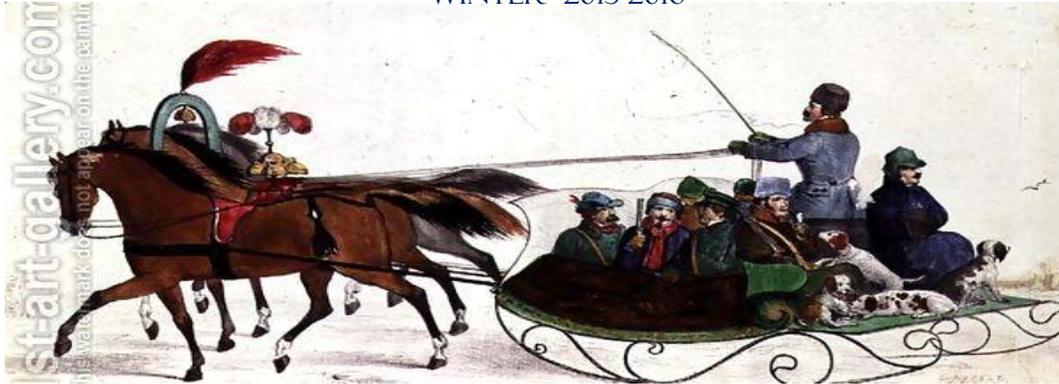


# BARNSTABLE LAW LIBRARY NEWSLETTER

WINTER 2015-2016



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**NEW!**

## Lifting the Cloud on Foreclosed Properties

Recently Governor Baker signed into law [chapter 141](#) of the Acts of 2015 giving homeowners three years to challenge a residential foreclosure. The legislation was drafted in response to a 2011 Massachusetts Supreme Judicial Court decision.

In [U.S. Bank National Association v. Ibanez](#) the court decided that the bank failed to show that they held the mortgage at the time of foreclosure and therefore did not have the authority to foreclose on the property. As a result, the court denied the bank's request for a declaration of clear title. The bank argued that an assignment had been made, but the court said "In Massachusetts, where a note has been assigned but there is no written assignment of the mortgage underlying the note, the assignment of the note does not carry with it the assignment of the mortgage." The court found that because the bank "did not have their assignments to the mortgages at the time of the publication of the notices and the sales, they lacked authority to foreclose under [G. L. c. 183, § 21](#), and [G. L. c. 244, § 14](#)." The court also held that a confirmatory assignment of an earlier, valid assignment can be recorded after the foreclosure.

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The new law primarily amends [Mass. General Laws chap. 244 sec. 15](#) by adding that a recorded affidavit of sale is "conclusive evidence" of compliance with the foreclosure statutes after it has been on record at the [Registry of Deeds](#) for 3 years. However, the time frame does not apply if a court action challenging the validity of a foreclosure sale has been recorded at the [Registry of Deeds or Land Court](#) within the 3 years. If the 3 year time frame is reached and there are no pending court actions, the purchaser has clear title to the property.

The legislation becomes effective on December 31, 2015. For affidavits recorded before the effective date, homeowners have either 3 years from the date of the recording of the affidavit or 1 year from the effective date of this act, whichever is later.

## Welcome, Judge Kathryn Hand!

Judge Kathryn E. Hand has been appointed the presiding justice of Barnstable District Court, replacing Judge W. James O'Neill, who died in September.

Judge was appointed to the District Court as an associate justice in 2006 by Gov. Mitt Romney. She has been the regional administrative justice responsible for management and scheduling for nine district courts in Barnstable, Dukes, Nantucket, Bristol and Plymouth counties since 2013.

A 1987 graduate of Barnstable High School, Judge Hand received a bachelor's degree in English and American Literature from Harvard University and a Juris Doctor from Boston College School of Law.

## NEW MCLE'S

[Drafting Commercial Real Estate Documents in Massachusetts](#) **NEW!** ed.

[Negotiating, Drafting and Enforcing Noncompetition Agreements & Related Restrictive Covenants](#)

[Pocket Guide to Juror Voir Dire in Massachusetts](#)

[Advocating Under Alimony Reform](#)

[Representing Combat Veterans in Criminal Court](#)

[Data Security & Privacy in Massachusetts](#)

[Life Transition Planning for Lawyers: The Next Step](#)

[Family Law Ethical Landmines](#)

[How to Become a Judge or Clerk Magistrate](#)

## NEW BOOKS ON ORDER from The ABA

Representing Parents in Child Welfare Cases

Encryption Made Simple for Lawyers

ABA/AARP Checklist for my Family: A Guide to...

ABA/AARP Checklist for Family Caregivers

Working with Aging Clients

ABA Consumer Guide to Employee Rights

ABA Consumer Guide to Asset Protection

Sword and Shield: A Practical Approach to Section 1983 Litigation

And one last one... ['Tis the Season: Handling & Trying Snow and Ice Cases](#)

**Meet Bert!** Even though summer is just a memory, hardy beach goers may still have the opportunity to see ocean wildlife. Just be certain to keep a safe distance from any animals you might encounter.



This cute little [harbor seal](#) that was found resting on the beach in Barnstable Harbor is protected. The [Marine Mammal Protection Act](#) and its [associated regulations](#) makes it illegal to feed or harass any [marine mammal](#).

The [National Oceanic and Atmospheric Administration](#) (NOAA) explains that feeding marine mammals can cause them to lose their natural wariness of humans and alter their normal behaviors. Their health may be further jeopardized by feeding food that is contaminated, spoiled or otherwise inappropriate. "Harassment" can be actively pursuing or annoying a marine mammal as well as anything that might change its behavior patterns such as attempting to move our cute harbor seal back into the water.

If you believe a marine mammal is in distress, [you can report it to NOAA](#) and they will dispatch a team to evaluate the situation.

## DON'T Forget the Bells!

Although we have had a mild December, we know that living in New England at this time of year can mean only one thing—SNOW. One way to enjoy the winter is dashing through the snow in a horse-drawn sleigh.

According to the rule of the road, [G.L. chapter 89, section 3](#), "no person shall travel on a way with a sleigh or sled drawn by a horse, unless there are at least three bells attached to some part of the harness."

So grab your bells and jingle all the way!



When the weather outside is Frightful, come on the first Tuesday of the month and grab a cup of coffee and a treat! 01/5, 02/2 & 03/7