawal should be recorded or registered.

Uncontested case

A case is considered uncontested provided

- the latest return day in any case has passed
- all interested parties having been successfully served
- no answers have been filed

Under these circumstances, the attorney for the plaintiff may seek to have the case reviewed for the entry of judgment by submitting a motion for general default with an affidavit as to military service. If a copy of the notice of filing complaint as recorded or registered has not already been submitted, this should be included. An attested copy of any judgment entered by the court must be recorded or registered.

Contested case

By statute, the filing of an answer in any tax lien case requires the court to hear the parties. Counsel should keep in mind that tax lien cases fall within the scope of the Rules of Civil Procedure with certain exceptions as for the service of process and the form of answers.

Either the plaintiff or the respondent may request a hearing on the latter's answer but only after all the interested parties have been successfully served and the return day on the last citation has passed. The court has posted on its website the form which parties must use to schedule a hearing. Hearings in tax lien cases are held only on Thursdays at 10 a.m. and 2 p.m. The moving party specifies the date and time.

If the moving party seeks a finding as to the amount owed for redemption, the request for hearing should include a draft order specifying this amount, including both principal and interest, as of the date of the hearing and the legal fees sought. The figure for the latter must be established through an affidavit from counsel. All requests for continuances of hearings must be made through a signed original document.

Upon the passing of the expiration date of any finding without redemption, counsel for the plaintiff may submit a motion for judgment and schedule a new hearing. If the motion for judgment is allowed, the case can be reviewed for the entry of judgment once a motion for general default with an affidavit as to military service has been filed. Finally, plaintiff's counsel can expect to receive by mail the judgment of foreclosure, if issued, for recording or registration.

Vacation of judgment

Section 64 of chapter 60 defines as "absolute" the title held by the holder of a judgment of foreclosure entered in the Land Court as to a tax taking or collector's deed. However, the statute provides for motions to vacate judgment. A plaintiff may move for vacation at any time provided "no innocent purchaser for value has acquired an interest" in the property at issue. Parties other than the plaintiff must per section 69A file any motion to vacate within one year after the entry of the judgment. Motions can be brought to vacate judgments as to fewer than all the parcels which were foreclosed or only particular parties.

John Harrington has served the Land Court for more than 21 years. He is currently title examiner, managing the court's tax title foreclosure department. John can be contacted by email at john.harrington@jud.state.ma.us.

Benefits and ethics of interacting on social media

BY KIMBERLY A. BIELAN

The use of social media is gaining traction in the legal profession, with attorneys frequently posting blogs, writing articles and sharing articles of interest.

As co-chair of REBA's Strategic Communications Committee, the evolving use of social media presents great opportunity to connect REBA members with access to blog posts, event updates, access to seminars and the chance to more actively participate in the association. Put simply, social media presents a mechanism by which you can not only market yourself to prospective clients, but also engage with your colleagues in the legal profession.

At the 2016 REBA Spring Conference, I had the opportunity to speak on a panel titled "Joining the Social Media Revolution … One Step at a Time" with Julie Barry, co-chair of REBA's Strategic Communications Committee, and Justin Tucker, national marketing director for WFG National Title Insurance.

The panel was an opportunity to introduce REBA members to the variety of social media platforms, answer questions and discuss ethical issues that may arise when using social media. As part of the Strategic Communications Committee's effort to encourage active social media engagement between REBA and its members, this article is the first in a series on the topic, which seeks to encourage you to dip your toe into the proverbial social media pool.

> If you would not undertake certain conduct in person, then do not undertake that conduct on social media.

Part of attorneys' hesitancy to use social media is often a question of the ethics surrounding the new medium. To be sure, social media may present traps for the unwary, but all one needs keep in mind is that the applicability of the Massachusetts Rules of Professional Conduct (S.J.C. Rule 3:07) to online conduct is no different than it would be to actions undertaken off-line.

Stated succinctly, if you would not undertake certain conduct in person, then do not undertake that conduct on social media. Keeping this simple statement in mind should guide your online interactions and (hopefully) take some of the intimidation out of engaging on a new form of medium.

Here is a list of other things to remember when interacting on social media:

1. Social media profiles and posts may constitute legal advertising
2. Avoid making false or misleading statements
3. Avoid making prohibited solicitations
4. Do not disclose privileged or confidential information
5. Do not assume you can "friend" judges (in fact, according to Massachusetts Committee on Judicial Ethics Opinion No. 2011-6, judges are prohibited from "friending" any attorney who may appear before them!)
6. Avoid communications with represented parties
7. Be cautious when communicating with unrepresented parties
8. Beware of inadvertently creating attorney-client relationships
9. Beware of potential unauthorized practice violations
10. Read cautiously with testimonials, endorsements and ratings

For more on each of these topics, including specific examples and recommendations on how to deal with each situation, please consult your 2016 REBA Spring Conference materials.

The Strategic Communications Committee looks forward to interacting with all of REBA's members and encourages all members to access its blog at rebama.blogspot.com, which is updated often with new content, to engage with REBA on Facebook, and to follow REBA on LinkedIn, where links to articles and events are frequently posted.

Kim Bielan co-chairs REBA's Strategic Communications Committee and is a leader in the association' strategic long-term planning, particularly with the New Lawyers Committee. She practices in the litigation department of Marcus, Errico, Emmer & Brooks, P.C. Kim can be contacted by email at kbielan@meeb.com.

Beyond Bitcoin: What blockchain means for real estate

BY AVI SPIELMAN AND STEVE WEIKAL

Digital currency has been in the news a lot lately, mostly for the wrong reasons. The $72 million hack of the Bitfinex exchange in Hong Kong; a $55 million hack of digital currency fund DAO; the $5 million hack of the Bitstamp exchange in 2015; and the lingering bad taste from the Mt. Gox exchange collapse in 2014, which caused hundreds of millions in Bitcoin losses.

These breaches highlight the challenges of bringing disruptive new technologies into the mainstream. However, these failures have not deterred technologists – nor investors – from the exciting new opportunities made possible by the technology underlying digital currencies: blockchain.

What exactly is blockchain? The Wall Street Journal's CIO Journal describes blockchain as "a data structure that allows for a digital ledger of transactions that is shared among a distributed network of computers on a peer-to-peer basis." In other words, a copy, or partial copy, of a shared ledger is saved on every computer connected to a blockchain network.

This "distributed ledger" is maintained by "miners" who perform mathematical operations according to a predetermined consensus process used to verify new transactions that are added to a blockchain. The result is blockchain's true innovation – removing the need for a central authority.

How does this affect the real estate industry? Beyond the impact that digital currency will have on the finance industry, which directly affects the real estate industry, digital currency – such as Bitcoin – has been used in a number of real estate-related capacities. This includes buyers accepting Bitcoin as payment for property and real estate crowdfunding websites accepting digital currency for debt and equity investment.

Although these are interesting developments, the more intriguing possibilities lie in how blockchain can revolutionize the way public records, particularly real estate titles, are processed, maintained and verified in the United States.

Consider the following possibilities:

Property ownership. What if a property's entire ownership and transaction history was immutably recorded and readily accessible by the general public on a distributed ledger? Blockchain enables such a system, where all data pertaining to a property or owner may be easily verified and accessed by the buyer, seller and trusted third parties. Furthermore, information asymmetry may be eliminated theoretically assuring provenance of title, transfer, deed and liens. Domestically, this may reduce human error or the need for redundant database systems. Internationally, it could stymie corruption and promote participation in formalized systems.

Contracts 2.0. Blockchain enables the use of "smart contracts" – computer protocols that can emulate contractual clauses in order to verify or enforce the performance of a contract. These "self-executing" agreements can automate certain processes of a real estate transaction (i.e. escrow services) while providing additional assurances to the participants (i.e. validate identity), in

See BLOCKCHAIN, page 14

2016 Annual Meeting & Conference

Monday, November 7, 2016, 7:30 am – 2:45 pm

Four Points by Sheraton, Norwood, Massachusetts

GENERAL INFORMATION

- REBA's 2016 Annual Meeting & Conference welcomes both members and non-members. The registration fee includes the breakout sessions, the luncheon, and the conference syllabus book. Please submit one registration per attendee. Additional registration forms are available at www.reba.net. We will confirm registration by email. REBA cannot offer discounts for registrants who attend only part of the Conference.
- To guarantee a reservation, conference registrations should be sent with the appropriate fee by email, mail or fax, or submitted online at www.reba.net, on or before October 31, 2016. Registrations received after October 31, 2016 will be subject to a late registration processing fee of $25. Registrations may be canceled in writing on or before October 31, 2016 and will be subject to a processing fee of $25. Registrations cannot be canceled after October 31, 2016; however, we welcome substitutions of registrants attending the program. Conference materials will be mailed to non-attendee registrants following the event.
- Credits are available for professional liability insurance and continuing legal education in other states. For more information, contact Bob Gaudette at 617.854.7555 or gaudette@reba.net.
- We ask attendees to kindly refrain from cell phone use during the breakout sessions and luncheon.

DRIVING DIRECTIONS

1125 Boston-Providence Tpke (Rt. 1)
Norwood, Massachusetts

FROM BOSTON:
Take I-93 South, which turns into I-95 (Route 128) North.
Take Exit 15B, Route 1 South, toward Norwood.
Continue 4.5 miles down Route 1 South.
The hotel will be on your right, after the Staples Plaza.

FROM PROVIDENCE:
Take I-95 North to Exit 11B, Neponset Street, Norwood.
Drive 7/10 of a mile and turn left onto Dean Street.
At the traffic light, turn left onto Route 1 heading south.
The hotel will be on your right, after the Staples Plaza.

FROM THE WEST:
Follow the Mass. Turnpike (I-90) East.
Take Exit 14 onto I-95 (Route 128) South (from the West it is Exit 14; from the East, it is Exit 15).
Continue South to Exit 15B (Route 1, Norwood).
Continue 4.5 miles down Route 1.
The hotel will be on your right, after the Staples Plaza.

REGISTRATION

COMPLETE AND RETURN THIS REGISTRATION WITH THE APPROPRIATE FEE TO:
REBA Foundation, 295 Devonshire Street, Sixth Floor, Boston, MA 02110
TEL: 617.854.7555 ◆ morales@reba.net ◆ FAX: 617.854.7570

	By Oct. 31	*After Oct. 31*
❒ YES! Please register me as a REBA member in good standing.	$225	$250
❒ YES! Please register me as a guest, as I am not a REBA member.	$265	$290
❒ I would like to purchase the conference syllabus, as I am unable to attend.	$200	$200
	$____	$____

❒ **Check Enclosed** ❒ **Credit Card (circle one):** VISA MasterCard American Express

Check No: _____ Card No: _____ Exp.: _____ / _____
Date: _____ Signature: _____ Date: _____

Registrant Information

Name of Registrant: _____ Esq. *(y/n)*: _____
Call Name *(for name badge)*: _____ Email: _____
Firm/Company: _____
Address: _____
City/Town: _____ State: _____ ZIP: _____
Tel: _____ Cell: _____ Fax: _____

Select your Luncheon Choice Below

- ❒ Butcher shop cut choice petit filet mignon, grilled and served with a red wine demi-glace
- ❒ Parmesan encrusted chicken Milanese topped with a lemon velouté sauce
- ❒ Vegetarian risotto with leeks, butternut squash, sage and braised lentils
- ❒ None, as I will not be eating at the conference luncheon
- ❒ None, as I am unable to stay for the conference luncheon

YOU MAY ALSO REGISTER ONLINE AT REBA.NET | For additional information, call REBA at 617.854.7555

SCHEDULE OF EVENTS

7:30 AM **REGISTRATION + EXHIBITORS' HOUR**
8:30 AM – 9:30 AM **TIFFANY BALLROOM A**
9:45 AM – 10:45 AM **TIFFANY BALLROOM A**

Post-TRID Compliance Trends: How to Stay in a Lender's Good Graces

Tucker Dulong; Benjamin Giumarra; Susan B. LaRose

This breakout will include updates on the TILA-RESPA Integrated Disclosure Rule, Ability-to-Repay Rule, and more relating to settlement agent interaction with mortgage lenders. Banking consultant and expert panelists will share perspectives of mortgage lenders attempting to comply with a variety of new regulations.

8:30 AM – 9:30 AM **TIFFANY BALLROOM B**
9:45 AM – 10:45 AM **TIFFANY BALLROOM B**

Cyber Scams Targeting Real Estate Attorneys

George A. Berman; Noel M. Di Carlo; Michael P. Kelly; Mark Van Divner

Internet wire scams are 21st century bank robberies. Butch and Sundance used to hold up the stage coaches because money is always most vulnerable when it is moving. Today, money moves by wire transfer instead and Butch and Sundance have traded in their horses for high-powered computers. Closing attorneys regularly wire large sums of money and have been identified by very sophisticated hackers as weak points in the banking system. This session will focus on the most common internet scams aimed at closing attorneys, best practices to avoid being victimized and what to do if you are.

8:30 AM – 9:30 AM **CONFERENCE ROOM 101**
9:45 AM – 10:45 AM **CONFERENCE ROOM 101**

Designing Optimal Insurance Provisions in Condominium Documents

Kevin O. Kehoe; Joseph S. Sano; Charles W. Soucy

Although Chapter 183A addresses many guidelines for condominium deed construction, it is less than clear with regard to insurance. Not only do provisions must contemplate the type of condominium (i.e. residential v mixed use, multi v sole unit, etc.) but also must consider compliance with the requirements of primary and secondary lenders, as well as regulatory authorities. These factors, along with balancing ever-changing insurance products and terminology, and the need for provisions which are practical and work for unit owners and boards, bring significant challenges in designing comprehensive, yet realistic insurance requirements and provisions that will stand the test of time. This program brings the experience and perspectives of experts from the legal, insurance brokerage, and risk consulting professions to provide ideas to help in this process.

8:30 AM – 9:30 AM **CONFERENCE ROOM 104**
11:00 AM – 12:00 PM **CONFERENCE ROOM 101**

Recent Developments in Massachusetts Residential Landlord/Tenant Law and Practice

Benjamin O. Adeyinka; Kenneth A. Krems; Emil Ward

Landlord/tenant law is continually evolving and for busy practitioners, it's difficult to keep track of all of the changes. Not to worry, this panel will provide a brief overview of recent developments in landlord/tenant law and also provide a practical approach on how best to manage these issues. Some of the topics that the panelists will discuss are the implications of Meikle v. Nurse on security deposits, medical marijuana and reasonable accommodations, post-foreclosure issues, and HUD criminal screening guidance.

9:45 AM – 10:45 AM **CONFERENCE ROOM 104**
11:00 AM – 12:00 PM **CONFERENCE ROOM 104**

Municipal Tax Takings and Tax Title Foreclosures

John D. Finnegan; John R. Harrington; Kathleen M. O'Donnell

As municipalities face rising costs and limited revenue, they are becoming more aggressive in pursuing the collection of overdue real estate taxes. The Land Court is seeing a rising number of foreclosure cases. These experienced panelists will review the current trends including sales of tax liens to private investors through tax receivables, collector's deeds and assignments and the claims and defenses raised in tax lien foreclosure cases. The program materials include a legal roadmap with a step-by-step description of the tax title foreclosure process.

8:30 AM – 9:30 AM **ESSEX/LENOX ROOM**
9:45 AM – 10:45 AM **ESSEX/LENOX ROOM**

Agricultural/Horticultural Liens: Conveyance Taxes, Roll-back Taxes & First Refusal Rights ~ A Practical Skills Session

David L. Delaney; Lisa J. Delaney; Eugene Gurvits

Have you reviewed a title with a Chapter 61A Agricultural or Horticultural Lien? Is the property converting to or being sold for another use? Are notices or release documents on record, and are they in proper form? Our panel will review the full statute, from creating and maintaining Chapter 61A status, intra-family sales or sales to another farming concern, converting the property to residential or commercial uses, statutory notices and recordings, the town's right of first refusal including assignment rights to a non-profit conservation organization, calculation of roll-back or conveyance taxes, release documents, and the potential for estate tax recapture.

8:30 AM – 9:30 AM **CONFERENCE ROOM 103**
11:00 AM – 12:00 PM **ESSEX/LENOX ROOM**

Identifying and Resolving Title Issues Involving Divorce, Death and other Probate Issues ~ A Practical Skills Session

Jutta R. Deeney; Lauren A. Solar

Join the panelists who will lead a discussion on how title can be affected when there is death, divorce or other proceeding initiated in the probate court. The focus of the session will be on identifying potential issues and discussing methods for resolving. Topics will include equitable liens that can arise in a divorce, automatic stays in pending divorce actions, competency issues, and missing interests.

9:45 AM – 10:45 AM **CONFERENCE ROOM 103**
11:00 AM – 12:00 PM **CONFERENCE ROOM 103**

Reviewing Titles with Affordable Housing Restrictions ~ A Practical Skills Session

Nancy I. Blueweiss; Beth M. Elliott; Kurt A. James

In this practical skills session, our panelists will discuss how to review titles of residential property, particularly condominium units, burdened with affordable housing restrictions. The panel will focus of vexing issues of lien priority, particularly in the context of the foreclosure of a first mortgage. The panel will also offer helpful suggestions in dealing with the DHCD when seeking subordination agreements.

12:15 PM – 1:15 PM **CONFERENCE ROOM 103***

**VIDEO SIMULCASTS OF THIS PRESENTATION WILL BE HELD IN CONFERENCE ROOMS 101 & 104*

Recent Developments in Massachusetts Case Law

Philip S. Lapatin

Now in his 38th year at these meetings, Phil continues to draw a huge crowd with this session. His presentation on Recent Developments in Massachusetts Case Law is a must-hear for any practicing real estate attorney. Phil is the 2008 recipient of the Association's highest honor, the Richard B. Johnson Award.

1:20 PM
LUNCHEON PROGRAM

1:20 PM – 1:40 PM
Remarks from President Susan LaRose

1:40 PM – 2:10 PM
Business Meeting

2:10 PM – 2:30 PM
Luncheon Keynote Address by Patricia McClung of the Consumer Financial Protection Bureau (CFPB)

2:30 PM – 2:45 PM
Concluding Remarks

2:45 PM
Adjournment

Remembering Helen Kass : 'gracious, caring, generous'

BY JOEL M. RECK

Helen Kass, wife of the Hon. Rudolph "Rudy" Kass, died at the age of 82 on June 20, on Devil Island in the Merchant Row archipelago in Maine, in the presence of Rudy and their three children, Elizabeth, Susan and Peter.

Devil Island was a very special place for Helen — a place where she, Rudy, their children, grandchildren and friends spent time together every summer for the last 40 years. Helen and Rudy own an interest in this 61-acre island under an ownership and use arrangement that would challenge the best of REBA's lawyers to replicate.

Helen was a graduate of Brandeis University (she received her A.B. in 1956) and Northeastern University (where she received a master's degree in counseling). She worked as a college admissions officer at Lesley College and at Brandeis; as director of field placement at Wheelock College; as a Wayland Junior High School guidance counselor; and with the Erickson Institute and Creative Alliances as a geriatric care counselor.

For most of her adult life, Helen lived in Arlington, where she served on the board of trustees of the Robbins Library, which is the public library of the Town of Arlington. She served on the board of Jewish Housing for the Elderly for many years and, along with Rudy, received the 2014 Trustees of the Year Award from the national organization, Association of Jewish Aging Services.

After her retirement and move to Brookline, Helen continued her work in the geriatric field as a volunteer in a variety of ways. She was often asked for advice on how to deal with aging parents and was always generous with her time and assistance. She was very active with

a number of community organizations, including the Senior Center in Brookline, where she served as the group leader of the Alzheimer's Caregivers Support Group.

A brief sampling of Helen's accomplished life as a professional and as a volunteer, however, does not capture Helen's spirit or essence. Helen and Rudy were married for 62 years and in many ways were kindred spirits.

Helen was indomitable. She not only never complained about her health, which was under serious barrage for decades, but to the contrary, was always upbeat and enthusiastic, no matter how she was feeling. Her trademark sweet smile was welcoming and inspiring to me and to our mutual friends. She was a truly gracious, caring and generous person.

As a loving and devoted wife and mother, Helen was also truly loved and admired by the people who were fortunate enough to know her. We will all miss her very much.

My cousin Vinnie and the last line of defense against anarchy

BY PAUL F. ALPHEN

"Next caller, please!" My cousin Vinnie, the suburban real estate attorney, yelled in his best exaggerated-talk-show-host-imitation-voice.

"It seems that some days I am running a radio talk show, taking call after call from people with semi-serious ideas equipped with insufficient intellectual capital. This week alone I've talked to people who want to submit a bid to buy a package store that lacks a liquor license and people who want to cut down trees in the wetlands and a seller who just wants me to show up at a closing with two-hours' notice without me having had anything to do with the P&S. Thankfully I talked the guy out of submitting the bid on the package store."

I agreed with Vinnie that we are seeing a lot more activity from amateurs who do not appreciate that the sale of alcoholic beverages is the second most highly regulated form of retail business (with the sale of firearms being the first).

It also seems that the amateurs think it is perfectly logical to submit liquor license applications or wetlands notices of intent, without the assistance of counsel and then call a lawyer the day before the public hearing and expect him or her to attend the hearing and perform miracles.

You have to love their enthusiasm.

"That's not the craziest thing going on!" Vinnie exclaimed. "Remember zoning opinions? Remember spending the better part of a week going through the cartons of old files in the basement of a town hall, drafting a 30-page opinion, with two pages of caveats, only to have lender's counsel spend the next week nit-picking every sentence and sending you back for re-write after re-write?"

I certainly do.

"Well, it seems that we aren't being asked to draft those opinions much these days. It is my impression that too many lenders would rather purchase a $200 zoning letter from Larry's Zoning Emporium and Pet Shop, than risk the chance that we will unearth some dead body from the town hall archives. Can't say that I blame them, as too many towns tossed out their old files, not to mention that too many towns failed to compile good records or prepare clear decisions in the first place, so the sufficiency of the documentation is lacking.

"It's funny," continued Vinnie, "the things that the world takes seriously and the things that don't seem to matter to some people. I have to lock up my office like it's the Federal Reserve Bank at the end of the day to comply with TRID, but nobody seems to care if a mortgage discharge is signed by an entity that does not have the authority to execute discharges. I have to remind myself weekly that my role is to be a guardian of the law and serve as the last line of defense against anarchy. Almost every other day somebody wants me to ignore this or ignore that; don't notice that a sole trustee was also the sole beneficiary; disregard the ZBA conditions of approval; just assume the non-conforming use is lawful; or ignore the foreclosure deed signed by somebody without any apparent power to act on behalf of the mortgagee. How many times have I heard someone argue that the issue that I am raising was not a problem for the last attorney who closed on the property?"

I agreed with Vinnie that we get asked a lot to pretend we don't know what we know, but I also said that I realize that if you act like a dummy, then don't be surprised if thereafter your client and everyone else in the deal will think you are a dummy.

Vinnie was more philosophical. "Remember what our classmate Barry said to the late, great professor Jerry Healy when Jerry asked him what should be the ultimate goal of counsel when representing a client? Barry said, 'Don't end up in a case published in a law school textbook.' Those are words to live by, and to me it means that when we give advice to our clients and issue written opinions, we have to anticipate that our advice and opinions may be subjected to intense scrutiny and surgical dissection in a court someday. The court is not going to care that that your client asked you to be 'expedient'; the court will only care if the advice was precise and based on the facts and ALL the law."

Once again, Vinnie spoke the truth.

A former REBA president, Paul Alphen currently serves on the association's executive committee and co-chairs the long-term planning committee. He is a partner in the Westford firm of Alphen & Santos, P.C. and concentrates in residential and commercial real estate development, land use regulation, administrative law, real estate transactional practice and title examination. As entertaining as he finds the practice of law, Paul enjoys numerous hobbies, including messing around with his power boats and fulfilling his bucket list of visiting every Major League ballpark. Paul can be reached by email at palphen@alphensantos.com.

Advantages of an LLC for real estate holding

BY LEO J. CUSHING

Limited liability companies clearly are the entity of choice, particularly in cases where holding real estate is involved. By way of background, Massachusetts first introduced limited liability companies in 1996. As a result of a 2003 amendment, single member LLCs became permissible.

Single member and multi-member LLCs are clearly superior to other entity choices, including S corporations, Massachusetts Business Trusts and nominee or "realty" trusts. For example, contributions of appreciated property to limited liability companies are income tax free. More importantly, distributions of appreciated property from an LLC to its owners are generally income tax free. This is a particularly significant benefit, inasmuch as a distribution of appreciated property from an S corporation will be a taxable event.

Liability and Income Tax Advantages

By statute, each member of an LLC has limited liability. A single member LLC does not file a separate income tax return. Rather, all items of income, expenses, deductions and credit are reported to the owner on the individual income tax return for both federal and state purposes.

Multiple Properties

In cases in which there are multiple properties, it is common to form a parent LLC and have each of the separate properties owned by a separate LLC. Each separate title-holding LLC will be owned by the parent LLC. The separate, single purpose LLCs, which own separate properties, are single member LLCs that do not have a separate income tax filing obligation. Of course, each LLC must pay the $500 annual filing fee.

Tax Filing Obligations

All income will be reported on the parent LLC and, in such a case, if the parent LLC is a single member LLC, all items of income, expense, deduction and credit will be reported on the individual's owns personal income tax return. Multi-member LLCs are treated as partnerships. No income taxes are paid at the entity level. All items of income, expense, deduction and credit will pass through to the members and will be taxed in accordance with the partnership rules of Subchapter K of the Internal Revenue Code.

Gifting of LLC Membership Interests

LLCs are used extensively for estate planning. In a typical case, a senior family member will form an LLC and contribute substantial real estate holdings to it. Thereafter, the senior family member will transfer by gift LLC membership interests. These may be voting or non-voting and could represent a small or significant portion of the LLC using non-voting shares.

To the extent that the membership interest transferred is either a minority interest or non-voting shares, the gift tax value of the interest will be discounted. This is because the interest is non-voting and non-transferable.

In the case of *Pierre v. Commissioner*, 133 T.C. 2 (2009), the IRS argued unsuccessfully that the LLC should be disregarded and that the transfer of a membership interest was essentially a distribution of the underlying asset to the transferor, a gift by the transfer or to the transferee with a re-contribution of that asset by the transferee and as a result, no discount would be allowed. This was rejected by the U.S. Tax Court.

This article only scratches the surface of the complex and vexing issue of whether a single member LLC is an intangible or an interest in real estate.

Changing Domicile

Limited liability companies are also useful to minimize Massachusetts estate taxes in connection with a change in domicile. Massachusetts residents are subject to an estate tax that can be as high as 16 percent. For this reason, many Massachusetts residents consider changing their domicile to Florida, New Hampshire or some other state that does not have a state death tax.

Aside from the need to comply with the various regulations in terms of changing voting registration, driver's license, physicians and the like, it is also important to deal with Massachusetts real estate that the taxpayer may own. The reason for this is that nonresidents are subject to the Massachusetts estate tax based on a formula.

The computation involves first computing the amount of the state death tax that otherwise would be due if the Florida resident was a Massachusetts resident and then multiplying that amount by a fraction, the numerator of which is Massachusetts real estate and other tangible personal property located in Massachusetts, with the denominator being the decedent's adjusted gross estate. G.L.c. 65C, § 4(g).

If the Massachusetts property was transferred to an LLC in connection with a change in domicile, even if the LLC is owned by the Florida resident, the numerator would be zero since the LLC is an intangible and not real estate.

See *Estate of Nielson v. Commissioner*, Docket No. F232365 (Appellate Tax Bd. Feb. 15, 2001), which states that partnership interest is not taxable, but interest in realty trust is taxable for Massachusetts estate tax purposes.

This planning opportunity has been addressed by a number of states, most recently New York. In an advisory opinion, the New York State Department of Taxation and Finance concluded that real estate owned by a single member LLC will not be considered an intangible unless it elects to be taxed as a corporation.

It is likely that other states will follow suit but not likely in Massachusetts because the LLC statute provides that an LLC interest is personal property and a member has no interest in specific LLC property. Also, this issue was addressed in a DOR regulation, 830 Code Mass. Regs §65C.2.1, which was repealed in its entirety as being obsolete in 2014.

Avoiding Excise Stamp Taxes

G.L.c. 64D, §1 imposes as stamp/excise tax on the sale of real estate; the amount is $4.56 per $1,000 of sale price and is payable by the seller. Massachusetts has not taken the position that a single member LLC is a property interest, at least for purposes of imposing the $4.56 per $1,000 stamp tax. In theory, then, this would permit a taxpayer to transfer their property to a single member LLC and then sell the membership interest to avoid paying the $4.56 per $1,000. See DOR Directive 95-5 (a sale of benefits interest in a Massachusetts nominee trust is subject to the stamp tax).

Single Member LLC and Asset Protection

One important asset protection benefit to an LLC is the statutorily-limited remedy of a creditor to a so-called charging order. See G.L.c. 156C, §40. Generally, this means that unlike an interest in another type of entity, the interest cannot be taken to satisfy a judgment creditor. A word of caution: this benefit does not exist in the case of a single member LLC.

Conclusion

This article only scratches the surface of the complex and vexing issue, not yet settled in all jurisdictions, on whether a single member LLC is an intangible or an interest in real estate. However, it is widely recognized that for holding title to real estate, the limited liability company has supplanted all other entities.

The founding partner in the Waltham-based firm of Cushing & Dolan P.C., Leo Cushing has written and lectured extensively on all aspects of taxation and estate planning. He also co-chairs REBA's estate planning, trusts and estate administration committee. Leo can be contacted by email at lcushing@cushingdolan.com.

LOMAP founder Rodney Dowell retires

Rodney S. Dowell retired from Law Office Management Assistance Program last July, to return to the practice of law with a concentration in the environmental field.

Dowell founded LOMAP, an affiliate of Lawyers Concerned for Lawyers in 2008. During his more than eight years at LOMAP's helm, he lectured frequently on law practice management issues, including presentations on law office technology, starting a new law office, improving client selection, terminating client relationships, law office finance, data security and time management.

Dowell has authored articles for American Bar Association's Law Practice Magazine, the ABA LPM's e-zine Law Practice Today, the Massachusetts Bar Association and the Boston Bar Association. He is the co-chair of MBA's Law Practice Management Section and an active participant in the ABA's Law Practice Management Section, where he is an editor of the *Law Practice* magazine.

SJC ruling reinforces value of attorney's affidavit

BY LAWRENCE P. HEFFERNAN AND DANIELLE ANDREWS LONG

In *Bank of America, N.A. v. Casey*, 474 Mass. 556 (2016), the Supreme Judicial Court stemmed the tide of recent decisions from the Bankruptcy Court in which bankruptcy trustees have capitalized on technical defects in acknowledgments to invalidate mortgages, which had been executed by mortgagors, who enjoyed the full benefits of the mortgage loan. In doing so, the SJC endorsed the attorney's affidavit under G.L.c. 183, §5B as a means of curing technical defects in mortgages.

The case arose from the refinance of a mortgage granted by Alvaro and Lisa Pereira to Bank of America to secure a mortgage loan of $240,000. The Pereiras initialed the bottom of each page of the mortgage, except the signature page which they each signed before the closing attorney, who also signed as witness. The certificate of acknowledgment, which was on a separate page, was initialed by the Pereiras and notarized by the closing attorney. The names of the persons appearing before the notary public in the acknowledgement, however, were left blank.

Approximately six years after the recording of the mortgage, the closing attorney realized the error in the acknowledgment and recorded an attorney's affidavit pursuant to G.L.c. 183, §5B, stating that he had personal knowledge of the facts stated in the affidavit, which were relevant to the title to the land and would be of benefit to clarify the chain of title. He went on to state in the affidavit that he witnessed the execution of the mortgage and subsequently recorded the mortgage at the Registry of Deeds, and that the names of the parties had been omitted from the notary clause through inadvertence. He also certified that he witnessed their signatures on the mortgage and that they provided satisfactory evidence of their identity.

About six months after the recording of the attorney's affidavit, Mr. Pereira filed a voluntary petition for bankruptcy. As often happens in these scenarios, the Chapter 7 trustee filed an adversary complaint in the bankruptcy action seeking to void the mortgage because it contained a material defect in the acknowledgment.

The Bankruptcy Court granted summary judgment to the trustee, concluding that the material defect could not be cured. The U.S. District Court reversed this decision and granted summary judgment to the bank. The trustee then appealed to the U.S. Court of Appeals for the First Circuit, which certified two questions to the SJC because the appeal turned on undecided issues of Massachusetts law.

Approximately six years after the recording of the mortgage, the closing attorney realized the error in the acknowledgment and recorded an attorney's affidavit pursuant to G.L.c. 183, §5B.

The first question asked whether an attorney's affidavit pursuant to §5B can correct the omission in the acknowledgement and thereby cure the material defect. The bankruptcy trustee admitted the veracity of the affidavit, but advanced three reasons in support of her position that the mortgage should be voided. The trustee invoked the doctrine of "functus officio," an antiquated common law principle which denies a public official such as a notary further authority or legal competence concerning duties and functions which have been fully accomplished.

The SJC rejected the application of the doctrine because it is doubtful that the principle continues to be recognized outside of arbitration and because §5B effectively supersedes any continuing common law principle.

The trustee also contended that G.L.c. 184, §24 is the only means of curing a title defect. That statute provides that an instrument of conveyance containing defect, irregularity or omission is effective 10 years after the date of its recording despite the defect, irregularity or omission, unless it is the subject of a proceeding.

The SJC rejected this contention as well, stating that c. 184, §24 creates, in effect, a statute of repose to protect the chain of title to real estate from attenuated challenges, but is not the sole and exclusive method of curing defects in an acknowledgement. Indeed, the SJC pointed to other curative statutes such as G.L.c. 183, §36, which permits a subscribing witness to testify that the deed was duly executed and thereby cure a grantor's refusal to acknowledge it as his free act.

It is worth noting that the SJC observed that the closing attorney's affidavit hit all of the notes of the §5B music sheet, supplying the missing information, confirming that all the steps necessary to acknowledge the mortgage were taken, i.e. that the mortgagors personally appeared before him, that he confirmed their identities, he witnessed their execution of the mortgage and that they did so voluntarily. The affidavit also attested that the omission of the mortgagors' names was inadvertent and referenced the book and page number of the previously recorded mortgage. The latter step enabled the two documents to be connected and effectuated the intended clarification of the chain of title.

Continuing to elevate form over substance, the trustee argued that the defect in the acknowledgment precluded the mortgage from being legally recorded and therefore, nothing existed on the record title to be clarified by the attorney's affidavit. The SJC held, however, that curing the defect in the acknowledgement also cured the defect in the original recording.

The second question posed to the SJC was whether the attorney's affidavit provided constructive notice to a bona fide purchaser of the existence of the mortgage. The SJC acknowledged its holding in *McQuatt v. McQuatt*, 320 Mass. 410 (1946), that a mortgage recorded with a materially defective acknowledgement is not properly recorded and does not provide constructive notice. The SJC, however, ruled that, where an attorney's affidavit complies with the formal requirements of §5B and cures the defect in an acknowledgement and refers to the previously recorded mortgage, the affidavit, in combination with that mortgage, provides legally adequate constructive notice to a bona fide purchaser. In doing so, the SJC reinforced and emphasized the utility and value of a §5B affidavit — in the right circumstances — for curing title defects in title instruments, particularly mortgage acknowledgements.

Danielle Long and Larry Heffernan authored an amicus curiae brief on behalf of REBA and The Abstract Club in the Casey case in support of the SJC's ultimate decision.

Danielle is a member of Robinson & Cole LLP's real estate litigation and title insurance group and appellate practice group, based in the firm's Boston office. She represents title insurance underwriters and their insureds on policy claims. She also has significant experience in handling zoning and land use appeals. Danielle can be reached at dlong@rc.com.

A partner in the Boston firm's office, Larry chairs the firm's real estate litigation and title insurance team. He has extensive trial and appellate experience in cases involving complex real estate issues, development, fraud, insurance coverage, banking and commercial disputes. Larry can be contacted by email at lheffernan@rc.com.

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If you answered yes to any of these questions, please join the Strategic Communications Committee of REBA. We won't take up much of your time – about 1-2 hours per month – and the time you spend will be invaluable to REBA.

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Please contact any of the following Strategic Communications Committee members to learn more and participate in our monthly teleconference meetings.

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- Chris Plunkett clp@clplunkett.com
- David Moynihan dmoynihan@mclane.com

Defenseless in the gathering storm

BY ROBERT M. RUZZO

Sarah Connor: "What did he say?"

Gas Station Attendant: "He said there is a storm coming in."

Sarah Connor: "I know."

— Closing scene from "The Terminator," Orion Pictures, 1984

It's time to connect some not altogether random thoughts as the haze of summer recedes.

Summertime, when the living was easy, this year also entailed the death throes of the municipal planning defense doctrine, the expiration of zoning reform efforts in the state Senate and the demise of proposed housing production legislation, launched through the efforts of the Massachusetts Housing Partnership and carried forward by a number of housing advocacy groups.

What could it all mean?

Summer had not yet technically begun when the Appeals Court officially pulled the plug on the attempt to assert a "municipal planning defense" in order to deny a comprehensive permit application filed under Chapter 40B (the commonwealth's Affordable Housing Law) in *Eisai v. Housing Appeals Committee*.

After years of largely lying dormant since its first pronouncement in the *Harbor Glen* decision in 1982, the planning defense sprang back to life in *Stuborn Ltd. Partnership v. Barnstable Board of Appeals* ("*Stuborn II*") and even enjoyed a short-lived day in the sun in 2009, when the *28 Clay Street v. Middleborough* decision applied the defense in a land use setting far less exotic than either *Harbor Glen* (750 acre former military base) or *Stuborn II* (waterfront property).

While admittedly arcane, the municipal planning defense afforded its fans the promise of a "different path"—a means of achieving the directional goals of the Affordable Housing Law while injecting a degree of local control consistent with the public expectations of a home rule state.

Hopes (fears?) for a broader application of the doctrine were dashed by two HAC decisions in 2014. It was clear from these two decisions that the HAC had come not to praise the municipal planning defense, but to bury it. The Appeals Court, bound by the deferential standard of review for administrative law appeals, had little choice but to follow suit. As an added bonus, the unusual procedural posture of the *Eisai* case introduced a further complication to the already byzantine world of standing under c. 40B, but let's save that tale for another day(s).

Andover's planning efforts, which were the subject of the *Eisai* decision, met with what seemed to be a particularly harsh fate at the hands of the HAC. While Andover was below the 10 percent subsidized housing inventory threshold at the time of the permit application, it had at one time been above that magical number, although the HAC concluded that this was not as a "result of the town's planning efforts," but despite Andover's master plan and affordable housing plan.

A pretty neat trick, to say the least.

Dismissing the town's well documented-planning work and "longstanding efforts to preserve" the site and the area in question for commercial and industrial uses, the court affirmed a Superior Court decision to let stand a HAC determination that the last vacant lot within a commercial subdivision should become a housing development.

This was at least in part because the Andover zoning board could not "point to possible foregone employment associated with future businesses that might be reluctant to locate in a subdivision whose future is uncertain."

A cynic might protest that the best defense for a municipality under this line of thinking would be to poorly propose and half-heartedly market such commercial zones and thereby preserve the ability to claim that any incursion into a commercial area jeopardized the coherence of the planning exercise as a whole.

Tellingly, the Appeals Court echoed the HAC's complaint that a "major shortcoming" of Andover's planning efforts was the fact that "multifamily housing is not permitted as of right anywhere in the town."

This shifts the focus back to Beacon Hill and competing efforts to address our distressingly high housing costs in Massachusetts via legislation. The Senate's efforts to enact zoning reform advanced one step further than in the last legislative session. In 2014, a similar bill was reported out of committee favorably. Before the expiration of this year's formal session, zoning reform legislation that had been revised substantially to address some (but far from all) criticisms of real estate industry groups was actually passed by the upper chamber.

Nonetheless, at the end of the (legislative) day, we collectively remained in the same position that we were in two years prior: in a low interest rate, high demand, overheated housing market, with a fundamental zoning law incapable of producing new units in sufficient numbers and devoid of any meaningful link between planning and zoning. Our ersatz solution, the Affordable Housing Law, becomes increasingly overtaxed, as it is called upon to create more market-rate housing than it was ever designed to produce.

A storm is coming in, indeed.

While it is always difficult to predict the future of such things, the proponents of the Senate's zoning reform legislation certainly have no reason to feel disheartened. They will most assuredly be back in force when a new legislature convenes in January. Some type of comprehensive zoning legislation is inching ever closer to reality. Fortune favors the prepared mind.

Also returning to the hearing rooms next session will be housing advocates who, building upon the foundation of a research paper published by MHP some two years ago, advanced legislation that would have, among other things, required every municipality to have a certain percentage of its land area zoned for multi-family housing.

Is there any sign of potential progress? Any hope for the elusive common ground?

Well, ironically, the aforementioned provision requiring right multi-family zoning is the very type of provision that, had it been in effect in Andover at the time of the HAC's initial decision, may have (indeed should have) allowed Andover's assertion of the municipal planning defense to pass muster.

So there's always hope… even for the municipal planning defense.

A frequent contributor to REBA News, Bob Ruzzo is a senior counsel in Holland & Knight's Boston office. He possesses a wealth of public, quasi-public and private sector experience in affordable housing, transportation, real estate, transit-oriented development, public private partnerships, land use planning and environmental impact analysis. Bob can be contacted by email at Robert.ruzzo@hklaw.com.

Save on professional liability insurance with CLE credits

BY JOHN L. TORVI

Professional development leading to better practice skills can have an obvious and positive effect on reducing the risk of a malpractice claim. Many attorneys do not realize, however, that professional development in the form of CLE credits may also reduce the cost of their lawyers' professional liability insurance.

To better understand this, it is helpful to know the insurance underwriting process and the intent of the insurance application. In its most basic purpose, the application requires certain information that an underwriter will use to determine the cost of a policy.

Using the application as a tool to tell the positive story of one's practice, rather than view it as an annual burden, can positively impact the insurance premium. Underwriting is a process of applying credits and debits to the risk.

It may seem surprising to some, but insurance companies generally want to offer the fairest and best price. Therefore, many questions are to allow the applicant to say "yes" and subsequently receive a premium credit. Any questions about the number of hours of CLE classes taken are there as a layup – the insurer wants to know that the applicant is improving practice skills and wants to reward them for it with lower premiums.

Typically, the question will ask how many credit hours have been taken over the last twelve months by attorneys in the firm. For any state with a mandatory number of required credits hours, the underwriter will check the application against state mandates. In states where no requirement exists, the underwriter is looking for a reasonable, not excessive, number of credit hours, based on the number of attorneys in the firm, experience and/or areas of practice. In other words, taking even a few credit hours can help.

It does beg the question why a professional would not actively improve knowledge and skill level, regardless of any effect on insurance cost. The more skilled the practitioner, the greater the opportunity for success on all levels. Information obtained through CLE classes can lead to better practice management and administrative operation of the firm, both reflected in various questions on the application that are also designed for underwriting credit. So there are direct and indirect correlations between obtaining CLE credit hours and reduced cost.

As one might suspect, answering all application questions properly can lead to more premium credit. Questions about docket control and calendaring, new client evaluation, conflict of interest procedures and so on are there to allow the applicant to tell their story about the quality of their practice (and incidentally are subject matter often available in CLE classes as well).

The Areas of Practice grid asking about the percentage of work done on various areas can be a valuable tool as underwriters want to see a focused practice, especially with smaller firms. It is not unusual to see higher premiums or even denials of coverage for applicants who state they practice in many areas, especially for new attorneys or those in high risk areas of practice.

Understanding how the insurer defines plaintiff litigation, commercial real estate, corporate finance or business transactions, for example, will help ensure one's practice is adequately represented and a knowledgeable insurance professional familiar with the guidelines of the insurer can be consulted to assist in application completion.

No one likes the high cost of malpractice insurance. Improving professional skills through education and effectively representing the practice on an insurance application will provide immediate relief to the cost of a policy.

John Torvi is the vice president of marketing and sales at the Herbert H. Landy Insurance Agency, a longtime REBA affinity partner. He is a frequent speaker and contributor to professional journals and conferences for the legal, accounting, real estate and insurance industries. John can be reached by email at johnt@landy.com, or visit www.landy.com for more information.

Emerging Leader Award to recognize new, young lawyers

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young real estate practitioners in Massachusetts.

Through this fall, REBA New Lawyers plans to put on programs about collegiality and decorum, how to deal with difficult interpersonal situations in the practice of law and a networking event in Boston.

REBA has also constituted a Strategic Communications Committee designed to respond to the changing landscape of public relations and marketing, for the practice of law, caused by the emergence of social media and the platforms that they provide.

The Emerging Leader Award was the brainchild of REBA New Lawyers and Strategic Communications, which conducted a joint meeting in April 2016, to discuss outreach to law students and new and young lawyers.

REBA New Lawyers, in close consultation with Strategic Communications made a proposal for what has become the Emerging Leader Award to the REBA Nominating Committee, which in turn approved the new award for consideration and eventual adoption by the association's board of directors in July.

While New Lawyers and Strategic Communications made the pitch, REBA's leadership should be lauded for having the vision to see the necessity of this type of commendation. As Benjamin O. Adeyinka of Strategic Communications said, in response to learning of the adoption of the Emerging Leader Award, "I applaud REBA's effort to bring this important initiative into fruition. Recognizing young and new leaders within REBA's membership helps encourage attorneys who practice real estate law, to present new ideas and concepts to help deal with the ever changing real estate landscape."

The Emerging Leader Award fits into a greater context and ongoing dialogue through which REBA has sought to modernize and respond to the ever-changing conditions affecting the practice of real estate law in Massachusetts and its membership.

We ask that all of our fellow REBA members participate in the process of recognizing new and young lawyers who have contributed, beyond their short years, to our practice area, and nominate those young and new lawyers who exemplify why REBA adopted the Emerging Leader Award platform.

Applications for nominations for the award are available via email, admin@reba.net. Applications may be sent to Tom Bhisitkul, chair of the Nominating Committee, or our executive director, Peter Wittenborg. As with REBA's other awards, the decision of who will be given the Emerging Leader Award will be made by the Nominating Committee.

Kendra Berardi and Nick Shapiro co-chair REBA's new section. To join the new lawyers section, contact admin@reba.net.

An associate in the Boston office of Robinson & Cole LLP, Kendra is a member of the firm's real estate litigation and title insurance practice group, where she focuses her practice on real estate litigation, zoning appeals, representing title insurance underwriters and their insureds and condominiums. Prior to joining Robinson & Cole, she served a law clerk to the Hon. Karyn F. Scheier. Kendra's email address is kberardi@rc.com.

Nick joined the Boston firm of Phillips & Angley in 2011. His areas of practice are zoning, land use and real estate. Prior to joining the firm, he clerked for the Hon. Joseph A. Trainer, associate justice of the Massachusetts Appeals Court and the Hon. Harry M. Grossman, associate justice of the Land Court. Nick's email address is nshapiro@phillips-angley.com.

Business email scams target real estate lawyers

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ter (IC3), since the beginning of 2015, there has been a 270 percent increase in identified victims, who come from all 50 states and nearly 80 other countries. The majority of the fraudulent transfers are initially sent to banks in China and Hong Kong.

The scammers ' methods have become increasingly more sophisticated. They'll spoof accounts with slight variations in domains (abc@lawfirm.com vs. abc@lawflnn.com); make them look similar to authentic accounts (john.kelly@abc.com vs. john.kelley@abc.com); mimic the real account using a spoofing tool that directs responses to a different e-mail account (the reply-to mail account can be seen in the extended header or by hovering a curser over the shown e-mail address); and hack accounts.

Criminals also use malware to infiltrate company networks, gaining access to legitimate e-mail threads about billing and invoices. They then use that information to make sure the suspicions of an accountant or financial officer aren't raised when a fraudulent wire transfer is requested.

Some individuals have reported being a victim of various cyber intrusions immediately preceding a BEC incident. These intrusions can be facilitated through a phishing scam in which a victim receives an e-mail from a seemingly legitimate source that contains a malicious link. The victim clicks on the link, and it downloads malware, allowing them unfettered access to the victim's data, including passwords or financial account information.

The BEC scam is linked to other forms of fraud, including but not limited to: romance, lottery, employment and rental scams. The victims of these scams are usually based in the United States and may be recruited, unknowingly, to transfer money illegally on behalf of others.

If your company has been victimized by a BEC scam, it's important to act quickly. Contact your financial institution immediately and request that they issue a "SWIFT recall." For domestic transfers, ask your financial institution to send a "hold harmless" letter to the beneficiary bank.

Experience has shown that after three days, funds have likely been transferred out of the beneficiary account. This is not always the case and the FBI may still be able to pursue a criminal prosecution. Next, file a complaint – regardless of whether there is a dollar loss –with IC3 at www.ic3.gov.

Filing a complaint with IC3:

- IP address and e-mail address of fraudulent e-mail
- Summary of the incident (including date/time)
- Victim's name
- Victim's location (city, state)
- Victim's bank name
- Victim's account number
- Beneficiary's name
- Beneficiary's account number
- Beneficiary's bank location
- Beneficiary's bank name
- SWIFT/IBAN number
- Date of transaction
- Amount of transaction

Detailed descriptions of BEC incidents should also include the date and time of incidents; copies of the incorrectly formatted invoices; full e-mail headers; requests for secrecy or immediate action; phone numbers of the fraudulent phone calls, and reports of any previous e-mail phishing activity.

Suggestions for Protection:

- Create intrusion detection system rules that flag company e-mail. For example, legitimate e-mail of abc_company would flag fraudulent e-mail of abc-company.com.
- Verify changes in vendor payment location by adding additional two-factor authentication such as having secondary sign-off by company personnel.
- Create an e-mail rule to flag e-mail communications where the reply to e-mail is different from the "from" e-mail address shown.
- Confirm requests for transfers of funds, adding new vendors and changing vendor payment information by using phone verification as part of the two-factor authentication, use previously known numbers, not the numbers provided in the e-mail request.
- Color code e-mails so e-mails from employee/internal accounts are one color and e-mails from non-employee/external accounts are another.
- Carefully scrutinize all e-mail requests for transfer of funds to determine if the requests are out of the ordinary.

Michael Kelly is the supervisory special agent of the economic crimes squad for the FBI's Boston Field Office. Michael can be contacted by email at Michael.Kelly@ic.fbi.gov or by phone, 617-223-6419.

Beyond Bitcoin: What blockchain means for real estate

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turn shortening the life-cycle of a deal and reducing associated risks and costs.

The Future is Here

According to Coindesk, a world leader in news and information on digital currencies, venture capital investments in bitcoin and blockchain-related start-ups has surpassed $1.1 billion dollars ($380 million of which was raised in 2016 alone), making it clear that the private sector believes in bitcoin and blockchain.

In fact, the list of growing blockchain-based companies includes real estate title recording start-ups, such as Ubitquity (U.S.), ChromaWay (Sweden), Bitland (Ghana) and Bitfury (Republic of Georgia). Most recently, on July 18, Xinyuan Real Estate Co., a major Chinese real estate developer and property manager listed on the NYSE, announced that is has launched the first blockchain-powered real estate finance technology platform in partnership with IBM.

While Blockchain technology offers these and other exciting prospects for the future, introducing and integrating such a disruptive framework in an entrenched, administration-based industry such as real estate will require tireless commitment from forward-thinking, influential leaders.

Legal reforms need to be introduced to address blockchain innovations, such as legally recognizing the authenticity of digital proofs of ownership. While it may be too early to predict when and how blockchain will change the real estate industry, the possibilities are too exciting to ignore and steps can be taken now to prepare for the inevitable transition to blockchain-based systems.

Learn more about blockchain for real estate at MIT Real Disruption: Real Estate Blockchain on Oct. 6, at 7:30 a.m. in the Fort Point Room at Atlantic Wharf, Boston. MIT Real Disruption is an ongoing series of conferences, hosted by the MIT Center for Real Estate, that highlight the intersection of disruptive technology and commercial real estate. For more information, visit www.RealDisruption.com.

Avi Spielman is an associate editor of the Harvard Real Estate Review, author of "Blockchain: Digitally Rebuilding the Real Estate Industry" and founder of Nashville-based real estate development company Joon Properties. He holds a B.A. in Philosophy from Vanderbilt University and a master of science in Real Estate Development from MIT.

Steve Weikal is the head of industry relations for the MIT Center for Real Estate (MIT/CRE), director of the MIT/CRE Real Estate Tech HUB and founder of the MIT Real Disruption conferences. He has master's degrees in Real Estate Development (MSRED) and City Planning (MCP) from MIT, and a law degree from Suffolk University Law School.

The co-authors can be contacted by email: Avi Spielman at ars@mit.edu and Steve Weikal at sweikal@mit.edu.

Can condominium associations evict unit tenants?

BY GEORGE WARSHAW

It's a question often asked but rarely answered with any degree of certainty or comfort. Though the condominium by-laws may give the association authority to fine a unit owner repeatedly for a tenant's violation of its rules, by-laws or covenants of the master deed, assessing fines is often a slow and unsatisfying method of preventing misconduct from reoccurring.

For that reason, many attorneys include provisions in drafting the master deed, by-laws or amendments granting the association extensive powers to regulate tenancies. One often finds among these powers, the authority to evict a tenant who violates the association rules or master documents.

Recently, I explored the subject in depth in my book on Massachusetts landlord and tenant law. This article summarizes some of my research and analysis.

The power to bring a summary process action found in the condo documents commonly takes one of three forms: granting the association a power of attorney to act for the unit owner or owners; granting the association a power of attorney coupled with an interest; or simply declaring that the association has a right of action.

Master condominium documents that merely declare that an association has a right to bring a summary process action against the tenant residing in a unit is not supported by any recognized theory of law. An association does not have an inherent right of action.

The association is neither the owner of the unit nor the agent of the owner, has no contractual relationship with the tenant nor shares any privity of estate with the owner or tenant and has no possessory interest in the unit.

A few states, including Ohio and Illinois, have enacted legislation granting a condominium association summary process of action in order to solve this problem. The method many master deeds or by-laws employ to provide the association the ability to act on behalf of a unit owner, is to include language granting the association the authority to act as a unit owner's attorney in fact under a power of attorney or agency theory in dealing with tenant problems.

The power of attorney approach is not without significant pitfalls. A power of attorney, even those declared irrevocable, is still revocable. See *Bailey v. Astra Tech, Inc.*, 84 Mass. App. Ct. 590, 597 (2013) and Restatement (Second) Agency, §118, comment B.

Since a power of attorney is essentially an agency relationship revocable by the principal, an action brought by an association as agent of or attorney in fact for the unit owner could fail at any time by the mere revocation of the power by the unit owner. The power of attorney approach also creates legal and practical issues of standing, real party in interest and lack of a necessary party (i.e. the unit owner) to the action. How does one join a unit owner living in China to a local summary process action?

A power coupled with an interest (often referred to as a power of attorney coupled with an interest) is the most viable of the three approaches commonly used. A power coupled with an interest is often described as not being a power of attorney at all since, "it is neither given for, nor exercised for, the benefit of the person who creates it," according to *Bailey v. Astra Tech, Inc.*, 84 Mass. App. Ct. 590, 598 (2013) Restatement (Third) of Agency, supra §3.12 comment B.

It is a higher form of authority that permits the holder to act without the consent of the principal. By its nature it is irrevocable and thus cannot be revoked by the principal. A condominium association holding a true power coupled with an interest could bring an eviction action, if other prerequisites were met, despite the protests of the unit owner.

However, words alone do not create a power coupled with an interest. Merely declaring that the right granted is a power coupled with an interest doesn't necessarily create the interest or confer the power.

The interest must exist in fact and have substance. Although the words describing it as a power coupled with an interest may be helpful in identifying it, facts and circumstances, and not words, create the power coupled with an interest.

To constitute a "power," the holder of the power must have a significant interest in the outcome or object of the power. With real property, it is often described as having an ownership interest in the property or in the outcome of exercise of the power.

While I did not come across any case relying on a possessory interest in property that served as the basis for the grant or exercise of the power, nonetheless I think it sufficient for condominium purposes if there was a properly conceived and expressed basis for it.

What is principally lacking in nearly all efforts to give an association a right of action to evict a unit tenant, is the right to employ summary process. Summary process by statute (chapter 239) is a limited form of action. It is a possessory action. It may only be employed by one claiming to have a superior right of possession. Words granting an association a right to act on behalf or in lieu of the unit owner do not necessarily vest a right of possession in the association vis-a-vis the tenant.

These are techniques that I believe give a condo association the capability it needs. In conjunction with a power coupled with an interest, I would consider the following:

Require in the master documents as a condition of the right to rent that

an owner include in any lease a template addendum, prepared by the association attorney, giving the association a superior right of possession (i.e. a possessory interest in the unit) upon the tenant's violation of the lease or the condominium documents.

Include in the lease addendum language making the association a third-party beneficiary to the lease, thereby buttressing its possessory interest upon a default by the tenant.

Aside from the foregoing, I would also consider employing an Assignment of Leases and Rents concept in the condominium documents similar to that commonly used in commercial loan documents. Care, though, must be used before drafting any form of lease assignment lest the assignee acquire an unintended liability or responsibility as an assignee.

George Warshaw is the author of "Massachusetts Landlord-Tenant Law," Lexis Law Publishing 2nd edition, and a member of the Condominium and Leasing Committees of the Real Estate Bar Association. George is the managing partner of Warshaw, Di Carlo & Associates, P.C. located in Boston. He practices in the area of conveyancing, condominium law, purchase and sale litigation and landlord-tenant law. Warshaw can be reached at gwarshaw@warshawlaw.com.

Taxation on forest, farming and recreational land

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board of assessors, planning board, conservation commission and the state forester.

The municipality has 120 days from the date of the notice of intent to sell to agree to match the offer to purchase. In the case of intent to convert, the town has 30 days to perform an appraisal and deliver it to the owner. If the owner is dissatisfied with the appraisal, he may, at his own expense, perform his own appraisal to be completed within 60 days from the date of the notice to convert.

If that appraisal is not acceptable to the town, a third appraisal will be performed with the cost to be borne by both parties; that third appraisal is to be finished within 90 days from the date of the notice of intent to convert. Once the parties agree on the amount of consideration, the town has 120 days to agree to purchase the property.

If the town elects to exercise its right, the notice to exercise is sent to the owner and is recorded at the registry of deeds. The notice to the owner has to be accompanied by a proposed purchase and sale agreement with the performance date of 90 days after the agreement, signed by both parties, and returned to the town by certified mail.

While the town also must record the notice of non-exercise of its right, the mere failure to record the notice of exercise of the town's right to purchase within 120 days from the date of notice to the town of a bona fide offer (in the event of sale) or the date of agreement of consideration (in the event of conversion) is conclusive evidence that the town did not exercise the option.

For all of these reasons, I believe that the lien under chapters 61, 61A, and 61B, and the corresponding rights of first refusal by the town, will continue to affect the record title to the property, unless:

- There is a release on record of the lien under these chapters and more than a year has passed from the date of the release, or
- There is on record a notice of non-exercise of the town's right of first refusal signed by the appropriate official, or
- There is on record an affidavit signed by a Massachusetts attorney that the notice of intent to sell or convert has been delivered to the town (including a complete copy of the contents of the mailing), followed by 120 days without a recorded notice to exercise or a notice to assign the town's right to a permissible entity (if this is the case, make sure that the terms of the purchase and sale agreement contained in the notice match the deed from the owner of the affected land to the grantee), or
- There is a recorded notice of exercise of the town's right or an assignment of such right followed by a deed to the appropriate grantee.

Please note that, while a mortgage of the land subject to the liens under the above chapters is not considered a sale that will trigger the right of first refusal, in the event of a foreclosure of such mortgage, the mortgage holder must give a notice of the foreclosure sale to all of the parties entitled to notice as specified for notices of intent to sell or convert.

The notice has to be given at least 90 days prior to the foreclosure sale. Therefore, an examination of a post foreclosure title subject to these liens should focus, among other things, on the foreclosing mortgagee's attorney affidavit of compliance with this notice requirement.

Parts of this article originally appeared in a 2009 First American underwriting bulletin.

Vice president and special counsel at First American Title Insurance Company, Gene serves as co-chair of the association's title insurance and national affairs committee. His responsibilities at First American include underwriting, claims handling and continuing education. He is a frequent lecturer at MCLE programs and REBA conferences. Gurvits can be contacted by email at ggurvits@firstam.com.