

REBA Title Standard No. 10

Power of Sale Under Will

The deed of:

- (1) an executor, or
- (2) an administrator CTA, or
- (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
- (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of Title Standard 78,

pursuant to a general power in the will to sell real estate conveys to the purchaser for value a title free from the claims of general creditors and of legatees and devisees under the will.

Comments

1. *This standard derives from the famous correspondence in 1912 between George A. Sawyer and John C. Gray which has been published with comments in Issue No. 1 of Volume 36 of the Massachusetts Law Quarterly.*
2. *The above standard applies to deeds given both within and after the period of the statute of limitations on creditors' actions but has no effect on either Federal or Massachusetts death tax liens.*
3. *Under the law in effect prior to March 31, 2012:*
 - (a) *The executor and the administrator CTA (cum testamento annexo – with the will annexed) were the only fiduciaries who had the power to sell without a license of the court; temporary executors, temporary administrators CTA, and special administrators must have obtained court authority to convey real estate.*
 - (b) *The power to sell must have attached to the office of the executor/executrix and not the person with respect to an administrator CTA*
 - (c) *The reference in the standard to an administrator CTA includes an administrator DBN CTA (de bonis non – of the goods not administered).*

Adopted May 17, 1973

Amended May 4, 1994 (deleted "of the testator" in the Standard).

Amended May 5, 2008 (added reference to administrators CTA and expanded Comments)

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

REBA Title Standard No. 10