

INSTRUCTIONS FOR INFORMAL PROBATE WITH OR WITHOUT A WILL

These general instructions are for informational purposes only and do not constitute legal advice. Please consult an attorney if you have specific questions. Court staff cannot provide legal advice or assist you with legal decisions.

GENERAL INFORMATION

Informal probate is an administrative proceeding to probate a will and/or appoint a personal representative. An administrative proceeding means that you do not have to have a hearing in front of a Probate and Family Court judge.

If the decedent died with a will (testate), an informal petition may be filed to probate the decedent's will with or without a request for the appointment of a personal representative. An informal petition may also be filed for the informal appointment of a personal representative after the formal or informal probate of the decedent's will. If the petitioner is requesting the appointment of a personal representative and the decedent died with a will that has not been probated, the petitioner must also request that the will be probated at that time.

If the decedent died without a will (intestate), an informal petition may be filed to appoint a personal representative.

Informal probate is **unavailable** if:

- the **original** will is lost, destroyed or otherwise unavailable;
- the **original** will has handwritten words added (interlineations) or crossed out (deletions);
- there is no official death certificate;
- the location or identity of any heir or devisee is unknown;
- the person to be appointed personal representative does not have **priority for appointment** by statute or by renunciation and/or nomination;
- **an heir or devisee is an incapacitated or protected person or a minor** and is not represented by a conservator or is only represented by a guardian who is also the petitioner;
- the personal representative to be appointed is an interested person solely due to his or her status as a **creditor** or as a **public administrator**;
- the estate of a **since deceased** heir or devisee is not represented by a personal representative;
- supervised administration is necessary;
- a judge must sign an order or final decree for any reason.

Note: A determination of heirs and an adjudication of testacy are made only in a formal probate proceeding.

FILING FEES

The total fee required to file an informal petition is **\$390.00**. The fee is broken down as follows: \$375 for the filing of the informal petition including all required forms/documents and a \$15.00 surcharge to assign a docket number. The \$390.00 filing fee includes the initial appointment bond, notice forms and the initial court issued Letters of Authority but does not include publication costs.

OTHER FEES

The following court fees are optional and will only be assessed upon request:

- Additional Letters of Authority = \$25 each
- Copy, attested = \$2.50 per page; Copy, unattested = \$1.00 per page

COMMON TERMS

Docket Number: The number the court assigns to your case.

Petitioner: Interested persons identified by Massachusetts law who can file a petition.

Decedent: The person who died.

Heirs at Law: At the time of the decedent's death, persons who are entitled to receive the decedent's property under the intestacy succession laws if there is no will. For more information, see the Intestate Succession Charts at the end of these instructions.

Devisees: Persons, entities, charitable organizations, or trusts designated in a will to receive the decedent's personal or real property. In the case of a devise to an existing trust or trustees, or to a trustee or trust established by the will, the trust or trustee is the devisee and the beneficiaries are not devisees.

Probate Estate: All of the real and personal property the decedent owned in his or her name alone on the date of death that is subject to probate.

Interested Persons: Persons identified by Massachusetts law who can file a petition and who also must be notified of the court proceeding. The term may include a surviving spouse, children, heirs at law, devisees, creditors, fiduciaries representing interested persons and persons having priority for appointment as personal representative, depending on the circumstances.

Intestate: An estate in which the decedent did not leave a will.

Testate: An estate in which the decedent did leave a will.

Letters of Authority: A document issued by the court evidencing the personal representative's authority to act.

Nominee: The person seeking to be appointed personal representative.

Personal Representative: A person at least 18 years of age who has been appointed to administer the estate of the decedent.

FORMS

There are several forms that need to be completed before a will can be informally probated and/or a personal representative appointed. Forms may be obtained:

- 1) from the registry in each county Probate and Family Court; or
- 2) from the MUPC Hub located on the Probate and Family Court's website at <http://www.mass.gov/courts/forms/pfc/pfc-mupc-forms-generic.html>

You may complete a form online and print or you may print the form and type or print legibly in black or blue ink. **All required forms must be submitted as a complete packet.** A complete packet consists of the following court approved forms and documents depending on whether the decedent died with a will (testate) or without a will (intestate):

INFORMAL CHECKLIST

DECEDENT DIED WITH A WILL (TESTATE)	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Informal Probate of Will/Appointment of PR (MPC 150)	REQUIRED
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law (MPC 162)	REQUIRED
<input type="checkbox"/> Devises (MPC 163)	REQUIRED
<input type="checkbox"/> Original Will	REQUIRED
<input type="checkbox"/> Certified Copy of Death Certificate	REQUIRED
<input type="checkbox"/> Notice of Informal Probate & Return of Service (MPC 550)	REQUIRED
<input type="checkbox"/> Order of Informal Probate of Will and/or Appointment of PR (MPC 750)	REQUIRED
<input type="checkbox"/> Bond (MPC 801)	REQUIRED (only if seeking the appointment of a PR)
<input type="checkbox"/> Military Affidavit (MPC 470)	REQUIRED (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Authenticated Copy of Will and Appointment	REQUIRED (for ancillary probate proceedings only)
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455)	MAY NEED
<input type="checkbox"/> Affidavit - as to cause of death (MPC 475), domicile (MPC 485), or no conflict of a Conservator who is also an heir or devisee	MAY NEED
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED
DECEDENT DIED WITHOUT A WILL (INTESTATE)	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Informal Probate of Will/Appointment of PR (MPC 150)	REQUIRED
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law (MPC 162)	REQUIRED
<input type="checkbox"/> Certified Copy of Death Certificate	REQUIRED
<input type="checkbox"/> Notice of Informal Probate & Return of Service (MPC 550)	REQUIRED
<input type="checkbox"/> Order of Informal Probate of Will and/or Appointment of PR (MPC 750)	REQUIRED
<input type="checkbox"/> Bond (MPC 801)	REQUIRED
<input type="checkbox"/> Military Affidavit (MPC 470)	REQUIRED (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455)	MAY NEED
<input type="checkbox"/> Affidavit - as to cause of death (MPC 475), domicile (MPC 485), or no conflict of a Conservator who is also an heir	MAY NEED
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED

STEPS TO FILING YOUR CASE

STEP 1: Complete All Forms

You must complete all applicable sections of each form. If you are unsure how to complete a form, see the Instructions associated with that form or see the ***MUPC Estate Administration Procedural Guide*** located at <http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/mupc-procedural-guide.pdf>

☐ **Petition for Informal Probate of Will/Appointment of Personal representative (MPC 150)**

- Complete all applicable sections of this form.
- Pay careful attention to the caption. Put an "X" next to "Original Form" if this is the first time you are filing this form; put an "X" next to "Amended Form" if you have previously filed this form with the court and are now changing the information. **ALERT:** An informal petition can only be amended **prior** to allowance.

PETITION FOR INFORMAL <input type="checkbox"/> PROBATE OF WILL <input type="checkbox"/> APPOINTMENT OF PERSONAL REPRESENTATIVE PURSUANT TO G.L. c. 190B, § 3-301 <input type="checkbox"/> Original Form <input type="checkbox"/> Amended Form		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: First Name Middle Name Last Name Date of Death:		Division	

ALERT: The petitioner must certify on the petition that the petitioner gave written notice seven (7) days prior to petitioning for informal probate or appointment by sending a copy of the petition and a copy of the death certificate by **certified mail** to the Division of Medical Assistance, Estate Recovery Unit. As of the time of this publication, the address is P. O. Box 15205, Worcester, MA 01615-0205. The Division of Medical Assistance is NOT the court. For additional notice requirements, see Step 3 below.

☐ **Surviving Spouse, Children, Heirs at Law (MPC 162)**

- This form must be filed in **ALL cases** to identify a decedent's surviving spouse, children and heirs at law.
- Complete all applicable sections of this form. For line by line instructions, see the **Instructions (MPC 958)**.
- Failure to submit this form will result in a delay in processing your case.

ALERT: If there are heirs at law who are not known to the petitioner, a formal proceeding is required.

☐ **Devises (MPC 163)**

- This form must be filed **if** the petitioner is seeking to probate the decedent's will.
- Complete all applicable sections of this form. For line by line instructions, see the **Instructions (MPC 959)**.
- Failure to submit this form will result in a delay in processing your case.

☐ **Bond (MPC 801)**

- This form must be filed **if** the petitioner is requesting the appointment of a personal representative.
- If a bond with sureties is required, the petitioner must state the penal sum in a dollar amount. Failure to state a dollar amount subjects the sureties to unlimited liability.
- Complete all applicable sections of this form. This form must be signed by the personal representative.

☐ **Military Affidavit (MPC 470)**

- This form must be filed **UNLESS** the written assents and waivers of notice (MPC 455) of all interested persons are filed.
- If an heir, devisee or other interested person is in the military service, his or her written assent (MPC 455) to the petition **must be filed** or an informal proceeding is not available. A formal proceeding however may be commenced.

Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455)

- This form must be filed **if** a person entitled to notice wants to assent and waive his/her statutory right to notice. See Section I.
- This form must be filed **if** a person with statutory priority for appointment as personal representative wants to renounce (decline) his/her right to appointment, renounce (decline) his/her right to appointment **and** nominate another to serve in his/her place, or when priority for appointment is shared, assent to the nomination of another to serve as co-personal representative or for the nominee to individually petition for appointment. See Section II and the Alert below.
- This form must be filed **if** an heir or devisee wants to assent to the personal representative serving without sureties on the bond. See Section III and the Alert below.
- Complete all applicable sections of this form. For instructions, see the **Instructions (MPC 941)**.

ALERT: To file informally, any person seeking appointment as personal representative must have priority for appointment by statute or by renunciation/nomination. All required renunciations/nominations must be filed with the Informal Petition. The person named in the will of the decedent to act as personal representative (formerly referred to as executor/executrix) may only nominate another to serve in his/her place if the will expressly authorizes such nomination.

ALERT: A bond without sureties is permissible only if the will of the decedent expressly waives sureties on the bond and no interested person has demanded that a bond with sureties be filed, or if the will does not expressly waive sureties, all devisees named in the will, assent to the personal representative serving without sureties on the bond. If the estate is intestate (no will), a bond without sureties is permissible only if all heirs assent to the personal representative serving without sureties on the bond.

Affidavit as to Cause of Death (MPC 475)

- This form must be filed **if** the decedent's cause of death is listed on the death certificate as "homicide" or "pending". Other causes of death do not require the Affidavit.

Affidavit of Domicile (MPC 485)

- This form must be filed **if** the address of the decedent is incorrectly listed on the death certificate.

Informal Order (MPC 750)

- This form must be filed in ALL cases as part of the complete packet.
- The petitioner is required to complete all applicable sections in preparation for the magistrate's signature.

STEP 2: Obtain Other Documents for Filing

Certified Copy of the Death Certificate

- A certified copy of the decedent's death certificate must be filed.
- Death certificates of Massachusetts residents can be obtained from the Town Hall where the person was residing at the time of death or from the Registry of Vital Records and Statistics. For information, see <http://www.mass.gov/eohhs/gov/departments/dph/programs/admin/dmoa/vitals/obtaining-certified-copies-of-vital-records.html>.

Original Will

- The original will must be filed if the decedent died with a will and the petitioner is offering the decedent's last will and any codicil(s) for probate.

ALERT: A formal petition must be filed to probate a copy of a will or a will with words added (interlineations) or crossed out (deletions).

☐ **Authenticated Copy of Will and Appointment**

- If a petitioner is offering a **nonresident** decedent's last will and any codicil(s) for probate in Massachusetts, an authenticated copy of the will and an authenticated copy of the order, decree or judgment issued by the court where it was first probated must be filed.

☐ **Proof of Guardianship/Conservatorship**

- If an heir or devisee is an incapacitated or protected person or a minor, the heir or devisee must be represented by a conservator, or a guardian who cannot be the petitioner, and proof of the conservatorship or guardianship must be provided. If the appointment is/was within the division in which the filing is being made, the petitioner shall be required to present proof in the form of a docket number. If not, the petitioner must file a certified copy of Letters of guardianship or conservatorship or other proof of appointment.

ALERT: Minor children of the decedent do not require the appointment of a conservator or guardian **UNLESS** they are also heirs or devisees.

☐ **Affidavit of Conservator**

- If the **conservator** of an incapacitated person, protected person or a minor also has an interest in the decedent's estate as an heir or devisee, the conservator must file an affidavit stating specific facts to warrant a conclusion by the magistrate that a conflict of interest does not exist between the conservator and person(s) represented in order to proceed administratively on an informal petition. Failure to submit an affidavit or to state sufficient facts to support the conclusion that a conflict of interest does not exist may result in a denial by the magistrate.

STEP 3: Provide Pre-Filing Notice

Once your informal packet is complete, you must provide notice to interested persons **at least 7 days prior to filing** your complete packet with the court.

☐ **Notice of Informal Probate (MPC 550)**

- Complete all applicable sections of this form.
- At least seven (7) days prior to petitioning, the petitioner must provide a copy of MPC 550 either by in-hand delivery or first-class ordinary mail to the following interested persons (unless they have assented and waived their right to notice by completing form MPC 455):
 - 1) all heirs and devisees, including any devisee that is a charity;
 - 2) any person having a higher or equal right to appointment not waived in writing and filed with the division;
 - 3) any personal representative of the decedent whose appointment has not been terminated;
 - 4) the Attorney General of Massachusetts, if there is no spouse or heir of the decedent or if any devisee is a charity;
 - 5) a conservator or guardian appointed to represent an heir or devisee who is a minor, incapacitated or protected person and the person represented regardless of age; AND
 - 6) any other person as the petitioner elects.

ALERT: If it appears that an heir or devisee is a minor, incapacitated or protected person, the petitioner shall give notice to that person and that person's guardian or conservator. Notice to the parent(s) of an heir or devisee who is a minor is not adequate notice. A parent, however, may petition to be the minor child's guardian or conservator. If an heir or

devisee is a minor or incapacitated person and is not represented by a conservator or is only represented by a guardian who is the petitioner, an informal proceeding is not available. A formal petition may be filed.

If the address of any interested person or the identity of any heir is unknown, an informal proceeding is not available and a formal petition must be filed.

ALERT: If an heir or devisee of the decedent's estate is since deceased (i.e. died **after** the death of the decedent), a personal representative must be appointed to represent that estate in order to proceed informally. **Notice of the informal proceeding must be provided to the appointed personal representative.** If no personal representative is appointed to represent the since deceased's estate, a formal petition must be filed.

□ **Return of Service (MPC 550)**

- The petitioner must submit, as part of the complete packet, the Return of Service stating the names of persons served, how served and the date of service. If a person entitled to notice has assented and waived their right to notice, the petitioner must file the written assent and waiver of notice (MPC 455).

STEP 4: File Papers with the Court

- Provide the court with the complete packet of required forms and documents and pay the \$390 filing fee.
- The complete packet should be filed in the county Probate and Family Court where the decedent was domiciled at the time of death; OR if the decedent was not domiciled in Massachusetts, in any county where property of the decedent was located at the time of death.
- For a listing of Massachusetts counties and the cities and towns within, see <https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm>.

****Important Information – Please Read****

Review all completed forms for accuracy prior to filing with the court. If you do not understand any form, do not sign it! Please consult an attorney for legal advice. Court staff cannot provide legal advice or assist you with legal decisions.

WHAT TO EXPECT NEXT

- Once approved or denied/declined, a copy of the Informal Order will be forwarded to the petitioner by mail or in-person.
- If an informal appointment has been approved, the registry shall be responsible for providing a copy of the Letters of Authority to the petitioner either in hand or by mail.

STEP 5: Provide Post-Allowance Publication Notice

□ **Informal Probate Publication Notice (MPC 551)**

- Within 30 days of allowance of the informal petition, the petitioner must publish a notice (MPC 551) **once** in one of the newspapers designated by the register.
- A list of newspapers designated by the register is available at each registry and on the Probate and Family Court website <http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/list-newspapers-informal-pub.pdf>. The petitioner selects the newspaper from the list generally based on the city or town of the decedent's last domicile or if a non-resident, where decedent last owned property. For instructions see <http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/informal-publication-instructions.pdf>.

ALERT: There is no general requirement to file proof of publication with the court. In most circumstances, the court will require proof of publication in a later formal proceeding such as a petition for license to sell real estate.

WHERE CAN I FIND MORE INFORMATION?

A detailed description of each probate process can be found in the ***MUPC Estate Administration Procedural Guide: A Guide to Estate Administration Practices & Procedures in the Probate and Family Court***, located at:
<http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/mupc-procedural-guide.pdf>.

Massachusetts Uniform Probate Code (G. L. c. 190B)
Intestate Succession
(for dates of death on or after March 31, 2012)

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants of any pre-deceased child) and... all surviving children are also children of the surviving spouse and the surviving spouse has no surviving children who are not children of the decedent.	<ul style="list-style-type: none"> Spouse Only.
2.	Spouse and Children (or the descendants of any pre-deceased child) and... not all surviving children of the Decedent are also children of the surviving spouse; OR the surviving spouse also has surviving children who are not children of the Decedent.	<ul style="list-style-type: none"> Spouse AND decedent's surviving children (and surviving descendants of any pre-deceased child).
3.	Spouse and NO Children	<ul style="list-style-type: none"> Spouse ONLY, if no surviving parents; <u>OR</u> Spouse AND decedent's surviving parent(s).
4.	Children (or descendants of any pre-deceased child) and NO Spouse	<ul style="list-style-type: none"> Surviving Children ONLY (and surviving descendants of any pre-deceased child).
5.	Parents, and NO Spouse and NO Children	<ul style="list-style-type: none"> Surviving Parent(s) ONLY.
6.	Siblings (or descendants of any pre-deceased sibling), and NO Spouse, NO Children, and NO Parents	<ul style="list-style-type: none"> Surviving Siblings ONLY (and surviving descendants of any pre-deceased sibling).
7.	Kin and NO Spouse, NO Children, NO Parents, NO Siblings	<ul style="list-style-type: none"> Surviving closest relative according to degrees of kindred (see § 2-103(4)).
8.	No Taker	<ul style="list-style-type: none"> Commonwealth or Soldiers Home (see § 2-105).

**Intestate Succession Pursuant to G. L. c. 190
(for dates of death prior to March 31, 2012)**

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants ¹ of any pre-deceased child)	<ul style="list-style-type: none"> • Spouse AND decedent's surviving children (and surviving descendants of any pre-deceased child).
2.	Spouse and NO Children	<ul style="list-style-type: none"> • Spouse ONLY, if no surviving kindred²; <u>OR</u> • Spouse AND decedent's surviving kindred.
3.	Children (or descendants of any pre-deceased child) and NO Spouse	<ul style="list-style-type: none"> • Surviving Children ONLY (and surviving descendants of any pre-deceased child).
4.	Parents, and NO Spouse and NO Children	<ul style="list-style-type: none"> • Surviving Parent(s) ONLY.
5.	Siblings (or descendants of any pre-deceased sibling), and NO Spouse, NO Children, and NO Parents	<ul style="list-style-type: none"> • Surviving Siblings ONLY (and surviving descendants of any pre-deceased sibling).
6.	Kin and NO Spouse, NO Children, NO Parents, NO Siblings	<ul style="list-style-type: none"> • Surviving closest relative according to degrees of kindred (see Massachusetts Degree of Kinship Chart (MPC 960)).
7.	No Taker	<ul style="list-style-type: none"> • Commonwealth • Soldiers Home

¹ Chapter 190 uses the term "issue" and not "descendants" to refer to the Decedent's children, grandchildren, etc.

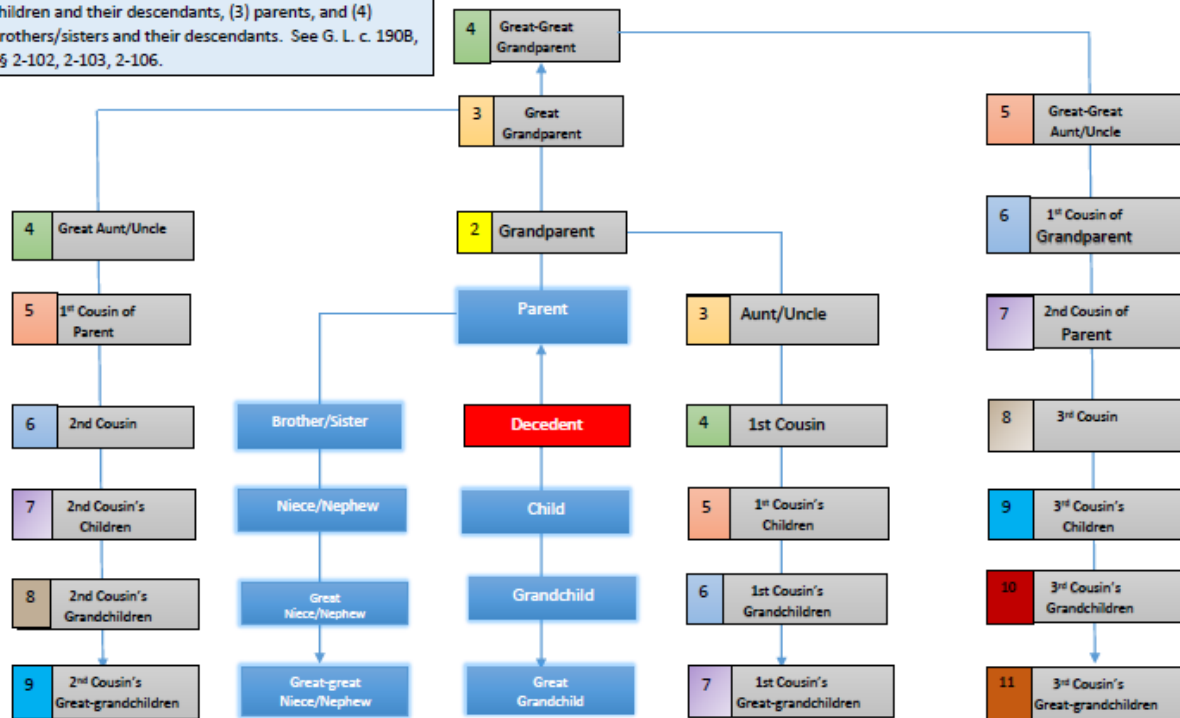
² Kindred includes surviving parent(s), siblings, descendants of any predeceased sibling, etc., and the closest relative as listed on the Massachusetts Degrees of Kinship Chart (MPC 960).

3/30/16

Degrees of kinship are used to identify heirs at law in the "next of kin" category **ONLY** if there are no members in the first four groups of heirs: (1) surviving spouse, (2) children and their descendants, (3) parents, and (4) brothers/sisters and their descendants. See G. L. c. 190B, §§ 2-102, 2-103, 2-106.

MASSACHUSETTS DEGREES OF KINSHIP CHART (MPC 960)

Each title is that person's relation to the Decedent.



- The numbers above represent the order of nearness in blood to the deceased and are referred to as "degrees of kindred". The lower the degree or number, the closer a relation is to the Decedent.
- When there are multiple relations with the same degree, those who claim through the nearest ancestor are preferred. See G. L. c. 190B, § 2-103 (4). For example, if the nearest living relatives are a great-aunt, a great-uncle and two 1st cousins, all are 4th degree relations, but the two 1st cousins inherit because they claim through the grandparents - a closer ancestor than the great-grandparents.
- The nearest living relatives of the lowest degree inherit the estate equally regardless of whether they claim on the mother's side or the father's side of the family. Children of deceased relatives in a class are excluded. See G. L. c. 190B, § 2-103 (4).
- If there are no known heirs at law, see G. L. c. 190B, § 2-105. The Attorney General must be provided notice in such cases.