

A Practical Skills Session

UPDATED TITLE STANDARDS ON DEATH & TITLE ISSUES

Presented by:
Co-Chairs of REBA's
Standards & Forms Committee

Carrie Rainen, Esq.
Rainen Law Office, P.C.

&

Jutta Deeney, Esq.
Stewart Title Guaranty
Company



AGENDA

- Title Standard **41** – List of Heirs
- Title Standard **71** – Evidence of Death of Deceased Joint Owners and Life Tenants
- Title Standard **14** – Missing Probates
 - ✓ Discussion of What Changed and Why
 - ✓ Practical Application



TITLE STANDARD 41 LIST OF HEIRS

What changed and why?

- Pre-MUPC – Listing of spouse and heirs at law deemed reliable
- MUPC adopted in March of 2012 (10 years ago)
- Question presented: Can listings in an informal probate as to identity of heirs at law and spouse provide reliable evidence?
- Amended in **November 2019**

Pre-Amendment

REBA Title Standard No. 41

List of Heirs

The listing of heirs on a petition filed prior to March 31, 2012 in a probate court in connection with the probate of a will or the administration of an estate may be relied upon as complete and accurate in the absence of evidence to the contrary recorded or filed in the appropriate registry of deeds or probate.

EXAMPLE - LIST OF HEIRS PRE-MUPC

Initial filing with court-seeking to Probate Estate of Decedent.

Form included a place to LIST spouse and heirs.

note bottom of form contained a space for Judge's signature indicating allowance (reliance only upon allowance)

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss. TO THE PROBATE COURT: DOCKET NO. [REDACTED]

PROBATE OF WILL - ~~WITH~~ - WITHOUT - SURETIES

Name of Decedent Eldridge Edgar [REDACTED]

Heirs at law or next of kin of deceased including surviving spouse:

Name	Residence	Relationship
Eldridge Edgar [REDACTED], Jr. 3 [REDACTED] Drive	(minors and incompetents must be so designated) Decatur, Georgia 30032	Son
Roberta Ann [REDACTED]	[REDACTED] Cambridge, Mass. 02139	Daughter

MPC Form 162 – Surviving Spouse, Children Children Heirs at Law – filed as part of the Informal Filing and allowance

(note completed in both Informal and Formal Probates)

- ✓ Must be completed with each filing
- ✓ Provides detailed instructions to aid preparing in arriving at heirs-at-law are

NOTE Justice or Magistrate must approve filing of probate using form MPC 750 (called “Order of Informal Probate of Will and/or Appointment of Personal Representative”)

Formal Probate v. Informal Probate

- In a Formal Probate proceedings, due to nature of proceedings heirs-at-law are determined upon allowance. (Form 755 or 757)

SURVIVING SPOUSE, CHILDREN, HEIRS AT LAW G. L. c. 190B, § 3-301 <input type="checkbox"/> Original Form <input type="checkbox"/> Amended Form	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: First Name Middle Name Last Name		Division
Date of Death:		

ALL PETITIONERS MUST COMPLETE LINE 1 AND LINE 2.

☒ The Decedent ☐ did not leave a surviving spouse. ☐ left a surviving spouse:

NAME OF SURVIVING SPOUSE	ADDRESS (omit if since deceased)

☒ 2. a. The Decedent ☐ did not have children (biological or adopted). ☐ had the following children (biological or adopted):

NAME OF DECEDENT'S CHILD	ADDRESS (omit if deceased)	CHILD OF SURVIVING SPOUSE	A MINOR
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes

☐ b. The surviving spouse has surviving descendants (children, grandchildren, etc.) who are **not** descendants of the Decedent.

Complete line 3 ONLY if the Decedent left children in line 2a who are also heirs at law.

3. ☐ a. All of the children listed in 2a **survived** the Decedent.
☐ b. The following children listed in 2a died **before** the Decedent:

NAME OF PREDECEASED CHILD	DATE OF DEATH

c. The predeceased child(ren) listed in 3b:
☐ did not leave surviving descendants (children, grandchildren, etc.) (biological or adopted).
☐ left the following surviving descendants (children, grandchildren, etc.) (biological or adopted):

Complete line 3 ONLY if the Decedent left children in line 2a who are also heirs at law.

3. ☐ a. All of the children listed in 2a **survived** the Decedent.
☐ b. The following children listed in 2a died **before** the Decedent:

NAME OF PREDECEASED CHILD	DATE OF DEATH

c. The predeceased child(ren) listed in 3b:
☐ did not leave surviving descendants (children, grandchildren, etc.) (biological or adopted).
☐ left the following surviving descendants (children, grandchildren, etc.) (biological or adopted):

MPC 162 (4/15/16) SCH page 1 of 3

NAME OF SURVIVING DESCENDANT OF PREDECEASED CHILD	ADDRESS (omit if since deceased)	RELATIONSHIP TO DECEDENT	A MINOR
			<input type="checkbox"/> Yes
			<input type="checkbox"/> Yes

Complete line 4 ONLY if the Decedent left NO surviving descendants (children, grandchildren, etc.). Otherwise STOP and go to line 7 and line 8.

4. The Decedent ☐ did not leave a surviving parent. ☐ left a surviving parent or parents:

NAME OF SURVIVING PARENT(S)	ADDRESS (omit if since deceased)

Title Standard 41 – as Amended

The listing of a surviving spouse (if any) and heirs in proceedings filed in a Massachusetts probate court may be relied upon as complete and accurate in the absence of evidence to the contrary recorded or filed in the appropriate registry of deeds or probate:

- A. on an allowed petition for the probate of a will or administration of an estate filed prior to March 31, 2012;

Part A: is the OLD standard

- B. in a Decree and Order of the court that makes a determination of heirs in either a formal or informal probate; or

Part B: NEW – reliance upon Court Order

- C. In an original or duly amended list of Surviving Spouse, Children, Heirs at Law (Form MPC 162), filed with or after a Petition for Informal Appointment of Personal Representative pursuant to G.L. c. 190B, § 3-301 (Form MPC 150) that has been allowed by an Order of Informal Appointment of Personal Representative (a) after 12 months from the approval of the informal petition, or (b) three years from the date of death, whichever is later provided, however, that at least one of the following also applies:

Part C: NEW – reliance on listing, but...

1. a Decree and Order of Complete Settlement has been issued but it fails to formally determine the surviving spouse and heirs or fails to confirm the listing of the surviving spouse and heirs on the Form MPC 162;
- 2.a Closing Statement (Form MPC 850) has been duly filed pursuant to G.L. c. 190B, § 3-1003 and no challenge to the Closing Statement or other proceedings involving the personal representative were pending at the end of one year after the Closing Statement was filed;
3. six years have passed since the allowance of the Bond of the Personal Representative.

APPLICATION IN THE REAL WORLD

- Until November 2019 – No reliance in an **Informal** Probate unless
 - ✓ Allowance for an **Order of Complete Settlement With a Determination of Heirs.** (note: Petition for Order of Complete Settlement, which doesn't request Determination of Heirs, leaves heirs undetermined).
- **ORDER of Complete Settlement** – requires:
 - ✓ Wait at least 1 year from date of death
 - ✓ Wait at least 1 year from the appointment of the PR in the proceeding
 - ✓ Filing fees, publication fees, final account fees
 - ✓ Filing of multiple forms, including Petition for Order of Complete Settlement, Inventory, First and Final Account, Military Affidavit
 - ✓ Provide notice to all interested parties
 - ✓ Wait for court to rule on petition

Decedent died intestate, can I rely on this?

There's No Formal Adjudication of Spouse, Children, Heirs-at-Law

Docket Information		
◆ Docket Date	Docket Text	
11/14/2013	Certificate of Death	
11/14/2013	Bond without Sureties	
11/14/2013	An Interested Person,Billy Don Smith , Filed MPC 455 toAssent and Waiver of Notice	
11/14/2013	An Interested Person,Rodney Smith , Filed MPC 455 toAssent and Waiver of Notice	
11/14/2013	An Interested Person,Melinda Johnson , Filed MPC 455 toAssent and Waiver of Notice	
11/14/2013	Petition for Informal Probate	Note: the probate court has had some form revisions and in the early years of the MUPC, the Spouse, Children, & Heirs-at-Law form was included as part of the petition. NOW, a separate form is used.
11/14/2013	Order for Informal Probate of Will and/or Appointment of Personal Representative	
11/14/2013	Affidavit as to Military Service	
11/14/2013	Bond Without Sureties Approved Tara DeCristofaro	

Date of Death: August 6, 2012

✓ proceeding under MUPC - YES

Do we fall under the New Standard?

✓ List of Spouse, children and heirs at law are included in the Petition for Informal – YES

✓ Was the PR appointed and Bond approved – YES

✓ Have more than six (6) years passed – YES



TITLE STANDARD 71 EVIDENCE OF DEATH OF DECEASED JOINT OWNERS AND LIFE TENANTS

What changed and why?

- In 2019, a question was presented to the Standards and Forms Committee whether additional evidence was reliable of death of a joint owner or life tenant, in addition to those listed in TS 71
- A revised version of TS 71 was adopted in **May of 2019** to reflect these additional sources of information deemed reliable (related to DOR forms)
- In 2020, prompted by increasing difficulties for non-family members to obtain death certificates, further additional sources of evidence of death were added
- TS 71 was further amended in **November 2020** to reflect the alternate sources deemed reliable

Pre-Amendment

REBA Title Standard No. 71

Evidence of Death of Deceased Joint Owners and Life Tenants

A title derived from surviving joint owner(s), or from remainderpersons after the death of life tenant(s) or from a personal representative or an executor, administrator, guardian, conservator, heir(s) or devisee(s) of such survivor(s) or remainderperson(s) (collectively, "Survivors"), is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

- a) a death certificate recorded at the Registry of Deeds in the district where the property is located or a death certificate filed with or noted in the docket of a probate or other proceeding in the Probate Court in the county where the real property is located; or
- b) the recording at the Registry of Deeds in the district where the property is located of
 - 1) a certified copy of an approved or allowed petition for a domestic or foreign probate or administration of the decedent's estate, or a certificate of appointment in such matter, which in either case recites the decedent's date of death, provided that recording of such petition in the Registry of Deeds shall not be necessary if such petition is filed in the same county where the property is located; or
 - 2) a Massachusetts Inheritance Tax Lien Release ("L-8") relative to the decedent's interest in the property; or
 - 3) a Massachusetts Certificate of Release of Estate Tax Lien ("M-792") relative to the decedent's interest in the property; or
 - 4) a deed for the real property from such Survivors that contains a recital that the decedent has died, even if no date or place of death is recited, provided, however, that such deed has been recorded for more than 20 years.

EXAMPLES: L-8, M-792

Form L8

THE COMMONWEALTH OF MASSACHUSETTS
Department of Corporations and Taxation
Inheritance Tax Bureau, Room 707
100 Cambridge Street, Boston 02204

NO. 1930

INHERITANCE TAX RELEASE OF LIEN

MUST BE FILED IN DUPLICATE WITH FORMS L16, L16A OR L-53
TOGETHER WITH CERTIFIED COPY OF DEED, IF ANY

Date..... March 8, 1972.....

Probate Court.....

Docket No. (if any).....

ESTATE OF EINO KANGAS
NAME OF DECEDENT

LATE OF Lowell, Middlesex County, Massachusetts
CITY OR TOWN

This is to certify that:

☐ An inheritance tax has been paid, or

☐ No inheritance tax is due on any interest that accrued to

ALICE L. KANGAS
NAME OF PERSON(S) TO WHOM INTEREST PASSES

☒ As Surviving Joint Owner(s) ☐ As Donee(s)

☐ As Beneficiary(ies) u/Trust ☐ As Devisee(s) or Legatee(s)
u/Will, or u/Administration

In Real Estate located in Lowell, Middlesex County, Massachusetts
CITY OR TOWN

☒ As described by Deed dated July 3, 1969 and recorded in
Middlesex North District Deeds Book No. 1891 Page No. 299, or
Registry of Deeds

☐ As described by certificate of Title No. _____ recorded in

COUNTY LAND REGISTRATION OFFICE

COMMISSIONER OF CORPORATIONS
AND TAXATION

BK30285PG358 Form M-792

Certificate Releasing
Massachusetts Estate Tax Lien

Rev. 3/95
Massachusetts
Department of
Revenue

Estate Tax Bureau P.O. Box 7023, Boston, MA 02204

File in triplicate with copy of recorded deed.

Mail to:	Decedent's first name and initial <u>Charles Newton</u>	Last name <u>Peabody</u>
Name	Probate court <u>Middlesex</u>	Date of death <u>08/09/1998</u>
Street address	Docket number <u>98P4176</u>	
City/Town, State, Zip code	Residence (domicile) at time of death <u>265 Belknap Road</u> <u>Framingham MA 01701</u>	

This Certificate releases the lien of the Commonwealth of Massachusetts imposed by Chapter 65C of the General Laws, on any and all interests which the decedent may have had in the property described below:

Real Estate (full legal description not necessary)

Location of property 265 Belknap Road Framingham MA 01701
Number Street City/Town Zip code

☒ As described by Deed dated November 14, 1985 and recorded in
Middlesex South Book No. 016628 Page No. 181, or
Registry of Deeds

MSD 06/14/99 09:30:56 137 10.00

Title Standard 71 – 2019 Amendments

A title derived from surviving joint owner(s), or from remainderpersons after the death of life tenant(s) or from a personal representative or an executor, administrator, guardian, conservator, heir(s) or devisee(s) of such survivor(s) or remainderperson(s) (collectively, "Survivors"), is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

- a) a death certificate recorded at the Registry of Deeds in the district where the property is located or a death certificate filed with or noted in the docket of a probate or other proceeding in the Probate Court in the county where the real property is located; or
- a) the recording at the Registry of Deeds in the district where the property is located of
 - 1) a certified copy of an approved or allowed petition for a domestic or foreign probate or administration of the decedent's estate, or a certificate of appointment in such matter, which in either case recites the decedent's date of death, provided that recording of such petition in the Registry of Deeds shall not be necessary if such petition is filed in the same county where the property is located; or
 - NEW** → 2) a Massachusetts Inheritance Tax Lien Release ("L-8 **or L-53**") relative to the decedent's interest in the property; or
 - 3) a Massachusetts Certificate of Release of Estate Tax Lien ("M-792") relative to the decedent's interest in the property; or
 - 4) a deed for the real property from such Survivors that contains a recital that the decedent has died, even if no date or place of death is recited, provided, however, that such deed has been recorded for more than 20 years.

Title Standard 71 – 2020 Amendments

A title derived from surviving joint owner(s), or from remainderpersons after the death of life tenant(s) or from a personal representative or an executor, administrator, guardian, conservator, heir(s) or devisee(s) of such survivor(s) or remainderperson(s) (collectively, "Survivors"), is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

(a) a death certificate recorded at the Registry of Deeds in the district where the property is located or a death certificate filed with or noted in the docket of a probate or other proceeding in the Probate Court in ~~the any county where the real property is located~~ of Massachusetts; or

(b) the recording at the Registry of Deeds in the district where the property is located of:

(1) a certified copy of an approved or allowed petition for a domestic or foreign probate or administration of the decedent's estate, or a certificate of appointment in such matter, which in either case recites the decedent's date of death, provided that recording of such petition in the Registry of Deeds shall not be necessary if such petition is filed in ~~the same county where the property is located~~ any county; or

(2) a Massachusetts Inheritance Tax Lien Release ("L-8 or L-53") relative to the decedent's interest in the property; or

(3) a Massachusetts Certificate of Release of Estate Tax Lien formerly known as an "M-792" relative to the decedent's interest in the property; or

(4) a deed for the real property from such Survivors that contains a recital that the decedent has died, even if no date or place of death is recited, provided, however, that such deed has been recorded for more than 20 years; or

(5) a subsequently recorded death certificate of the Survivor that lists the Survivor's marital status as widowed and that identifies the predeceased joint owner as the spouse of the decedent; or

(6) in a case in which a previously recorded deed for the real property from such Survivor(s) to an arm's length purchaser for value exists, an affidavit given by an attorney in good standing pursuant to G.L. c. 183 §§ 5A or 5B:

(i) that states that a death certificate cannot be obtained because such records are confidential or unavailable in the jurisdiction where the decedent died and includes a supporting narrative, and

(ii) that appends a true copy of a published obituary that provides the date of death.

APPLICATION IN THE REAL WORLD

- Prior to Amendment – record title required one of the following:
 - ✓ Death Certificate
 - ✓ Massachusetts Tax Releases
 - ✓ Federal Tax Releases
 - ✓ 20 years since recitation indeed from remainder or joint owner
- Practical issues for downstream owners
 - ✓ Not possible to obtain death certificate (certain states limit who can obtain)
 - ✓ Death occurred outside of the country
 - ✓ Delay in acquiring documents, when death is certain

Example:

Property owned by Margaret J. Connolly and Michael Connolly

- Margaret and Michael deed to James Connolly and reserve a **life estate**
- Margaret and Michael have both died and James sells the property in 1990 to Bonnie Buyer, but the title exam completed for Bonnie Buyer misses that there is NO death certificate recorded for Michael.
- Bonnie is selling in 2022 to Nellie Newhouse. Nellie's attorney identifies the **life estate** of record held by **Michael**

Issues:

- Bonnie is not related to the Connolly family so she has no idea if Michael has died
- Searching Vital records for a Michael Connolly is time consuming and may be cost prohibitive
- Google searches for obituaries aren't helpful in locating date or place of death (probably due to age)
- Bonnie doesn't have title insurance!

Cure:

- Margaret's death certificate was recorded at the time of sale and can provide proof of Michael's death

843-E-5-8-85
(INSTRUCTIONS ON REVERSE SIDE)
FOR USE BY
PHYSICIANS AND
MEDICAL EXAMINERS

The Commonwealth of Massachusetts
STANDARD CERTIFICATE OF DEATH
REGISTRY OF VITAL RECORDS AND STATISTICS

11/14/85 03:38 TR 728 RE 10.00
REG-STERED NUMBER STATE USE ONLY

STATE USE ONLY

DECLINANT NAME FIRST MIDDLE LAST SEX DATE OF DEATH (Mo Day Yr)
Margaret J. Connolly Female May 6, 1985

PLACE OF DEATH (City or Town) COUNTY OF DEATH HOSPITAL OR OTHER INSTITUTION (Name, if not in other, give street and number) IF IN HOSPITAL (DDA, 1985 of 1985)
Waltham Middlesex Waltham-Weston Hospital NO

RACE (Mo White Black American Indian etc. (Specify)) AGE Last Birthday (Mo Day Yr) UNDER 1 YEAR UNDER 1 DAY DATE OF BIRTH (Mo Day Yr) STATE OF BIRTH (if not in U.S.A. name country)
White 82 May 1, 1903 Ireland

MARRIED NEVER MARRIED SPOUSE (if wife, give maiden name) USUAL OCCUPATION (if none, give) KIND OF BUSINESS OR INDUSTRY
Widowed Michael Connolly Housewife At Home

SOCIAL SECURITY NUMBER IF U.S. WAR VETERAN SPECIFY WAR RESIDENCE STREET AND NUMBER CITY OR TOWN COUNTY STATE ZIP CODE
48 Fiske St. Waltham Middlesex Mass. 02154

FATHER FULL NAME STATE OF BIRTH (if not in U.S.A. name country) MOTHER NAME (Maiden) STATE OF BIRTH (if not in U.S.A. name country)
Michael Mulkerrins Ireland Mary O Toole Ireland

INFORMANT NAME AND ADDRESS RELATIONSHIP
James P Connolly 48 Fiske St. Waltham Son

DATE OF DISPOSITION DATE OF DISPOSITION PLACE OF DISPOSITION AND LOCATION CITY OR TOWN STATE
May 8, 1985 Calvary Cemetery Waltham, Mass.

DISPOSITION FUNERAL SERVICE (Name) ADDRESS OF FACILITY
Richard M Fennelly Jr Waltham-Fennelly Funeral Home Inc. 20 High St Waltham

CAUSE OF DEATH (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) (115) (116) (117) (118) (119) (120) (121) (122) (123) (124) (125) (126) (127) (128) (129) (130) (131) (132) (133) (134) (135) (136) (137) (138) (139) (140) (141) (142) (143) (144) (145) (146) (147) (148) (149) (150) (151) (152) (153) (154) (155) (156) (157) (158) (159) (160) (161) (162) (163) (164) (165) (166) (167) (168) (169) (170) (171) (172) (173) (174) (175) (176) (177) (178) (179) (180) (181) (182) 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Title Standard 71 – 2020 Amendment to Comments and Notes

Notes and Comments

(1) As to the recording of a death certificate as a matter of practice, see REBA Practice Standard No. 10.

(2) For purposes of this Title Standard, the term "joint owners" shall include joint tenants and tenants by the entirety.

(3) When a death certificate or probate is outside of the county where the land is located, it is the recommended practice to note in the title reference of the deed being recorded, the county where the death certificate is recorded or the probate is filed.

(4) The spouse of a widowed Survivor may be identified by his/her birth name on the death certificate issued by the municipality.

(5) An affidavit recorded pursuant to (b)(6) of this Title Standard must be based on personal knowledge, contain sufficient information setting forth the steps taken to obtain the death certificate, cite the statutory or regulatory bar existing which prohibits obtaining the death certificate by the record title owner, contain a recitation of the facts discovered or known to the affiant, and the source of information which establishes that the person identified in the obituary was the owner for whom proof of death is necessary to establish the record title.

(6) For purposes of this Title Standard a published obituary shall include digital publication of the obituary through the funeral home or digital obituary publication service.

Caveat

(1) As to registered land, see Land Court Guideline No. 14 (May 1, 2000, Revised February 27, 2009).

(2) While M-792s, L-8s or L-53s are considered sufficiently reliable evidence of death under the circumstances discussed in this title standard, an Estate Tax Affidavit pursuant to G.L. c. 65C, §14(a) is not.

EXAMPLE – MA ESTATE TAX RELEASE



Commonwealth of Massachusetts
Department of Revenue
Geoffrey E. Snyder, Commissioner
mass.gov/dor

2021 00103667
Bk: 77709 Pg: 77 Doc: DIS
Page: 1 of 1 05/06/2021 02:17 PM

Letter ID: L0749036352
Issue Date: April 6, 2021
Case ID: 0-001-126-236



CERTIFICATE RELEASING MASSACHUSETTS ESTATE LIEN



ELIZABETH A JONES
16 S MAIN ST
TOPSFIELD MA 01983-1813

This is a copy of a letter sent to: ESTATE OF
CAROLYN F PROCOPIO

In response to your request, the Department of Revenue is issuing this certificate releasing the Massachusetts Estate lien for the Estate of CAROLYN F PROCOPIO. Review the information below and call us at (617) 887-6930 if you have any questions.

Taxpayer Information

Name of Decedent	CAROLYN F PROCOPIO
Social Security Number	***-**-9865
Date of Death	06/24/2020

Lien Information

Address of Property	4 Lamoil Street Woburn, MA 01801-0000
Lien Released Date	03/24/2021
Probate Court	N/A
Docket Number	
Registry where deed was recorded	Middlesex South
Date of Deed	11/04/1998
Book Number	29483
Page Number	120

Commissioner of Revenue

TITLE STANDARD 14

MISSING PROBATES

What changed and why?

- In 2019, the SFC desired to remove any ambiguity as to a filing of Voluntary Administration for a decedent
- Comment 3 was added in 2019, which stated that a Voluntary Administration was not a probate proceeding
- A Voluntary Administration cannot be employed to convey real property or determine heirs at law, as its sole use is for distribution of personal property of no greater value than a particular statutory dollar amount.
- Thus, if your title examination shows a voluntary administration, it must be treated like a missing probate

Pre-Amendment

REBA Title Standard No. 14

Missing Probates

A title dependent on a deed from heirs of a person for whom there are no Massachusetts probate proceedings is not defective if:

(1) the decedent died more than 25 years ago, and

(a) a recorded affidavit or death certificate shows the date of death and place of residence at death, and

(b) an affidavit recorded pursuant to G.L. c. 183, §§ 5A or 5B names the decedent's heirs, states that the decedent died intestate, and declares that no probate proceedings have been filed in any jurisdiction,

or

(2) *the decedent died more than 50 years ago and instruments recorded in the chain of title of land of the decedent identify the heirs.*

Comments

1. (a) G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. G.L. c. 191, §§ 12 and 13 required wills to be presented promptly. G.L. 197, § 19 precluded a sale of real estate to pay legacies after six years. (All repealed, effective March 31, 2012)

(b) G.L. c. 190B provides with limited exceptions that a probate may be opened only within 3 years from date of death (G.L. c. 190B, §3-108) and that a proceeding to determine heirs may be opened thereafter (G.L. c. 190B, §3- 402).

2. When the owner has been dead 25 years without probate or administration, the risk is deemed negligible that others than the grantee from the heirs have a valid interest in the land.

Title Standard 14 – Amendment

Missing Probates

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or

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Comments

- (a) G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. G.L.c. 191, §§ 12 and 13 required wills to be presented promptly. G.L. 197, § 19 precluded a sale of real estate to pay legacies after six years. (All repealed, effective March 31, 2012)*
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- When the owner has been dead 25 years without probate or administration, the risk is deemed negligible that others than the grantee from the heirs have a valid interest in the land.*
- For purposes of Title Standard 14, the filing of a Voluntary Administration under G.L. c. 190, §3-1201 or G.L. c. 195, § 16 shall not be deemed a probate proceeding.*

EXAMPLE – VOLUNTARY ADMINISTRATION

VOLUNTARY ADMINISTRATION STATEMENT PURSUANT TO G.L. c. 190B, § 3-1201	Docket No. 16P1374	Commonwealth of Massachusetts The Trial Court Probate and Family Court
--	------------------------------	--

3. At least 30 days have elapsed since the death of Decedent:
4. A death certificate issued by a public officer is in the possession of the Court or accompanies this statement.
5. ☒ The Petitioner is unaware of any unrevoked Will relating to property in Massachusetts.
- OR**
- ☐ The original Will and codicil(s) are in the possession of the Court or accompanies this statement. The Petitioner is unaware of any instrument revoking the Will and believes that the Will is the decedent's last Will.

6. ☒ Copies of this statement and the death certificate have been sent by certified mail to the Division of Medical Assistance Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205.
7. The probate estate consists entirely of personal property and the total value of all personal property owned by the Decedent and subject to disposition by Will or intestate succession at the time of the Decedent's death does not exceed \$25,000.00, exclusive of one motor vehicle.