

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 (All repealed, effective March 31, 2012)*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)