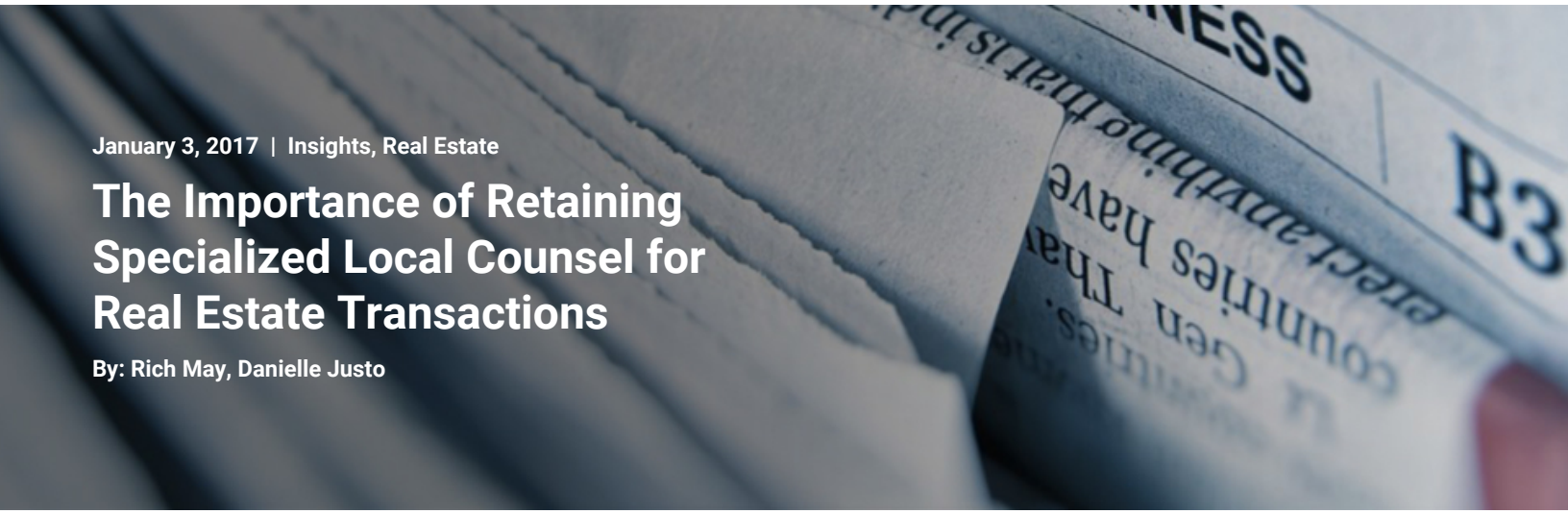

January 3, 2017 | Insights, Real Estate

The Importance of Retaining Specialized Local Counsel for Real Estate Transactions

By: Rich May, Danielle Justo

It is incredibly common for out-of-state attorneys (and even local attorneys with limited real estate experience) to conclude transactions which create or exacerbate serious title defects, which the attorney and her clients mistakenly believe, often for many years, have been properly performed.

There are several reasons for this, but the most common is the quagmire of the dual-recording system in Massachusetts.

<u>Dual Systems:</u>

There are two land records systems in each county in the Commonwealth, which are controlled and maintained independently. Property is most often designated as "Recorded Land." However, approximately twenty percent of properties are separately designated as "Registered Land." Registered Land is certified under the Torrens Act system, established in the 1800s and modeled after an Australian method for recording ownership interest in ships. Records for Registered Land are maintained by the Registry District of the Land Court in each county, while records for Recorded Land are maintained by the Registry of Deeds for each county. To further complicate matters, a single usable unit of land (e.g. a parcel might be created using all the lots in a particular city block, and then improved by a block-sized building) can overlap these dual systems, and be designated as both Registered and Recorded, requiring deeds and other instruments affecting the land to be recorded or filed in both systems. Such a parcel can also overlap counties, requiring that instruments be recorded and registered in two counties. To top that all off, individual counties in Massachusetts utilize different software to maintain land records in separate systems whose intricacies are challenging to navigate. In any case, documents affecting Registered Land must be filed in person, and the registrar of the Land Court where the document is being presented can reject any instrument that does not meet the Land Court's guidelines, or that county's customs and practices.

<u>Land Court Guidelines:</u>



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There are numerous requirements applicable to documents evidencing the transfer of ownership and other interests in Registered Land. A few examples:

- **Necessity of plan approval through a survey division prior to registration.** This is a substantive review by a surveyor employed by the Commonwealth of Massachusetts, and plans can be rejected for a variety of reasons, including preferences that vary between counties. The first instrument following the registration of a new plan also requires pre-approval.
- **Additional approvals when an estate is involved.** For the first conveyance of a property out of an estate, there are particular approvals required prior to document registration (i.e. recording/filing of a deed). Without the correct license or approvals, a conveyance from an (apparently) improper party or without proper documentation will be deemed ineffective. For land that inhabits both systems, this may result in documents being recorded for the Recorded Land, but rejected for the Registered Land portion.
- **Establishment of a condominium.** Special rules apply to the registration of a condominium, and, to the withdrawal from the Registered Land system of a condominium only partly on Registered Land.

Past mistakes – What now?

Despite the review requirements in place, serious errors still occur with Registered Land. Faulty Registered Land documents cannot be remedied simply by registering an accurate document. A title problem unknowingly created at acquisition will interfere with future financing or conveyance, and may require a court petition to correct. Retaining knowledgeable counsel as part of your acquisition team will allow any title issues to be recognized and addressed at the time of purchase. If your client never took this step when it bought the property, and title issues are uncovered while a sale agreement or refinance is pending, engaging experienced Massachusetts title counsel can help insure your transaction proceeds.

Rich May, P.C. possesses a wealth of knowledge and expertise in real estate and all related areas discussed above, including title, trusts, estates, corporate, tax, and litigation. Retaining a firm with substantive experience in both real estate and adjacent areas of law will protect your property and ensure smooth transactions, in addition to safeguarding your business and personal interests.

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