

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 (All repealed, effective March 31, 2012)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.
3. 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.

Adopted November 26, 1973

Amended May 22, 1989 (The phrase “and declare that no probate proceedings have been filed in any jurisdiction” was added.)

Amended May 7, 2012 (to conform Standard to passage of G.L. c. 190B, effective March 31, 2012.)

Amended May 6, 2013 (to restore use of statutory affidavits to identify the heirs of a decedent who died more than 25 years ago.)

Amended May 6, 2019 (to clarify that a Voluntary Administration is not deemed a probate proceeding for purposes of this Standard)

REBA Title Standard No. 14

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 remainderperson(s) 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 a Probate Court in any county 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 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.

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.*

Adopted November 14, 2005

Amended November 5, 2008 (to delete a requirement in subsection (b)(3) that, to establish evidence of death, an M-792 must have been recorded for at least 20 years)

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

Amended May 6, 2019

Amended November 2, 2020 (to expand sources of evidence which may be relied on for proof of death for joint owners and remainderpersons)

REBA Title Standard No. 77
Prior Owner Automatic Homestead or Declared Homestead

Title derived from a conveyance of record of real estate on which there was an automatic or declared homestead is not on that account defective if:

1. The only persons entitled to an estate of homestead were a married couple and both executed a deed for the conveyance of the real property to a bona fide purchaser for value; or
2. An unmarried person entitled to an estate of homestead, or the executor or administrator of such person, recited in a deed for the conveyance of the real property to a bona fide purchaser for value:
 - a. (For deeds recorded prior to March 16, 2011) that he/she was unmarried, or
 - b. (For deeds recorded on or after March 16, 2011) that he/she was unmarried and that there were no other persons entitled to the protection of the homestead act;
or
3. A non-titled spouse released his/her right of homestead either in a deed for the conveyance of the real property to a bona fide purchaser for value or in a separately recorded instrument of release; or
4. There is recorded in the registry of deeds for the county where the real property is located a G.L. Ch 183 Section 5B affidavit certifying that attached to it is a subsequently recorded declaration of homestead on other real estate declared by the prior owner(s); or
5. The real estate was held in trust and was conveyed to a bona fide purchaser for value by the trustee(s) of the trust; or
6. There is recited in a deed for the conveyance of the real property to a bona fide purchaser for value that:
 - a. The property was not homestead property; or
 - b. The property was not the principal residence of the grantor or any other person; or
7. A principal residence was abandoned by those person(s) entitled to an estate of homestead.

Comments

1. *G.L. Ch 188 was rewritten with the passage of Chapter 395 of 2010, which became effective on March 16, 2011. It established an automatic homestead effective as of that date on a principal residence when a declared homestead has not been recorded.*
2. *With respect to the conveyance by an unmarried person, G.L. Ch 188 Section 13 states that the marital status of a grantor may be relied upon by a good faith purchaser for value. It is recommended that an affidavit pursuant to this section be obtained as such an affidavit is conclusive as to the facts set forth in the affidavit. While the affidavit need not be recorded to be conclusive, an attorney certifying title may elect to do so.*
3. *G.L. Ch 188 Section 10(3) terminates the estate of homestead when there has been abandonment of the real estate by the owner, the owner's spouse, former spouse and minor children (excepting those in the military service as defined in 50 U.S.C. appendix, Section 511). It may be reasonably assumed by a conveyancer that any rights arising from a prior declared or automatic homestead have been abandoned when there have been two successive deeds to purchasers for value. Prior to the enactment of Chapter 395 of the Acts of 2010, the word "abandonment" was not contained in the homestead statute. It is now an additional statutory means of terminating a homestead. Case law prior to the enactment of Chapter 395 recognized that an estate of homestead may be terminated by abandonment. See *In re Marrama*, 307 B.R.332 (D. Mass. 2004). As abandonment was not included in prior versions of the homestead statute, however, courts imposed a high standard to prove abandonment. See *Silloway v. Brown*, 94 Mass. 30, 12 Allen 30 (1866) and *Lazell v. Lazell*, 90 Mass. 575, 8 Allen 575 (1864). Courts have held that to defeat a homestead estate, any act of abandonment, short of acquiring a new homestead, must be such as to afford unequivocal evidence of an intent to abandon it. In none of the cases involving the determination of abandonment has the property been conveyed by the record title owner. Instead, the cases have dealt with the rights of creditors to perfect a lien on property which continued to be owned by the person who created or was benefited by a homestead estate. While not defining the term "abandonment", *In re Melito*, 357 B. R. 684 (D. Mass.2007) implied that it would involve vacating the premises other than temporarily or conditionally. Two successive deeds to a bona fide purchaser for value would seem to meet the criteria of abandonment.*

Adopted November 14, 2011

From MGL c. 65C, s. 14

Section 14. (a) Unless the tax imposed by this chapter is sooner paid in full, it shall be a lien for ten years from the date of death upon the Massachusetts gross estate of the decedent, except that such part of the Massachusetts gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by the probate court having jurisdiction thereof, shall be divested of such lien. For dates of death on or after January 1, 1997, an affidavit of the executor, subscribed to under the pains and penalties of perjury, recorded in the appropriate registry of deeds and stating that the gross estate of the decedent does not necessitate a federal estate tax filing, shall release the gross estate of the lien imposed by this section.

(b) If the tax imposed by this chapter is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the real or personal property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, real or personal property included in the Massachusetts gross estate to the extent of the value, at the time of the decedent's death, of such property shall be personally liable for such tax. Any part of such real property, which, prior to the decedent's death, was conveyed by a deed of the decedent not disclosing an intention that it take effect in possession or enjoyment at or after his death and such deed was recorded or registered prior to the decedent's death, and any part of such personal property transferred by, or transferred by a transferee of, such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in subsection (a), and a lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth.

MGL c. 190B, s. 3-101:

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to property are subject to the restrictions and limitations contained in this chapter to facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to allowances and exempt property, to rights of creditors, elective share of the surviving spouse, and to administration.

From MGL c. 190B, s. 3-715:

(a) Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 3–902, a personal representative other than a special personal representative, acting reasonably for the benefit of the interested persons, may properly:

...

(23.5) sell, lease or encumber to an arm's length third party any real estate of the estate, or an interest in that real estate, for cash, credit or for part cash and part credit, with or without security for unpaid balances and whether the personal representative has been appointed formally or informally; the sale, lease or encumbrance shall be conclusive notwithstanding section 3–302 or any contest of the informal probate proceeding, provided that: (i) if the decedent died without a will, a license has been issued under chapter 202; or (ii) if the decedent died with a will, either: (a) the will, probated formally or informally, empowered the personal representative to sell, lease or encumber that real estate or an interest in that real estate, or (b) a license has been issued under chapter 202.

MEMORANDUM

To: Registry District Personnel – Registered Land Divisions
From: Christina T. Geaney, Chief Title Examiner
Date: October 31, 2019
Subject: **Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles**

THIS MEMORANDUM SUPERSEDES PREVIOUS MEMO DATED OCTOBER 13, 2012

Section I. General Information

The Land Court Guidelines, first promulgated in May of 2000, and revised on February 27, 2009, include Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles. Guideline 14 has been supplemented with Memos from the Chief Title Examiner in order to reflect the changes resulting from the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B *et seq.*, with an effective date of March 31, 2012 (“MUPC”), as amended. Until such time as Land Court Guideline 14 is revised by the Court, this Memorandum should be consulted when dealing with the death of any registered land owner(s).

The purpose of this guideline is to assist lawyers in dealing with title to Registered Land upon the death of a registered owner. The methods outlined herein are generally speaking, mutually exclusive:

- A) **METHOD NO. 1** – DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST
- B) **METHOD NO. 2** – COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)
- C) **METHOD NO. 3** – SALE UNDER DECREE (LICENSE) OF PROBATE COURT
- D) **METHOD NO. 4** – DEED UNDER POWER OF SALE IN WILL

Note: Reference to “LCP-2 Petition” has been replaced by “Complaint for Certificate After Death,” revised as of the date of this Memorandum (also referred to herein as “Complaint”).

Note: The revised Complaint is to be utilized in all applicable cases as set forth herein. The revised Complaint is available on our website (www.mass.gov/lists/land-court-forms).

Note: To include additional facts or in a case involving more than one death, please attach an **Addendum** explaining the situation, along with the relevant supporting documentation. (Reference to an Addendum is found on Page 1 of the Complaint.)

Note: The Land Court will require, for registered land, **FORMAL** probate proceedings for a Complaint for Certificate After Death whether they are testate or intestate. This will be further explained below under Method No. 2.

Note: For **DEED APPROVALS** from probate estates, we will accept a Decree (license) or the use of the power of sale conferred in a will probated in either *informal or formal probate proceedings*. The requirements under Method Nos. 3 and 4 will be discussed more fully herein.

Section II. Methods

A) METHOD NO. 1 - DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST

Because title to land passes in such situations by operation of law to the surviving co-tenant(s) by right of survivorship, it is unnecessary for the surviving owner(s) to obtain a new Certificate of Title or Memorandum of Unit Ownership (reference throughout this Memorandum to Certificate of Title also includes Memorandum of Unit Ownership) in order to deal with the property. It is necessary, however, that evidence of the death be noted on the encumbrance sheet of the outstanding Certificate of Title as follows:

- (1) A certified copy of a death certificate of the deceased owner.
- (2) If the deceased owner was a tenant by the entirety, an Affidavit of No Divorce.

Once the above-referenced documents are registered, the surviving registered owner(s) may deal with the property freely, without Land Court approval.

However, if the surviving registered owner(s) request(s) a Certificate of Title in their name(s), a Subsequent Complaint must be filed with the Land Court Department, along with the statutory filing fee, the material referred to under Subsections 1 and 2 above (as applicable), as well as an attested copy of the outstanding Certificate of Title. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title. There is no court-promulgated form which must be used. The surviving registered owner(s) must simply recite, under oath, the circumstances, request the cancellation of the outstanding Certificate of Title, and request the issuance of a new Certificate of Title in their name(s). An Order of the Land Court will issue and must be presented at the Registry of Deeds for registration.

B) **METHOD NO. 2 – COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)**

Method No. 2 is used to obtain a new Certificate of Title after the death of a person in whose name alone a Certificate of Title stands, after the death of both tenants by the entirety, after the death of one tenant in common, or after the death of the last joint tenant. For this method, the Complaint for Certificate After Death must be filed, and the lawyer for Plaintiff(s) or a Land Court Examiner will file the following to initiate a case:

- (1) File the completed Complaint along with the statutory filing fee. Note that this Complaint has two signature sections. The statement in the section entitled “Waiver of Notice by Personal Representative” is to be signed by the Personal Representative of the estate. If no Personal Representative has been appointed, one heir (intestate estate) or devisee (testate estate) must sign the Complaint.
- (2) As provided for in the Complaint, all Plaintiffs, or the lawyer for the Plaintiff(s), will also sign the Complaint in the applicable section entitled “Listing of All Plaintiffs.”

Note: If the lawyer signs the Complaint, the lawyer should make clear that they represent the Plaintiff(s). If the lawyer represents *less* than all of the Plaintiffs, those Plaintiffs must also sign the Complaint, or provide the Court with a separate written Assent to the Complaint.

- (3) An attested copy of the outstanding Certificate of Title must be filed. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent, prior Certificate of Title.
- (4) Supporting documentation will vary depending upon how title to the property was held:
 - (a) *Tenancy by the Entirety/Joint Tenancy - all Co-Tenants Deceased*
 - (i) ***as to the first to die***, a death certificate. If there are more than two joint tenants, a death certificate must be filed for each deceased registered land owner (except the last to die). In addition, if the property was held as tenants by the entirety, an Affidavit of No Divorce must be filed.

Note: The Affidavit of No Divorce must address the fact that at the time of death of the *first to die*, there had been no divorce.

- (ii) *as to the surviving tenant by the entirety or the last joint tenant to die*, file attested Probate and Family Court copies of the following (as applicable):

TABLE 1 – Attested Probate and Family Court documents
Docket Sheet
Allowed Petition (pre-MUPC) or Petition for Formal (MPC 160)
Citation (and a copy of the publication)
Approved Bond(s)
Will (if testate) and all Codicils (if any)
Inventory (if filed)
Surviving Spouse, Children, Heirs at Law Form (MPC 162) (if filed)
Devises Form (MPC 163) (if testate and filed)
Decree and Order on Petition for Formal Adjudication (MPC 755) (unless the Probate and Family Court Decree is otherwise part of a Pre-MUPC filing)

TABLE 2 – Attested Probate and Family Court documents <i>needed only if filed</i>
Petition for Late and Limited Formal Testacy and/or Appointment (MPC 161)
Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment (MPC 757)
Petition for Order of Complete Settlement (MPC 855)
First and Final Account (include all Accounts if more than one)
Decree and Order for Complete Settlement (MPC 790)

Note: If any of the Probate and Family Court documents in the [Tables](#) were amended, attested copies will also be required.

Note: Lawyers may not attest these documents.

Note: If the opening proceeding was an informal probate, and the time limits prescribed in G.L. c. 190B, § 3-108, have not expired, you may either institute a Formal Probate, or in the alternative, you may petition the Probate and Family Court for a Decree and Order for Complete Settlement. *The Petition for Order of Complete Settlement (MPC 855) must specifically seek a determination of testacy and heirs.* This Petition for Order of Complete Settlement is a formal probate proceeding, and will result in a Decree and Order for Complete Settlement (MPC 790). Please follow up with the Probate and Family Court regarding this process.

If the time limits prescribed in G.L. c. 190B, § 3-108, have expired, then an **Addendum** addressing this issue is to be included along with the

Complaint, with the relevant supporting documentation. (Reference to the Addendum is found on Page 1 of the Complaint.)

Note: A determination of heirs is not established as a result of the time limits under G.L. c. 190B, § 3-108. This must be determined by the Probate and Family Court in either a testate or intestate estate, and submitted as part of the Complaint to the Land Court. Please follow up with the Probate and Family Court regarding this process.

- (b) *Tenancy in Common* - for each tenant in common who is deceased, file all of the materials set forth in the preceding [Tables](#) (as applicable). If there are surviving tenants in common, each should assent to the Complaint by signing it to indicate that they are aware that the old Certificate of Title is to be cancelled, and a new Certificate of Title is to be issued in their name(s) as well as the name(s) of the new tenant(s) in common.

Note: If a surviving tenant in common does not sign the Complaint, a separate written Assent can be filed.

- (c) *Certificate Standing in the Name of One Person* - again, file attested Probate and Family Court Division copies of all probate documentation for the estate of the decedent as set forth in the preceding [Tables](#) (as applicable).

The result of this method will be an attested Order of the Land Court which must be registered at the Land Registration Office at the proper Registry of Deeds. In due course, a new Certificate of Title will be drawn in accordance with the Order of the Land Court.

Note: Deeds of Distribution: The Land Court will NOT accept, in lieu of the Complaint, a deed from the Personal Representative to the heirs or devisees under the will of the decedent, or to their nominee. If acceptance of a deed from a Personal Representative is requested, it may be registered in connection with a Court Order, but only if the Complaint is based on a formal decree that allows the issuance of a Certificate of Title to the heirs or devisees.

Note:

DEBTS: As to decedents dying on or after January 1, 1990, claims of creditors are generally barred after one year from the date of decedent's death.

Different rules may apply to those decedents dying before January 1, 1990.

TAXES: Estate and inheritance taxes are not required to be noted on Certificates of Title (G.L.c. 185, § 46; See also Land Court Guideline 35).

LEGACIES: Unless the real property is specifically devised, if a will directs the payment of legacies, the Land Court requires evidence of their payment.

Note: If less than one year has elapsed since the date of death, or if there are claims on the estate, any new Certificate of Title will issue subject to the settlement of the estate.

Note: If a new Certificate of Title issues subject to the settlement of the estate, a further Subsequent Complaint to Amend the Certificate of Title, together with applicable supporting documentation, is required to remove the settlement of the estate language from the face of the new Certificate of Title.

DEVISE TO A TRUST:

A) *Testamentary Trust:* If property is devised to the Trustees of a testamentary trust, attested copies of the Decree appointing the Trustee or the Statement of Confirmation of Testamentary Trustee and the Trustee's Bond(s) must be included, along with the aforementioned probate documentation under Method No. 2 (set forth in the preceding [Tables](#), as applicable). The Order of Court will issue to the testamentary Trustee(s) for the benefit of the named beneficiary(ies) of said testamentary trust, under the will of the decedent.

B) *Inter Vivos Trust:* If property is devised to the Trustees of an *inter vivos* trust, which is not of record, the original trust instrument and any amendment(s) thereto, or a Certificate pursuant to G.L. c. 184, § 35, must be filed with the Land Court in connection with the Complaint, along with the aforementioned probate documentation under Method No. 2, (set forth in the preceding [Tables](#), as applicable). The Order of Court will issue to the trustee(s), and the original trust document(s) or the aforementioned Certificate will be registered, and noted on the new Certificate of Title issued. *Please note that we will not place title into an expired trust* (See also Land Court Guideline 62. Trusts: Expired).

C) METHOD NO. 3 - SALE UNDER DECREE (LICENSE) OF PROBATE COURT

Method No. 3 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. One of the advantages of obtaining a Probate and Family Court Decree ("Decree" or "license") is that the property will be sold free of debts of the deceased, costs of administration, legacies, and Massachusetts estate taxes, a tax release being a prerequisite for obtaining the Decree/license.

If utilizing Method No. 3, please present all of the following for a DEED APPROVAL:

- (1) The original or an attested copy of the Decree/license (no more than one year old) containing the property description;
- (2) An attested copy of the Probate and Family Court Docket Sheet;

- (3) An attested copy of the Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750);
- (4) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title; and
- (5) A fully executed deed must be presented. The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

Example Grantor Clause:

"I, _____ as Personal Representative of the Estate of _____ holder of a Decree of the Probate and Family Court of _____ dated, _____ Docket No. #####, by power conferred by said Decree. . ."

Note: The date of the Decree/license referenced in the deed must be the date that the Decree/license issued. The deed must conform in all respects to the Decree/license, with the consideration equal to or more than the amount specified in the Decree/license. The deed should be executed on or after the date of the Decree/license.

Note: The property description in the deed must conform to the description in the Decree/license.

Note: If the Personal Representative is the grantee in the deed, the Decree/license of the Probate and Family Court must provide that the Personal Representative is permitted to take title.

If everything is in order, the deed pursuant to the Decree/license is endorsed "Approved for Registration" and signed by a Land Court Title Examiner.

D) **METHOD NO. 4 - DEED UNDER POWER OF SALE IN WILL**

Method No. 4 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. The advantage of a sale pursuant to a power of sale in a will is that the property is sold free of debts of the deceased, costs of administration and legacies. ***The power of sale can be used to convey registered land when the will, probated formally or informally, empowered the personal representative to sell the real estate or an interest in that real estate. It is not to be used to distribute the registered land to the devisees or heirs at law, nor is it to be used to effectuate an agreement amongst the devisees as to which of them will take title.***

If utilizing Method No. 4, please present all of the following for a DEED APPROVAL:

- (1) An attested copy of the probated will (and all codicils) must be presented at the Land Court. To use this method, the power of sale in the will must be unequivocal. The clause containing the power should be marked;

- (2) Attested Probate and Family Court copies of the Docket Sheet, Petition for Formal (MPC 160) or Petition for Informal Probate of Will and/or Appointment of Personal Representative (MPC 150), Approved Bond(s), Surviving Spouse, Children, Heirs at Law Form (MPC 162), Devisees Form (MPC 163), and Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750). Along with the foregoing, provide current Letters of Authority of the Personal Representative, issued from the Probate Court (not more than 60 days old).
- (3) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title;
- (4) The fully executed deed of the Personal Representative must be presented. The grantor clause should clearly state that the Personal Representative is selling pursuant to the power conferred by the probated will of the deceased owner. ***The consideration in the deed must be other than nominal, and must be in favor of an arm's length third party*** (See G.L. c. 190B, § 3-715 23 ½); and

Example Grantor Clause:

"I, _____ as Personal Representative of the Estate of _____, pursuant to the power of sale conferred under the probated will, Probate and Family Court, Docket No. #####. . ."

- (5) The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

If everything is in order, the deed, pursuant to power of sale in the probated will is endorsed "Approved for Registration" and is signed by a Land Court Title Examiner.

Note: With Method Nos. 3 and 4, where title was held as tenants by the entirety, or as joint tenants, a death certificate and an Affidavit of No Divorce (tenants by the entirety) should be presented to the Land Court Title Examiner, along with the Deed.

In Summary: If a Complaint for Certificate After Death is presented, an Order of the Land Court will issue. If a deed under either a Decree/license *or* pursuant to the power of sale conferred in a probated will is presented, the deed is approved, and no Complaint is necessary. This Memorandum is not intended to be exhaustive, and addresses only the most common situations.