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## July 2012 Newsletter from Pusateri & Pusateri, P.C.



### Cut Down Trees Results in Wrongful Death Settlement

A property owner in Somerset hired a handyman to remove some 30 foot trees separating his yard from his neighbor's yard. When his 69 year old female neighbor discovered the trees were cut down, she became emotionally distraught. She had allegedly planted the trees with her husband 40 years earlier. The next day, the woman was found dead in her chair with no signs of trauma.

The woman's estate brought negligence and tort claims against the neighbor, alleging wrongful death partially caused by stress arising from the destruction of the plants.

The case was mediated, and ended up settling. The defense attorney stated that she had to contend with a case where a jury would feel sympathy for a woman who has lived in the home for many years and was married to her husband and died of a broken heart.

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### Unsigned Purchase and Sale Agreement Enforceable Because of Email Communication

In a case of first impression, the Superior Court ruled that a series of emails between a buyer and seller of real estate which contained the material terms of an offer to purchase and an acceptance of those terms created a binding contract. The defendant seller backed out of the deal before signing a purchase and sale, but the Judge found enough evidence of a binding agreement.

The buyers approached the seller about purchasing two lots of undeveloped land. Through a series of emails, the parties agreed on the purchase price for the land, the closing date and the mortgage financing contingency. However, the seller began to question why a mortgage contingency was necessary and asked that this be eliminated from the offer. The buyer's attorney agreed to do so and emailed a revised offer which reflected the change. The seller's attorney approved it and directed the checks and documents to be delivered to his office. However, after that, the seller and his attorney stopped responding to the buyer and his attorney's attempts to reach them. The seller then informed the buyers he was backing out of the agreement and selling the property to a third party. The buyers filed suit.

The Court ruled that an enforceable agreement requires the terms be sufficiently complete and definite and the parties intended to be bound at the time. Further, the email exchange satisfied the statute of frauds, which requires a contract for the sale of land to be in writing and signed by the party to be charged (in this case, the seller). The Court found that the parties' email signature block would suffice as an electronic signature. Thus, the email exchange created a binding contract.

If you have any questions about real estate law, please contact our office.

### Patient Protection and Affordable Care Act Upheld

The Supreme Court has ruled on the Patient Protection and Affordable Care Act (the Affordable Care Act) and held that it is constitutional. In its 193 page ruling, the two main issues the Court decided was whether the individual mandate was

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constitutional, and whether the expansion of Medicaid to cover many more people near the poverty line was constitutional.

First, the Court held that the individual mandate which requires most Americans to maintain "minimum essential" health insurance coverage is constitutional and a valid exercise of Congress's power under the Taxing Clause. In a split 5-4 decision, the five justices held that the penalty someone must pay if he refuses to buy insurance is a kind of tax that Congress can impose.

Second, the Court held that the expansion of Medicaid to cover more people who are near the poverty line was constitutional. However, states cannot have their existing Medicaid funds cut off if they decline to participate in the expansion of Medicaid to millions of additional people. The expansion of Medicaid coverage is only constitutional as long as states would only lose new funds if they do not comply with the new requirements, rather than lose all of their funding.

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