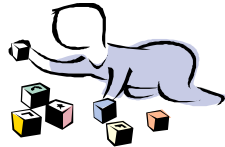


The Reporter

First Issue ★ Old Republic National Title Insurance Company, Boston, MA 02108 ★ January 2002

Heirs Conceived After Death

A Title Attorney's Nightmare?



In a ground-breaking decision, the Supreme Judicial Court has ruled that a child conceived from the frozen sperm of a deceased man may, in certain limited circumstances, enjoy the inheritance rights of "issue" under Massachusetts' law of intestate succession. In Lauren Woodward v. Commissioner of Social Security, 435 Mass. 536, ___ N.E.2nd ___ (2002), the Court provides three requirements that must be met before a posthumously conceived child can be considered an heir-at-law. First, the surviving parent or the child's legal representative must establish a genetic relationship between the child and the decedent. Second, it must be shown that the deceased parent affirmatively consented to the posthumous conception. Finally, there must be proof that the decedent agreed to support the resulting child.

The decision had its genesis in a dispute over Social Security survivor benefits. Lauren and Warren Woodward had not had any children in their three and a half year marriage, when in January of 1993 Warren was diagnosed with leukemia. Advised that Warren's treatment might leave him sterile, the Woodwards arranged to have a quantity of his semen frozen prior to the commencement of a bone marrow transplant. Warren's cancer treatments were not successful.

Sixteen months after Warren's death, Lauren conceived twin girls using Warren's frozen sperm. After the twins' birth, she applied for both "child's" benefits and "mother's" benefits under her deceased husband's contributions to the Social Security system. The Social Security Administration denied

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MARKETING TIPS/REMINDERS:

- ★ Provide your lenders with updated evidence of malpractice before they ask you for it;
- ★ Provide your lenders with Insured Closing Letters dated 2002 (fax us your list and we will do them all at once);
- ★ New homeowners like to leave your office with more than a stack of documents! Consider offering them a nice key chain (with your ad) for their new home!

HUD Fines RESPA Violators



The Department of Housing and Urban Development has recently announced that it has reached settlements with a number of major companies in the real estate industry that it had accused of RESPA violations. The allegations involved the payment of illegal kickbacks and the padding of closing costs in consumer home purchases. The settlements involved approximately 38 mortgage lenders and one of the nation's largest title insurance companies (not Old Republic). This enforcement action by HUD was clearly a move designed to shake up the real estate and mortgage industry. HUD officials emphasized that these settlement agreements are just the beginning of its stepped-up commitment to more stringent enforcement of RESPA violations.

While none of the institutions involved admitted wrongdoing under the settlements, they were forced to pay fines to HUD and to non-profit housing counseling and educational organizations.

One mortgage lender was accused of padding the credit report fees of hundreds of customers during the last three years. These overcharges, ranging from a few dollars per report to \$50 per report, came to light in the course of a federal audit of 21 of the company's branch offices. HUD officials warned the others to stop the widespread practice of "upcharging" consumers for credit report fees, appraisals, loan processing fees, courier expenses and other settlement costs. Federal law provides that consumers are only obliged to pay the actual cost of these settlement expenses. These fees cannot be marked up to provide additional revenue to the lender or settlement agent.

The title insurance company involved was accused of having provided low or no-cost flood certifications to lenders in exchange for exclusive referrals on new loans. Such inducements are prohibited under RESPA. Although the title insurance company denied wrongdoing, it agreed to pay \$1,000,000 to a non-profit housing counseling organization and another \$200,000 to HUD as part of the settlement. All of the companies involved in the settlements agreed to cease the practices that HUD identified as violations of federal law.

This enforcement action by HUD was the first in over a decade. During the 1990's, HUD's failure to pursue reports of widespread overcharges and kickback arrangements convinced many in the industry that they could engage in

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her benefits on the grounds that her daughters were not entitled to inherit from the decedent under Massachusetts's intestacy and paternity laws. The mother appealed the Social Security Administration decision to the Federal District Court, which sought a formal opinion of the Supreme Judicial Court on the issue because there was no directly applicable Massachusetts precedent.

In her opinion, Chief Justice Marshall provides a review of the law of intestacy in Massachusetts, including the "posthumous children" statute, M.G.L. c. 190, Sec. 8. This section states that "[p]osthumous children shall be considered living at the death of their parent." The Court notes that posthumous children statutes in several other states contain requirements that the posthumous child must "be in existence" as of the date of the decedent's death. The Massachusetts statute does not.

The Woodward case does not address the important issue of the limitation period for bringing a paternity claim against an estate. Because Social Security regulations do not require compliance with any state statute of limitation in determining paternity, the question presented by the Federal District Court did not require the SJC to consider this issue. As a result of this procedural quirk, the statute of limitation did not affect the decision in the Woodward case.

As established by M.G.L. c. 190, Sec. 7, the statute of limitation in an action to establish paternity against a decedent is one year from the date of death. This section governs the rights of children born out of wedlock. As the Court in Woodward makes clear, death ends a marriage and thus posthumously conceived children are always born out of wedlock. The limitation period for establishing paternity is the same one-year from death that applies to general creditors of the estate under c. 197, Sec. 9. Clearly Mrs. Woodward could not have met the burden of complying with the Massachusetts statute of limitation, as she did not conceive her twins until some sixteen months after her husband's death. Fortunately for her, she did not have to meet that burden in this case.

CONVEYANCING IMPLICATIONS:

The statute of limitation for commencing an action to determine paternity protects us in the title industry from the dangers of this decision. Under current practice, we do not accept deeds from heirs of an estate until one year after death. During this one-year period, the Massachusetts Conveyancers Association's title standards require a deed from an Administrator or Executor under a license of the court or a power to sell in the will. With such a properly authorized deed from an Administrator or Executor, any claims against the estate attach to the proceeds of the sale, not the real estate. As long as the SJC applies the current statute of limitations to such actions, we should not be in danger of a challenge to title from an heir conceived after death. Unfortunately, there is dicta in the Woodward decision which indicates that the Court may be willing to revisit the issue of the statute of limitations. In discussing the Commonwealth's need to balance its interest in protecting the rights of children with its interest in the orderly administration of estates, the Court notes "[i]n the case of posthumously conceived children, the application of the one-year limitations period of G. L. c. 190, 7 is not clear; it may pose significant burdens (see "HEIRS" continued on next panel)

such practices with impunity. By its recent actions, HUD is sending a message that those days are over.

Beware: be square when completing your HUD-1 Settlement Statements!

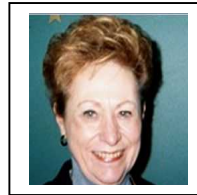


("HEIRS"... Conveyancing Implications cont'd)
on the surviving parent, and consequently on the child."
Woodward at 544.

Will the SJC fashion some exception from the statute of limitation for posthumously conceived children? Are these children going to be a new problem for the conveyancer? We will have to wait until the Supreme Judicial Court addresses the statute of limitation issue directly before we know for sure.

Given the status of medical technology, a child conceived with frozen sperm could be born ten or more years after the parent's death. And what will be done with cloning when that becomes a practical possibility?

Employee Spotlight - Norma Segal



Our first newsletter shines its spotlight on the first person you speak with when you contact our Boston Office. This person with the cheery "Old Republic Title" is

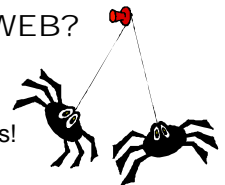
Norma Segal. Norma is our Receptionist/Administrator and has been working with the Company since May of 1999. She is the person who typically processes requests for Insured Closing Letters. She frequently will lend a helping hand with back title requests as well.

Norma is married; she has 5 adult children and 8 wonderful grandchildren. She is a very loving Mom and her favorite thing to do is organize and cook for her many family gatherings. She also loves to shop and comes back from lunch hours to show us her "bargains".

Norma also shared with us one of the highlights of her life. She recently returned to San Francisco, the city of her childhood, after being away for over 30 years. We think that Norma is very special. Her warm, caring manner and great sense of humor help make Old Republic a great place to work.

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