

INSTRUCTIONS FOR FORMAL 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

Formal probate matters are typically heard by a judge and may involve one or more hearings before the court. The court may accept a formal petition to:

- 1) admit the decedent's will to formal probate and determine the heirs;
- 2) determine that the decedent died without a will and determine the heirs;
- 3) appoint personal representative to administer the estate, including a person designated as a public administrator, in a supervised or unsupervised administration;
- 4) appoint a special personal representative pending the appointment of the personal representative in the formal proceeding.

In addition to the above, the petitioner may request as part of the formal proceeding that the court:

- 5) set aside an informal probate of a will;
- 6) prevent informal probate of a will which is the subject of a pending petition; or
- 7) confirm a prior informal appointment in a testate or intestate estate.

Formal probate may be required for several reasons, including if:

- informal probate is unavailable;
- the **original** will is lost, destroyed or otherwise unavailable;
- the 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 decree for any reason.

ALERT: 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 a formal petition is **\$405.00**. The fee is broken down as follows: \$375 for the filing of the formal petition including all required forms/documents, a \$15.00 surcharge to assign a docket number, and a \$15.00 citation fee. The filing fee of \$405.00 includes the initial appointment bond, citation, and initial court issued Letters of Authority but does not include publication costs.

The total fee to file a formal petition by a Public Administrator is **\$130.00**. The fee is broken down as follows: \$100.00 for the filing of the petition, a \$15.00 surcharge to assign a docket number, and a \$15.00 citation fee. The filing fee of \$130.00 includes the initial appointment bond, citation, 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: Persons entitled to receive the decedent's property under the intestacy succession laws if there is no will.

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 a 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 formally 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

You may complete a form online and print or you may print the form and type or print legibly in black or blue ink. The following court approved forms and documents must be filed depending on whether the decedent died with a will (testate) or without a will (intestate):

FORMAL CHECKLIST

DECEDENT DIED WITH A WILL (TESTATE)	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Formal Probate of Will/Adjudication of Intestacy/ Appointment of PR (MPC 160)	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, if available, if not, a copy or statement of Will contents	REQUIRED
<input type="checkbox"/> Certified Copy of Death Certificate, if available or affidavit	REQUIRED
<input type="checkbox"/> Citation – Return of Service (MPC 560)	REQUIRED
<input type="checkbox"/> Decree and Order on Petition for Formal Adjudication (MPC 755)	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), execution (MPC 480), domicile (MPC 485), or no conflict of a Conservator	MAY NEED
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED
<input type="checkbox"/> Uniform Counsel Certification Form (CCF 4/07)	MAY NEED
DECEDENT DIED WITHOUT A WILL (INTESTATE)	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Formal Probate of Will/Adjudication of Intestacy/ Appointment of PR (MPC 160)	REQUIRED
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law (MPC 162)	REQUIRED
<input type="checkbox"/> Certified Copy of Death Certificate, if available or affidavit	REQUIRED
<input type="checkbox"/> Citation – Return of Service (MPC 560)	REQUIRED
<input type="checkbox"/> Decree and Order on Petition for Formal Adjudication (MPC 755)	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"/> 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	MAY NEED
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED
<input type="checkbox"/> Uniform Counsel Certification Form (CCF 4/07)	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 Formal Probate of Will/Adjudication of Intestacy/Appointment of Personal Representative (MPC 160)**
 - 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. **NOTE:** A formal petition may be amended as a **matter of right** prior to an appearance being filed before 10:00 a.m. on the return day. Thereafter, a motion must be filed requesting court approval along with an amended petition. See Rule 7 of the Supplemental Rules of the Probate and Family Court.

PETITION FOR FORMAL		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
<input type="checkbox"/> PROBATE OF A WILL			
<input type="checkbox"/> ADJUDICATION OF INTESTACY			
<input type="checkbox"/> APPOINTMENT OF A PERSONAL REPRESENTATIVE			
<input type="checkbox"/> OTHER: _____			
PURSUANT TO G. L. c. 190B, § 3-402			
<input checked="" type="checkbox"/> Original Form	<input type="checkbox"/> Amended Form		
Estate of:		Division	
_____	_____	_____	
First Name	Middle Name	Last Name	
Date of Death: _____		Instructions	

ALERT: The petitioner must certify on the petition that the petitioner gave notice once by citation to the Division of Medical Assistance. To do so, the petitioner shall send a copy of the citation when issued by the court together with a copy of the petition and death certificate by **certified mail** at least fourteen (14) days before the return day 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.
- 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. No bond is necessary if the petitioner is requesting only to probate an original will.

- 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.

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

- This form must be filed **if** the petitioner is requesting the appointment of a personal representative who does **NOT** have statutory priority for appointment and there is no need for a court hearing on that issue.
- This form must be filed **if** the petitioner is seeking to waive sureties on the bond of a personal representative and any will filed for probate does not expressly waive such sureties.
- This form may be filed to assent and waive notice by any interested person.
- Complete all applicable sections of this form. For instructions, see the **Instructions (MPC 941)**.

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 Witness to Will (MPC 480)

- This form must be filed **if** evidence concerning the execution of a will is necessary.

Affidavit of Domicile (MPC 485)

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

Uniform Counsel Certification (CCF 407)

- This form must be filed by the attorney for the petitioner, if represented.

Decree and Order on Petition for Formal Adjudication (MPC 755)

- This form must be filed in **ALL** cases prior to allowance.
- The petitioner is required to complete all applicable sections in preparation for the court’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 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>.
- If the decedent’s death certificate is unavailable, a certified or authenticated copy of a death certificate issued by an official or agency or a record or report of death by a governmental agency may be filed. The fact of death may be established by other evidence, including circumstantial evidence.

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.
- If the original will is unavailable, a copy may be filed or a statement of its contents.

ALERT: A formal petition must be filed to probate a copy of a will or a will with cancellations or interlineations.

Proof of Guardianship/Conservatorship

- If 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 the petitioner, the court must determine if a guardian *ad litem* is necessary. Minor children of the decedent do not require the appointment of a guardian or conservator UNLESS they are also an heir or devisee. The appointment of a guardian *ad litem* may be waived by the court upon a motion filed with the petition.
- If a guardian or conservator is already appointed, the petitioner shall be required to present proof in the form of a docket number if appointed within the division in which the filing is being made or, if appointed from another division or from a court outside of Massachusetts, a certified copy of Letters of guardianship or conservatorship.

Affidavit of Conservator

- **If** a 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 court that a conflict of interest does not exist between the conservator and person(s) represented.
- 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 the appointment of a guardian *ad litem*.

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.

STEP 3: File Papers with the Court

- Provide the court with the required forms and documents completed above and pay the filing fee.
- The form and documents 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.

STEP 4: Provide Citation Notice to Interested Persons and Notice by Publication

Citation for Formal Adjudication (MPC 560)

- After the filing of the petition, the court shall fix a return date and issue a citation. Review the Order of Notice carefully. **Note:** The return date listed in a citation is **NOT** a hearing date. It is the deadline date by which an

interested party must file his or her written appearance if he or she wishes to contest a formal petition.

- At least fourteen (14) days prior to the return day, the petitioner must provide a copy of MPC 560 either by in-hand delivery or by registered, certified or ordinary first-class mail to the following interested persons (unless they have assented and waived their right to notice by completing form MPC 455):

- 1) surviving spouse;
- 2) children*;**
- 3) other heirs of the decedent;
- 4) devisees and executors named in any will that is being, or has been probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere;
- 5) any devisee that is a charity;
- 6) any personal representative of the decedent whose appointment has not been terminated;
- 7) any other person;
- 8) 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;
- 9) the Attorney General of Massachusetts, if there is no spouse or heir of the decedent or any devisee is a charity;
- 10) any other person as the petitioner elects.

ALERT: *Children must be given notice even if they are NOT an heir or devisee.

Notice by Publication

- The petitioner must also give notice by publication by publishing a copy of the citation once in a newspaper designated by the register of probate having general circulation in the county where the proceeding is pending, at least 7 days prior to the return date.

Return of Service

- The petitioner must file with the court the Return of Service stating the names of persons served, how served and the date of service. The petitioner must also include details regarding the publication. If a person entitled to notice has assented and waived their right to notice, the petitioner must include the written assent and waiver of notice (MPC 455).

WHAT TO EXPECT NEXT

- If the petition is uncontested, the court may enter appropriate orders after the return date on the strength of the pleadings if satisfied that all conditions are met or the court may conduct a hearing and require proof of the matters necessary to support the order sought.
- If the petition is contested, the petitioner must file a Request for a Case Management Conference or other applicable form. The division's judicial case manager may be consulted for further information regarding the scheduling of a hearing date.
- Once approved or denied, a copy of the Formal Decree and Order will be provided to the petitioner by mail or in-person.
- If a formal 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.

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>.