

MEMORANDUM

To: Registry District Personnel – Registered Land Divisions
From: Christina T. Geaney, Chief Title Examiner
Date: October 31, 2019
Subject: **Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles**

THIS MEMORANDUM SUPERSEDES PREVIOUS MEMO DATED OCTOBER 13, 2012

Section I. General Information

The Land Court Guidelines, first promulgated in May of 2000, and revised on February 27, 2009, include Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles. Guideline 14 has been supplemented with Memos from the Chief Title Examiner in order to reflect the changes resulting from the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B *et seq.*, with an effective date of March 31, 2012 (“MUPC”), as amended. Until such time as Land Court Guideline 14 is revised by the Court, this Memorandum should be consulted when dealing with the death of any registered land owner(s).

The purpose of this guideline is to assist lawyers in dealing with title to Registered Land upon the death of a registered owner. The methods outlined herein are generally speaking, mutually exclusive:

- A) **METHOD NO. 1** - DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST
- B) **METHOD NO. 2** - COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)
- C) **METHOD NO. 3** - SALE UNDER DECREE (LICENSE) OF PROBATE COURT
- D) **METHOD NO. 4** - DEED UNDER POWER OF SALE IN WILL

Note: Reference to “LCP-2 Petition” has been replaced by “Complaint for Certificate After Death,” revised as of the date of this Memorandum (also referred to herein as “Complaint”).

Note: The revised Complaint is to be utilized in all applicable cases as set forth herein. The revised Complaint is available on our website (www.mass.gov/lists/land-court-forms).

Note: To include additional facts or in a case involving more than one death, please attach an **Addendum** explaining the situation, along with the relevant supporting documentation. (Reference to an Addendum is found on Page 1 of the Complaint.)

Note: The Land Court will require, for registered land, **FORMAL** probate proceedings for a Complaint for Certificate After Death whether they are testate or intestate. This will be further explained below under Method No. 2.

Note: For **DEED APPROVALS** from probate estates, we will accept a Decree (license) or the use of the power of sale conferred in a will probated in either *informal or formal probate proceedings*. The requirements under Method Nos. 3 and 4 will be discussed more fully herein.

Section II. Methods

A) METHOD NO. 1 - DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST

Because title to land passes in such situations by operation of law to the surviving co-tenant(s) by right of survivorship, it is unnecessary for the surviving owner(s) to obtain a new Certificate of Title or Memorandum of Unit Ownership (reference throughout this Memorandum to Certificate of Title also includes Memorandum of Unit Ownership) in order to deal with the property. It is necessary, however, that evidence of the death be noted on the encumbrance sheet of the outstanding Certificate of Title as follows:

- (1) A certified copy of a death certificate of the deceased owner.
- (2) If the deceased owner was a tenant by the entirety, an Affidavit of No Divorce.

Once the above-referenced documents are registered, the surviving registered owner(s) may deal with the property freely, without Land Court approval.

However, if the surviving registered owner(s) request(s) a Certificate of Title in their name(s), a Subsequent Complaint must be filed with the Land Court Department, along with the statutory filing fee, the material referred to under Subsections 1 and 2 above (as applicable), as well as an attested copy of the outstanding Certificate of Title. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title. There is no court-promulgated form which must be used. The surviving registered owner(s) must simply recite, under oath, the circumstances, request the cancellation of the outstanding Certificate of Title, and request the issuance of a new Certificate of Title in their name(s). An Order of the Land Court will issue and must be presented at the Registry of Deeds for registration.

B) **METHOD NO. 2 - COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)**

Method No. 2 is used to obtain a new Certificate of Title after the death of a person in whose name alone a Certificate of Title stands, after the death of both tenants by the entirety, after the death of one tenant in common, or after the death of the last joint tenant. For this method, the Complaint for Certificate After Death must be filed, and the lawyer for Plaintiff(s) or a Land Court Examiner will file the following to initiate a case:

- (1) File the completed Complaint along with the statutory filing fee. Note that this Complaint has two signature sections. The statement in the section entitled “Waiver of Notice by Personal Representative” is to be signed by the Personal Representative of the estate. If no Personal Representative has been appointed, one heir (intestate estate) or devisee (testate estate) must sign the Complaint.
- (2) As provided for in the Complaint, all Plaintiffs, or the lawyer for the Plaintiff(s), will also sign the Complaint in the applicable section entitled “Listing of All Plaintiffs.”

Note: If the lawyer signs the Complaint, the lawyer should make clear that they represent the Plaintiff(s). If the lawyer represents *less* than all of the Plaintiffs, those Plaintiffs must also sign the Complaint, or provide the Court with a separate written Assent to the Complaint.

- (3) An attested copy of the outstanding Certificate of Title must be filed. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent, prior Certificate of Title.
- (4) Supporting documentation will vary depending upon how title to the property was held:
 - (a) *Tenancy by the Entirety/Joint Tenancy - all Co-Tenants Deceased*
 - (i) ***as to the first to die***, a death certificate. If there are more than two joint tenants, a death certificate must be filed for each deceased registered land owner (except the last to die). In addition, if the property was held as tenants by the entirety, an Affidavit of No Divorce must be filed.

Note: The Affidavit of No Divorce must address the fact that at the time of death of the *first to die*, there had been no divorce.

- (ii) *as to the surviving tenant by the entirety or the last joint tenant to die*, file attested Probate and Family Court copies of the following (as applicable):

TABLE 1 – Attested Probate and Family Court documents
Docket Sheet
Allowed Petition (pre-MUPC) or Petition for Formal (MPC 160)
Citation (and a copy of the publication)
Approved Bond(s)
Will (if testate) and all Codicils (if any)
Inventory (if filed)
Surviving Spouse, Children, Heirs at Law Form (MPC 162) (if filed)
Devises Form (MPC 163) (if testate and filed)
Decree and Order on Petition for Formal Adjudication (MPC 755) (unless the Probate and Family Court Decree is otherwise part of a Pre-MUPC filing)

TABLE 2 – Attested Probate and Family Court documents <i>needed only if filed</i>
Petition for Late and Limited Formal Testacy and/or Appointment (MPC 161)
Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment (MPC 757)
Petition for Order of Complete Settlement (MPC 855)
First and Final Account (include all Accounts if more than one)
Decree and Order for Complete Settlement (MPC 790)

Note: If any of the Probate and Family Court documents in the [Tables](#) were amended, attested copies will also be required.

Note: Lawyers may not attest these documents.

Note: If the opening proceeding was an informal probate, and the time limits prescribed in G.L. c. 190B, § 3-108, have not expired, you may either institute a Formal Probate, or in the alternative, you may petition the Probate and Family Court for a Decree and Order for Complete Settlement. *The Petition for Order of Complete Settlement (MPC 855) must specifically seek a determination of testacy and heirs.* This Petition for Order of Complete Settlement is a formal probate proceeding, and will result in a Decree and Order for Complete Settlement (MPC 790). Please follow up with the Probate and Family Court regarding this process.

If the time limits prescribed in G.L. c. 190B, § 3-108, have expired, then an **Addendum** addressing this issue is to be included along with the

Complaint, with the relevant supporting documentation. (Reference to the Addendum is found on Page 1 of the Complaint.)

Note: A determination of heirs is not established as a result of the time limits under G.L. c. 190B, § 3-108. This must be determined by the Probate and Family Court in either a testate or intestate estate, and submitted as part of the Complaint to the Land Court. Please follow up with the Probate and Family Court regarding this process.

- (b) *Tenancy in Common* - for each tenant in common who is deceased, file all of the materials set forth in the preceding [Tables](#) (as applicable). If there are surviving tenants in common, each should assent to the Complaint by signing it to indicate that they are aware that the old Certificate of Title is to be cancelled, and a new Certificate of Title is to be issued in their name(s) as well as the name(s) of the new tenant(s) in common.

Note: If a surviving tenant in common does not sign the Complaint, a separate written Assent can be filed.

- (c) *Certificate Standing in the Name of One Person* - again, file attested Probate and Family Court Division copies of all probate documentation for the estate of the decedent as set forth in the preceding [Tables](#) (as applicable).

The result of this method will be an attested Order of the Land Court which must be registered at the Land Registration Office at the proper Registry of Deeds. In due course, a new Certificate of Title will be drawn in accordance with the Order of the Land Court.

Note: Deeds of Distribution: The Land Court will NOT accept, in lieu of the Complaint, a deed from the Personal Representative to the heirs or devisees under the will of the decedent, or to their nominee. If acceptance of a deed from a Personal Representative is requested, it may be registered in connection with a Court Order, but only if the Complaint is based on a formal decree that allows the issuance of a Certificate of Title to the heirs or devisees.

Note:

DEBTS: As to decedents dying on or after January 1, 1990, claims of creditors are generally barred after one year from the date of decedent's death.

Different rules may apply to those decedents dying before January 1, 1990.

TAXES: Estate and inheritance taxes are not required to be noted on Certificates of Title (G.L.c. 185, § 46; See also Land Court Guideline 35).

LEGACIES: Unless the real property is specifically devised, if a will directs the payment of legacies, the Land Court requires evidence of their payment.

Note: If less than one year has elapsed since the date of death, or if there are claims on the estate, any new Certificate of Title will issue subject to the settlement of the estate.

Note: If a new Certificate of Title issues subject to the settlement of the estate, a further Subsequent Complaint to Amend the Certificate of Title, together with applicable supporting documentation, is required to remove the settlement of the estate language from the face of the new Certificate of Title.

DEVISE TO A TRUST:

A) *Testamentary Trust:* If property is devised to the Trustees of a testamentary trust, attested copies of the Decree appointing the Trustee or the Statement of Confirmation of Testamentary Trustee and the Trustee's Bond(s) must be included, along with the aforementioned probate documentation under Method No. 2 (set forth in the preceding [Tables](#), as applicable). The Order of Court will issue to the testamentary Trustee(s) for the benefit of the named beneficiary(ies) of said testamentary trust, under the will of the decedent.

B) *Inter Vivos Trust:* If property is devised to the Trustees of an *inter vivos* trust, which is not of record, the original trust instrument and any amendment(s) thereto, or a Certificate pursuant to G.L. c. 184, § 35, must be filed with the Land Court in connection with the Complaint, along with the aforementioned probate documentation under Method No. 2, (set forth in the preceding [Tables](#), as applicable). The Order of Court will issue to the trustee(s), and the original trust document(s) or the aforementioned Certificate will be registered, and noted on the new Certificate of Title issued. *Please note that we will not place title into an expired trust* (See also Land Court Guideline 62. Trusts: Expired).

C) **METHOD NO. 3 - SALE UNDER DECREE (LICENSE) OF PROBATE COURT**

Method No. 3 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. One of the advantages of obtaining a Probate and Family Court Decree ("Decree" or "license") is that the property will be sold free of debts of the deceased, costs of administration, legacies, and Massachusetts estate taxes, a tax release being a prerequisite for obtaining the Decree/license.

If utilizing Method No. 3, please present all of the following for a DEED APPROVAL:

- (1) The original or an attested copy of the Decree/license (no more than one year old) containing the property description;
- (2) An attested copy of the Probate and Family Court Docket Sheet;

- (3) An attested copy of the Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750);
- (4) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title; and
- (5) A fully executed deed must be presented. The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

Example Grantor Clause:

“I, _____ as Personal Representative of the Estate of _____ holder of a Decree of the Probate and Family Court of _____ dated, _____ Docket No. #####, by power conferred by said Decree. . .”

Note: The date of the Decree/license referenced in the deed must be the date that the Decree/license issued. The deed must conform in all respects to the Decree/license, with the consideration equal to or more than the amount specified in the Decree/license. The deed should be executed on or after the date of the Decree/license.

Note: The property description in the deed must conform to the description in the Decree/license.

Note: If the Personal Representative is the grantee in the deed, the Decree/license of the Probate and Family Court must provide that the Personal Representative is permitted to take title.

If everything is in order, the deed pursuant to the Decree/license is endorsed “Approved for Registration” and signed by a Land Court Title Examiner.

D) METHOD NO. 4 - DEED UNDER POWER OF SALE IN WILL

Method No. 4 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. The advantage of a sale pursuant to a power of sale in a will is that the property is sold free of debts of the deceased, costs of administration and legacies. ***The power of sale can be used to convey registered land when the will, probated formally or informally, empowered the personal representative to sell the real estate or an interest in that real estate. It is not to be used to distribute the registered land to the devisees or heirs at law, nor is it to be used to effectuate an agreement amongst the devisees as to which of them will take title.***

If utilizing Method No. 4, please present all of the following for a DEED APPROVAL:

- (1) An attested copy of the probated will (and all codicils) must be presented at the Land Court. To use this method, the power of sale in the will must be unequivocal. The clause containing the power should be marked;

- (2) Attested Probate and Family Court copies of the Docket Sheet, Petition for Formal (MPC 160) or Petition for Informal Probate of Will and/or Appointment of Personal Representative (MPC 150), Approved Bond(s), Surviving Spouse, Children, Heirs at Law Form (MPC 162), Devisees Form (MPC 163), and Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750). Along with the foregoing, provide current Letters of Authority of the Personal Representative, issued from the Probate Court (not more than 60 days old).
- (3) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title;
- (4) The fully executed deed of the Personal Representative must be presented. The grantor clause should clearly state that the Personal Representative is selling pursuant to the power conferred by the probated will of the deceased owner. ***The consideration in the deed must be other than nominal, and must be in favor of an arm's length third party*** (See G.L. c. 190B, § 3-715 23 ½); and

Example Grantor Clause:

“I, _____ as Personal Representative of the Estate of _____, pursuant to the power of sale conferred under the probated will, Probate and Family Court, Docket No. #####. . .”

- (5) The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

If everything is in order, the deed, pursuant to power of sale in the probated will is endorsed “Approved for Registration” and is signed by a Land Court Title Examiner.

Note: With Method Nos. 3 and 4, where title was held as tenants by the entirety, or as joint tenants, a death certificate and an Affidavit of No Divorce (tenants by the entirety) should be presented to the Land Court Title Examiner, along with the Deed.

In Summary: If a Complaint for Certificate After Death is presented, an Order of the Land Court will issue. If a deed under either a Decree/license *or* pursuant to the power of sale conferred in a probated will is presented, the deed is approved, and no Complaint is necessary. This Memorandum is not intended to be exhaustive, and addresses only the most common situations.