

REBA Title Standard No. 40

Transfers by Devisees Under a Will Containing a Power of Sale

Title dependent on a deed from the devisees under a duly allowed or admitted will giving the personal representative a discretionary, as opposed to a mandatory power of sale, is not defective by reason of the failure of the personal representative to join in said deed if:

(1) The testator died on or before March 30, 2012, and:

(a) the probate case includes an allowed final account showing payment of all debts, legacies and expenses of administration;

or

(b) a period of six years has passed from the date of approval of the bond and no outstanding claims appear in the estate;

or

(2) The testator died on or after March 31, 2012, and:

(a) the probate case includes a Decree and Order of Complete Settlement;

or

(b) the estate was opened formally and more than one year has passed since the filing of a Closing Statement (MPC 850) by the personal representative showing payment of all debts, legacies and expenses of administration;

or

(c) the estate was opened informally, more than one year has passed since the filing of a Closing Statement (MPC 850) by the personal representative showing payment of all debts, legacies and expenses of administration, and three years has passed since the date of death without the filing and allowance of a superseding formal probate;

or

(d) a period of six years has passed from the date of approval of the bond and no outstanding claims appear in the estate.

or

(3) The decedent's will is admitted to probate in a late and limited proceeding, pursuant to M.G.L. c. 190B § 3-108(4).

Comments

1. *The MPC form titles and numbers recited are current as of the date of adoption of the first amendment to this title standard and should be construed as referring to such forms as they may be amended or replaced in the future.*

2. *With respect to the limited powers of a personal representative in a late and limited proceeding, pursuant to M.G.L. c. 190B, § 3-108, “...the personal representative shall have no right to possess estate assets as provided in section 3–709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be presented against the estate....” See *In Re Estate of Kendall*, 486 Mass. 522 (2020).*

3. *When taking title from the heirs of an intestate estate, refer to Title Standard 41 for lists of heirs which may be relied on as accurate and complete.*

Caveat

4. *Probate estates may be subject to Massachusetts and federal estate tax liens. See Title Standards 3, 24 and 61.*

Adopted November 26, 1979

Amended November 14, 2022, to update the standard to account for the passage of M.G.L. c. 190B.