

The Decoder



NEWSWORTHY EVENTS

SPRING 2014

WEBSITE: NEW LOOK/ NEW INFORMATION

The Probate and Estates section of the Probate and Family Court website has a new look and new information. The content includes answers to commonly asked questions such as “What is probate?”, “Is it always necessary to probate an estate?”, “What law governs?”, “What options are available?”. The website can be accessed from www.mass.gov.

SUMMER 2014

2ND EDITION OF THE MUPC PROCEDURAL GUIDE

A revision to the [MUPC Estate Administration Procedural Guide](#) is now underway. Current chapters are being updated to reflect changes in the law as well as procedure. Printed copies of the updated Guide will be distributed to court staff who received the first edition. An electronic version will also be posted on the MUPC Hub and may be downloaded to any desktop.

Welcome....

On behalf of Chief Justice Angela Ordoñez and the MUPC Procedures Committee, welcome to the premier edition of *The Decoder*.

With this communication, we hope to keep you updated on court accomplishments, procedural developments, and upcoming events related to the Massachusetts Uniform Probate Code (“MUPC”) and the Massachusetts Uniform Trust Code (“MUTC”).

Since we want *The Decoder* to be as helpful as possible, we look forward to hearing your comments on this first issue. We also welcome any suggestions that you may have for future issues. Please email comments and suggestions to:

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Thank you for your interest.

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THE MUPC PROCEDURES COMMITTEE:

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- ♦ *Confirmation of a Testamentary Trustee, p.3*



NEWSWORTHY EVENTS

SUMMER 2014 UPDATED MUPC MAGISTRATE LIST POSTED

An updated list of MUPC Magistrates for each county has been posted on the Probate and Family Court website. The updated list may be found on the MUPC Hub under Estate and Administration Reference Materials at: www.mass.gov/courts/court-info/trial-court/pfc/mupc-general-resources-lc.html

EARLY FALL 2014 PRACTITIONER ASKED QUESTIONS (“PAQ”)

A web page is currently being developed for select questions and answers from probate practitioners concerning procedure under the MUPC. The purpose of the “PAQ” is to encourage uniformity under the law. Questions and answers are organized according to Articles and Parts of the MUPC and will be updated periodically.

FALL 2014 MCLE SEMINAR- SAVE THE DATE.....

The MUPC Education Committee will be conducting a half-day seminar on the MUPC and MUTC on Friday, November 7th at MCLE Boston. An e-vite will be sent to all MUPC Magistrates in October. Practitioners may sign-up by contacting MCLE at www.mcle.org

PRACTICE AND PROCEDURE

AMENDING AN INFORMAL PETITION

After an informal petition is filed with the court and before it is acted on by a MUPC Magistrate, a petitioner may amend the petition without obtaining court permission in order to correct any errors or omissions. To do so, the petitioner must file a new [Informal Petition \(MPC 160\)](#) clearly designating it as an “amended” petition in the caption. No fee shall be charged for the filing of an amended petition. Notice of the amended petition, using form [Notice of Informal Probate \(MPC 550\)](#), must be provided to persons interested in the estate. See G. L. c. 190B, § 3-306. A person entitled to notice may waive such right by filing a written [Assent and Waiver of Notice form \(MPC 455\)](#). An assent to the petition as originally filed will not be deemed to be an assent to the amended petition. The statute of limitations shall not apply to the filing of an amended petition if the original pleading was filed within the time limit. See G. L. c. 190B, § 3-108 (as amended).

Once an Informal Order has entered, an informal petition cannot be amended.

Requirements:

- ♦ An “amended” Informal Petition (MPC 160)
- ♦ Notice of Informal Probate (MPC 550)
- ♦ Notice or Assents and Waivers of Notice (MPC 455)
- ♦ NO filing fee required
- ♦ NO motion required

DISCOVERY OF ADDITIONAL ASSETS

If additional estate assets are discovered after the court enters a decree on a Petition for Complete Settlement discharging the personal representative (“PR”) and any sureties from liability, the PR may use the following procedure to administer the additional assets:

DISCOVERY OF ADDITIONAL ASSETS (CONT'D)

1. File an "Affidavit of Additional Assets" listing the value of the additional assets along with a Certificate of Service acknowledging that the Affidavit was sent to all persons interested in the estate, including the Division of Medical Assistance and Attorney General (if applicable).

2. File a subsequent [Bond \(MPC 801\)](#) to cover the amount of the additional assets. The fee for the filing of the bond is \$75. Rules regarding sureties are outlined in G. L. c. 190B, § 3-603: In general, sureties are required unless waived by the will, by heirs or by devisees. A [Waiver of Sureties \(MPC 455\)](#) may be filed for each person interested in the estate to waive sureties on the PR's bond.

3. Although Letters of Appointment do not technically expire, if requested, new Letters of Appointment may issue from the Registry. The

fee is \$25 for each Letters of Appointment requested.

4. A PR may close the estate as to the additional assets under any of the available MUPC options (e.g., Petition for Complete Settlement or Closing Statement). See also Rule 72 of the Supplemental Rules of the Probate and Family Court. For all accounts filed for allowance, the filing fee for the account shall be in accordance with the [Uniform Fee Schedule](#) based on the value listed in Schedule A and not the \$75 fee for an "Amended/Substituted Account".



CONFIRMATION OF A TESTAMENTARY TRUSTEE

If a will was probated prior to the enactment of the MUPC or MUTC and a testamentary trustee was not appointed by the court under the prior appointment/petition procedure, if requested, a testamentary trustee's appointment may be "confirmed" as provided by the MUTC. To confirm the appointment of a testamentary trustee, a trustee of a testamentary trust shall file a [Bond \(MPC 801\)](#) along with a [Statement of Confirmation of Appointment of Testamentary Trustee \(MPC 275\)](#). The forms shall be filed in the division where the will was probated. A bond with sureties shall be required unless: (1) sureties are waived by the terms of the trust or (2) found by the court, in a prior formal proceeding, to not be necessary (see pg. 15 of the MUTC Procedural Advisory (1/24/13), section A, "Modifying a Bond Prior to Approval by the Court"). The filing fee is \$75.00 for the bond. There is no separate filing fee for the Statement of Confirmation of a Testamentary Trustee. Upon payment of an attested copy fee of \$2.50 per page, the Register shall issue an attested copy of the Statement form provided the bond is examined and approved by the court. Letters of Appointment do not issue to a testamentary trustee confirmed under the MUTC.

