

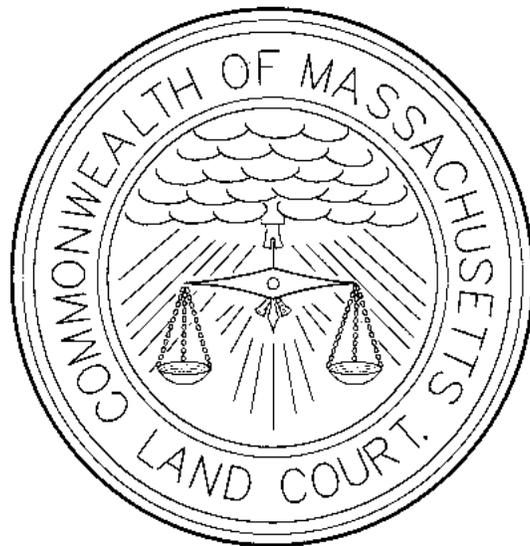
COMMONWEALTH OF MASSACHUSETTS

LAND COURT

GUIDELINES

ON

REGISTERED LAND



February 27, 2009

The 2009 Registered Land Guidelines have been supplemented by the Land Court in Registered land memos issued by the Chief Title Examiner. Additionally, registered land forms have been updated. Please refer to the Land Court's website for updated forms and all the Chief Title Examiner memos to ensure you are referencing the latest guidance.

INTRODUCTION

In May 2000, for the first time, the Court issued a set of Guidelines to assist registry personnel and the bar in determining the suitability of documents presented for filing and affecting registered land. The goal of the Guidelines was to offer a consistent, reliable set of requirements across the Commonwealth's registered land districts, to the extent possible. This second compilation reflects a revision of the 2000 Guidelines, and is informed by our shared experiences working with the Guidelines during the past several years.

This second compilation contains sixty-three guidelines, of which ten are new, and twenty-one are revisions of the originals. One original guideline has been deleted. The goal throughout the revision process has been two fold. First, the committee wanted to clarify matters that proved difficult to understand in practice. Second, the committee sought to eliminate the need for filing cases with the court unless such filings were absolutely necessary. Accordingly, under the revised Guidelines more decisions may be made at the registry district level, with the revised guidelines themselves affording sufficient guidance to the decision makers.

As we did in 2000, we emphasize that the Guidelines are not firm rules. We do not intend that they should eliminate the exercise of sound judgment by registry personnel in assessing whether a particular document may be accepted for filing. The registry districts retain the right to refer to the Court any question they may have about the propriety of documents presented for filing, if, in the judgment of registry personnel there exists a question regarding its suitability for filing – even where the document falls within the literal application of these Guidelines. Nonetheless, we have attempted to provide guidance that will allow treatment of most documents in a consistent manner.

The recent increase in foreclosures in Massachusetts reminds us that new issues arise daily. Accordingly, these Guidelines cannot be static. Revisions will continue to be required and will be made. Our goal, going forward, is to update the Guidelines more frequently, to respond to matters brought to our attention by registry personnel and the bar. We invite and look forward to your input.

The court is grateful to the many people, within and outside the Court, who participated in revising the Guidelines.. Our appreciation to Attorneys Martin Loria, Kathleen Mitchell, Robert Moriarty, Samuel B. Moskowitz, Joel A. Stein, and Philip D. Stevenson, for their commitment to this project and for the generosity of their time and expertise. We also appreciate the assistance and input we received from the Registers of Deeds and their staffs, whose perspective is essential to this effort.

We are grateful to Justice Gordon H. Piper and Chief Title Examiner Edmund Williams for their invaluable insights and dedication, and to all of the Court's associate justices and title examiners whose time and input were instrumental in this effort.

We hope you find these Guidelines useful.

Chief Justice Karyn F. Scheier
Recorder Deborah J. Patterson

March 26, 2009
Boston, Massachusetts

TABLE OF CONTENTS

Guideline # Subject

1.	Acknowledgments: Requirements (May 1, 2000, Revised February 27, 2009)	<u>-1-</u>
2.	Acknowledgments Outside The United States (May 1, 2000)	<u>-5-</u>
3.	Administrative Agent for Multiple Lenders (May 1, 2000)	<u>-7-</u>
4.	Alteration of Documents (May 1, 2000)	<u>-10-</u>
5.	Approval by the Engineering Department (May 1, 2000)	<u>-14-</u>
6.	Attachments (May 1, 2000, Revised February 27, 2009)	<u>-15-</u>
7.	Attorney's Proposed Form of New Certificate (May 1, 2000)	<u>-17-</u>
8.	Condominiums: Acts by the Organization of Unit Owners (May 1, 2000)	<u>-24-</u>
9.	Condominiums: First Unit Deeds (May 1, 2000, Revised February 27, 2009)	<u>-25-</u>
10.	Condominiums: Foreclosure of Lien for Common Expenses (May 1, 2000, Revised February 27, 2009)	<u>-28-</u>
11.	Condominiums: Prior Undischarged Mortgages (May 1, 2000)	<u>-30-</u>
12.	Condominiums: Plans and Amendments (May 1, 2000)	<u>-31-</u>
13.	Conservation Commission or DEP Plans (May 1, 2000)	<u>-32-</u>
14.	Death: The Effect of Death upon Registered Land Titles (May 1, 2000, Revised February 27, 2009)	<u>-33-</u>
15.	Deeds: Execution and Acknowledgment of Deed under Power of Attorney (May 1, 2000)	<u>-39-</u>
16.	Deeds: Nominal Consideration (May 1, 2000)	<u>-40-</u>
17.	Delayed Filing for Registration (May 1, 2000)	<u>-41-</u>
18.	Descriptions in Deeds and Certificates of Title; Exception Deeds; Conveyances of Portions of Land (May 1, 2000, Revised February 27, 2009)	<u>-42-</u>
19.	Easements, Restrictions, Covenants and Other Rights Granted or Reserved in a Deed (May 1, 2000)	<u>-45-</u>
20.	Executions (May 1, 2000, Revised February 27, 2009)	<u>-47-</u>
21.	Expired and Obsolete Encumbrances (May 1, 2000)	<u>-49-</u>
22.	Faxed Instruments (May 1, 2000)	<u>-50-</u>
23.	Federal Deposit Insurance Corporation (May 1, 2000, Deleted February 27, 2009)	<u>-51-</u>
24.	Fees In Streets (May 1, 2000)	<u>-52-</u>
25.	Homestead (May 1, 2000, Revised February 27, 2009)	<u>-53-</u>
26.	Land Court Examiner Qualifications (May 1, 2000)	<u>-56-</u>
27.	Leases and Notices of Lease (May 1, 2000, Revised February 27, 2009)	<u>-57-</u>
28.	Life Estate Deeds (May 1, 2000)	<u>-58-</u>
29.	Limited Liability Companies and Partnerships: Formation, Consolidation & Merger (May 1, 2000)	<u>-59-</u>
30.	Limited Liability Company Documents (May 1, 2000)	<u>-61-</u>
31.	Limited Liability Partnership Documents (May 1, 2000)	<u>-62-</u>
32.	Limited Partnership: Consolidation or Merger (May 1, 2000)	<u>-63-</u>
33.	Limited Partnership: Filing Requirements (May 1, 2000)	<u>-64-</u>
34.	Lis Pendens (May 1, 2000, Revised February 27, 2009)	<u>-65-</u>

35.	Massachusetts Estate, Inheritance and Corporate Excise Taxes (May 1, 2000, Revised February 27, 2009)	<u>-67-</u>
36.	Mechanics Liens (May 1, 2000, Revised February 27, 2009)	<u>-68-</u>
37.	Mortgages: Amendments (May 1, 2000, Revised February 27, 2009)	<u>-72-</u>
38.	Mortgages: Discharges, Partial Releases and Assignments; Persons Signing (May 1, 2000, Revised February 27, 2009)	<u>-78-</u>
39.	Mortgages: Discharges and Assignments; Collateral Security Documents (May 1, 2000)	<u>-80-</u>
40.	Mortgages and Assignments: Addresses (May 1, 2000)	<u>-81-</u>
41.	Mortgages: Foreclosures (May 1, 2000)	<u>-82-</u>
42.	Mortgage Electronic Registration Systems ("MERS") (May 1, 2000, Revised February 27, 2009) . .	<u>-86-</u>
43.	Orders of Conditions (May 1, 2000)	<u>-87-</u>
44.	Purchase and Sale Agreements (May 1, 2000)	<u>-88-</u>
45.	Registered and Recorded Instruments (May 1, 2000)	<u>-89-</u>
46.	Sheriff's Deeds (May 1, 2000)	<u>-90-</u>
47.	Street Address (May 1, 2000)	<u>-92-</u>
48.	Tax Takings (May 1, 2000)	<u>-93-</u>
49.	Tax Titles: Foreclosure of Tax Titles (May 1, 2000, Revised February 27, 2009)	<u>-94-</u>
50.	Tenancies by the Entirety (May 1, 2000, Revised February 27, 2009)	<u>-97-</u>
51.	Trusts: Conveyances to Trustees (May 1, 2000, Revised February 27, 2009)	<u>-99-</u>
52.	Trusts: Conveyances by Trustees (May 1, 2000, Revised February 27, 2009)	<u>-100-</u>
53.	Trusts: Trustee's Deed for Nominal Consideration (May 1, 2000, Revised February 27, 2009) . . .	<u>-106-</u>
54.	UCC Financing Statements (May 1, 2000, Revised February 27, 2009)	<u>-107-</u>
55.	Approval by the Chief Title Examiner (Added February 27, 2009)	<u>-109-</u>
56.	Bank Mergers (Added February 27, 2009)	<u>-113-</u>
57.	Condominiums: Approval of Condominium Documents (Added February 27, 2009)	<u>-114-</u>
58.	Conveyances by Cities and Towns (Added February 27, 2009)	<u>-121-</u>
59.	Indefinite References (Added February 27, 2009)	<u>-122-</u>
60.	Mortgages Affecting Appurtenant Easements (Added February 27, 2009)	<u>-123-</u>
61.	Mortgages: Discharge Notations for Expired Mortgages (G. L. ch. 260, § 33) (Added February 27, 2009)	<u>-124-</u>
62.	Trusts: Expired (Added February 27, 2009)	<u>-126-</u>
63.	Voluntary Withdrawal (G. L. ch. 185, § 52) (Added February 27, 2009)	<u>-127-</u>
64.	Withdrawal From Registration (G. L. ch. 183A, § 16) (Added February 27, 2009)	<u>-134-</u>

INDEX

Guideline # Subject

2.	Acknowledgments Outside The United States (May 1, 2000)	<u>-5-</u>
1.	Acknowledgments: Requirements (May 1, 2000, Revised February 27, 2009)	<u>-1-</u>
3.	Administrative Agent for Multiple Lenders (May 1, 2000)	<u>-7-</u>
4.	Alteration of Documents (May 1, 2000)	<u>-10-</u>
5.	Approval by the Engineering Department (May 1, 2000)	<u>-14-</u>
55.	Approval by the Chief Title Examiner (Added February 27, 2009)	<u>-109-</u>
6.	Attachments (May 1, 2000, Revised February 27, 2009)	<u>-15-</u>
7.	Attorney's Proposed Form of New Certificate (May 1, 2000)	<u>-17-</u>
56.	Bank Mergers (Added February 27, 2009)	<u>-113-</u>
11.	Condominiums: Prior Undischarged Mortgages (May 1, 2000)	<u>-30-</u>
8.	Condominiums: Acts by the Organization of Unit Owners (May 1, 2000)	<u>-24-</u>
12.	Condominiums: Plans and Amendments (May 1, 2000)	<u>-31-</u>
57.	Condominiums: Approval of Condominium Documents (Added February 27, 2009)	<u>-114-</u>
10.	Condominiums: Foreclosure of Lien for Common Expenses (May 1, 2000, Revised February 27, 2009)	<u>-28-</u>
9.	Condominiums: First Unit Deeds (May 1, 2000, Revised February 27, 2009)	<u>-25-</u>
13.	Conservation Commission or DEP Plans (May 1, 2000)	<u>-32-</u>
58.	Conveyances by Cities and Towns (Added February 27, 2009)	<u>-121-</u>
14.	Death: The Effect of Death upon Registered Land Titles (May 1, 2000, Revised February 27, 2009)	<u>-33-</u>
15.	Deeds: Execution and Acknowledgment of Deed under Power of Attorney (May 1, 2000)	<u>-39-</u>
16.	Deeds: Nominal Consideration (May 1, 2000)	<u>-40-</u>
17.	Delayed Filing for Registration (May 1, 2000)	<u>-41-</u>
18.	Descriptions in Deeds and Certificates of Title; Exception Deeds; Conveyances of Portions of Land (May 1, 2000, Revised February 27, 2009)	<u>-42-</u>
19.	Easements, Restrictions, Covenants and Other Rights Granted or Reserved in a Deed (May 1, 2000)	<u>-45-</u>
20.	Executions (May 1, 2000, Revised February 27, 2009)	<u>-47-</u>
21.	Expired and Obsolete Encumbrances (May 1, 2000)	<u>-49-</u>
22.	Faxed Instruments (May 1, 2000)	<u>-50-</u>
23.	Federal Deposit Insurance Corporation (May 1, 2000, Deleted February 27, 2009)	<u>-51-</u>
24.	Fees In Streets (May 1, 2000)	<u>-52-</u>
25.	Homestead (May 1, 2000, Revised February 27, 2009)	<u>-53-</u>
59.	Indefinite References (Added February 27, 2009)	<u>-122-</u>
26.	Land Court Examiner Qualifications (May 1, 2000)	<u>-56-</u>
27.	Leases and Notices of Lease (May 1, 2000, Revised February 27, 2009)	<u>-57-</u>
28.	Life Estate Deeds (May 1, 2000)	<u>-58-</u>
30.	Limited Liability Company Documents (May 1, 2000)	<u>-61-</u>
33.	Limited Partnership: Filing Requirements (May 1, 2000)	<u>-64-</u>

29.	Limited Liability Companies and Partnerships: Formation, Consolidation & Merger (May 1, 2000)	<u>-59-</u>
31.	Limited Liability Partnership Documents (May 1, 2000)	<u>-62-</u>
32.	Limited Partnership: Consolidation or Merger (May 1, 2000)	<u>-63-</u>
34.	Lis Pendens (May 1, 2000, Revised February 27, 2009)	<u>-65-</u>
35.	Massachusetts Estate, Inheritance and Corporate Excise Taxes (May 1, 2000, Revised February 27, 2009)	<u>-67-</u>
36.	Mechanics Liens (May 1, 2000, Revised February 27, 2009)	<u>-68-</u>
42.	Mortgage Electronic Registration Systems ("MERS") (May 1, 2000, Revised February 27, 2009)	<u>-86-</u>
60.	Mortgages Affecting Appurtenant Easements (Added February 27, 2009)	<u>-123-</u>
41.	Mortgages: Foreclosures (May 1, 2000)	<u>-82-</u>
40.	Mortgages and Assignments: Addresses (May 1, 2000)	<u>-81-</u>
39.	Mortgages: Discharges and Assignments; Collateral Security Documents (May 1, 2000)	<u>-80-</u>
37.	Mortgages: Amendments (May 1, 2000, Revised February 27, 2009)	<u>-72-</u>
38.	Mortgages: Discharges, Partial Releases and Assignments; Persons Signing (May 1, 2000, Revised February 27, 2009)	<u>-78-</u>
61.	Mortgages: Discharge Notations for Expired Mortgages (G. L. ch. 260, § 33) (Added February 27, 2009)	<u>-124-</u>
43.	Orders of Conditions (May 1, 2000)	<u>-87-</u>
44.	Purchase and Sale Agreements (May 1, 2000)	<u>-88-</u>
45.	Registered and Recorded Instruments (May 1, 2000)	<u>-89-</u>
46.	Sheriff's Deeds (May 1, 2000)	<u>-90-</u>
47.	Street Address (May 1, 2000)	<u>-92-</u>
48.	Tax Takings (May 1, 2000)	<u>-93-</u>
49.	Tax Titles: Foreclosure of Tax Titles (May 1, 2000, Revised February 27, 2009)	<u>-94-</u>
50.	Tenancies by the Entirety (May 1, 2000, Revised February 27, 2009)	<u>-97-</u>
52.	Trusts: Conveyances by Trustees (May 1, 2000, Revised February 27, 2009)	<u>-100-</u>
51.	Trusts: Conveyances to Trustees (May 1, 2000, Revised February 27, 2009)	<u>-99-</u>
53.	Trusts: Trustee's Deed for Nominal Consideration (May 1, 2000, Revised February 27, 2009)	<u>-106-</u>
62.	Trusts: Expired (Added February 27, 2009)	<u>-126-</u>
54.	UCC Financing Statements (May 1, 2000, Revised February 27, 2009)	<u>-107-</u>
63.	Voluntary Withdrawal (G. L. ch. 185, § 52) (Added February 27, 2009)	<u>-127-</u>
64.	Withdrawal From Registration (G. L. ch. 183A, § 16) (Added February 27, 2009)	<u>-134-</u>

1. Acknowledgments: Requirements

(May 1, 2000, Revised February 29, 2009)

An acknowledgment should be dated; however, the date of the acknowledgment may be either before or after the date of execution appearing on the instrument (regardless of length of time).

The name of the notary or other official before whom the acknowledgment has been made should be legible. It is suggested that the name of the notary or other official taking the acknowledgment be typed or printed below the signature line for such notary or other official.

The date that a notary public's commission expires should be indicated beneath the name of the notary public.

The following documents must be acknowledged in order to be recorded:

- 1.) Deeds (excepting conveyances from the United States) - see G.L. Chapter 183 § 29. Included in this category, based on the broad definition of deed, are easement deeds, mortgage deeds, deeds of trust, release deeds found in boundary line agreements, leases, notices of leases, options to purchase, options to lease, assignments of mortgages, collateral assignments of mortgages and collateral assignments of leases.
- 2.) Purchase and Sale Agreements; see G.L. Chapter 54 § 17A.
- 3.) Discharges and Partial Releases pursuant to G.L. Chapter 183 § 54, 54B and 54C.
- 4.) Powers of Attorney; see G.L. Chapter 183 § 32.
- 5.) Homesteads and releases of same; see G.L. Chapter 188.
- 6.) Receipts of federal revenue collectors for succession taxes; see G.L. Chapter 36 § 16.
- 7.) Subdivision Covenant Releases and Clerk's Certificates; see G.L. Chapter 41 § 81u.
- 8.) Tax redemptions; see G.L. Chapter 60 § 62.
- 9.) Incorporation certificates re Roman Catholic Church; see G.L. Chapter 68 § 44.
- 10.) Liens for failure to reimburse the Commonwealth of Massachusetts for removal of wharfs or piers; see G.L. Chapter 91 § 49B.
- 11.) Veteran's agent liens and discharges or satisfactions thereof; see G.L. Chapter 115 § 5A.

- 12.) Dissolutions of attachments by plaintiff, or his executor, administrator or attorney of record; see G.L. Chapter 223 § 132.
- 13.) Notices or other instruments required or required or permitted to be recorded by G.L. Chapter 254; see G.L. Chapter 254 § 30.
- 14.) Release of Notice of Contract.
- 15.) Planning Board Release.
- 16.) Declaration of Trust.
- 17.) Resignation of Trustee.
- 18.) Release of Damages (General Releases).

Instruments not on this list do not require acknowledgments in order to be registered.

The forms of certificates of acknowledgment and jurat, as well as the forms of official seals and stamps, set forth in Executive Order Revised No. 455 (03-13) 2004, extracts of which are attached, are acceptable for registration by the court's registration districts.

Registration districts of the Land Court should not refuse to register documents either (a) because they bear official notarial seals and stamps which are not in the form, or do not contain the content, required by said Executive Order, or (b) because they do not contain the form of certificate of acknowledgment or jurat set forth in said Executive Order, provided, however, that those documents would have been acceptable for registration before the promulgation of Executive Order No. 455.

In case of any doubt as to the form of certificate of acknowledgment or jurat being used, district personnel should contact the Chief Title Examiner in Boston or his or her designee.

**EXTRACTS FROM
EXECUTIVE ORDER REVISED No. 455 (03-13)
“Standards of Conduct for Notaries Public”**

Section 5(c).

“A notary shall keep an official notarial seal or stamp that is the exclusive property of the notary, which may not be used by any other person.

(1) A notary public shall obtain a new seal or stamp if the notary public renews his or her commission, receives a new commission, or changes his or her name.

(2) The notarial seal or stamp shall include: the notary public’s name exactly as indicated on the commission; the words “notary public,” “Commonwealth of Massachusetts” or “Massachusetts”, and “my commission expires on [commission expiration date]” or “commission expires on [commission expiration date]” or “commission expires [commission expiration date]”; and a facsimile of the great seal of the Commonwealth of Massachusetts.

(3) Each new notarial seal that uses ink shall, after the date of this Executive Order, use black ink.

(4) A notary public may satisfy the requirements of this section by using a stamp and a seal that together include all of the information required by this section.”

Section 5(d).

“A notary shall take the **acknowledgment** of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

On this ____ date of _____, 20 ____, before me, the undersigned notary public, personally appeared _____ (name of document signer), provided to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

(as partner for _____, a partnership)

(as _____ for _____, a corporation)

(as attorney in fact for _____, the principal)

(as _____ for _____, (a) (the) _____)

_____ (official signature and seal of notary)”

Section 5(e).

“A notary shall use a **jurat** certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

On this _____ date of _____, 20____, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his)(her) knowledge and belief.

_____ (official signature and seal of notary)”

2. Acknowledgments Outside The United States

(May 1, 2000)

When a deed or other written instrument is acknowledged outside of the United States, it may be made

a) Before a notary public or justice of the peace provided that the identity and office of the notary public or justice of the peace are authenticated by a certificate described in G.L. c. 183, § 33, sometimes called an “apostille”, issued by the competent authority of the country from which the document emanates. A model of an apostille is attached. The apostille need not be in English.

or

b) Before a commissioner appointed by the governor of the Commonwealth of Massachusetts pursuant to G.L. c. 222.

or

c) Before an ambassador, minister, consul, vice consul, charge d’affaires or consular officer or agent of the United States accredited to the country where the acknowledgment is made, provided that it is certified by him/her under his/her seal of office.

G.L. c. 183, § 30 (b) and (c) and § 33.

Model of certificate

APOSTILLE

1. Country:

This public document

2. has been signed by

3. acting in the capacity of

4. bears the seal/stamp of

.....

Certified

5. at 6.

7. by

8. N*

9. Seal/stamp: 10. Signature:

.....

3. Administrative Agent for Multiple Lenders

(May 1, 2000)

This Guideline relates to mortgages in which the mortgagee is stated to be an agent for several lenders whose identity is not disclosed in the mortgage. Typically the loan is being made to the borrower pursuant to a Credit Agreement which is not of record.

These mortgages can be dealt with in a fashion similar to the requirements for nominee trusts, that is, the names of the lenders need not be disclosed so long as there are the requisite indicia of authority for the agent to act with respect to the mortgage, just as the beneficiaries of a nominee trust need not be identified.

The mortgage must be presented with a certificate from the bank or other entity acting as agent; alternatively, the statements required for a certificate may be made part of or appended to the mortgage, if the agent also executes the mortgage.

The certificate must refer to the Credit Agreement or other comparable governing document, set forth the authority of the agent as to the execution of documents including amendments, and any time limits on the authority of the agent. A form of certificate is attached.

These mortgages, when presented with a certification in a form substantially similar to the attached certificate, will not require prior Land Court approval before being accepted for registration.

CERTIFICATE OF AGENT

The undersigned, _____ Bank as administrative agent for itself and other lenders under the terms and provisions of a certain _____ Agreement (the Credit Agreement) dated as of _____, hereby certifies as follows:

1. The Credit Agreement referenced in the mortgage is in full force and effect and has not been amended, modified, terminated or revoked.
2. The undersigned has been duly appointed Agent and is duly serving on the date hereof as the sole Agent under the Credit Agreement, and has not resigned or been removed.
3. Pursuant to the provisions of the Credit Agreement, the Agent has the following powers:
 - a. Hold the mortgage and any other collateral security instruments upon such terms and conditions as the Agent deems acceptable.
 - b. Execute, acknowledge and deliver any and all documents which are necessary or appropriate in connection with the granting, amendment or modification of the mortgage.
 - c. Execute, acknowledge and deliver any partial releases, discharges, assignments, etc., which may be necessary or appropriate with respect to the mortgage.
4. The representations of the Agent contained in this certificate are true as of the date hereof.
5. Any person dealing with the mortgage may rely fully and without further inquiry on a certificate signed by the Agent as to the authority of the Agent to act as Agent for other lenders under the Credit Agreement. This certificate shall further be conclusive evidence of every person relying thereon that at the time of the execution and delivery of the mortgage, the Credit Agreement was in full force and effect.
6. The terms and provisions of the mortgage may be amended by instrument duly executed by the mortgagor and the Agent, which amendment will become effective on the recording or filing of same.

In witness whereof, the undersigned has hereunto signed his name, as such Agent, this _____ day of _____ .

_____ Bank, as Agent

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

[date]

Then personally appeared the above-named _____, and acknowledged that _____ is the _____ of the above-named _____ Bank, as Agent, and that _____ executed the Certificate on behalf of said bank.

, Notary Public
My commission expires:

4. Alteration of Documents

(May 1, 2000)

A. Certain changes are not “alterations” and are acceptable.

An alteration is a change which on its face appears likely to have been made after the instrument was executed, such as a handwritten change or a whiteout. However, if the document shows that the change was made intentionally by the parties to the instrument, or with their approval, it should not legally be considered as an alteration. Thus changes to an instrument which have the handwritten initials of the parties alongside the change are not considered alterations for the purpose of this guideline and may be accepted for filing without other documentation.

B. Three categories of alterations.

Alterations of instruments can be separated into three categories:

Category 1.

The first category consists of changes and insertions of information which are either obviously required or are of a ministerial or clarifying nature. Examples of this category include, but are not limited to, the following:

- (1) the insertion of the address of the property in the margin of a deed or on a discharge of a mortgage;
- (2) the insertion or correction of an erroneous reference to either the date or the record reference (but not both) to a mortgage in the case of an assignment, partial release, or discharge of such mortgage;
- (3) the insertion of the grantor’s Certificate of Title number in a deed;
- (4) the insertion of the Certificate of Title number indicating where a Land Court plan is filed when the plan is already referenced by a Land Court plan number;
- (5) the deletion or addition of a middle or first initial of an individual;
- (6) the addition of another name of a party as a result of change of marital status;
- (7) the correction of a minor variation from the correct name of a corporation, limited partnership, limited liability company or other entity, such as the omission or addition of “The” or the interchange of “Corporation” for “Corp”;
- (8) changing “for no monetary consideration paid” to “for consideration paid of one dollar” or “love and affection” (or words of similar import) in a deed;
- (9) the correction of obvious misspellings or the addition of prefixes or suffixes;
- (10) the insertion of “formerly known as” or “f/k/a” or “also known as” or “a/k/a” or “successor to” followed by a name of a person or entity, when the change is plainly made for the purpose of clarification;
- (11) changes in the form of tenancy in the grantee clause of a deed, provided the alteration does not negate the decision regarding survivorship rights reflected by the unaltered deed. This Category 1 includes insertion of a form of tenancy where none is specified, and

changing a joint tenancy to tenancy by the entireties, or vice versa, which may be accepted without further inquiry. If the deed indicates a change from a joint tenancy or tenancy by the entireties to a tenancy in common, or vice versa, all grantees must initial the change; if they do not, but instead supply the affidavit called for under Category 2 (signed by all grantees) the change will be treated as a Category 2 alteration; otherwise the change will be treated as a Category 3 alteration;

(12) the insertion of the official, corporate or similar office or title of a signatory; or

(13) the addition of Book and Page or instrument numbers of recorded or filed instruments otherwise accurately described in the instrument presented for filing.

Alterations of an instrument in this first category may be accepted, without further documentation and without Court approval, unless in the judgment of the registry personnel there is something unusual about the alteration which requires further inquiry in which case the requirements for the second category may be considered. Alterations of a grantee's name, except as described above, do not belong in this category.

Category 2.

The second category consists of alterations which do not belong in the first category or the third category but which do not separately or in the aggregate change the substance of the instrument. Handwritten changes may be considered in this category in the discretion of registry personnel. A change in the grantee clause of deed which changes the form of tenancy from one with a right of survivorship to one without survivorship, or vice versa, falls into this Category 2, requiring an affidavit of all of the grantees, unless all grantees have initialed the change; otherwise the change will be treated as a Category 3 alteration. Other types of alterations in this second category may only be accepted for filing when accompanied by the affidavit of an attorney, or of a grantor in the instrument, stating in substance that the alteration(s) were made to conform to the intention of the parties to the instrument. Suggested forms of affidavit are attached to this guideline. Changes to the names of the grantees in a deed (except as described above as belonging in the first category) belong in the third category.

Category 3.

The third category consists of changes in the name(s) of the grantee(s) in a deed (except as permitted under Category 1) or other alterations which change the substance of the instrument, such as the addition or deletion of parcels of land. Changes to documents issued by a court, such as an order authorizing the filing of an attachment or a lis pendens, are in this category, unless clearly ministerial. Changes in this third category shall not be accepted for filing without an order of the Court or approval of the Court's Chief Title Examiner or his or her designee.

AFFIDAVIT OF ATTORNEY

The undersigned, an attorney at law, make the following statements of my own personal knowledge:

1. I am the attorney for _____, the grantor(s)/grantee(s)/mortgagee(s) [select one] named in the deed/mortgage [select one] to which this affidavit is attached. I participated in the preparation of said deed/mortgage/participated in the closing of the transaction of which such deed/mortgage is a part/advised the grantor(s)/grantee(s)/mortgagee as to the execution and delivery of such deed/mortgage [select appropriate facts].

2. Subsequent to the preparation of such deed/mortgage, the following changes to the deed/mortgage were made at the time of delivery of the deed/mortgage/in the process of preparing to record the deed/mortgage [select appropriate facts]:

a) _____

b) _____

c) _____

3. All such changes were made with the consent and approval of the grantor(s)/grantee(s)/mortgagee [select appropriate facts] in order to conform the deed/mortgage to their intentions.

Signed under the pains and penalties of perjury this ____ day of _____, 2000.

Print name
BBO # _____

May 1, 2001

AFFIDAVIT OF GRANTOR

The undersigned make the following statements of my own personal knowledge:

1. I am [one of] the grantor(s)/mortgagor(s) [select one] named in the deed/mortgage [select one] to which this affidavit is attached.

2. Subsequent to the preparation of such deed/mortgage, the following changes to the deed/mortgage were made at the time of delivery of the deed/mortgage/in the process of preparing to record the deed/mortgage [select appropriate facts]:

a) _____

b) _____

c) _____

3. All such changes were made with the consent and approval of the undersigned/all of the grantors /all of the mortgagors [select appropriate facts] in order to conform the deed/mortgage to my/their intentions.

Signed under the pains and penalties of perjury this _____ day of _____, 2000.

Print name

5. Approval by the Engineering Department

(May 1, 2000)

When there is a new subdivision of a registered land parcel pending in the Engineering Department of the Land Court and that subdivision plan has not yet been received at the registry district for entry, no instruments may be accepted for registration against that plan until the said instruments have been first stamped for approval by the Land Court. The only exception to this policy is that once the first deed out of any lot on the subdivision has been approved by the Land Court Engineering Department and thereafter registered, no further instruments as to that particular lot need be further approved.

6. Attachments

(May 1, 2000, Revised February 27, 2009)

Writs of attachment from courts within the Superior and District Court Departments are issued on approved forms which carry the signature or facsimile signature of the clerk of the court and the seal of the court. Attachments from courts within the Probate and Family Court Department are issued either on probate court forms which carry the signature of the judge or the seal of the court, or on a form which carries the name of the judge, the amount approved, and the signature or facsimile signature of the register of probate. Writs of attachments also may be accepted from this court or courts in other departments of the Trial Court if they carry the signature of the judge or the signature or the facsimile signature of the clerk of the court, and the seal of the court.

A writ of attachment may be registered only by a deputy sheriff or, if authorized by the issuing court, a special officer (such authority should be made part of, and registered with, the attachment). The document will be a copy of the original as issued by the court. It must be attested as a true copy by the deputy sheriff/special officer, and the seal of the court must appear on the copy. Alternatively, the deputy sheriff/special officer may write "seal" in the place where the seal normally appears. The deputy sheriff's/special officer's return must refer to the current outstanding certificate of title number of the land being attached and the return must bear the officer's signature.

The deputy sheriff/special officer may only attach the interest and no more than the interest authorized by the court issuing the attachment. The names of the persons or entities noted on the face of the attachment must match the name or names on record as one or more of the owners shown on the current certificate. If the person or entity named on the attachment is not one of the named owners in the certificate, it must be clear from the certificate and the memorandum of encumbrances that the party named in the attachment has an interest in the property described in the certificate which is susceptible to an attachment, i.e. the party is a named mortgagee on the certificate, a named beneficiary of a trust, a named lessee, etc. Or, the attachment must state on its face that it is against the interest of "A" standing in the name of "B", where "B" is the holder of an ownership or other interest shown by the certificate. If the return is faulty in regard to any of the above it must be corrected before the attachment can be received for registration.

An attachment on which no execution has been registered will expire six years from the date of registration and may be dropped from the certificate, including upon request of an interested party, unless a document bringing the attachment forward has been registered within that period (See G.L. c. 223, §114A). An attachment may be brought forward by the plaintiff's attorney or by the sheriff.

An attachment may be discharged by a signed and acknowledged release from the plaintiff or by the plaintiff's executor, administrator or attorney of record (the plaintiff's attorney

need not be the same one named on the attachment but must be a current attorney of record as established from current court pleadings, docket, or court clerk's certificate). An attachment also may be released by a certificate from the clerk of court in which the action was pending that the attachment has been dissolved or that the action has finally been determined in favor of the Defendant.

For additional provisions concerning attachments, please see Guideline 20, Executions.

7. Attorney's Proposed Form of New Certificate
(May 1, 2000)

MASSACHUSETTS LAND COURT
PROPOSED FORM OF OWNER'S CERTIFICATE OF TITLE

(Instructions)

This form may be used to suggest to the Land Registration District the form of new owner's certificate of title the District will issue (or of notations to be made to the memoranda of encumbrance for an existing certificate of title) following registration of documents.

Use of the form is optional, but is encouraged if the title involved or the documents presented are complex. Any person interested in the title to land affected by a certificate of title may submit this form directly or through counsel. More than one party may submit this form. Joint submission of the same form is encouraged, but parties may submit differing versions.

This form should be submitted at the time the documents are registered; when this form is submitted later, it is possible that it may not be taken into account before the District completes its work on the certificate. Parties are encouraged to provide copies of this form to other parties involved in the transaction and to retain copies of this form and the relevant documents in the event questions arise while the District is working on the certificate.

This form is intended only to suggest to the District what action it should take in preparing a new certificate of title or notation(s). In doing its work, the District will use its own best judgment, following applicable law and court guidelines, and may accept, reject, or modify the suggestions made in this form. Nothing in this form will in any way alter or affect the registered documents themselves. This form is not intended as a substitute for a supplemental petition to the Land Court to amend or correct a certificate of title. So-called "S-Petitions" will continue to be required in appropriate cases. Use of this form does not relieve proponents of documents of the need to establish authority or to obtain prior Land Court approvals.

5. List all documents being filed for registration (list in order of Document Nos.):

Document No.	Type of Document	Parties (Name and Description)	Date of Document	Date and Time of Registration	Noted on Certificate of Title No.	Affects Parcel(s)

6. Set forth proposed form of New (or Modified) Transfer Certificate(s) of Title (Prepare one for each certificate of title number):

[Note: Modification of an existing Transfer Certificate of Title (or Issuance of a New Transfer Certificate of Title to reflect modification of an existing Transfer Certificate of Title) may be appropriate (a) as a result of the filing of additional documents, or (b) where matters have been terminated or expired by passage of time or operation of law (see Land Court Guideline 21). The reasons for such a request should be stated clearly in this form]

A. **Owner:** Name(s): _____
 Description: _____
 Address: _____
 Comments: _____

B. **Description of Land Subject to Certificate:**

Comments:

C. Suggested form of language, to appear on face of certificate (provide only if new certificate is being issued or if certificate is being amended by order of court):

i. The land is subject to:

if less than all land described in certificate is affected, specify and explain:

Comments:

ii. The land has the benefit of:

if less than all land described in certificate is affected, specify and explain:

Comments:

iii. Other:

Comments:

D. Suggested form of Memoranda of Encumbrances (list in order and with specific language requested). Provide comments (and supply copies of relevant documents with pertinent provisions highlighted) to explain or clarify request.

i. Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____
Discharge: _____
Comments: _____

ii. Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____

Discharge: _____
Comments: _____

iii. Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____

Discharge: _____
Comments: _____

iv. Document No.: _____
Type of Instrument: _____

Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____

Discharge: _____
Comments: _____

v. Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____

Discharge: _____
Comments: _____

vi. Document No.: _____
Type of Instrument: _____
Running in Favor of: _____
Terms/Description: _____
Date of Document: _____
Date and Time of Registration: _____
Parcel or Parcels Affected (if less than all): _____
Additional Explanatory Notation Requested: _____

Discharge: _____
Comments: _____

E. Other comments and requested action concerning certificate:

Dated: _____

Name:
Title:
Telephone Number:
Signature of party submitting form
(or of counsel)

8. Condominiums: Acts by the Organization of Unit Owners

(May 1, 2000)

1. Registry districts may accept for filing documents granting, modifying or amending easements through, over and under the common areas and facilities of the condominium which are executed by the organization of unit owners acting by and through its governing body, provided that the document contains a recital of compliance with the notice and consent provisions of G.L. c. 183A, § 5(b)(2)(i).

2. Registry districts may accept for filing documents granting to, or designating for, any unit owner the right to use any limited common area and facility of the condominium, whether exclusively or in common with other unit owners, which are executed by the organization of unit owners acting by and through its governing body, provided that the document contains a recital of compliance with the notice and consent provisions of G.L. c. 183A, § 5(b)(2)(ii).

3. The extension, revival or grant of rights to develop the condominium, including the right to add additional units or land to the condominium, or withdrawal of common areas from the condominium, G.L. c. 183A, § 5(b)(2)(iii), requires the approval of a Judge of the Land Court.

4. Registry districts may accept for filing documents selling, conveying, leasing or mortgaging any rights or interests to develop the condominium, after approval by the Land Court of the establishment of such rights as set forth in paragraph 3. above, which are executed by the organization of unit owners acting by and through its governing body.

9. Condominiums: First Unit Deeds

(May 1, 2000, Revised February 27, 2009)

A form of Condominium Unit Deed is attached. They are also available at the Land Court in Boston.

If the first units out are conveyed using this form, or are similar to this form, and contain the same statutorily-required items, listed below, registry personnel may accept the unit deed(s) without prior Land Court approval. All other first unit deeds require prior land court approval. *Statutory Requirements.* Each unit deed must satisfy the requirements of G. L. c. 183A, § 9, which requires that unit deeds include:

- (a) An indication that the deed relates to a condominium and is subject to the provisions of Chapter 183A. If the unit is in a leasehold condominium, the name of the condominium shall contain the word "Lease" or "Leasehold" and each unit deed must indicate that the unit is in a leasehold condominium.
- (b) Either a description of the land on which the building containing the unit is located or the post office address of the property and, in either case, the book, page and *date of recording* of the master deed. (Note the statute requires the date of recording, not the date of the instrument. This is important, because under G. L. c. 183A, §§ 2, 16, the condominium is deemed formed on the date the master deed is recorded.)
- (c) The unit designation of the unit in the master deed and any other data necessary for the unit's proper identification.
- (d) A statement of the use for which the unit is intended and the restrictions, if any, on its use.
- (e) The undivided interest appertaining to the unit in the common areas and facilities.
- (f) As an optional matter, any further provisions which the grantor and grantee may deem desirable to set forth, consistent with the master deed and Chapter 183A.

Unit Plans Not Required. A unit plan no longer is required to be registered with any unit deed, including the first unit deed. St. 2008, chap. 13, § 2

The subsequent sale of units is to be handled in the usual manner. Attorneys may wish to use their own deed or they may use the Land Court form.

THE COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

CONDOMINIUM UNIT DEED

GRANTOR:

(number and street, town or city) For consideration of

GRANTS TO:

of

Commonwealth of Massachusetts, with quitclaim covenants, Unit No. of
Master Deed dated and filed on Condominium created by
Registry District of with
as Document No. County of the Land Court
noted on Certificate of Title No.

The Post Office Address of the Condominium is:

The unit is conveyed subject to and with the benefit of the obligations, restrictions, rights and liabilities contained in G.L. c. 183A, the Master Deed and the By-Laws filed therewith.

The Condominium and each of the units is intended for residential purposes and other uses permitted by the applicable Zoning Ordinances and as set forth in the Master Deed.

The undivided percentage interest of the unit conveyed hereunder in the common areas and facilities is _____ %.

Witness _____ hand and seal this _____ day of _____, 20____.

COMMONWEALTH OF MASSACHUSETTS

ss. _____ Date _____

Personally appeared the above-named _____ and
acknowledged the foregoing instrument to be his free act and deed before me.

Notary Public
My Commission expires: _____

10. Condominiums: Foreclosure of Lien for Common Expenses

(May 1, 2000, Revised February 27, 2009)

By statute, a condominium organization of unit owners has a lien for unpaid common expenses. G. L. c. 183A, §6. Such lien is prior to all other liens and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recording of the Master Deed;
2. A first mortgage on the unit recorded before the date on which the assessment sought be enforced became delinquent, except there is a priority over such a first mortgage to the extent of (a) common expense assessments, based on the duly adopted condominium budget, which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and also (b) any costs and reasonable attorneys' fees incurred in the action to enforce the lien; and
3. Liens for real estate taxes and other municipal assessments or charges against the unit.

To enforce priority for the common expense lien over a prior recorded first mortgage, as described in 2 above, either a lawsuit brought by the organization of unit owners must be commenced or an agreement in writing must be entered into by the first mortgagee, as provided by G. L. c. 183A §6(c).

The lien is enforced in the manner provided in G. L. c. 254, §§ 5 and 5A. Enforcement is by a civil action brought by the organization of unit owners in either the local Superior Court or the local District Court. The complaint must name as a defendant or “party-in-interest” all persons with an interest in the unit. G. L. c. 254, §5. An attested copy of the complaint, containing a sufficient description of the unit and a statement of the amount due, must be recorded at the local registry of deeds or registry district of the Land Court within thirty (30) days of the commencement of the action. Id. Failure to do so results in dissolution of the lien. Id.

The Court establishes the amount of the lien and enters an order authorizing the sale of the unit. G. L. c. 254, §5A. The Court also establishes the priority of the respective liens on the unit for purposes of the lien-enforcement sale of the unit. (Such priorities should be consistent with the priorities noted on the Memorandum of Encumbrances for the unit.)

The organization of unit owners must publish, using the form set out in G. L. c. 254, §5A, once in each of three (3) successive weeks, the first publication to appear not less than 21 days before the date of the sale, in a newspaper published in the town where the property lies, or if no newspaper is published in such town, in a newspaper published in the county where the property

lies. G. L. c. 254, §5A. The unit owner organization, or its attorney, may (it is not required by statute) cause a copy of the notice and an affidavit, stating that the requirements of the Court order and the statute have been complied with, to be recorded at the proper registry. The Land Court requires such a filing and notation on the certificate of title for the unit.

A sale of the unit conveys it subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax title(s), municipal or other public taxes, assessments and the first mortgage of record, recorded prior to the complaint, except that the sale is free of the first mortgage, if, as of the date of the sale, there are unpaid common expense assessments, costs, or reasonable attorneys fees the lien for which is given priority over the first mortgage under 2, above.

The following instruments should be registered and noted on the appropriate Memorandum of Encumbrances:

1. An attested copy of the complaint containing a sufficient description of the unit and a statement of the amount due;
2. An attested copy of the order of the court that establishes the amount of the lien and the respective priority of the liens on the Unit, identifies the portion thereof entitled to priority over any first mortgage, and authorizes the sale and sets forth the terms of the sale.
3. A copy of the notice and an affidavit, stating that the requirements of the court order and the statute have been complied with; and
4. The deed given pursuant to the judicially ordered sale, conveying the property in accordance with the statute and the court order.

No new certificate of title, however, should be issued based on the above referenced instruments. If an attorney should request a new certificate of title based on the foreclosure, he/she should be advised to file a Supplemental Petition at the Land Court in Boston.

CAVEAT: If a subsequent 6(d) Certificate indicates there are no unpaid assessments outstanding, a complaint which was previously registered should be dropped upon conveyance of the unit, or a notation may be registered in accordance with Guideline 21, Expired and Obsolete Encumbrances.

11. Condominiums: Prior Undischarged Mortgages

(May 1, 2000)

If registered land is subject to a mortgage at the time a condominium Master Deed is filed, the Master Deed may be accepted for filing without a discharge, subordination agreement, partial release or consent by the mortgagee. In such case the mortgage must be noted on the Master Condominium Certificate of Title and noted (on the encumbrance sheet) on the Memorandum of Unit Ownership resulting from a unit deed.

A "Subordination Agreement" or "Consent to the Condominium Regime" or similar instrument is to be noted on the Master Condominium Certificate of Title and may, but need not be, noted on any Memorandum of Unit Ownership.

If a subordination agreement or consent by the mortgagee is filed without a discharge or partial release of the mortgage, the mortgage must still be noted (on the encumbrance sheet) on the Memorandum of Unit Ownership resulting from a unit deed as set forth in the first paragraph above, until such time as the mortgage is discharged or partially released.

NOTE that this is a change in practice. Until August 1999, the court would approve Master Deeds subject to a prior unsubordinated mortgage, but would not approve unit deeds until the mortgage was discharged or subordinated to the Master Deed. Attorneys are cautioned to review the Master Condominium Certificate of Title as well as the relevant Memorandum of Unit Ownership.

12. Condominiums: Plans and Amendments

(May 1, 2000)

The Land Court Engineers no longer prepare condominium plans for filing at the local registry. Instead, the site plan (which has heretofore been filed with the Engineering Department) along with the floor plans and condominium documents will be reviewed by the Land Court Legal Department. The condominium will then be allowed by a Land Court Judge as evidenced by the Judge's signature on the face page of the Master Deed. After the condominium is allowed the condominium documents and plans should be filed at the proper registry.

All amendments to the Master Deed must also be allowed by a Judge. Amendments to the condominium trust do not need Land Court approval.

13. Conservation Commission or DEP Plans

(May 1, 2000)

G.L. c. 131, § 40 provides that a final order, determination or notification of a conservation commission or the department of environmental protection may require the recording of a plan which:

1. shows location of the proposed work;
2. is prepared by a registered professional engineer or land surveyor; and
3. is in recordable form.

The registry district should accept these plans for registration and should treat these plans in the same manner, and subject to the same requirements for registration, as easement plans. The plan should be reduced to the same size as the order, determination or notification.

14. Death: The Effect of Death upon Registered Land Titles

(May 1, 2000, Revised February 27, 2009)

The purpose of this guideline is to assist attorneys in dealing with title to registered land upon the death of a registered owner. Upon such a death, there are three possible avenues of approach.

THE METHODS OUTLINED ARE, GENERALLY SPEAKING, MUTUALLY EXCLUSIVE.

1. BY WAY OF A LICENSE TO SELL.

This method is usually utilized when the death is fairly recent and when a sale of the real estate is contemplated.

The advantage of this method is that the sale is free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes.

For details, see Method # 3.

2. BY WAY OF A SALE UNDER THE POWER IN A WILL.

This method is utilized when a sale is contemplated.

Under this method, the sale is free of debts of the deceased, costs of administration and legacies.

For details, see Method # 4.

3. BY WAY OF PETITION FOR A NEW CERTIFICATE AFTER DEATH OF A REGISTERED OWNER.

This method is usually utilized when no sale is imminent. The heirs-at-law or the devisees in the will are entitled to a Certificate of Title in their names.

For details, see Method # 1 and Method # 2.

If Land Court form LCP-2 is presented, an Order of Court will issue. If a deed under a license is presented, the deed is approved. No petition is necessary.

This guideline is not intended to be exhaustive and addresses only the most common situations. With any method, an attested copy of the outstanding Certificate of Title must be presented.

METHOD # 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 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. There should be registered the following:

1. Certified copy of death certificate of deceased owner.
2. If deceased was a tenant by the entirety, an Affidavit of No Divorce. Attached is a form which may be used.

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

However, if the surviving owner(s) requests a certificate of title in his/her name, an "S" petition must be filed at the Land Court Department along with the statutory filing fee, the material referred to in the previous paragraph and an attested copy of the outstanding Certificate of Title. There is no form for such a petition; the surviving owner must simply recite under oath the circumstances, request the cancellation of the outstanding certificate and the issuance of a new certificate in his/her name.

METHOD # 2—PETITION FOR LAND COURT ORDER

This method 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 any tenant in common and after the death of the last joint tenant.

1. Land Court Form LCP-2 must be completed and filed at the Land Court along with the statutory filing fee. Note that the petition has two signature sections. The petitioners (heirs or devisees of the deceased owner) may sign the first section of the petition or their attorney may sign for them. The statement in the last paragraph of the petition *must* be signed by the executor or administrator of the estate and the signature must be notarized.
2. An attested copy of the outstanding Certificate of Title must be filed with the petition.
3. 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 first to die*, file a death certificate. In addition, an Affidavit of No Divorce must be filed where the owners were tenants by the entirety. (Where there were more than *two* joint tenants, these documents must be filed for each joint tenant to die but the last).
 - (ii) *as to the surviving tenant by the entirety or last joint tenant to die*, file either an abstract of the probate proceedings prepared by a Land Court Examiner, *or*, attested Probate Court copies of the Probate petition, citation, decree, bond, will (and any codicils thereto), inventory, if any, and docket. Attorneys *may not* attest these documents.
- (b) *Tenancy in Common—for each tenant in common who has died*, file all of the material set out in the immediately preceding paragraph 3(a)(ii). If there are surviving tenants in common, each should assent to the petition by signing it to indicate that they are aware that the old certificate is to be canceled and a new one issued in their names and the names of the new tenant(s) in common.
- (c) *Certificate Standing in the Name of One Person*—again, file either an abstract of the probate proceedings, prepared by a Land Court Examiner, *or*, attested Probate Court copies of all probate papers in the estate of the deceased and the Probate Court docket.

4. The result of this procedure 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.

NOTE:

DEBTS

As to decedents dying before January 1, 1990 the new Certificate of Title will issue subject to debts in the estate of the deceased owner, *unless* one full year has elapsed from the date upon which the bond in the estate was allowed.

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

TAXES

Estate and inheritance taxes are not required to be noted on certificates, G.L. c. 185, § 46. See also Guideline 35.

LEGACIES

Unless there is a specific devise of the real property, if a will directs the payment of legacies, the Land Court requires evidence of their payment unless six years have elapsed from the date of death.

DEVISE TO TRUST

If property is devised to the trustees of a testamentary trust, attested copies of the trustees' appointment and bond must be included with the probate papers.

If real property is devised to the trustees of an *inter vivos* trust which is not on record, the original trust instrument and any amendment(s) thereto or a certificate pursuant to G. L. ch. 184, § 35 must be presented at the Land Court.

The Court Order will issue to the trustees, and the trust will be registered and noted on the new certificate issued.

METHOD # 3—SALE UNDER DECREE
(LICENSE) OF PROBATE COURT

This method and Method # 4 are alternatives to Method # 2 and are used when an immediate sale is contemplated. One of the advantages of obtaining a Probate Court decree of sale 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 from the Probate Court.

1. *The original or an attested copy of the Decree of the Probate Court* must be presented at the Land Court together with *an attested copy of the Probate Court docket*; the decree must be no more than one year old.
2. *An attested copy of the outstanding Certificate of Title* must be filed.
3. *A fully executed deed* must be presented. The grantor clause should state as follows: "I, _____ Executor/Administrator of the estate of _____ holder of a Decree of the Probate Court of _____ County dated _____, by power conferred by said Decree". The date must be the date the decree issued. The deed must conform in all respects to the decree, thus, the consideration must be equal to or more than the amount specified in the decree. It should be executed on or after the date of the decree.

Likewise, the description of the property in the deed must conform to the description in the decree. There are several Probate Courts whose decrees do not describe the property. If the decree is obtained from one of these courts, the petition filed to obtain the decree must be presented at Land Court. In addition, if the fiduciary is the grantee in the deed, the decree of the Probate Court must state that the fiduciary is permitted to take title.

4. If everything is in order, the deed under the decree will be endorsed "Approved for Registration" and signed by Land Court personnel.

METHOD # 4—DEED UNDER POWER OF SALE IN WILL

The advantage of a sale pursuant to a Power of Sale in the will is that the property is sold free of debts of the deceased, costs of administration and legacies.

1. *An attested Probate Court copy of the will* 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. Along with the will, file an attested Probate copy of the *Executor's appointment*, together with *an attested copy of the Probate Court docket*. *The certificate of appointment* should be no more than 60 days old.
3. *An attested copy of the outstanding Certificate of Title* must be filed.
4. *The fully executed deed* of the Executor must be filed. The grantor clause should state clearly that the Executor is selling pursuant to the power conferred by the will of the deceased owner. The consideration in the deed *must* be other than nominal.

AFFIDAVIT OF NO DIVORCE

I, _____, Attorney for _____,
being the surviving owner of the premises described in Land Court Certificate of Title No.
_____, depose and say that his wife/her husband, _____, died at
_____ on _____, and at that time there had been no divorce.

Attorney for

Subscribed and sworn to before me this _____ day of _____, 1999

Notary Public

15. Deeds: Execution and Acknowledgment of Deed under Power of Attorney

(May 1, 2000)

Although, as indicated below, there is some leeway in the way a deed in such an instance can be signed, there is little flexibility as to how the granting clause should be drafted.

When a sealed instrument is executed by an agent or attorney, for the principal, the strict technical rule of the Common Law, which has never been relaxed in England or in this Commonwealth, requires that it be executed in the name of the principal in order to make it his deed" *Abbey v. Chase*, 6 Cush. 54. As stated in Crocker's Notes on Common Forms, Little Brown & Company (Seventh Edition, 1955), § 351, where A.B. is the principal, a deed beginning "I, C.D.," or "I, C.D. as attorney for A.B." is an improper form as to the granting clause, and will be ineffective as the deed of the principal. The deed should be drafted by reciting in the granting clause the principal's name only, as though there was no power of attorney.

As far as the execution of the instrument, the signature should be as noted below. We'll assume that Mary Doe is the principal and that John Doe is her attorney in fact under a power of attorney:

/s/ Mary Doe
by John Doe her Attorney in Fact
under Power of Attorney,
recorded with (Registry of Deeds)
Book---, Page---

In this instance John will actually sign Mary's name. Although the above form is the preferred one, the signature "John Doe for Mary Doe" would seem to be satisfactory. See *Mussey v. Scott*, 7 Cush. 215.

The acknowledgment, like the deed, should be that of the principal (albeit through the act of the agent), as follows:

Then personally appeared the aforementioned John Doe and
acknowledged the foregoing instrument to be the free act and deed
of Mary Doe.

16. Deeds: Nominal Consideration

(May 1, 2000)

Deeds and other instruments of conveyance may be accepted for registration when they recite that they are given “for nominal consideration”, “for no consideration”, “for consideration of [any amount of dollars less than \$100]”, “in consideration of love and affection”, “as a gift”, or any other similar words which communicate that the conveyance is made for nominal consideration. Deeds of a Trustee given for nominal consideration must nevertheless comply with Guideline 53: Trusts: Trustee’s Deed for Nominal Consideration.

17. Delayed Filing for Registration

(May 1, 2000)

No deed, mortgage or other instrument transferring an interest in real estate may be filed after one year from the date of its execution unless it (a) is accompanied by the affidavit of an attorney or a person having personal knowledge of the facts and stating whether the grantor and the grantee under the deed are still living or (b) has been re-acknowledged by all grantors within one year prior to the date of the delayed filing.

If the grantor has died, the document may not be accepted for filing without an order of the Court. The attorney should be advised to file a Supplemental Petition. An affidavit will be required confirming that the instrument was delivered to the grantee or an agent of the grantee during the grantor's lifetime. Assent of the heirs or notice to the heirs may be required.

If the grantee has died, the instrument will be accepted for registration but no certificate will issue in the name of the deceased; the heirs or devisees may thereafter petition for a new certificate after death, upon completion of applicable probate proceedings, or otherwise in accordance with Guideline 14: Deeds: The Effect of Death upon Registered Land Titles.

18. Descriptions in Deeds and Certificates of Title; Exception Deeds; Conveyances of Portions of Land

(May 1, 2000, Revised February 27, 2009)

A. Except as otherwise provided in this Guideline, or ordered or approved by the court or its Chief Title Examiner, a description of the land in a certificate of title shall describe the land as a lot or lots shown on an approved Land Court Plan. A description incorporating by reference the lot number on a Land Court Plan, together with a reference to the certificate with which the plan is filed, may substitute for a metes and bounds or bounding description when the certificate of title is prepared.

B. Except as otherwise provided in this Guideline, or ordered or approved by the court or its Chief Title Examiner, a deed of registered land will be accepted for filing only if it conveys a lot or lots shown on a Land Court Plan.

"Notation deeds" or "exception deeds" of registered land only will be accepted where the existing certificate of title is one in which the property already is described as the remainder of the land described on a plan, excepting and excluding therefrom a lot or lots on a more recent plan. The creation of new certificates of title describing, for the first time, land as the remainder of the land shown on a Land Court Plan, is not permitted absent a specific order of the court, which will be granted rarely, and only upon the showing of extreme hardship and exceptional circumstances, above and beyond the costs, delay, and inconvenience which may attend the preparation of a new plan for all the land then covered by the certificate.

If the existing certificate of title is one in which the property already is described as the remainder of the land described on a plan, excepting and excluding therefrom a lot or lots on a more recent plan, then additional exceptions of land from that already described will not be permitted and the following procedures are to be employed:

These procedures apply to any conveyance of a portion of the land held under a certificate of title, and to any conveyance of all or any portion of the remainder parcel resulting from any such conveyance ("remainder parcel"). The following procedures reflect a change from prior practice:

1. Before conveyance of any lot or lots constituting less than all of the land described in a certificate of title as a separately-conveyable lot, the owner shall file a plan of such lot or lots to be conveyed. The plan shall require the court's approval, and shall accurately depict the boundaries and monuments describing such lot as required by the court's surveying standards. The deed shall convey the lot by reference to its identification on the approved plan. A new certificate will issue for the lot conveyed, and the deed will be noted on the certificate of title for the original larger parcel, stating that the certificate of title is canceled as to the lot conveyed.

2. No deed of a remainder parcel will be accepted for registration unless and until a plan

of the remainder parcel is filed as approved by the court. Such plan shall include a lot designation for the remaining land. Any deed conveying the remainder parcel should convey the remainder parcel by reference to its identification on the approved filed plan.

3. Lots may be conveyed out of a remainder parcel, without a new plan of the full remainder parcel in the following circumstances: A plan of the lot to be conveyed is required. In such cases, the owner also shall file with the court's surveying department a "reference plan" showing the lot(s) to be conveyed in relation to (i) all lots previously conveyed from the land originally described under the certificate of title, and (ii) the land remaining after the proposed conveyance. Such "reference plan" may be compiled from the plan(s) of the lot(s) conveyed out from the original tract, together with the plan originally filed with the certificate of title to the original tract. The "reference plan" shall be for information and illustration purposes only to facilitate review of the plan of the lot(s) to be conveyed. The deed then may be filed together with an order of the Court approving the new plan of the lot being conveyed, and instructing the Registry District that no instrument of conveyance of the remainder parcel shall be accepted for registration thereafter without a further order.

4. Instruments conveying a mortgage interest in land are subject to the same procedures described above. Accordingly, a mortgage will be accepted for filing only if the lot described in the mortgage is shown on a Land Court Plan. If a portion of such land is conveyed after the mortgage is filed, a foreclosure deed of the remainder parcel may be accepted for filing. However, no certificate will issue for the remainder parcel, and no further conveyance of the remainder parcel may occur, until a plan of the remainder parcel is filed.

5. The Court or the Chief Title Examiner may, in their discretion, issue an order or grant an approval permitting the filing of deeds of remainder parcels upon a showing by the owner of the remainder parcel that it would be a substantial burden on the owner to comply with the requirement for a new plan of the remainder parcel and that the registration of the remainder deed will not result in substantial harm to the grantee or others interested in the title. Examples of this would include, but not be limited to, transfers or conveyances to family members or related entities, for estate planning purposes, or conveyances to state or municipal authorities or to public interest groups for preservation purposes. In such instances, permission shall be granted by an order or approval that instructs the Registry District that no further instrument of conveyance of the remainder parcel shall be accepted for registration thereafter without a further order of the Court or approval by the Chief Title Examiner

6. A conveyance of a remainder parcel which was created by, or exists following, an eminent domain taking does not require prior Land Court approval.

C. A lease, notice of lease, or easement describing a portion of a lot shown on a plan attached thereto as an exhibit should not be rejected for filing on the basis that the land shown on the attached plan is not a lot shown on a Land Court Plan. Such a document may be

accompanied by a sketch plan indicating the extent, limit, or location of the portion of the lot subject to lease or easement, although the district does have discretion to refuse registration of a sketch plan, absent approval by the Court or the Chief Title Examiner, if the district concludes that the sketch plan as presented lacks reasonable legibility or clarity.

Note to Practitioners

Attorneys for grantees and mortgagees should check prior certificates of title to examine whether the land has adequate access and utility line easements appurtenant thereto.

19. Easements, Restrictions, Covenants and Other Rights Granted or Reserved in a Deed

(May 1, 2000)

If a deed grants the fee of one lot (Lot "A") to a person and the same deed grants or otherwise creates rights, such as an easement or restriction, for the benefit of the grantee of Lot A over another parcel of registered land (Lot "B") owned by the same grantor, registry personnel should check the outstanding certificate of title to verify that the grantor does in fact own Lot B and the deed creating the rights must be noted on the encumbrance sheet of Lot B. Said deed should be noted on the Memorandum of Encumbrances attached to the certificate of title covering Lot B as a deed of Lot A with restriction or a deed of Lot A with easement (or other appropriate notation).

The same deed should be noted as an appurtenant right on the face of the certificate of title to be made up for Lot A.

If the owner of Lots A and B (both registered) conveys Lot A, retains Lot B and reserves an easement or other rights over the granted land (Lot A) for the benefit of Lot B, such reservation should be noted as an encumbrance on the Memorandum of Encumbrances of the new certificate of title in the name of the grantee of Lot A and should be noted on the Memorandum of Encumbrances attached to the certificate of title for Lot B as a deed of Lot A with easement, covenant or restriction. When making up the next certificate of title for Lot B, registry personnel should include on the face of the new certificate, the appurtenant right (easement, restriction or covenant) created for the benefit of Lot B in the deed of Lot A. However, this appurtenant right should only be included on the face of the certificate of title to issue if all the mortgagees of Lot A subordinated their interests as mortgagee or consented to the easement, covenant or restriction.

If the Owner of Lot A grants to the owner of Lot B (both registered) an easement, covenant or restriction for the benefit of Lot B, such grant should be noted as an encumbrance on the Memorandum of Encumbrances for Lot A and should also be noted on the Memorandum of Encumbrances for Lot B. When the next certificate of title is made up for Lot B, this appurtenant right should be included on the face of the new certificate of title to issue as long as the mortgagees of Lot A subordinated their interests as mortgagee or consented to the easement, covenant or restriction set forth in the grant to Lot B.

A grant of easement, restriction or covenant from the owner of an unregistered parcel to the owner of a registered parcel which easement, restriction or covenant runs over or burdens unregistered land, should be accepted for filing and noted on the Memorandum of Encumbrances as easement, restriction or other identifying notation. Said appurtenant right should not be noted on the face of the next certificate of title to be issued without the filing of a Supplemental Petition.

A deed which grants a fee to Lot A and an easement over the same locus to Lot C is a nullity as far as the easement is concerned if the owner of Lot C is a stranger to the title (that is, neither grantor nor grantee). The easement must be created by a separate instrument.

Note to practitioners: We encourage attorneys who are preparing deeds that include restrictions, easements, covenants or similar matters to highlight the rights created or reserved in the deed and to entitle the instrument “Deed With Restriction”, “Deed With Easement” or other appropriate caption. This will help registry personnel to enter the instrument on the Memorandum of Encumbrances.

See also Guideline No. 7, Attorney’s Proposed Form of New Certificate.

20. Executions

(May 1, 2000, Revised February 27, 2009)

Executions may be deposited by a deputy sheriff or, if authorized by the issuing court, a special officer (such authority should be made part of the execution).

If the land has been attached previously, for the execution to relate back to the date of the attachment, the execution must be levied on within thirty (30) days after the issuance of the execution following the final judgment; a copy of the execution, with the officer's memorandum, must be deposited with the Registry District within forty (40) days after the issuance of the execution. (G.L. c. 223, s. 59 and G.L. c. 236, s. 4)

These periods are sixty (60) days and seventy (70) days respectively (i) for property attached in Nantucket if the judgment entered elsewhere, or (ii) if the judgment is rendered in Nantucket and the property is elsewhere. (G.L. c. 223, s. 59 and G.L. c. 236, s. 4)

To have an attachment removed from a certificate of title where these time limits are exceeded, approval of the Chief Title Examiner is required, and, in his or her discretion, an order of the court may be required to be obtained on petition.

G.L. c. 236, s. 4 provides that an officer having an execution where there was no previous attachment may make a taking of the defendant's land by depositing a copy of the execution at the registry district with a memorandum that the land has been so taken.

All executions on record will expire in six years unless brought forward (as per M.G.L. c. 236, s. 49A) or enforced within six years after the deposit. Executions are brought forward in the registry district in the manner, provided for in G.L. c. 223, s. 114A, for bringing forward attachments of real estate.

If it is clear to the District, or upon the request of any interested party, the execution may be then marked discharged or expired. Upon a subsequent conveyance and the issuance of a new certificate, the execution will be dropped. Any doubtful questions will be referred to the Chief Title Examiner.

The Registry District personnel should make certain that the premises described in the execution are the same premises as are covered by the certificate of title; the debtor in the execution must be the holder of the certificate of title or of an interest under said certificate. One cannot execute on property of "A" standing in the name of "B" unless the execution issued by the court which granted the judgment so provides.

A creditor of either husband or wife, whose principal residence is held in a post 1980 tenancy by the entirety (G.L. c. 209, s. 1) may attach, but may not levy on the execution.

A certificate issued by the clerk of the court where the execution issued, marked "satisfied in full," is usually obtained to clear the record title of a cloud created by an unexpired execution.

An execution also may be released by an instrument executed by the deputy sheriff making the seizure or by the execution creditor. The release may not be executed by the creditor's attorney.

21. Expired and Obsolete Encumbrances

(May 1, 2000)

Various matters shown on a certificate of title's memorandum of encumbrances may expire or become of no force and effect by passage of time and/or by operation of law.

Examples include:

- attachments and executions which have not timely been carried forward;
- restrictions and conditions which expire by statute and have not been removed of record;
- restrictions which have expired by their terms;
- leases (and notices of lease) the terms of which, taking into account all available extensions, have all passed;
- UCC-1 financing statements which have not been continued within the statutory period;
- municipal betterments and assessments.

In such cases, the District should enter, directly on the memorandum of the relevant encumbrance, an appropriate notation such as "Expired by Statute" or "Expired by its Own Terms" to reflect that the listed encumbrance is no longer in force and effect. The notation should be made in a manner similar to that used to indicate the discharge of a mortgage following filing of an appropriate mortgage discharge.

These notations should be made by the Districts on their own or upon request of an interested party. These notations should be made by the Districts without further approval from the Court if there is no issue about the expiration of the encumbrances. Doubtful questions may of course be referred to the Court's Chief Title Examiner or his or her designee.

22. Faxed Instruments

(May 1, 2000)

A faxed instrument produced on plain paper bearing original signature is acceptable for registration provided it is legible in its entirety. A faxed instrument produced on thermal paper, even with an original signature, is **never** acceptable for registration.

A faxed instrument without an original signature is equivalent to a photocopy and therefore unacceptable for registration.

23. Federal Deposit Insurance Corporation

(May 1, 2000, Deleted February 27, 2009)

24. Fees In Streets
(May 1, 2000)

No new certificate of title may issue for the fee in a street unless a plan has been filed showing the street as a lot.

25. Homestead

(May 1, 2000, Revised February 27, 2009)

1. Estates of homestead may be acquired pursuant to G.L. c. 188, § 1, and, by persons 62 years of age or older, or by disabled persons, pursuant to G.L. c. 188, § 1A. A claim of homestead must be in the deed or a later instrument in writing, signed, sealed and acknowledged. It should contain a statement that the person claiming the homestead occupies or intends to occupy such property as his or her principal residence.

2. A declaration of an estate of homestead to be acquired under Section 1 of the statute may be accepted for registration with the understanding that the court, by accepting the document, is not adjudicating the validity or effectiveness of the filing, which may be determined at a future date by a court of competent jurisdiction. A declaration of homestead will be accepted for filing and will be noted as a "Purported Homestead." Subject to the further caveat that the court's acceptance of a declaration of homestead will not constitute the court's determination of the validity or effect of the filing:

- a.) Only one party who holds title as tenant by the entirety may file a declaration of homestead under Section 1 of the statute for the benefit of his or her family;
- b.) All parties who hold title as tenants in common may file declarations of homestead;
- c.) No party who holds title as trustee as to any interest, may file a declaration of homestead as to the interest held as trustee;
- d.) All parties who hold title as joint tenants may file declarations of homestead; and
- e.) Life tenants may file declarations of homestead..

The Court will not prohibit multiple filings of homestead declarations, with the understanding that multiple filings by parties who are related may not be valid or effective, and that the acceptance of said filings by the Court is not a judgment on the validity of said filings or the impact of the filing of subsequent declarations on the validity of the initial filing.

3. The amount of an estate of homestead acquired under Section 1 has been increased by the legislature; it is now \$500,000.00.

4. A section 1 homestead estate is acquired for the benefit of the declarant's family. The word "family" is defined as a parent and child or children, a husband and wife and their children, if any, or a sole owner.

5. Under Section 1A of the statute, the principal residence, including real property or manufactured home, of a person 62 years of age or older, regardless of marital status, or of a disabled person, is protected to the extent of \$500,000 per qualified person who declares the homestead. The Section 1A homestead estate is available to each individual who has an

ownership interest in the property and qualifies by reason of age or disability.

6. A disabled person is an individual who has any medically determinable permanent physical or mental impairment, which would meet the disability requirements for supplemental social security income under the U.S. code. Such persons must file with any claim of homestead:

- (a) An original or certified copy of a disability award letter issued by the United States Social Security Administration; or
- (b) A letter signed by a physician licensed in Massachusetts certifying that the claimant meets the disability requirements of the United States Code.

7. As the Social Security Administration will not issue certified copies of the award letter, claimants are limited to a physician's letter or the original award. Claimants should be advised that original documents are not returned from the Registry District.

8. There are several obligations of the owner which are exempt from the protection afforded by the Homestead Act, see sections 1 and 1A.

9. Termination

- a. Both the regular and the elderly or disabled homestead can be terminated by
 - a conveyance of the property subject to homestead signed by the owner and the owner's spouse without a specific reservation of homestead;
 - a signed, sealed and acknowledged release by the owner and the owner's spouse filed in the appropriate Registry District;
 - the acquisition of a new estate or claim of homestead; and
 - the abandonment of a residence.

The elderly or disabled homestead is also terminated by:

- a sale or transfer of real property or manufactured home, or the declarant's interest therein, during the declarant's lifetime;
 - the death of the surviving declarant;
 - a deed conveying the homestead property signed by the declarant;
 - a signed, sealed and acknowledged release of a homestead in real property by the declarant filed in the appropriate Registry District; and
 - a signed, sealed and acknowledged release of the claim of homestead in a manufactured home filed with the appropriate city or town clerk's office.
- b. Execution of a mortgage with mortgage covenants subordinates any homestead interest to the mortgage lien, *Atlantic Savings Bank v. Metropolitan Bank and Trust Company*, 9 Mass. App. Ct. 286 (1980), provided both spouses are mortgagors or otherwise joined in the mortgage.

- c. Homestead is a matter of fact and proof claimant has claimed homestead elsewhere, has abandoned the residence, or has never used the property as a principal place of residence will be sufficient cause to strike from the encumbrance sheet. This can be accomplished by a Supplemental Petition.

10. Problem Period - Where Minor Children Are Involved - December 5, 1977 Through August 30, 1979.

Homesteads created between December 5, 1977 and October 18, 1978, can be released only by the guardian of the property of minor unmarried children of the homesteader by the license of the probate court, unless the instruments creating the homestead specifically reserved the right to release the interests to the children. Between October 18, 1978 and August 30, 1979, parents could release the right for their children, but they had to indicate clearly that they were doing so. After August 30, 1979, a homestead can be terminated by simply executing a deed of the premises.

26. Land Court Examiner Qualifications

(May 1, 2000)

All candidates for appointment as a Land Court examiner should meet the following minimum qualifications:

1. Must be a member of the Massachusetts Bar:
 - a. Must be admitted for three years; or
 - b. Demonstrate sufficient equivalent experience in title matters (i.e. experience as a title examiner prior to admission to the bar).
2. Should submit to the Court a letter requesting appointment. This should enclose with the request two letters of recommendation from members of the bar who are familiar with the candidate's work and experience.
3. Submit an abstract of title with narrative report on any property which has been researched and written by the candidate.

27. Leases and Notices of Lease

(May 1, 2000, Revised February 27, 2009)

A lease should be accepted for registration if the lease is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor. A notice of lease should be accepted for registration if it complies with the requirements of G.L. c. 183, § 4; namely, an instrument in writing executed by all persons who are parties to the lease of which notice is given and acknowledged by the lessor or one of several parties constituting the lessor containing

the date of execution thereof,
a description, in the form contained in such lease, of the premises demised,
the term of the lease,
with the date of commencement of such term
and all rights of extension or renewal.

A lease or notice of lease meeting these requirements shall be accepted for registration whether the original term of the lease is more or less than seven (7) years.

An amendment of a notice of lease may be accepted for registration if it is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor, provided that the notice of lease previously was filed for registration, or is being filed for registration simultaneously with the amendment. A notice of an amended lease may be accepted for registration if it complies with the requirements of G.L. c. 183, § 4 set forth in the first paragraph above. An amendment of a lease may be accepted for registration if it is signed by both the lessor and the lessee and is acknowledged by the lessor or one of several parties constituting the lessor, provided that the lease previously was filed for registration, or is being filed for registration simultaneously with the amendment.

A lease or notice of lease of less than all of the land described in the certificate of title may describe the leased premises in words or by reference to an attached plan or drawing which need not be approved by the Land Court Engineering Department.

Where the commencement date of a lease term is uncertain from the face of the document, a subsequent estoppel certificate or agreement stating the commencement date, properly acknowledged, may be registered to establish the commencement date.

If the term of a lease (including all extensions) has expired on its face, the registry should enter, adjacent to the document number of the lease or notice of lease on the Memorandum of Encumbrances of the relevant certificate, an appropriate notation such as "Expired by its Own Terms," without need for the filing of a Supplemental Petition.

28. Life Estate Deeds

(May 1, 2000)

An example of a life estate deed is where one or more grantors convey real estate to one or more grantees (the "remaindermen") reserving (a) the right to use and occupy the real estate and (b) sometimes other rights such as the right to sell or mortgage, during the lives of the grantors (the "life tenants").

The certificate of title should issue in the names of the grantees/remaindermen in whatever relationship is stated in the life estate deed, e.g., joint tenants or tenants-in-common, immediately followed by a recitation of the rights reserved by the grantors/life tenants exactly as it appears in the life estate deed, e.g., subject to the rights of _____ and ___ to use and occupy the premises for and during their lives as reserved in Document No. _____ .

If the grantors/life tenants reserve additional powers with or without notice to the grantees/remaindermen, these should be recited in the certificate of title, e.g., "Subject to the rights, powers and interests reserved to _____ and _____ in Document No. _____, any of which may be exercised without notice to, or assent from, the above named owners or their assigns."

If the grantors/life tenants holding the retained rights exercise them, no notice to or assent from the grantees/remaindermen or their assigns need be given or obtained unless, of course, called for by the deed reserving such rights.

A typical "no notice" provision in a deed would be "No notice to, or assent by, the grantees herein or their assigns shall be necessary in connection with any exercise of the rights retained by the grantors herein."

29. Limited Liability Companies and Partnerships: Formation, Consolidation & Merger
(May 1, 2000)

Chapter 281 of the Acts of 1995 went into effect on January 1, 1996, and authorized the creation of limited liability partnerships (G.L. c. 108A, § 45) and limited liability companies (G.L. c. 156C).

A. CONVERSION OF AN EXISTING PARTNERSHIP TO A LIMITED LIABILITY PARTNERSHIP.

If there is a certificate of title in the name of a general partnership, the filing of a certified copy from the Secretary of State of the certificate of registration pursuant to G.L. c. 108A § 45 registering the partnership as a Limited Liability Partnership, together with a certificate executed by a person authorized to execute and deliver recordable instruments pursuant to the certificate of registration and specifying that the partnership is converting to a limited liability partnership, shall be sufficient to cause the issuance of a new certificate of title in the name of the Limited Liability Partnership.

B. INABILITY TO CONVERT TO A LIMITED LIABILITY COMPANY.

There is no correlative statutory authorization to convert an existing entity to a Limited Liability Company under G.L. c. 156C, as each Limited Liability Company is a new legal entity. However, nothing in this Guideline shall prevent a Limited Liability Company from participating in a merger, consolidation or reorganization pursuant to G.L. c. 156C, § 61 or 64.

C. MERGER, CONSOLIDATION AND REORGANIZATION OF LIMITED LIABILITY COMPANIES.

If there is a certificate of title in the name of a Limited Liability Company, the filing of a certified copy from the Secretary of State of the certificate of consolidation or merger pursuant to G.L. c. 156C, § 61 shall be sufficient to cause the issuance of a new certificate of title in the name of the surviving or resulting Limited Liability Company or other entity. The certified copy must be examined to see if it provides for an effective date later than the date the certificate of consolidation or merger was filed with the Secretary of State; if there is such a later effective date, issuance of the new certificate shall not occur until that date. If issuance of a new certificate of title is requested as a result of a reorganization under G.L. c. 156C, § 64, the matter shall be referred to the Court.

D. FORMATION OF A LIMITED LIABILITY COMPANY.

In order to form a limited liability company one or more authorized persons must execute a Certificate of Organization, which shall be filed in the Office of the Secretary of State. This

certificate shall set forth (1) the name of the limited liability company; (2) the address of the office in the Commonwealth; (3) the name and address of the resident agent for service of process; (4) if the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve; (5) if the limited liability company has managers at the time of its formation, the name and address of each manager; (6) the name of any other person in addition to any manager who is authorized to execute any documents to be filed with the Office of the State Secretary and at least one such person shall be named if there are no managers; (7) the general character of the limited liability company's business; (8) if desired, the names of one or more persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property, whether to be recorded with a registry of deeds or a district office of the land court.

E. FOREIGN LIMITED LIABILITY COMPANIES.

Every foreign limited liability company doing business in the Commonwealth shall submit to the Secretary of State, within ten days after it commences doing business in the Commonwealth, an application for registration as a foreign limited liability company, which shall be signed and sworn to by an authorized person. This application for registration sets forth essentially the same information required for a domestic limited liability company.

See Guideline 30 regarding transfers by limited liability companies and Guideline 31 regarding transfers by limited liability partnerships.

30. Limited Liability Company Documents

(May 1, 2000)

Instruments to be filed on behalf of a limited liability company may be accepted by the local registries without prior approval of the Court in accordance with this Guideline.

A deed, mortgage, or other instrument of transfer transferring an interest in real estate from a limited liability company created under G.L. c. 156C (“LLC”) must be

(1) accompanied by

(a) (i) the certificate of organization of a domestic LLC or the application for registration of a foreign LLC

and

(ii) a certificate of the Secretary of State’s office, dated within 60 days of the date presented for filing, that there have been no amendments or a certificate that there have been amendments and accompanied by copies of the amendments to date

or

(b) a good standing certificate under G.L. c. 156C, § 68 dated within 60 days of the date presented for filing

or

(c) a certification under G.L. c. 156C, § 67 by someone whose authority is established under (a) or (b) above, of the authority of some other person to act,

and

(2) executed by

(a) any Manager or person authorized to execute, acknowledge, deliver and record instruments affecting interests in real property as appearing on the certificate of organization of a domestic LLC or on the application for registration of a foreign LLC (hereinafter “an authorized person”)

or

(b) any Manager or authorized person appearing on a good standing certificate under G.L. c. 156C, § 68

or

(c) a person named on the certificate of any Manager or an authorized person as being authorized to execute real estate instruments.

31. Limited Liability Partnership Documents

(May 1, 2000)

Registered limited liability partnerships were created pursuant to G.L. c. 108A, § 45.

Pursuant to G.L. c. 108A, § 46, the name of every registered limited liability partnership must end with the words "registered limited liability partnership", "limited liability partnership" or the abbreviation "L.L.P." or "LLP". Therefore, any naming of the partnership within the document should include one of these references.

Instruments to be filed on behalf of a limited liability partnership may be accepted by the local registries without prior approval of the Court in accordance with this Guideline.

A deed, mortgage, or other instrument of transfer transferring an interest in real estate from a limited liability partnership created under G.L. c. 108A ("LLP") must be

(1) accompanied by

(a) (i) the registration statement of the LLP

and

(ii) a certificate of the Secretary of State's office, dated within 60 days of the date presented for filing, that there have been no amendments or a certificate that there have been amendments and accompanied by copies of the amendments to date

or

(b) a good standing certificate under G.L. c. 108A, § 49 dated within 60 days of the date presented for filing

and

(2) executed by

(a) any partner authorized to execute, acknowledge, deliver and record instruments affecting interests in real property as appearing on the registration statement of the LLP (hereinafter "an authorized partner")

or

(b) any authorized partner appearing on a good standing certificate under G.L. c. 108A, § 49.

32. Limited Partnership: Consolidation or Merger

(May 1, 2000)

G.L. c. 109, § 16A provides that a domestic limited partnership may merge or consolidate with or into one or more domestic partnerships or other business entities.

A certificate of consolidation or merger must be filed with the Secretary of State by the resulting or surviving limited partnership or business entity. The consolidation or merger shall be effective upon the date of filing of the certificate of consolidation or merger with the Secretary of State unless otherwise provided in the certificate.

The certificate of consolidation or merger acts as a certificate of cancellation for a domestic limited partnership and as a certificate of withdrawal for a foreign limited partnership which are not the resulting or surviving entity in the consolidation or merger.

The certificate of consolidation or merger attested by the Secretary of State or otherwise showing his acceptance should be presented as would the certificate of formation of limited partnership when registering any documents involving a merged or consolidated limited partnership.

Notice to Practitioners

Unless otherwise provided in the partnership agreement the consolidation or merger must be approved by each domestic limited partnership which is to consolidate or merge, by all general partners and by the limited partners or if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

33. Limited Partnership: Filing Requirements

(May 1, 2000)

No Land Court approval to accept documents for registration is required if the following are presented:

1. Executed documents to be filed;
2. “Long Form” certificate of formation of limited partnership, not over 60 days old and bearing the Seal of The Commonwealth, from the Secretary of State attesting the name(s) of the general partner(s) and certifying that the limited partnership has not filed a Certificate of Cancellation (or if the limited partnership is a foreign limited partnership, that its application for registration has not been canceled and that it has not filed a Certificate of Withdrawal).

As to a foreign limited partnership organized in any of the other 49 states, if it is not registered with our Secretary of State you may accept an original certificate (not over 60 days old) of legal existence from the Secretary of State of the jurisdiction in which the foreign limited partnership is organized, stating the name of the foreign limited partnership, the names of its general partners and the fact that the foreign limited partnership has not filed a Certificate of Cancellation.

Any filings not meeting the above requirements (and a filing by a limited partnership of another country) must be approved by the Land Court.

NOTE: If any partner signing the document(s) is a corporation, the usual requirements for corporate execution of documents apply to the corporation’s execution of the document(s), except that there need not be any concern as whether the conveyance constitutes all or substantially all the assets of the corporation (since the assets being conveyed are those of the limited partnership, not those of the corporate partner).

If any partner signing the document is another limited partnership, the above must be satisfied as to that limited partnership as well.

Unless there is something contrary in the Secretary of State’s certificate, § 9 and 10 of G.L. c. 108A (made applicable to limited partnerships by § 24 of G.L. c. 109), allow registration of an instrument executed in the name of a limited partnership by any one general partner.

The “Long Form” certificate should not be given a separate document number. It should be attached to (one of) the instrument(s) being registered. It can serve as the basis of subsequent registrations, provided they occur within 60 days of the date of the certificate.

34. Lis Pendens

(May 1, 2000, Revised February 27, 2009)

A “notice of lis pendens” is a memorandum which is filed at a Registry District to alert persons examining title to a specific piece of land that the land or the building thereon is the subject of pending litigation in some court, G.L. c. 185, § 86. The statute refers to the filing of a memorandum “like that described in” G.L. c. 184, § 15, and also requires that the memorandum contain a reference to the certificate of title number and the book and page where the certificate of title is maintained in the book of registrations.

G.L. c. 184, § 15 in turn sets forth certain requirements as to what information must be contained in the memorandum. This includes: the names of the parties to the proceeding, the court in which it is pending, the date of the complaint, the town where the property is located, and a description of the property sufficiently accurate for identification. A notice of lis pendens may be accepted for registration only if it contains the required information and bears the endorsement of a justice of the court in which the action is pending on a finding by that justice that the subject matter of the action constitutes a claim of a right to title to real property or the use or occupation thereof or the building thereon. In some instances, the signature of the justice making the required finding is endorsed directly on the memorandum of lis pendens; in other cases, the signature of the judge is endorsed on a separate finding appended to the memorandum. In some courts, an original of the judge’s endorsement is provided for registration; in other courts, a copy of the endorsed finding, certified by the court clerk, issues. All are acceptable for registration, but a memorandum without an endorsed finding should not be registered.

The notice of lis pendens also must be accompanied by an affidavit stating that the plaintiff or plaintiff’s attorney has, by certified mail, served notice of the court’s allowance of the motion for judicial endorsement on all parties to the action. This affidavit should accompany the endorsed notice of lis pendens when it is registered.

The memorandum of lis pendens may be dissolved by one of several methods:

1. The filing of a notice of voluntary dissolution duly executed by the party who executed (or on whose behalf was executed) the memorandum of lis pendens, by that party’s successor in interest, or by an attorney of record for either of those parties; or
2. The filing of an attested copy of an allowed special motion to dismiss, or of any order or judgment dismissing, the underlying action, or of an order dissolving the memorandum of lis pendens, in each such case without a timely appeal having been filed (or, if an appeal had been filed, by final resolution of all appeals upholding the allowance, order or judgment). A clerk’s certificate from the trial court will be necessary to establish the absence of a timely appeal or the favorable resolution of any appeal, and should be registered along with the attested copy of the allowance, order, or judgment; or

3. The filing of a clerk's certificate from the court in which the action is pending that the action has been fully and finally concluded by notice of voluntary dismissal, stipulation of dismissal or agreement for judgment.

Once dissolved, the lis pendens will not be carried forward to subsequent certificates.

35. Massachusetts Estate, Inheritance and Corporate Excise Taxes

(May 1, 2000, Revised February 27, 2009)

Registry personnel are not required to inquire as to releases of Massachusetts estate, inheritance and corporate excise tax liens or the possible existence of such liens. Such liens are not to be noted on certificates of title. Likewise, attorneys should not assume that such taxes have been paid simply because there is no notation as to tax liens on the certificate of title. See G.L. c. 185, § 46, which excepts such liens from the coverage of a certificate of title. “Seventh, liens existing in favor of the commonwealth for unpaid taxes arising or existing under the laws of the commonwealth.” Nevertheless, releases or waivers of tax liens should be accepted for filing.

36. Mechanics Liens

(May 1, 2000, Revised February 27, 2009)

The Legislature enacted major revisions to Massachusetts General laws, Chapter 254, the Mechanics Lien Law, effective February 7, 1997 (Chapter 364, Acts of 1996).

The revision made substantial changes to the procedures for creating and enforcing liens. It also expanded the time frame for filing.

I. PERSONAL LABOR (Section One Lien)

Under prior law, a person performing “personal labor” in the erection, alteration, repair or removal of a building or structure on land or improvement or alteration to real property, had a lien on the land for not more than eighteen days of work actually performed during the forty days next prior to filing of a statement of account under Section 8, G.L. c. 254, § 1. This lien does not apply to labor performed pursuant to a written contract. The lien rights governing that type of work are covered by the provisions of Sections 2 and 4. Chapter 364 expanded the time frame for the personal labor lien to thirty days of work. Thus, under the revised law, a person performing personal labor has a lien for thirty days of labor performed during the ninety day period next prior to the filing of a statement of account under Section 8.

II. GENERAL CONTRACTORS (Section Two Liens)

A person who performs work or provides materials for the construction or alteration of improvements on land pursuant to a written contract with the owner of the land (as a general rule, such a person would be considered to be a general contractor), has a lien on the land upon the recording of a notice of contract at the appropriate Registry of Deeds, G.L. c. 254, § 2. Under the prior law, the person claiming a lien under Section 2 was required to record the notice of contract prior to the contractually agreed upon completion date. If the notice of contract was recorded after the completion date, there was no lien. **Blount Bros. Corp. v. Lafayette Place Associates**, 399 Mass. 632, 506 N.E.2d 499 (1987).

Under the revised law, a general contractor may file or record a notice of contract at any time after the execution of a written contract whether or not the date for performance of the contract had passed and whether or not the work under such contract had been performed. The law now provides that the notice of contract must be filed or recorded not later than the earliest of:

1. Sixty days after filing or recording of a notice of completion;
2. Ninety days after filing or recording of a notice of termination; or

3. Ninety days after such person last performed or furnished labor and/or materials.

G.L. c. 254, § 2. Upon the recording or filing of the notice of contract, the lien attaches. If a notice of contract is presented for registration, you should not reject it as an untimely filing unless it is obvious on the face of the notice that it is untimely.

Sections 2A and 2B of the revised lien law introduce two new forms: notice of substantial completion and notice of termination. Section 4 adds yet a third new form: notice of identification, which however, is not recorded or registered.

Under Section 2A of the revised lien law, “upon or after notice of substantial completion of any contract subject to the provisions of section 2 of this chapter (contracts between a contractor and the owner of land), the owner and contractor shall execute and file or record in the appropriate registry of deeds a notice of substantial completion”.

Notice of Termination:

Under Section 2B of the revised lien law, if a general contract has been terminated by one or both of the parties, the owner shall execute and file or record a notice of termination in the appropriate registry of deeds. In such a case, the revised lien law provides a ninety day period in which subcontractors of that general contractor or lower tier subcontractors must file a notice of contract in order to preserve their rights.

III. SUBCONTRACTOR (Section Four Liens)

Under the revised lien law, a subcontractor may record the notice of contract at any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work under such contract has been performed. The lien rights of subcontractors will no longer be tied into the contractually agreed upon completion date. However, the notice of contract by a subcontractor must be recorded no later than the earliest of:

1. Sixty days after the filing or recording of the notice of substantial completion;
2. Ninety days after filing or recording of a notice of termination; or
3. Ninety days after the last day a general contractor or anyone claiming by, through or under him performed or furnished labor or materials.

Again, if a notice of contract is presented for registration, you should not reject it as an untimely filing unless it is obvious on the face of the notice that it is untimely.

The new form of notice of contract will look substantially different from the old form. The new notice of contract will contain information concerning the contract price, agreed change orders, pending change orders, disputed claims and payments received. However, the lien created by recording this notice of contract secures the payment of all labor and material “regardless of the amount stated in the notice of contract”.

The most important changes as far as registry personnel are concerned are:

1. You no longer will have the termination date in the notice of contract; and
2. You have two additional new papers that will be filed:

Notice of Substantial Completion
Notice of Termination

3. Once the Notice of Substantial Completion is recorded the time periods begin to run. All notices of contract (whether they be by the general contractor, subcontractor or sub-subcontractors) must be recorded within sixty days after the recording of the Notice of Substantial Completion (although they can be recorded prior to that time). Likewise, Statements of Account must be recorded within ninety days after the recording of the Notice of Substantial Completion (although they can be recorded before that time). (Note that the time period for recording the Statement of Account runs from the recording of the Notice of Substantial completion and not from the time of the recording of the Notice of Contract). Also, suit must be commenced within ninety days after the filing of the Statement of Account and an attested copy of the complaint must be recorded within thirty days thereafter. Failure to register the Statement of Account or the attested copy of the complaint (and note them on the certificate of title) within the required time period will permit the notice of contract and statement of account to be dropped from the certificate of title; if a new certificate is being prepared after transfer, and the attested copy of the complaint has not been filed for registration timely, the notice of contract and the statement of account should not be carried over to the new certificate.
4. If the project is not completed, but rather is terminated, a different instrument will appear of record. This is called a “Notice of Termination”.

Once the Notice of Termination is recorded the time periods being to run. All notices of contract (whether they be by the general contractor, subcontractor or sub-subcontractors) must be recorded within ninety days after the recording of the Notice of Termination (although they can be recorded before that time). Likewise, Statements of Account must be recorded within one hundred and twenty days after the recording of the Notice of Termination (although they can be recorded before that time). Note that the time period for recording the Statement of Account runs

from the recording of the Notice of Termination and not from the time of the recording of the Notice of Contract). Also, suit must be commenced within ninety days after the filing of the Statement of Account and an attested copy of the complaint is recorded within thirty days thereafter.

If the various documents described above are not filed within the time periods set forth above, the lien is dissolved by statute. If it is clear from the filed documents that the time periods have not been met, the Notice of Contract and other related documents which may have been filed should be dropped from the current certificate, in the manner indicated in Guideline 21. Expired and Obsolete Encumbrances, and should not be carried forward onto the new certificate of title for the property following a transfer.

Also, as in the case of other liens, a release of the lien (G.L. c. 254, § 10) will dispose of the lien.

A Section 2 lien can be disposed of, at least partially, in another way under the new statute. This is accomplished by utilizing what is called a “Partial Waiver and Subordination of Lien”. (Section 32. The statute does not require the recording or registration of that document.).

G.L. ch. 254, § 30 has a listing of all those persons who can sign notices or other instruments required or permitted to be filed or recorded under the Mechanics Lien Law, Chapter 254 by various entities. This statute eliminates the necessity of votes in most cases when registering the documents described earlier in this Guideline. The statute provides that a notice under Chapter 254, duly acknowledged, and executed by a person purporting to hold one of a list of specified positions, shall be binding upon the entity and shall be entitled to be recorded or filed. According to this statute, no vote of the entity affirming such authority shall be required to permit recording or filing. The statutory provisions apply to instruments executed prior to, on, or after the effective date of the Act. The statute refers to persons purporting to hold various offices of an “entity;” the statute is not limited to corporations, but includes other entities such as a limited partnership, a limited liability company and a limited liability partnership. Because of the statutory language, proof of a person’s incumbency in office is not required to accept their signature on behalf of the entity. The persons listed in this statute are:

“a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, or any assistant to the foregoing, principal, partner, proprietor, trustee, attorney or other similar position, of the entity entitled to record or file such instruments on behalf of such entity acting in its own capacity or as a general partner or co-venturer, or as assignee, agent or authorized representative”

The statute also provides that a certificate of the acknowledgment or other proof of due execution shall be endorsed upon or annexed to the instrument, and filed or recorded with it.

37. Mortgages: Amendments

(May 1, 2000, Revised February 27, 2009)

I. A District may accept for filing, without consultation with the Court, “amended mortgages”; this term includes amendments to particular provisions of the mortgage as well as “amended and restated mortgages.”

Ordinarily, “confirmatory” documents are not accepted for filing by the registry districts, as such a document implies a failure or defect in the original registration of the document sought to be “confirmed.” If a document is defective so that it fails to transfer title or otherwise accomplish the purpose of the document, it ought not have been accepted for registration in the first place. If the previously registered document contains errors, they should be corrected by a duly executed and registered amendment. If the meaning of a registered document is uncertain or dubious, an S Petition and review by the court, in an appropriate proceeding, may be required to settle the uncertainty.

The court recognizes, however, that the exigencies of the secondary mortgage market sometimes require that a previously registered mortgage be amended and clarified in instances in which the mortgage is otherwise valid and sufficient. In most instances, such an instrument will act to amend the provisions of the earlier registered mortgage and thus will require execution by both the mortgagor and the mortgagee. However, some items requiring change are, in the case of residential mortgages, of such relatively minor significance or routine nature that an amendatory mortgage instrument, duly executed by the mortgagor(s) and current registered owner(s), may be accepted by the court’s Registration Districts without formal execution on behalf of the mortgage holder. Instead, the amendatory mortgage, duly executed on behalf of the mortgagor(s), will be accepted for registration based on the written affirmation by the mortgage holder’s counsel that the mortgage holder consents to the changes to the mortgage, and affirms the registration of the amendatory mortgage document, and its notation on the owner’s certificate of title.

This method only may be used where the mortgagee’s attorney’s affirmation states that the property covered by the mortgage contains a one to four family residential building and no other improvements. This method is available only where the changes are limited to one or more of a specific category of changes, and the mortgagee’s attorney’s affirmation so certifies. Those matters are as follows:

1. Incorrect recitation of the loan amount as set forth in the original promissory note (this does not include any increase or decrease in the amount originally loaned as set forth in the original promissory note);
2. Incorrect maturity date, first payment date or last payment date;
3. Incorrect street address, including zip code;
4. Modifications of the margin or base rate calculations for variable rate loans;
5. The addition of one or more conventional secondary market form(s) of riders to the mortgage, omitted from the mortgage as originally registered, and which have

- been executed by the mortgagor;
6. Defect in the execution or acknowledgment clause of the original mortgage by the mortgagor (this does not include changes in the identity of the mortgagor(s));
 7. Scrivener's errors of a nature that fall within category one of Land Court Guideline 4 entitled "Alteration of Documents"; or
 8. Addition of an omitted, or correction of a misstated, mortgage identification number, FHA or VA loan number, or similar lender-required or lender-designated loan or transaction identification number.

In all instances, the amendatory mortgage shall be captioned and identified as amendatory, rather than confirmatory. The districts will continue to deny registration to documents which, in name and substance, are confirmatory mortgage instruments.

The amendatory mortgage will be accepted whether it takes the form of an amendment targeted to a particular change in the original mortgage, or is an amendment and restatement, at length, of the original mortgage. In either case, the amendatory mortgage shall contain a specific reference to the original mortgage by date and document number and shall contain a statement of the terms or provisions that are being amended, so that the registry district may verify compliance with the requirements of this guideline.

The acceptance of an amendatory mortgage pursuant to this guideline will not cause the amendment to operate retroactively to the registration of the original mortgage. No change in the priority of the encumbrances on the memorandum of encumbrances is intended when an amendment is filed pursuant to this guideline. The amendatory document should be noted on the memorandum at the date and time it is registered; a notation referring to the amendment document should be added to the notation of the original mortgage.

Before an amendment without formal execution by the mortgagee is accepted, a fully executed affirmation by lender's counsel in substantially the form attached should be presented. The affirmation should be registered along with the amendatory document.

With the exception of the aforementioned changes in numbers 1 through 8 above all amendments to mortgages (and similar security instruments) must be executed and acknowledged by both the mortgagor (or the mortgagor's successor as owner of the land) and the mortgagee (or the mortgagee's successor as holder of the mortgage).

No affirmation by lender's counsel is required when an amendatory mortgage that has been duly executed by the holder of the mortgage is presented for registration. This guideline does not apply in that case.

ATTORNEY'S CERTIFICATE
For Amendatory Mortgages
(One to Four Family Residential)

1. I, _____, am an attorney-at-law duly authorized to practice in the Commonwealth of Massachusetts. My office address is: _____. My BBO number is _____. I certify and affirm as follows:

2. I give this certificate in connection with the registration of a document ("Amendatory Mortgage") dated _____, 20__ executed by _____, owner(s) of the premises at _____ (street address). These premises are improved only with a one to four-family residential building.

3. These premises are the subject of a mortgage ("Original Mortgage") from _____ to _____ dated _____ filed with the _____ Registration District of the Land Court as Document No. _____, noted on Certificate of Title No. _____.

4. I am counsel for _____, ("Current Holder") the current registered holder of the Original Mortgage, by whom I am authorized to make the these certifications and affirmations.

3. The purpose of this Amendatory Mortgage is to amend in the following particulars the Original Mortgage (check all that apply):

1. _____ Incorrect recitation of the loan amount as set forth in the original promissory note (this does not include any increase or decrease in the amount originally loaned as set forth in the original promissory note);
2. _____ Incorrect maturity date, first payment date or last payment date;
3. _____ Incorrect street address, including zip code;
4. _____ Modifications of the margin or base rate calculations for variable rate loans;
5. _____ The addition of one or more conventional secondary market form(s) of riders to the mortgage, omitted from the mortgage as originally registered, and which have been executed by the mortgagor;
6. _____ Defect in the execution or acknowledgment clause of the original mortgage by the mortgagor (this does not include changes in the identity of the mortgagor(s));
7. _____ Scrivener's errors of a nature that fall within category one of Land Court Guideline 4 entitled "Alteration of Documents"; or
8. _____ Addition of an omitted, or correction of a misstated, mortgage identification number, FHA or VA loan number, or similar lender-required or lender-designated loan or transaction identification number.

There are no other material provisions of the Original Mortgage which are altered or amended by the Amendatory Mortgage. Although the Amendatory Mortgage has not been executed by the Current Holder, as counsel for Current Holder I certify and affirm

that the Current Holder consents to and approves the execution and filing for registration of the Amendatory Mortgage in the accompanying form.

Certified and affirmed by the undersigned on _____, 20__.

II. An amended mortgage may also add new land to the land already subject to the mortgage. This is permitted (and such amendments may be accepted by the District without consultation with the Court) provided:

1. the amended mortgage (in some form of words) grants a mortgage of the additional land (it is insufficient merely to amend an exhibit containing the description of the land originally subject to the mortgage); and
2. the amended mortgage is noted on each certificate of title on which the original mortgage was noted and remains outstanding; and
3. the original mortgage is noted on each certificate of title for each additional parcel covered by the amendment (as to these additional parcels not previously subject to the mortgage, the original mortgage and the amendment are both noted and take effect as of the date the amendment is registered).

The notation made by the District on the memoranda of encumbrance when a mortgage amendment adds additional land should indicate which parcel(s) have become subject to the mortgage.

In the case where the original Mortgage covers recorded land only, the amended mortgage must be accompanied by a Land Court Examiner's Report similar in form to that attached hereto noting that the examiner has checked title to the recorded mortgage and the filed report includes certified copies of the original mortgage and any amendments, assignments, or discharges of the same. If there have been amendments or assignments of record, the current record holder(s) of the mortgage must join in the amendment sought to be registered before it can be filed.

This guideline applies as well to amendments of other security instruments, such as conditional or collateral assignments of leases and rents.

LAND COURT TITLE EXAMINER'S REPORT
Regarding the Amendment of a Mortgage that originally affected Recorded Land only

To the Honorable Judges of the Land Court:

Re: Land Court Case No. _____
Mortgage from _____ to _____, dated _____,
Recorded with the _____ Registry of Deeds ("Registry")
on _____, _____, in
Book _____, Page _____.

I am a member in good standing of the Massachusetts bar and a duly appointed Land Court Title Examiner.

I have examined title from the date of the recording of the above-referenced Mortgage at the Registry, through the close of business on _____. For the time covered by my rundown, I find the Mortgage is not discharged of record, and has been:

1. ____ (a) Assigned to _____, by instrument dated _____ and recorded with _____ Deeds, Book _____, Page _____, a certified copy of which is attached to this Report; or
____ (b) Not assigned of record.

2. ____ (a) Amended by instrument dated _____, and recorded with _____ Deeds, Book _____, Page _____, a certified copy of which is attached to this Report; or
____ (b) Not amended of record.

CERTIFIED as of _____, _____.

Land Court Title Examiner
Name, Address, Phone, BBO
Number

38. Mortgages: Discharges, Partial Releases and Assignments; Persons Signing

(May 1, 2000, Revised February 27, 2009)

1. G.L. c. 183, § 54B, effective as of October 1, 2006, has a listing of all those persons who can sign discharges, assignments, partial releases, subordination, non-disturbance, recognition and attornment agreements. It eliminates the necessity of votes in most cases when registering discharges, assignments and partial releases of mortgages. It applies to instruments executed prior to or on or after the effective date of the Act. Since the statute refers to persons purporting to hold various offices of an “entity”, the statute is not limited to corporations, but includes other entities such as a limited partnership, a limited liability company and a limited liability partnership. The statute reads in pertinent part as follows:

“A deed of release or written acknowledgment of payment or satisfaction of the debt thereby secured, or a release, partial release or assignment of mortgage, or an instrument of subordination, non-disturbance, recognition, or attornment by the holder of a mortgage...executed before a notary public, justice of the peace or other officer entitled by law to acknowledge instruments, whether executed within or without the commonwealth, by a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, cashier, loan representative, principal, investment, mortgage or other officer, agent, asset manager, or other similar office or position, including assistant to any such office or position, of the entity holding record title thereto on behalf of such entity acting in its own capacity or as a general partner or co-venturer of the entity holding record title, shall be binding upon such entity and shall be entitled to be recorded or filed, and no vote of the entity affirming such authority shall be required to permit recording of filing.”

2. Assignments and discharges executed by fiduciaries of deceased mortgagees may be accepted for registration if accompanied by a certificate of appointment of fiduciary which is no more than six (6) months old.

3. Regarding ancillary documents, such as conditional assignments of rents, refer to Guideline Number 39, Mortgages: Discharges and Assignments; Collateral Security Documents.

4. An affidavit by a Massachusetts attorney which complies with the requirement of G.L. ch. 183, § 55(g) constitutes a discharge of a mortgage and a release of the lien on the mortgaged premises. All of such affidavits must be approved at the Land Court in Boston before being accepted for registration.

5. There are a great many instances wherein there are minor errors in the names of parties assigning or discharging mortgages. There are cases where Corp. is used rather than Corporation, where Inc. is either omitted or included incorrectly, where N.A. or F.A. is omitted from a bank title.

Minor errors may be corrected on the document when not inconsistent with Guideline Number 4, Alteration of Documents.

In other cases, in the interest of eliminating the need for supplemental petitions and subsequent Court orders to correct the record, the following procedure is now advised:

The persons presenting such assignments or discharges should be instructed to present such instruments to the Land Court in Boston, for approval. They should present: 1.) The face sheet of the original mortgage, and 2.) The assignment or discharge. There should also be presented some proof of the correct name.

The Land Court registration districts should not decline to accept for filing a form of partial release because it does not include the phrase “release to _____ all interest acquired under said mortgage.”

39. Mortgages: Discharges and Assignments; Collateral Security Documents

(May 1, 2000)

If there is noted on a certificate of title a mortgage and a conditional assignment of leases and rents (or similar accompanying financing documents such as an assignment of project documents, assignment of purchase and sale agreements, etc.) which assignment contains no express language evidencing an intent that it not be released upon the discharge of the mortgage, and a discharge of the mortgage is registered containing the words "and the note and claim thereby secured" or "acknowledges satisfaction thereof" or "acknowledges satisfaction of the same" or substantially similar language, you should drop the mortgage and all the ancillary documents when a new certificate is written. If the discharge of the mortgage does not contain a recital or other evidence that the underlying obligation has been satisfied, you must carry forward the assignment of leases and rents and/or other accompanying financing documents.

If an assignment of a mortgage includes the words "assigns said mortgage and the note and claim secured thereby", said assignment will also include the rights of the mortgagee in and to the ancillary financing documents.

You are also referred to Guideline 38, "Mortgages: Discharges, Partial Releases and Assignments; Persons Signing".

40. Mortgages and Assignments: Addresses

(May 1, 2000)

Every mortgage and assignment of mortgage presented for record shall contain or have endorsed on it the residence and post office address of the mortgagee or assignee, if said mortgagee or assignee is a natural person, or a business address of said mortgagee or assignee if not a natural person. G.L. c. 183, § 6C. The endorsement shall be recorded as part of the mortgage or assignment. However, while failure to comply will not affect the validity of any mortgage or assignment, no Register of Deeds shall accept a mortgage or assignment unless it is in compliance with these requirements.

41. Mortgages: Foreclosures

(May 1, 2000)

The Soldiers' and Sailors' Civil Relief Act of 1940 has been affected by Chapter 496 of the Acts of 1990 and by Chapter 142 of the Acts of 1998.

The passage of the above acts has brought about the following changes in our procedure.

1. There is no longer the necessity for bringing an action to establish compliance with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if the record ownership is held by the following:

- a. A corporation - either domestic or foreign.
- b. A limited partnership, limited liability partnership or limited liability company - either domestic or foreign.
- c. A trust under a written declaration, the beneficial interest under which is divided into transferable certificates of participation or shares - sometimes referred to as a Business Trust.
- d. A general partnership or joint venture of which all the general partners appear of record to be one or more of the foregoing types of entities.

In these cases, when the record owner in the certificate of title is one of the above entities and you are presented with the entry, the deed, and the Affidavit of Sale, you should proceed as follows: Check such instruments carefully according to the check list enclosed.

If in proper form then: Register and note such documents on the outstanding certificate(s) of title and issue a new certificate of title based upon the foreclosure deed.

CAVEAT: This only applies to mortgage foreclosures initiated after January 1, 1991. There is no Court involvement. The only review of documents will be made at the registry counter.

2. In all other cases, i.e., record owner is an individual or a trust without transferable shares, etc., registry personnel should proceed as follows:

A judgment by the Court that no person is entitled to the benefits of the Soldiers' and Sailors' Relief Act of 1940, as amended, should be registered and noted before or simultaneously with the acceptance of foreclosure papers.

There will be no Court approval of the documents presented under the new statute. We will rely on the District's careful use of the checklist.

Register and note the documents on the outstanding certificate(s) of title, and then issue a new certificate of title based on the foreclosure deed.

Attached with this memo is the checklist to be used by counter personnel in taking for record foreclosure documents.

CERTIFICATE OF TITLE NO. _____

FORECLOSURE OR MORTGAGE UNDER POWER OF SALE in registered Document No. _____ as appearing in Foreclosure Deed and Affidavit, being Document No. _____ to which this sheet is annexed.

- _____ 1. Are Grantor and affiant the same party described as mortgagee in original mortgage, or an assignee of said party under assignment or assignments duly registered and endorsed on Certificate of Title No. _____ (being the present outstanding certificate)?
- _____ 2. Is the description in the Foreclosure Deed, the Notice of Sale and the original mortgage the same, or substantially the same, as in said certificate?
- _____ 3. Does the Affidavit allege a default which, so far as appears of record, may under the terms of the original mortgage, then exist, and indicate a sale at public auction to the highest bidder?
- _____ 4. Is the notice printed in a newspaper published or having a general circulation in the town or city where the land lies?
- _____ 5. Is the notice published in accordance with the requirements in the original mortgage?
- _____ 6. Are authority to sell, the Notice of Sale and the Deed subject to the same encumbrances, if any, as stated in the original mortgage? (In answering the question, a statement that the sale is to be made subject to any unpaid taxes and tax title or similar language, may be disregarded.)
- _____ 7. Is the place of sale appearing in the notice authorized by the original mortgage, and does the Affidavit show that sale was made at the time and place advertised, at public auction? (If more then one lot covered by said mortgage, does publication state on which lot sale is to take place?)
- _____ 8. Was the first date of publication 21 days before the day of sale, and was the notice published once a week for at least 3 successive weeks?
- _____ 9. Is there a statement to the effect that notice of sale was sent registered mail to the owner or owners of record of the equity of redemption as of thirty days prior to the date of sale to the last address of the owner or owners of the equity of redemption and to any person of record as of thirty days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed? If there is a statement in the Affidavit that notice was not given to the owner or

owners of record of the equity of redemption or to all persons of record as of thirty days prior to the date of sale holding an interest in the property junior to the mortgage, the Affidavit should be accompanied by a waiver from said owner or said persons holding an interest in the property who did not receive notice. The Affidavit should include the following language:

"I also complied with Ch. 244, § 14 of Massachusetts General Laws, as amended, by mailing the required notices certified mail, return receipt requested, with the exception of the Commonwealth of Massachusetts (Department of Revenue) and Aetna Insurance Company whose assents to the sale and waivers of the notice are attached hereto as Appendices B and C respectively."

_____ 10. If the highest bid has been assigned, the Foreclosure Deed should run to the assignee of the Assignment of Bid. The Affidavit of Sale should include the following language:

"I sold the mortgaged premises at _____ by _____, an auctioneer, to XYZ Bank (above named) for Fifty Thousand and 00/100 (\$50,000.00) Dollars bid by XYZ Bank, being the highest bid made therefor at said auction, which bid was later assigned to John Small, as is evidenced by the Assignment of Bid to be recorded herewith."

An Assignment of Bid should be filed with the Affidavit. Said Assignment of Bid should run from the original high bidder to the assignee.

CHECKED BY _____ DATE _____

42. Mortgage Electronic Registration Systems ("MERS")

(May 1, 2000, Revised February 27, 2009)

MERS is a national electronic registry for tracking servicing rights and beneficial ownership interests in mortgage loans; it also acts as the mortgagee of record and, as such, is the nominee for both the servicer and the beneficial owners of mortgage loans in the public land records.

MERS becomes mortgagee of record in one of two ways: the first is by an assignment from a lender or servicer to MERS; the second is by being the mortgagee of record as nominee in the original security instrument when the loan is closed.

In either case the holder of the mortgage on the encumbrance sheet will be listed as Mortgage Electronic Registration System, Inc., without any reference to the institution for which MERS is holding the mortgage, whether or not the original mortgage or any subsequently filed instrument affecting the mortgage makes reference to the party for whose benefit MERS is holding the mortgage.

Registry districts should not (without approval from Boston) accept a mortgage running to MERS which does not contain language substantially the same as the language set forth below. An assignment of a mortgage to MERS does not require similar language.

Language to be included in MERS mortgages

"Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assign), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument."

A discharge properly executed by MERS, with or without reference to any party for whose benefit MERS is holding the mortgage, shall be accepted for filing. A discharge executed only by the underlying lender for whose benefit MERS is holding the mortgage shall not be accepted for filing without approval from the court's Chief Title Examiner or order of the court.

43. Orders of Conditions

(May 1, 2000)

The Department of Environmental Protection and the Conservation Commission of a City or Town occasionally will issue a Certificate of Partial Compliance.

Registry personnel must review Certificates of Partial Compliance carefully to determine whether or not the Certificate affects specific lots only. In that case, the Partial Certificate of Compliance should be listed on the encumbrance sheet with the notation as to what lots are affected. A Partial Certificate of Compliance which affects only specific lots should be carried forward onto the Memorandum of Encumbrances when a new Certificate is made up for one of those lots.

If the Partial Certificate of Compliance affects a particular condition or conditions of the original Order, it should be noted on the Memorandum of Encumbrances as a Partial Certificate of Compliance and should be carried forward onto the next Memorandum of Encumbrances for all of the lots affected by the original Order.

An Order of Conditions normally includes conditions which continue beyond completion of the work and issuance of a Certificate of Compliance. Accordingly, Orders of Conditions, Partial Certificates of Compliance, Extensions and Certificates of Compliance should be carried forward onto new Certificates and should not be dropped without an Order of the Court.

44. Purchase and Sale Agreements

(May 1, 2000)

A purchase and sale agreement or any extension of a purchase and sale agreement may be accepted for registration if the agreement or extension is acknowledged by the parties agreeing to sell or one of them.

If it is contended that a registered purchase and sale agreement is no longer in force and effect, whether by operation of G.L. c. 184, § 17A or otherwise, the court should be consulted as to any action necessary to establish that fact of record; provided, that a release executed by the person or persons identified as the buyer in the purchase and sale agreement may, without notice to the court, be accepted for registration.

45. Registered and Recorded Instruments

(May 1, 2000)

After the registration of an instrument which affects both registered and recorded land, before the instrument is presented for recording it should be photocopied by registry personnel at registry expense to enable registration staff to work from the copy until the original document is returned to them after recording. A notation should be made on the original document that the original papers are to be returned to the Registry District after recording. The attorney or the examiner doing the recording should understand that the Registry District will retain the original papers after filing and if duplicate originals are needed, either certified copies should be requested or duplicate originals must be provided at the time of recording and filing.

This guideline need not be applied when one complete set of duplicate originals are presented by the registrant or in registries where the same staff perform both registration and recording.

46. Sheriff's Deeds

(May 1, 2000)

Sheriff's Deeds are "notation" deeds, that is, they are to be noted on the current certificate of title, and no certificate may issue thereon except by an Order of Court. G.L. c. 185, § 85. A petition to the Court is required (see suggested form following). In cases where the grantee conveys back to the equity owner within the one year redemption period, the equity owner is free to convey under the existing certificate.

THE COMMONWEALTH OF MASSACHUSETTS

LAND COURT

PETITION FOR NEW CERTIFICATE OF TITLE
AFTER SHERIFF SALE

Case No.

Upon the petition of _____
representing that Certificate of Title No. _____ issued by the Registry District of
_____ County stands in the name(s) of _____
_____;

and further representing that petitioner made a special attachment on
_____ by Document No. _____ noted on Certificate of Title No.
_____. A judgment in said action was entered on _____ and by
virtue of said execution, the deputy sheriff levied upon and sold all right, title and interest of said
_____ in said Certificate of Title as Document No.
_____;

and further representing that the time within which to redeem said premises from the said
levy and sale has expired; and praying for a new certificate of title.

Signed under pains and penalties of perjury,

47. Street Address
(May 1, 2000)

G.L. c. 185, § 61A requires...

All documents registered in the Land Court shall, when applicable, set forth in the margin the street address of the property affected by such document; provided, however, that failure to include such address shall not affect the validity of the document or the recording thereof.

You should require that the attorney endorse the street address on the margin of the document. The address provided may be noted on the certificate of title as the “purported” address of the property because municipalities change street names and numbers

48. Tax Takings

(May 1, 2000)

To establish its lien for taxes upon real estate, a city or town must register an instrument of taking or a collector's deed to itself or a private purchaser. Takings have to a large extent replaced collector's deeds.

The Department of Revenue has prescribed the forms cities and town should use when taking or selling land for nonpayment of taxes. All of the information requested by the form for a taking or a collector's deed should be provided.

Instruments of taking and collector's deeds are not valid unless registered within sixty (60) days after the taking or the date of the collector's deed. If a city or town has established the lien by registering an instrument of taking, the municipal treasurer may assign any such tax title by registering the approved form within sixty (60) days of the date of its execution. The form should be complete as to all requested information.

Should any person having an interest in land being sold for nonpayment of taxes pay to the municipal treasurer prior to foreclosure the amount of the corresponding tax title account, a completed instrument of redemption of the approved type is to be registered.

49. Tax Titles: Foreclosure of Tax Titles

(May 1, 2000, Revised February 27, 2009)

To foreclose all rights of redemption on land acquired by sale or taking for taxes, the holder of the tax title to such land must file a complaint in the Land Court. As soon as possible after this filing, the plaintiff must complete and register a notice of filing complaint form; particular care should be taken to inspect this form for the case number and the date of filing. The name of the equity owner, the date of the tax taking or collector's deed, the document number assigned to such tax taking or deed, and the number of the outstanding certificate of title on which it is noted should all be recited in this form exactly as these are listed on the relevant certificate of title and encumbrance sheet. Once a final judgment in a tax lien case is noted on a particular certificate of title, nothing subsequent may be accepted for registration with respect to that certificate until the Land Court has issued an order canceling the certificate and directing a new one to be prepared. The only exception would be if the Land Court has already issued a vacation of the final judgment.

The holder of title to land found by the Commissioner of Revenue to be of low value may establish such title by filing a complaint in the Land Court, a so-called Chapter 60, Section 80B proceeding. Title to low value land is held through a deed executed by the municipal treasurer and registered within fifteen (15) days after execution if to a purchaser who was the highest bidder at a public auction of the land or within sixty (60) days after sale to a city or town. As with a complaint for foreclosure of rights or redemption, the plaintiff in low value case (Chapter 80B) must complete and register as soon after filing the complaint as possible a notice of filing complaint form. The very same items must be checked on this form as with the equivalent foreclosure form. The only difference is that the low value form has to include the date, document number, and certificate of title number for the treasurer's deed. Upon registration of a final judgment in a low value proceeding no later instrument may be registered with respect to the particular certificate of title until an order issued from the Land Court for cancellation of this certificate.

No deed conveying property acquired by a city or town by tax title foreclosure or through the low value process is valid and acceptable for registration unless it contains a recitation that the municipal board or officer granting the deed has received a particular statement from each grantee. In this statement (the exact language is in G.L. c.60, § 77B), each grantee must swear under the pains and penalties of perjury that neither he nor she nor any other person gaining equity in the property has ever been convicted of arson or fire insurance fraud or is delinquent in the payment of real estate taxes to the grantor city or town.

A recitation by the board or officer that the required statement has been received by the board or officer will suffice; the text of the statement need not be given. If it is given, the statement must be checked carefully against the statute.

An additional statutory requirement for deeds out of cities or towns conveying foreclosed tax title or low value land is that they must be registered within fifteen (15) days after execution.

Additional statutory requirements in the case of a sale by a city or town are set forth in Guideline 58.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
PETITION FOR NEW CERTIFICATE OF TITLE
AFTER LOW VALUE SALE

Case No. _____

_____ respectfully represents _____,
married to _____, of _____
in the County of _____ and said Commonwealth that he/she is the
holder of certain deeds given by the Town of _____ in the County of _____ and
said Commonwealth to the petitioner dated _____ and entered as Document No.
_____ respectively noted on Certificate of Title No. _____ issued from
_____ the sale under which has been duly determined by
the Tax Commissioner for the Commonwealth of Massachusetts, to be a sale under the
provisions of G.L. (Ter.Ed.) Chapter 60, Section 79, and any amendments thereto: that the
original deed for nonpayment of taxes was entered as Document No. _____ respectively,
Certificate No. _____.

Wherefore your petitioner prays that said Certificate of Title No. _____ be
canceled and a new certificate be issued to him/her as owner pursuant to law.

Subscribed and sworn to before me,

50. Tenancies by the Entirety

(May 1, 2000, Revised February 27, 2009)

Establishing Tenancy by the Entirety

When presented with a deed or other document to be registered which refers to, or establishes or conveys title in or to two individuals “as tenants by the entirety,” (or which uses any similar form of words intended to create, establish, or refer to title in those individuals as tenants by the entirety), registration districts of the Land Court should not--as a prerequisite to registration--inquire, conduct investigation or require production of proof in any form concerning the marital status of the two individuals, or their qualification or entitlement to be married to each other. This is so without regard to whether the two individuals are or are not (or appear from their names to be or not be) either of the same sex or of the opposite sex. A document referring to, establishing, or conveying title in or to two individuals may, but to be registered need not, contain words reciting the marriage of the two individuals to each other.

Following registration of a deed or other instrument which conveys title to, or establishes title in, two individuals as tenants by the entirety, if fee ownership of registered land is changed as a result, the new transfer certificate of title should issue in their names, with the recitation on the face of the new transfer certificate that they hold their title as “tenants by the entirety.” If fee ownership does not change as a result, the appropriate notation on the memoranda of encumbrances should be made, again with the recitation that the two individuals hold their title “as tenants by the entirety.” The proper form for these recitations and notations on certificates of title is “A and B, as tenants by the entirety” without references such as “husband and wife,” “married to each other,” or similar language.

The registration of any document running in favor of two individuals “as tenants by the entirety,” and the issuance by the districts of, or the making by the districts of notation on, any certificate referring to two individuals as “tenants by the entirety,” does not preclude subsequent challenge to their right or ability to hold their title as tenants by the entirety, in an appropriate judicial proceeding brought in the Land Court or other court of competent jurisdiction.

Additional Characteristics of Tenants by the Entirety

Marital status is important only in cases of tenancy by the entirety. Spouses may assign mortgages to each other (See G.L. ch. 209, § 2), may mortgage to one another (G.L. c. 209, § 3) and otherwise may transfer their interest in the property to each other.

The interest of a tenant by the entirety can be mortgaged without the consent of the non debtor spouse. In the event of a foreclosure, the mortgagee acquires the property subject to rights of survivorship of the non debtor spouse. (*Coraccio v. Lowell Five Cents Savings Bank*, 415 Mass. 145). Accordingly, in such circumstances the foreclosure documents should be noted on the memorandum of encumbrances of the certificate of title in the name of the husband and wife,

and no new certificate will issue.

A new tenancy by the entirety was created by Chapter 727 of the Acts of 1979, amending G.L. c. 209, § 1 (effective February 11, 1980). This law does not affect pre-existing tenancies by the entirety. However, under G.L. c. 209, § 1A, tenants by the entirety holding real property under a deed dated prior to February 11, 1980 may elect in a writing identifying the real estate by Book and Page wherein the deed is filed, to have the property treated pursuant to the provisions governing separate and marital property. The election must be executed by the grantees named as tenants by the entirety on the deed and the writing must be duly notarized and filed at the appropriate Registry District. Registry Districts should file and note such election on the Memoranda of Encumbrances of the certificate of title.

Chapter 400 of the Acts of 1989 amended G.L. c. 36 by inserting a new c. 32A as follows:

“Section 32A. Whenever the register, in any communication, document or writing intended for use outside the registry, identifies a husband and wife, he shall use the name of both husband and wife and shall not use a legal phrase as a substitute for either name.

“This will be effective January 10, 1990.”

51. Trusts: Conveyances to Trustees

(May 1, 2000, Revised February 27, 2009)

Deeds, mortgages and other instruments that convey title to a trustee or trustees may be accepted for registration only when accompanied by the trust instrument or a certificate pursuant to G.L. c. 184 §35, except:

- (a) if the trust instrument or certificate is recorded or filed for registration in another registry district or registration district in the Commonwealth, an attested copy of the trust instrument or certificate may be presented as an alternative to the original trust instrument, together with a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment; or
- (b) if the trust instrument or certificate is recorded or filed for registration in the same registry district, the filed document (or the recorded land record of it) may be shown as an alternative to the original trust instrument.

The instrument of conveyance must have as grantees, mortgagees or other benefitted parties one or more trustees who are shown of record by the trust instrument or certificate to be trustees of the trust. If necessary, this showing may be made (a) by appropriate filed or recorded appointments and/or resignations of trustees, (b) by filed or recorded amendments to the trust instruments, or (c) by a certificate given by a trustee of record, provided the trust instrument allows reliance on such a certificate and the requirements for reliance set out in the trust instrument have been met, or the certificate is executed in conformance with the provisions of G.L. c. 184 §35.

The provisions of this guideline do not apply to any trust operating under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares.

52. Trusts: Conveyances by Trustees

(May 1, 2000, Revised February 27, 2009)

A. Nominee Trust Conveyances - Trust in Same Registry District

Conveyances by Trustees of a nominee trust are acceptable if

- (1) the instrument of conveyance is authorized by the terms of the registered or recorded (previously or simultaneously) trust instrument or certificate given pursuant to G.L. c. 184 §35, and (a) a Trustee's Certificate in substantially the form appended hereto as Exhibit A or Exhibit B is submitted, or (b) the instrument of conveyance itself contains all such matters required to be set forth in a Trustee's Certificate;
- or
- (2) Land Court approval has been obtained.

B. Nominee Trust Conveyances - Trust in Different Registry District or recorded in Registry of Deeds

Conveyances by Trustees of a nominees trust are acceptable if

- (1) the instrument of conveyance is authorized by the terms of the registered or recorded (previously or simultaneously) trust instrument and (a) attested copies of the trust declaration, or of a certificate pursuant to G.L. c. 184 §35, and all amendments thereto and all trustee resignations and appointments are submitted (as established by a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment), and (b)(i) a Trustee's Certificate in substantially the form attached hereto as Exhibit A or Exhibit B is submitted, or (ii) the instrument of conveyance itself contains all such matters required to be set forth in a Trustee's Certificate, and with respect to a Trust for which only a Certificate pursuant to G.L. c. 184 §35 has been recorded, it is subscribed and sworn to under the pains and penalties of perjury
- or
- (2) Land Court approval has been obtained (this requires the fully executed instrument and a Land Court Examiners Report on the contents and status of the trust).

CAVEAT: Certificates pursuant to G.L. c 184 § 35, once recorded or registered in connection with, and establishing authority for, a particular transaction, may not be used for subsequent transactions at a later date unless: (a) the earlier certificate establishes that the termination of the trust has not occurred as of the date of the later transaction, or (b) the earlier certificate provides that any party interested in title to the locus may rely on the continuing existence of the trust until the recording of a certificate or document establishing the termination of the trust.

CAVEAT: A trustee certificate as contained in attached Exhibit A cannot be used alone

to demonstrate authority of a trustee to convey, in cases where the trust instrument is not of record and a certificate pursuant to G.L. c. 184, § 35 instead has been recorded or registered, unless the recorded or registered G.L. c. 184, § 35 certificate authorizes any party interested in title to the locus to rely on such a trustee certificate.

C. Trust Conveyances Other Than Nominee Trusts- Trust in Same Registry District

Trust conveyances are acceptable if the instrument is authorized by the terms of the trust. In these cases no separate Trustee's Certificate is required.

D. Trust Conveyances Other Than Nominee Trusts- Trust in Different Registry District or recorded in Registry of Deeds

Trust conveyances are acceptable if

- (1) the instrument of conveyance is authorized by the terms of the trust and (a) attested copies of the trust declaration (or, instead, provided the trust is not a testamentary one, of a recorded or registered certificate pursuant to G.L. c. 184, §35) and all amendments thereto and all trustee resignations and appointments are submitted (as established by a certificate by an attorney, or given under oath by the trustee, certifying that the instrument or certificate of which the attested copy is provided is current, in force, and not the subject of any recorded amendment) and (b)(i) a Trustee's Certificate in substantially the form attached hereto as Exhibit C is submitted, or (ii) the instrument itself contains all such matters required to be set forth in a Trustee's Certificate

or

- (2) Land Court approval has been obtained (this requires the fully executed instrument and a Land Court Examiners Report on the contents and status of the trust).

EXHIBIT A

Form of Trustee Certificate for Nominee Trust

[NAME OF TRUST]
TRUSTEE CERTIFICATE

The undersigned hereby certifies as follows:

1. _____ [is/are all of the] Trustee(s) of _____ u/d/t dated and recorded with the _____ [County] District Registry of Deeds [Land Court Registration District] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No. ____], as amended by _____ , dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] "Trust".
 2. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.
 3. The undersigned has [have] full power and authority and has [have] been directed by the beneficiaries of the Trust to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at , County, Massachusetts ("Premises"), and in connection therewith to execute and deliver , on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to _____ in full consideration of the sum of \$ _____ [a promissory note of the undersigned in the amount of \$ _____ payable to , and as security therefor, a mortgage of the Premises to said lender], together with any other agreements, assignments, certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction.
- Executed as a sealed instrument this _____ day of _____ , 20__.

Trustee and not individually

EXHIBIT B

Form of Certificate where Certificate of Trust has been filed

TRUSTEES' CERTIFICATE

PURSUANT TO G. L. C. 184, §35

**NAME OF TRUST
DATED**

I, **NAME OF TRUSTEE**, Trustee of **NAME OF TRUST** under **INDENTURE/AGREEMENT/DECLARATION** of Trust dated **DATE**, recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.], as amended by , dated and recorded with the _____ County District Registry of Deeds [Land Registration District] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] (the "Trust"), certify as follows:

1. **[NAME OF TRUSTEE(S)] IS/ARE** the current trustee(s) of the Trust. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.

2. The undersigned has [have] full power and authority [**Insert where Trust is a Nominee Trust:** and has [have] been directed by the beneficiaries of the Trust] to enter into a sale/purchase/mortgage loan transaction with respect to certain premises situated at _____ , _____ County, Massachusetts ("Premises"), and in connection therewith to execute and deliver, on behalf of the Trust, any and all documents with respect to said transaction, including, but not limited to, a deed by the undersigned conveying the Premises to _____ in full consideration of the sum of \$ _____ [a promissory note of the undersigned in the amount of \$ _____ payable to , and as security therefor, a mortgage of the Premises to said lender], together with any other agreements, assignments, certificates, affidavits, settlement statements and documents as may be necessary or desirable in effectuating said transaction; and

3. There are no facts which constitute conditions precedent to acts by the trustees or which are in any other manner germane to affairs of the Trust.

[NOTE: for the Certificate to be used for future transactions, there should be added to the above format more general provisions, and either a specific expiration date or formula, or an explicit statement that all interested in title may rely on the continuing existence of the Trust until a further certificate is recorded or registered establishing the expiration or termination of the Trust.

There should be added to the above, if the trust so provides, a provision that one may, in the future, rely on a Certificate as set forth in Exhibit A to establish the facts set forth therein.]

EXECUTED, as a sealed instrument on _____, 20__.

NAME OF TRUSTEE, Trustee

7.COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 20__

Sworn to under the pains and penalties of perjury by the above-named **TRUSTEE**, as Trustee, before me,

Notary Public

My commission expires:

EXHIBIT C

Form of Trustee Certificate for Trusts Other than Nominee Trusts

[NAME OF TRUST]
TRUSTEE CERTIFICATE

The undersigned hereby certifies as follows:

1. _____ [is/are all of the] Trustee(s) of _____ u/d/t dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.], as amended by , dated and recorded with the _____ County District Registry of Deeds [Land Court Records] at Book , Page , [or registered as Document Number _____ as noted on [Transfer] Certificate of Title No.] "Trust".
2. The trust is in full force and effect and has not been amended or modified, except as provided above, and has not been revoked as of the date hereof.

Executed as a sealed instrument under the pains and penalties of perjury this ___ day of _____ , 20__.

Trustee and not individually

53. Trusts: Trustee's Deed for Nominal Consideration

(May 1, 2000, Revised February 27, 2009)

A trustee's deed containing a recitation of nominal consideration may be accepted for registration without prior Land Court approval when accompanied by a trustee's certificate, if authorized by the trust, or a certificate pursuant to G.L. c. 184 §35, signed by at least one of the trustees, certifying that all the beneficiaries who are natural persons are of full age and are competent and that all of the beneficiaries have assented to the conveyance for nominal consideration (See the attached sample certificate.)

The requirements of this guideline address only the issue of a deed reciting nominal consideration; the requirements of other guidelines relating generally to instruments executed by trustees also must be satisfied.

I, _____ Trustee
of _____ under a Declaration of
Trust dated _____ and registered as _____
hereby certify that:

1. Said Trust is in full force and effect.
2. All the beneficiaries of said trust who are natural persons, if any, are of full age.
3. All the beneficiaries of said trust who are natural persons, if any, are competent.
4. All the beneficiaries of said trust have consented to the transfer of the property to _____ for nominal consideration.

Signed under the penalties of perjury.

Signed: _____

Dated: _____

[Add Oath]

54. UCC Financing Statements

(May 1, 2000, Revised February 27, 2009)

Pursuant to G.L. c. 106, § 9-502, UCC financing statements filed against registered land should indicate that the financing statement is to be filed in the Registration District. Statements should contain a description of the real estate including a lot number on a Land Court Plan and the current certificate of title, and, if the debtor is not also the owner, must show the name of the registered owner(s) as set forth in the certificate of title. The UCC financing statement must describe the collateral and also show the names of both the debtor and secured party or its representative. The statement need not be signed by the secured party. If the statement is filed simultaneously with related loan documents (such as a mortgage, assignment of leases, or similar documents) as part of the same transaction, and those related documents have been signed by the debtor listed on the proffered UCC financing statement, it need not be signed by the debtor. If the UCC financing statement is unsigned by the debtor and filed unaccompanied by other loan documents, it will be filed by the district, and noted on the certificate of title with the marginal notation on the memorandum of encumbrances: "Unsigned, no proof of authorization supplied." This marginal notation may be removed (or dispensed with in the first instance) by obtaining approval from the court's Chief Title Examiner or an order of the court, upon presentation of satisfactory evidence that the filing of the UCC Statement was duly authorized by the debtor.

G.L. ch. 106, § 9-521, sets forth the form of an initial financing statement in a form, and containing the information required, to be acceptable for filing.

G.L. ch. 106, § 9-512 provides that all ancillary documents such as assignments, continuation statements, terminations, etc., subsequent to the original financing statement must refer to the document number of the original. Such ancillary documents need not be signed by the secured party or by the debtor. If an assignment or termination statement is filed simultaneously with related documents (such as an assignment or discharge of a mortgage or assignment of leases and rents) as part of the same transaction, and those related documents have been signed by the secured party listed on the proffered UCC assignment or termination statement, it need not be signed by the secured party. If the UCC assignment or termination statement is unsigned by the secured party and filed unaccompanied by other assignment or discharge documents, it will be filed by the district, and noted on the certificate of title with the marginal notation on the memorandum of encumbrances: "Unsigned, no proof of authorization supplied," and the certificate of title (and any subsequent certificates which issue upon it) will continue to carry the notation of the unassigned or unterminated UCC financing statement, indicated as being affected by the subsequent assignment or termination statement, which in turn will be noted as not having been signed by the secured party. An assignment or termination statement unsigned by the secured party and unaccompanied by the filing of other assignment or discharge documents may be noted without caveat or qualification (and any such caveat or qualification may be removed from a certificate) by obtaining approval from the court's Chief Title Examiner or an order of the court, upon presentation of satisfactory evidence that the filing of the assignment or termination statement was duly authorized by the secured party.

Sections 9-502 and 9-515 of chapter 106 provide that if a financing statement is filed as part of a mortgage it is unnecessary during the life of the mortgage to file continuation statements for the financing statement. All other financing statements are effective for five years from the date of filing only, unless a continuation statement is filed within six months prior to the expiration of said five year term.

55. Approval by the Chief Title Examiner

(Added February 27, 2009)

In many instances, including many set forth in these Guidelines, the prior approval of the Land Court's Chief Title Examiner or his or her designee, or an order of the court, will be required before a given document may be accepted by the court's Land Registration Districts. Listed below are a number, though by no means all, of the types of documents which require prior court approval, and the particulars of the submissions that ought to be made to the Chief Title Examiner to solicit approval.

ITEMS TO BE SUBMITTED IN CONNECTION WITH ALL APPROVAL REQUESTS:

An attested copy of the outstanding certificate of title, or a copy of the last prepared certificate and an attested copy of the deed into the current record owner should accompany all documents which are presented for approval. In all instances any applicable appeal period must have passed.

PARTICULAR TYPES OF DOCUMENTS REQUIRING APPROVAL FOR REGISTRATION:

1. **FIDUCIARY DEEDS:** Executors, Administrators, Guardians, Conservators

A SALE UNDER DECREE OF PROBATE COURT

1. Decree of Sale will be issued by the Probate Court within one year of the death of the testator (G. L. Chapter 202, Section 19), or upon application of Guardian or Conservator.

Attorney should present to the Land Court:

1. Decree of Sale;
2. Attested copy of the Owner's Certificate of Title;
3. The fully executed deed;
4. Attested copy of the Probate and Family Court docket sheet.

The Grantor Clause should state as follows:

I, Executor/Administrator/Guardian/Conservator of the Estate of _____ holder of a decree of the Probate Court of _____ County, dated _____, by power conferred by said decree.

(The deed must conform in all respects to the decree.)

B EXECUTOR'S DEED UNDER POWER OF SALE IN THE WILL

Attorney should present to the Land Court:

1. An attested Probate Court copy of the will;
(to use this method, the power of sale in the will must be unequivocal.)
2. An attested Probate copy of the Executor's Appointment;
3. The attested copy of the Owner's Certificate of Title;
4. The fully executed deed;
(The grantor clause should clearly state that the Executor is selling pursuant to the power conferred by the will of the deceased owner.)
5. Attested copy of the Probate and Family Court docket sheet.

C OTHER PROBATE DECREES

1. Any deed executed pursuant to an order of the Probate Court (Special Master, Estate Plan, etc.) must be approved at Land Court before registration.
2. An attested copy of the Order authorizing the sale or the allowed motion should accompany the deed;
3. Attested copy of the Probate and Family Court docket sheet.

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**NOTE:** For a more detailed treatment of Fiduciary Deeds see Land Court Guideline 14;  
Death: The effect of death upon registered land titles.

**2. BANKRUPTCY INSTRUMENTS**

All instruments executed by a Trustee in Bankruptcy or a debtor in possession must be approved by the Land Court.

**A BANKRUPTCY CODE TRANSFERS**

**Attorney should present to the Land Court:**

1. Attested copy of the Owner's Certificate of Title;
2. Fully executed instrument for approval; and
  - a. Certified copy of Bankruptcy Court Order approving sale pursuant to Notice of Intended Sale and Motion To Approve Sale (all such pleadings shall conform to all applicable local rules);
  - b. Bankruptcy Court Clerk's Certificate or a report by a Land Court Title Examiner that an examination of the docket in the case indicates the following:
    - i. the case was commenced by the filing of a petition;
    - ii. the appointment of a trustee, if the conveyance is by a trustee;
    - iii. that on a particular date, the trustee, debtor or debtor-in-possession filed a

Notice of Intended Sale and Motion To Approve Sale (all such pleadings shall conform to all applicable local rules);

- iv. that notice was given to all parties in interest and a Certificate of Service has been filed with the Bankruptcy Court;
- v. that no objections to the sale were filed and that no hearing was requested.

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NOTE: An attested copy of the docket may be provided if it conclusively establishes i - v, however, in cases where order includes a provision trust sale is free and clear of all liens, an affidavit of service showing parties notified must accompany docket.

B MOTION TO AVOID JUDICIAL LIEN

Attorney should present to the Land Court:

- 1. Certified copy of motion which includes certificate of service;
- 2. Certified copy of order in debtors motion;
- 3. Copy of certificate of title which shows liens specified; and
- 4. Copy of docket showing there was no appeal.

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**NOTE:** If affidavit and docket not provided, motion will be approved but both motion and lien(s) will be carried forward on new certificate of title.

3. **PENSION FUNDS** (as mortgagee)

**Attorney should present to the Land Court:**

- 1. Original document or a certified copy of same;
- 2. A copy will be retained here by the Court and from that point on we will approve documents if Trustee files a certificate attesting:
  - a. A true and attested copy of this fund is on file with the Land Court in Boston;
  - b. There have been no changes in said instrument since the date of filing with the Court;
  - c. Or the attorney may produce the original document each time approval is necessary;
- 3. If the Pension Fund is a trust, a trust certificate pursuant to G.L. ch. 184, §35 may be used instead.

4. **EXCEPTION DEEDS AS PERMITTED PURSUANT TO GUIDELINE 18**

5. **PARTITION BY SALE INVOLVING REGISTERED LAND**

A commissioner having a warrant for sale in a partition proceeding must comply with the warrant. The transaction must subsequently be approved by the court that issued the warrant.

**Attorney should present to the Land Court:**

1. Executed deed, copy of certificate of title and copy of registered notice of partition;
2. A commissioner's deed of registered land must be approved by the Chief Title Examiner or his designee before registration and will contain the caveat that "it derives from a partition G.L. ch. 185, §92." This notation will appear on the new certificate of title and will be carried forward from certificate to certificate until someone files as petition to remove it; and
3. The S-petition shall provide evidence that the warrant was returned and the transaction approved by the issuing court.

6. **SUCCESSOR TRUSTEES/REMOVAL OF TRUSTEES**

1. In all instances involving a nominee trust and in other cases upon referral from a Registry District, the appointment and acceptance of successor trustees, removal of trustee or any other action by the beneficiaries shall be approved by the Chief Title Examiner prior to registration.
2. In cases involving a nominee trust, where the trust calls for the beneficiaries to appoint a successor, evidence of the identity of the beneficiary will be required along with the certificate of appointment.
3. In cases where the trust allows for a certificate by a trustee to be registered to evidence a change of trustees, the court will determine who is eligible to execute said certificate.
4. Death certificates and acceptances of trustees are required to be registered along with any appointment or certificate.
5. In cases where there is a surviving trustee of record, a certificate pursuant to G.L. ch. 184, §35 may be substituted for the above procedures, along with the appropriate collateral documents.

## **56. Bank Mergers**

(Added February 27, 2009)

Pursuant to G.L. ch. 183 § 55(i) a mortgage discharge, assignment or partial release may be accepted for registration if there is contained in the document a recitation as to any merger, consolidation, amendment, conversion or acquisition of assets causing a change in name or identity of the entity executing the document without further documentation. Such a recitation does not and cannot cure a situation involving an unregistered assignment.

The use of the phrase "formerly known as" shall be interpreted as a name change unless there is reason to believe it is being used for another purpose. The registry districts will contact the Chief Title Examiner or his or her designee whenever a question regarding this phrase arises.

If there is no recital in the document, or the document is not covered by the statute, as an alternative method of proving the succession of bank interests, a certificate of a Massachusetts attorney may be submitted to and approved by the Chief Title Examiner or his or her designee. The certificate should identify the registered documents and/or certificate(s) of title to be affected by the proffered new documents, the names and identities of the lender entities involved, the complete line of merger, acquisition and changes of name to show an unbroken line connecting the record title holder to the party to the proffered instrument.

The Court recognizes the increasing availability of reliable, verifiable information that may be obtained on the Internet and in particular the information that may be obtained with respect to bank mergers, acquisitions and changes of names that may be available on the FDIC Institution Directory currently located at <http://www3.fdic.gov/idasp/main.asp>, the National Credit Union Association, <http://www.ncua.gov>, and the Office of the Comptroller of the Currency, <http://www.occ.treas.gov> . A certification by a member in good standing of the bar of Massachusetts which sufficiently sets forth a chain of succession of a bank and/or name change(s), and which has attached to it copies printed currently from the web site of the governing regulatory body for such institution may be submitted to the Chief Title Examiner or his or her designee, and, if approved, may be registered and filed with the Registry District with the proffered document, in the same manner and with the same effect as a Certificate from the Comptroller of the Currency.

## 57. Condominiums: Approval of Condominium Documents

(Added February 27, 2009)

### 1. Introduction

When is Land Court Approval Required? Prior to filing in the Registry Districts, the Land Court must approve a master deed, and related instruments and plans, creating a condominium where all or any part of the land being submitted to G. L. c. 183A is registered land. Amendments to master deeds and the related instruments and plans also require prior approval by the Court in Boston. No original or amended master deed or related condominium instrument or plan should be registered by the registry district of the Court unless the master deed or master deed amendment has been approved. Approval is indicated by the dated signature of a Justice of the Land Court on the first page of the master deed and master deed amendment. Subsequent pages of the master deed and master deed amendment ordinarily bear the initials of the Justice who approved the document. Neither the condominium trust instrument or by-laws, nor amendments to them, require a Justice's signature to be registered.

This Guideline describes the documents that must be submitted for approval or as part of the approval process. Any document submitted for final approval pursuant to this guideline must be fully executed before the Court will review it formally and grant approval. It is possible, however, to obtain preliminary staff review of near-final draft condominium documents which have not been fully executed.

For approval requirements in cases where the condominium is to be withdrawn from registration, please see Section 7 herein.

*Extent of Review.* The Court reviews these documents for compliance with the elemental statutory requirements discussed below and will approve a master deed if it satisfies the limited express requirements of G. L. Chap. 183A, including those set forth in Section 8, necessary for the establishment of a condominium and the valid submission of the registered land to the provisions of Chapter 183A. The Court's review is limited to this purpose and, therefore, any approval granted by the Court simply means that the master deed satisfies the minimum statutory requirements of Chap. 183A and that, upon filing for registration, such master deed will create a validly formed condominium under G. L. c.183A.

*Limited Nature of the Court's Approval.* Approval does *not* mean that the court considers any other provisions contained in the documents to be lawful or enforceable, in whole or in part. The court does not address in its review and approval, by way of a few examples only, any provisions having to do with rights and procedures regarding phasing or other retained developer rights and interests; the governance and finances of the condominium and the rights of unit owners among themselves; the rights and remedies of a declarant or the organization of unit owners; the computation, assessment, or enforcement of liens or charges, including common expense charges; any rights, rules or regulations governing the use of units or common elements; etc. If a master deed purports to establish rights and procedures concerning future phases or development of the site, the court's approval does not address those issues, which will be considered by the court only in the context of a later presented master deed amendment addressing the phasing or further development, and which may at that time be disapproved notwithstanding that the amendment is consistent with a procedure laid out in the original master

deed.

Likewise, the Court's approval of a master deed does not constitute an approval of any plan filed with such master deed nor does it mean that the filing of any such plan constitutes an amendment or modification of a prior registered plan issued or approved by the Land Court. Nothing done by the Court in the approval of condominium documents for registration alters, amends, or controls the duly approved Land Court Plans which the Court has issued with respect to the property on which the condominium exists.

Approval does not mean that the Court has determined that either the declarant or any other signatory has the requisite title or authority to submit the land to Chap. 183A or that the condominium complies with, and does not violate, any restrictions or other encumbrances contained or referenced in the certificate of title or in the back title of the land being submitted to Chap. 183A. Notwithstanding the Court's approval of a condominium document pursuant to this Guideline, determinations regarding the title and authority of the declarant or other parties to execute condominium documents will be made at the local registration office, not by the Court in Boston, in the same manner as determinations of proper title and authority are made for any conveyance of an interest in registered land.

## 2. Instruments to be Submitted to Court for Review.

The Land Court will only approve fully executed documents, but either executed or near-final unexecuted documents may be submitted initially to obtain preliminary staff comment regarding issues which may preclude formal approval. Counsel are urged to revise documents in response to staff comment prior to their presentation to a Justice of the Court for formal review. Counsel are reminded that review and approval of condominium documents by the Court may require time, particularly if revisions are indicated before approval can be sought formally and obtained, and that submissions to the Court should be made sufficiently in advance to accommodate closing dates.

The following are required:

### A. Master Deed.

### B. Condominium Trust or By-Laws.

If the organization of unit owners is a trust, the trust document should contain the by-laws of the organization. If the organization is an unincorporated association or a corporation, a set of by-laws is required.

Must be executed.

### C. Certificate of Title.

A copy of the owner/declarant's certificate of title, with the full

memorandum of encumbrances, must be provided to the Land Court for review. The certificate must be current within thirty (30) days of the day it is provided to the Land Court, and must be known to be up-to-date by the person providing it, to the best of his or her knowledge. If the owner(s) of the land being submitted to Chap. 183A has only recently acquired the property and no new certificate has yet been prepared, a copy of the cancelled certificate of the prior owner and a copy of the deed into the current owner is required.

D. Site Plan.

A site plan prepared, signed and sealed by a professional land surveyor must be submitted whenever the condominium is to include any easements or limited or exclusive common areas outside of a building of the condominium property. (The Land Court recommends that site plans be submitted for all condominiums, but site plans are only required when the condominium is to include any easements or limited or exclusive common areas outside of a condominium building.) It is recommended that, in addition, a copy of any Land Court plan upon which the site plan is based also be submitted as part of this process. (Any variation between the submitted site plan and said Land Court plan should be shown on the site plan.)

E. Floor Plans.

A set of floor plans for each building of the condominium fully and accurately depicting the layout, location, unit number and dimensions of the units, as built at the time of the master deed, must be submitted for approval of the master deed or amendment. The floor plans also must state the name of the building or that it has no name, and must bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that such plans fully and accurately depict the layout, location, unit number and dimensions of the units as built, all as provided by G. L. c. 183A, § 8(f).

3. Master Deed Requirements.

The scope and effect of the Land Court's approval of a master deed is limited, as explained above. In accordance with G. L. c. 183A, § 8 each master deed must contain the following:

- (a) A statement to the effect that the owner or lessee proposes to create a condominium to be governed by G. L. c. 183A, as required by G. L. c. 183A, § 2.

- (b) A description of the land on which the building or buildings and improvements are located. Said description must include a reference to a lot or lots on current Land Court approved plan or plans, and a reference to current valid certificate or certificates of title.
- (c) A description of each building stating:
  - 1. the number of stories,
  - 2. the number of units if there is more than one; and
  - 3. the principal materials of which it is constructed.
- (d) The unit designation of each unit, and a statement of its
  - 1. location;
  - 2. approximate area;
  - 3. number of rooms;
  - 4. immediate common area to which it has access; and
  - 5. any other data necessary for its proper identification.
- (e) A description of the common areas and facilities and the proportionate interest of each unit in the common areas and facilities.
- (f) A set of the floor plans of the building or buildings (discussed more fully below).
- (g) A statement of the purposes for which the building and each of the units are intended and the restrictions, if any, as to their use.
- (h) The method by which the master deed may be amended.
- (i) The name and mailing address of the corporation, trust or association which has been formed and through which the unit owners will manage and regulate the condominium, together with a statement that such corporation, trust or association has enacted by-laws pursuant to G. L. c. 183A.

If a trust or unincorporated association is named, the master deed also shall set forth the names of the trustees or managing board.

- (j) The name of the lessor of each lease that is submitted to the provisions of G. L. c. 183A and the recording data for each such lease or notice thereof. (G. L. c. 183A, § 8A contains additional requirements for a leasehold condominium that also must be satisfied if a leasehold condominium is comprised in part or in whole of registered land. In addition, pursuant to G. L. c. 183A, § 9(a), if the condominium relates to a lease which has been submitted to Chapter 183A, the name of the condominium must contain the word “Lease” or “Leasehold.”)

Notwithstanding the foregoing, if the proposed condominium constitutes a "commercial condominium" under G. L. c. 183A, § 21, then the master deed need not contain a statement of the number of rooms in any unit designed for purposes other than dwelling and may contain such other provisions as are set out in said Section 21. However, the Court still requires a site plan where it would otherwise be required of a non-commercial condominium.

#### 4. Requirements for By-Laws.

The Land Court's approval of condominium by-laws is limited to verifying that the by-laws match the referencing information in the Master Deed pursuant to G. L. c. 183A, § 8(i). The Court does not check to determine whether the statutory requirements for by-laws contained in G. L. c. 183A, §§ 10 and 11 have been satisfied, because those provisions do not go to title. It is the responsibility of counsel for the declarant to ensure that the by-laws comply with all provisions of G. L. c. 183A, including, for example, §§ 10 and 11. Accordingly, any approval granted by the Court simply means that the Master Deed satisfies the minimum statutory requirements of Chap. 183A and that the references in the Master Deed to the by-laws match up. The Court does not review or pass on rules and regulations.

#### 5. Site Plan Requirements.

The site plan must contain and show the following (although not necessarily in the order stated):

- (a) Plan Title containing:
  1. condominium name;
  2. phase designation (if any);
  3. locality;
  4. surveyor's: name; full business address and telephone number; date; and
  5. Land Court plan and lot number(s);
- (b) All Buildings, indicating:
  1. complete exterior dimensions to the nearest 0.1' or 1";
  2. distance to lot or phase lines to the nearest 0.1' or 1";
  3. unit designations; and
  4. number of stories;
- (c) Exclusive or Limited Use Easements
  1. located accurately on the parcel, in a clear and certain measured location on the lot, and fully dimensioned to the nearest 0.1 or 1".
- (d) North Arrow
- (e) Scale

- (f) "As-Built" Certification:  
"I certify that this plan fully and accurately depicts the location and dimensions of the buildings as built and fully lists the units contained therein, and further fully and accurately depicts, locates, and provides the dimensions of all limited or exclusive use common areas and facilities of the condominium outside of any building."
1. signed and sealed by a professional land surveyor;
  2. dated.

6. Floor Plans.

A set of floor plans must be filed with a master deed. The floor plans must:

(a) show the

1. layout,
2. location,
3. unit numbers, and
4. dimensions of the units to the nearest 0.1 foot or inch,
5. individual rooms (need not be dimensioned)(non-habitable spaces need not be shown separately).

(b) state the name of the building or that it has no name; and

(c) bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans fully and accurately depict the layout, location, unit number and dimensions of the units as built. This "As-Built" Certification, required by G. L. c. 183A, § 8(f), must appear on each sheet of the floor plans and must be dated, signed and sealed by the engineer, architect or surveyor who prepared them. It should provide:

"I certify that this plan fully and accurately depicts the layout, location unit number(s) and dimensions of the units numbered \_\_\_\_\_ through \_\_\_\_\_ inclusive, in building [name] as built."

7. Withdrawal From Registration.

In some instances, the owner of registered land on which a condominium is proposed may seek to have the land withdrawn from the provisions of the Registration Act, G.L. c. 185. The owner's ability to withdraw, and the procedure to be followed, depends on the basis for withdrawal which the owner is able to demonstrate in a particular case.

If only a portion of the land being submitted to condominium status under G.L. Chap. 183A is registered land, the owner of the land being submitted to Chap. 183A need not seek Land Court approval of the master deed and related documents *if*, pursuant to G. L. c. 183A, § 16, the owner:

(a) has recorded a master deed covering the whole of the land (including the registered land) in the appropriate registry of deeds, on the recorded side of the Registry; and (b) thereafter files a complaint to withdraw the registered land from the provisions of G. L. c. 185 pursuant to the provisions of G. L. c. 183A, § 16.

If all of the land being submitted to Chap. 183A is registered land, its owner may elect to withdraw the land from the provisions of Chap. 185 by employing the provisions of G.L. c. 185, § 52, by filing a complaint for withdrawal under that statutory section. In this case, the owner must seek a basic review of the master deed which is far more limited than the review that would be required absent a complaint for withdrawal from the registration system. This review will be limited to examination of the master deed and condominium floor plans to ensure they satisfy the statutory requirements of G. L. c. 183A, §8. A site plan need not be submitted. If the master deed passes that basic review, the court then also may approve the complaint for withdrawal of the land from registration. The owner will file the master deed with the appropriate land registration office simultaneously with the court's approval of the request to withdraw the land from registration removing the land from the operation of the Torrens system. In these cases, the Court's approval of the master deed after this limited review is provisional, conditioned on the condominium land being removed from G. L. c. 185, pursuant to the provisions of G. L. c. 185, § 52, no later than the time the master deed goes to record.

Owners of registered land who wish to consider the removal of land from the registration system in connection with the establishment of a condominium are urged to contact the court's title examination staff for helpful guidance, information, and forms.

Please see Guidelines 63 & 64 for a more detailed description of the requirements for withdrawing a condominium from registration.

## **58. Conveyances by Cities and Towns**

(Added February 27, 2009)

The grant of easement or a deed from a city or town should be accompanied by a municipal clerk's certificate which recites and/or gives evidence of the authority by which the grant or deed is being made. Doubtful questions should be referred to the Chief Title Examiner for approval.

G.L. c. 44, § 63A provides that whenever a city or town sells any real estate, the board or officer executing the deed shall, as a condition precedent to the power to deliver the deed, receive from the grantee a payment in lieu of real estate taxes. The statute also provides that a recitation in the deed of full compliance with the provisions of the statute shall be conclusive evidence of such fact. Therefore every deed from a city or town should contain such a recitation. Any deed from a city or town not containing such a recitation must be approved by the Court or the Chief Title Examiner or his or her designee.

## **59. Indefinite References**

(Added February 27, 2009)

The provisions of G. L. c.184, §25, the “indefinite reference” statute, protect titles from being or becoming subject to various types of interests which are not set forth in recorded or registered instruments.

But this statute, by its terms, does “not apply to a reference to an instrument in a notice or statement permitted by law to be recorded instead of such instrument.” For this reason, Registry Districts should not treat as indefinite references, and should not on that ground refuse to accept, documents which are notices or statements permitted by law to be recorded instead of, or in the place of, another instrument. Examples of these notices or statements include notices of lease, notices of assignment of leases, and notices of contract and of substantial completion under the mechanic’s lien statutes.

The indefinite reference statute also does not apply to a reference to the secured obligation in a mortgage or other instrument appearing of record to be given as security. It is permissible to refer--in a mortgage, collateral assignment of leases and rents, or similar registered instrument--to a promissory note, security agreement, construction agreement, construction loan agreement, option agreement, purchase and sale agreement, or similar agreement for which the mortgage or other registered document is given as security, even though the agreement referred to is not registered with the mortgage.

As to the provisions of the indefinite reference statute that deal with a conveyance to a party as trustee where there is no recorded trust instrument, see Land Court Guideline No. 51, Trusts: Conveyances to Trustees.

## **60. Mortgages Affecting Appurtenant Easements**

(Added February 27, 2009)

When a Certificate of Title includes on its face an appurtenant easement for the benefit of the registered land described in the Certificate, a mortgage registered or recorded against the title of the servient estate should not be noted on the Certificate of Title of the dominant estate.

When the title to registered land described in a Certificate of Title is subject to an easement for the benefit of recorded land, a mortgage recorded against the title of the dominant estate should not be noted on the Certificate of Title of the servient estate.

**61. Mortgages: Discharge Notations for Expired Mortgages (G. L. ch. 260, § 33)**

(Added February 27, 2009)

Any mortgage of registered land which does not set out any term or maturity date of the obligation secured, expires 35 years after the date of registration of the mortgage. Any mortgage of registered land in which a term or maturity date for the secured obligation is stated, expires 5 years after the stated term or maturity date.

However, in either case, if there has been registered an extension, acknowledgment or affidavit that the mortgage has not been satisfied, the period shall continue until 5 years shall have elapsed during which there is not registered any further extension of the mortgage, or acknowledgment or affidavit that the mortgage is not satisfied.

Pursuant to M.G. L. c. 260, § 33:

Upon the expiration of the period provided herein, the mortgage shall be considered discharged for all purposes without the necessity of further action by the owner of the equity of redemption or any other persons having an interest in the mortgaged property and, in the case of registered land, upon the payment of the fee for the recording of a discharge, the mortgage shall be marked as discharged on the relevant memorandum of encumbrances in the same manner as for any other mortgage duly discharged. (emphasis added)

Upon written request, registries will discharge mortgages which meet the above criteria. The attached form is to be filled out and, upon the payment of a fee equal to that required for the registration of a discharge, a document number will be assigned to the form and a discharge notation entered on the Certificate of Title. The notation will make reference to M.G. L. c. 260, § 33.

REQUEST FOR A DISCHARGE NOTATION  
PURSUANT TO G. L. ch. 260 § 33

Property Address: \_\_\_\_\_

Mortgage Document No.: \_\_\_\_\_

Date of Registration: \_\_\_\_\_

Noted on Certif. of Title No.: \_\_\_\_\_

Original Mortgagor: \_\_\_\_\_

Original Mortgagee: \_\_\_\_\_

Assignee(s), if any: \_\_\_\_\_

( Document No. \_\_\_\_\_ )

Stated Term or Maturity Date Which Is: \_\_\_\_\_

No Stated Term

\_\_\_\_\_  
/s/

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

## **62. Trusts: Expired**

Added February 27, 2009

The term of a trust can end for numerous reasons, including on a specified date certain, after expiration of a term of years, following the death of one or more persons, etc. If it appears that the term of a trust has ended, the districts should not accept documents for filing with respect to that trust and the person desiring to file the documents should be advised that the documents must be approved by the court. Depending on the circumstances, approval may require an order of the court following the filing of a Supplemental Petition; in other cases, an approval by the Chief Title Examiner will suffice. Which will be required will depend on the complexity of the trust and the factual situation.

Even though the term of a trust may have ended, the trustee(s) still may have the power to convey the trust property. For instance, the trust instrument might provide that upon the death of certain persons the trustees are directed to sell the real estate assets in the trust so as to be able to distribute money, rather than tangible property, to the beneficiaries. Or the trust instrument may require the trustee(s) to convey the trust property to the remainder beneficiaries to settle the record title, and the identity of the remainder beneficiaries may be readily apparent. In such circumstances, and similar situations, if less than one year has elapsed since the expiration of the trust, the proponent of the document to be filed should present the facts to the Chief Title Examiner, accompanied by a certificate in accordance with the provisions of G.L. c. 184, § 35, stating that the trustee(s) executing the proffered document are authorized to do so. There will be other circumstances where a Supplemental Petition is not required, because an analysis of the trust instrument and the facts is straightforward.

There are far too many different factual patterns to describe them all in this guideline. Because gaining the approval of the Chief Title Examiner normally is quicker and less expensive than preparing and filing a Supplemental Petition with the Court, the proponent of the document normally should seek Chief Title Examiner approval in the first instance. However, if the trust instrument requires the approval of the beneficiaries of the trust or there is to be a deed of the trust property to the beneficiaries, and in either case the identity of the beneficiaries cannot be determined, a Supplemental Petition to the Court will almost certainly be required.

### **63. Voluntary Withdrawal (G. L. ch. 185, § 52)**

(Added February 27, 2009)

Land may be withdrawn from registration voluntarily by private owners who qualify under the governing statute, G. L. c. 185, §52, and by a public entity.

- A. Registered Land owners, other than public entities, who qualify under the statute may have their land withdrawn from registration when the following procedures are followed:**
1. Submit a complaint, signed by either the registered owners or their lawyer, accompanied by an executed “Notice of Withdrawal”, on the designated Land Court form. The notice must be signed by all of the owners and should contain an Exhibit A. The basic form of complaint is available from the Land Court, but must be augmented with allegations and exhibits, as necessary (see Items 7, 8, and 9 below.). A form of the complaint and notice are attached hereto.
  2. Filing fee is \$50.00.
  3. File an attested copy of certificate of title or an attested copy of the deed(s) into the current owner and a copy of the most recent prior certificate of title.
  4. If (a) the registered land constitutes less than 50 per cent of the total area of a single parcel or of two or more contiguous parcels in common ownership, or (b) the registered land consists of less than 10 per cent of the land area shown on the decree plan to which the original certificate of title pertains, the rest of the land area to which such certificate pertains having been conveyed since the original registration under Chapter 185, then in either case, plaintiffs must submit proof that their situation falls within the applicable clause--by attaching to the complaint relevant plans and deeds, which support the allegations in the complaint. There will be a review by the court’s Engineering Department of all complaints filed under Clauses (a) and (b).  
(The Court may require a certificate from a registered engineer or land surveyor to verify land area percentages.)
  5. In those cases where Plaintiffs allege they have submitted the land to the provisions of Chapters 183A or 183B, or have created interests in the land to which Chapter 183B is applicable pursuant to § 3 of Chapter 760 of the Acts of 1987 (Clause c), Plaintiffs must submit proof of the facts alleged.
  6. When withdrawal is sought for other good cause, under Clause (d), the complaint must set forth with specificity the grounds upon which the Court is asked to find “good cause.”
  7. Title examination by a Land Court Examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non-sequential appointment in

accordance with the SJC Rule must be made at the time of filing the complaint.) When the Court appoints an examiner, it will send the Notice of Appointment to plaintiffs' attorney, who is responsible for sending the Notice of Appointment to the examiner, together with a copy of the complaint.

8. The title examination should run from the date of the outstanding certificate of title and list all of the owners, mortgagees, and lessees, with an address for each.
9. Notice to all mortgagees and lessees of record is required. If plaintiffs do not submit the assents of all mortgagees and lessees, a citation will issue. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an ex-parte matter, and presented to the Court for its consideration. If any party notified files an opposition to the complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of § 52.
10. Upon the filing of the Notice of Voluntary Withdrawal endorsed by a Justice of the Court with the appropriate registry district, the land described in the Notice shall be deemed withdrawn and shall become unregistered land, and the owners shall hold title thereto at the time of such filing "free of all liens and encumbrances, including adverse possession and prescriptive rights, except those set forth or referred to in § 46 and those noted on the certificate of title or filed for registration before the filing of the notice of Voluntary Withdrawal, as though a Judgment of Confirmation without registration had been recorded under § 56A."
11. The Chief Title Examiner and Engineering Department will receive from the local registry district verification of the filing of the Notice of Withdrawal, with the document number and date of filing.
12. Plaintiffs' counsel should be aware that he or she may want to record a copy of the Notice of Withdrawal on the unregistered side of the Registry to provide a starting point for the title on the unregistered side.

**B. Land owned by the Commonwealth or any agency, department, board, commission or authority of the Commonwealth or any political subdivision thereof or any authority of any such political subdivision**

1. A complaint shall be filed by the public entity which has acquired the registered land. This complaint is to be drafted by the plaintiff and is not the complaint referred to in the previous section dealing with privately owned land.
2. Filing fee is \$50.00.

3. Title examination by a Land Court Examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non sequential appointment in accordance with the Rule must be made at the time of filing the complaint.) When the Court appoints an examiner, it will send the Notice of Appointment to plaintiffs' attorney, who is responsible for sending the Notice of Appointment to the examiner, together with a copy of the complaint.
4. The title examination should run from the date of the outstanding certificate of title and list all of the owners, mortgagees, and lessees, with an address for each.
5. Notice to all mortgagees and lessees of record is required. If plaintiffs do not submit the assents of all mortgagees and lessees, a citation will issue. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an ex-parte matter, and presented to the Court for its consideration. If any party notified files an opposition to the complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of § 52.
6. A court order will issue for the withdrawal of the land from the provisions of Chapter 185.

COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT

Case No. \_\_\_\_\_

**COMPLAINT FOR VOLUNTARY WITHDRAWAL OF LAND FROM THE  
REGISTRATION SYSTEM UNDER G. L. c. 185, § 52**

Plaintiffs are all of the owners of the fee simple estate in all of a parcel of land that has been registered under G. L. Chapter 185, and wish to withdraw the land from the provisions of that Chapter. Plaintiffs therefore seek endorsement of the Court approving the withdrawal, under § 52 of that Chapter, as amended by Chapter 413 of the Acts of 2000.

Plaintiffs submit with this complaint their executed Notice of Voluntary Withdrawal. The land to be withdrawn is described on Certificate of Title No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, issued from the \_\_\_\_\_ Registry District of \_\_\_\_\_ County and is shown on Land Court Plan No. \_\_\_\_\_ as follows:

- all the land described in the certificate of title  
 part of the land described in the certificate of title, namely:

Plaintiffs seek withdrawal under the following clause in the fourth paragraph of § 52:

- (a) The registered land constitutes less than 50 per cent of the total area of a single parcel or of two or more contiguous parcels in common ownership.
- (b) The registered land consists of less than 10 per cent of the portion of the land area to which an original certificate of title pertains, the rest of the land area to which such certificate pertains having been conveyed since the original registration under Chapter 185.
- (c) The owners of the registered land have submitted the land to the provisions of Chapter 183A or 183B or have created interests in the land to which Chapter 183B is applicable pursuant to § 3 of Chapter 760 of the Acts of 1987.
- (d) Other good cause for withdrawal, as follows: \_\_\_\_\_

**NOTE-**

**PROOF OF PLAINTIFFS' ENTITLEMENT TO WITHDRAW LAND FROM THE REGISTRATION SYSTEM UNDER CLAUSES (a)-(c), INCLUSIVE, MUST ACCOMPANY THE COMPLAINT AND BE INCORPORATED THEREIN. IF PLAINTIFFS ARE FILING UNDER CLAUSE (d), THEY SHOULD SET FORTH WITH SPECIFICITY WITHIN THE COMPLAINT THE NATURE OF THE GOOD CAUSE FOR WITHDRAWAL.**

**FROM THE OFFICE OF:**

Signed under the pains and penalties of perjury,

\_\_\_\_\_  
(Signatures of owners or their attorney)

Dated:



EXHIBIT A

*[ Insert Locus Description Here ]*

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

Pursuant to G. L. Chapter 185, § 52 , as amended by Chapter 413 of the Acts of 2000, the Voluntary Withdrawal from the registration system of the land herein described is approved, subject to all registered rights outstanding as of the date hereof.

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Justice

Dated:

## **64. Withdrawal From Registration (G. L. ch. 183A, § 16)**

(Added February 27, 2009)

If land on which a condominium is declared has a title which is both registered and unregistered, the registered portion may be withdrawn from the provisions of Chapter 185 pursuant to G. L. c. 183A § 16.

In a withdrawal pursuant to G. L. Chapter 183A, § 16, the condominium documents are not reviewed and allowed by the Land Court. The Master Deed, Condominium Trust or Association document, site plans and floor plans are recorded on the unregistered side of the Registry of Deeds. The petition and notice referred to below are filed and registered as soon as practicable after the recording of the condominium documents.

Preliminary action to be taken by petitioner prior to recording of Master Deed and Condominium Plan

1. In preparing the Master Deed, be sure it describes the registered land as it appears on outstanding certificate as "Parcel 1" followed by the recorded land parcel - "Parcel 2". It is wise to list after the registered land parcel all outstanding registered interests (i.e., rights of way, easements, mortgages, etc.) from the certificate of title.
2. Obtain a certified copy of the outstanding certificate(s) to submit with complaint.
3. Prepare a print of condominium site plan showing location of the registered land (delineated in red) and the existing buildings and proposed buildings, to submit with complaint.

Complaint to withdraw under Chapter 183A, § 16

1. Draft and file with the court in Boston an original complaint to withdraw, which must be signed by the owner (usually the declarant in the Master Deed) or the owner's attorney, under oath and acknowledged. If signer is a corporation, a vote is needed authorizing the officer to sign if it is not signed by President and Treasurer. A proper authority document should accompany any other complaint.

Complaint should state that the Master Deed has been recorded (attach an attested copy of the recorded Master Deed as an exhibit). The assents of all outstanding mortgagees and lessees on the certificate of title should also be attached as exhibits. An assent cannot be conditional. A copy of the condominium plan should also be an exhibit. The filing fee is \$50.00 and the complaint is treated as an "S" Petition.

2. Prepare "Notice of Intention to Withdraw from Registration under G.L. C. 183A § 16".

This may be signed by the attorney. Once this is on record assents from future buyers of units and mortgagees will not be required. Once your petition is filed with the Court, register your notice on the outstanding certificate. A sample notice is attached hereto.

NOTE: This is not the Notice of Withdrawal form which is used in a G.L. C. 185 § 52 proceeding.

3. The Court will order a title examination by a Land Court Title Examiner. This report is to disclose the mortgagees and lessees that have an interest in the land being withdrawn from registration. The recording of the Master Deed and Condominium trust as well as deeds of units, mortgages, etc. must be noted. Abstract of title should run up to the date of recording of the notice of "Intention to Withdraw from Registration" under Chapter 183A, § 16.

#### Notice

1. Assents of holders of mortgages and leases.
2. For those that refuse to assent, the Court will issue a citation with a return date. Notice will be sent via certified mail, return receipt requested.

#### Decree of Court

1. When the necessary papers have been submitted and checked, an order is prepared which is then presented to a Justice to have allowed.
2. The attorney receives the court order which is then to be registered and noted on the outstanding Certificate of Title. The property is then withdrawn from registration.

