PROBATE AND FAMILY COURT

LEARN AT LUNCH PROGRAM

UNDERSTANDING THE NEW AND REVISED MUPC ESTATE FORMS

APRIL/MAY 2016

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The “MUPC HUB”

http://www.mass.gov

What Forms are Revised? What Forms are New?

See Handout

RELEASE 1				
Number	Form/Document Name	New or Revised	Release Date	Effective Date
MPC 170	Voluntary Administration Statement	Revised	3/4/16	4/15/16
MPC 961	Instructions for MPC 170	New	3/4/16	4/15/16
MPC 150	Petition for Informal	Revised	3/4/16	4/15/16
MPC 962	Instructions for MPC 150	New	3/4/16	4/15/16
MPC 750	Order of Informal Probate	Revised	3/4/16	4/15/16
MPC 160	Petition for Formal	Revised	3/4/16	4/15/16
MPC 963	Instructions for MPC 160	New	3/4/16	4/15/16
MPC 755	Decree and Order on Petition for Formal Adjudication	Revised	3/4/16	4/15/16
MPC 162	Surviving Spouse, Children, Heirs at Law	New	3/4/16	4/15/16
MPC 958	Instructions for MPC 162	New	3/4/16	4/15/16
MPC 163	Devisees	New	3/4/16	4/15/16
MPC 959	Instructions for MPC 163	New	3/4/16	4/15/16
MPC 960	Massachusetts Degree of Kinship Chart	New	3/4/16	4/15/16
MPC 161	Petition for Late and Limited Formal Testacy and/or Appointment	New	3/4/16	4/15/16
MPC 964	Instructions for MPC 161	New	3/4/16	4/15/16
MPC 757	Decree and Order on Petition for Late and Limited	New	3/4/16	4/15/16
MPC 801	Bond	Revised	3/4/16	4/15/16
MPC 751	Letters of Authority	Revised	3/4/16	4/15/16
MPC 965	Checklist for Voluntary Administration	Revised	3/4/16	4/15/16
MPC 966	Checklist for Informal	Revised	3/4/16	4/15/16
MPC 967	Checklist for Formal	Revised	3/4/16	4/15/16
MPC 968	Checklist for Formal Late and Limited	New	3/4/16	4/15/16

Why are Forms Changing?

- Legislative Changes (§ 3-108(4))
- To get accurate information re: heirs/devisees
- To correct any errors or omissions
- To create consistent language, where possible
- To provide more instructions to petitioners
- To assist court staff by providing more instructional/self-help materials

Options to Open an Estate

- Voluntary Administration Statement
- Informal Petition
- Formal Petitions

What's changed?

Voluntary Administration Statement (MPC 170) What's changed?

- New "Click on" or Printed Instructions **(MPC 961)**
- Minor clarifications in #2, #9 and #10 of form
- Certification/attestation language at end of form
- Checklist **(MPC 965)**

Voluntary Administration Statement (MPC 170) What's changed?

2. Information about the Petitioner:

Name: First Name | M.I. | Last Name

(Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Mailing Address, if different: (Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Primary Phone #:

The Petitioner's interest in the estate is as follows (e.g., Personal Representative named in a will, surviving spouse, heir, devisee, etc. See G. L. c. 190B, §§ 3-1201, 1-201(24)):

click to add | click to remove

9. The following are the names and addresses of all persons who, with the deceased, were joint owners of property. Also listed are the names and addresses of those who would take in the case of intestacy and the names and addresses of those persons and/or charities who would take as devisees under the provisions of any will.

10. No petition is pending or has been granted in any jurisdiction. The undersigned understands that I/we are answerable and accountable to any subsequently appointed Personal Representative of the estate or any other person having a superior right to the estate.

(Do Not Write Below This Line-For Court Use Only)

CERTIFICATION

As Register of Probate having the care and custody of the records pertaining to this court, I certify that the preceding document is a true, exact, complete and unaltered copy of the Statement of Voluntary Administration filed with this court.

Date

Register of Probate

Voluntary Administration Checklist (MPC 965)

VOLUNTARY ADMINISTRATION CHECKLIST

DECEDENT DIED WITH A WILL (TESTATE) OR WITHOUT A WILL (INTESTATE)	
FORM	**Required, May Need or May Have**
☐ Voluntary Administration Statement **(MPC 170)**	REQUIRED
☐ Certified Copy of Death Certificate	REQUIRED
☐ Original Will, if any	REQUIRED
☐ Affidavit - as to domicile **(MPC 485)** or cause of death **(MPC 475)**	MAY NEED

The fee to file a voluntary administration is $115.00. The fee is broken down as follows: $100 for the filing of the Voluntary Administration Statement fee and a $15.00 surcharge fee to assign a docket number. The $115.00 filing fee includes one (1) attested copy of the Voluntary Administration Statement issued by the Register of Probate.

Voluntary Administration- New Instructions (MPC 961)

INSTRUCTIONS FOR VOLUNTARY ADMINISTRATION WITH OR WITHOUT A WILL

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

GENERAL INFORMATION

A voluntary administration is a simplified procedure and is available whether or not the decedent left a will. To be eligible for voluntary administration, the following criteria must be met:

1) The decedent must have been a resident of Massachusetts at the time of death;

2) The decedent left a probate estate consisting **entirely of personal property** valued at $25,000 or less (excluding the value of a car) regardless of date of death;

3) Thirty (30) days or more have passed from the date of the decedent's death;

4) The petitioner must be an interested person as defined by Massachusetts law (G. L. c. 190B, § 1-201(24)) but does not need to be a resident of Massachusetts. In the case of a person who at the person's death, was receiving services from the Department of Mental Health (DMH), the Department of Developmental Services (DDS) or the Division of Medical Assistance (DMA), the petitioner may be any person designated to act as a VPR of the estate of the person by DMH, DDS or DMA; and

5) No other proceeding seeking to probate the decedent's will or appoint a personal representative has been filed.

Alert: For purposes of filing a voluntary administration, a creditor is **NOT** an interested person. If an interested person is a minor, the minor's parents may **NOT** file on behalf of the minor without prior court authority.

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

FILING FEES

The total fee required to file for voluntary administration is $115.00. The fee is broken down as follows: $100 for the filing of the Voluntary Administration Statement and a $15.00 surcharge fee to assign a docket number. The $115.00 filing fee includes one (1) attested copy of the Voluntary Administration Statement issued by the Register of Probate.

OTHER FEES

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

☐ Copy, attested = $2.50 per page; ☐ Copy, unattested = $1.00 per page

Voluntary Administration- New Instructions (MPC 961)

VOLUNTARY ADMINISTRATION CHECKLIST

DECEDENT DIED WITH A WILL (TESTATE) OR WITHOUT A WILL (INTESTATE)	
FORM	**Required, May Need or May Have**
☐ Voluntary Administration Statement **(MPC 170)**	REQUIRED
☐ Certified Copy of Death Certificate	REQUIRED
☐ Original Will, if any	REQUIRED
☐ Affidavit - as to cause of death **(MPC 475)** or domicile **(MPC 485)**	MAY NEED

STEPS TO FILING YOUR CASE

STEP 1: Complete All Forms

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

☐ **Voluntary Administration Statement (MPC 170)**

- Complete all applicable sections of this form.
- **ALERT:** The petitioner must certify on the petition that the petitioner gave written notice prior to petitioning for voluntary administration by sending a copy of the petition and a copy of the death certificate by **certified mail** to the Division of Medical Assistance, Estate Recovery Unit. As of the time of this publication, the address is P. O. Box 15205, Worcester, MA 01615-0205. The Division of Medical Assistance is NOT the court.

Voluntary Administration- New Instructions (MPC 961)

STEP 2: Obtain Other Documents for Filing

☐ **Certified Copy of the Death Certificate**

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

☐ **Original Will**

- The original will must be filed if the decedent died with a will.

STEP 3: File Papers with the Court

- Provide the court with all required forms and documents completed above and pay the $115 filing fee.
- You must file the Voluntary Administration Statement in the county Probate and Family Court where the decedent resided at the time of death. For a listing of Massachusetts counties and the cities and towns within, see https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm.

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

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

WHAT TO EXPECT NEXT

- Once filed, an attested copy of the Voluntary Administration Statement will be provided to the petitioner by mail or in-person.

WHERE CAN I FIND MORE INFORMATION?

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

Petition for Informal (MPC 150) What's changed?

- Petition reduced from 5 to 3 pages
- New separate forms required to identify Surviving Spouse, Children, Heirs at Law **(MPC 162)** and Devisees **(MPC 163)**
- New "Click on" or Printed Instructions **(MPC 962)**
- Original vs. Amended in caption
- New Section headers
- New Form Alerts
- "Click on" links to other forms
- More instructions on petition

Informal Petition (MPC 150)
What's changed?

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

Amending an Informal– The Rule

- May amend ONLY prior to allowance
- No motion is required
- Amended form is required – "Amended Form" in the caption must be checked
- Assent and Waiver of Notice (MPC 455) or Notice (MPC 550) required (see § 3-306)
- No filing fee

- Why so easy? = There is no rule! ☺

Informal Petition (MPC 150)
What's changed?

I. GENERAL INFORMATION

The Petitioner(s) (hereafter "Petitioner"), an interested person, makes the following statements:

1. Information about the Decedent:

   Name: First Name Middle Name Last Name Age at death

   Also known as: Name

   click to add Alias click to remove

   Street Address: (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

   The Decedent was domiciled in (City/Town) . (State) .

FORM ALERT: A death certificate issued by a public officer is in the possession of the court or accompanies this Petition.

2. Information about the Petitioner:

   Name: First Name M.I. Last Name

   (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

   Mailing Address, if different: (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

   Primary Phone #:

   The Petitioner's interest in the estate is as follows (e.g., Personal Representative named in a will, surviving spouse, heir, devisee, etc. See G. L. c. 190B, § 1-201(24)):

   click to add click to remove

3. This Petition is filed within the time period permitted by law (See G. L. c. 190B, § 3-108). Three years or less have passed since the Decedent's death, or the following circumstances authorize tardy proceedings (*include statutory reference*):

FORM ALERT: Do not use this form to file a late probate proceeding pursuant to G. L. c. 190B, § 3-108(4). Use form MPC 161.

Informal Petition (MPC 150)
What's changed?

II. PERSONS INTERESTED IN THE ESTATE

6. The Decedent's surviving spouse, children, heirs at law and devisees (if any), so far as known or ascertainable with reasonable diligence by the Petitioner are as stated in form MPC 162 Surviving Spouse, Children, Heirs at Law **AND** if the Decedent died with a will, form MPC 163 Devisees incorporated herein.

☐ There are additional heirs at law who are not known to the Petitioner (*Formal proceeding required*).

FORM ALERT: Failure to submit this information will result in a delay in processing your case.

Informal Petition (MPC 150)
What's changed?

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE
(if requested)

8. ☐ The Petitioner requests that the following qualified person, who is 18 years of age or older, be appointed Personal Representative: ☐ Self only. ☐ Self and other(s): ☐ Other(s):

Name of other(s): First Name | M.I. | Last Name

(Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Mailing Address, if different: (Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Primary Phone #:

click to add | click to remove

9. All nominees listed above have priority for appointment:

☐ by statute. See G. L. c. 190B, § 3-203.

☐ by renunciation and/or nomination. Persons with higher or equal rights to appointment are:

First Name | M.I. | Last Name

click to add | click to remove

FORM ALERT: **All required renunciations/nominations using form MPC 455 must accompany this Petition.**

Informal Checklist (revised)– (MPC 966)

See Handout

Revised Checklist (MPC 966)

INFORMAL CHECKLIST

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

Rev. 3/1/2016

Informal Probate – New Instructions (MPC 962)

New Instructions (MPC 962)

INSTRUCTIONS FOR INFORMAL PROBATE WITH OR WITHOUT A WILL

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

GENERAL INFORMATION

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

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

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

Informal probate is **unavailable** if:

- the **original** will is lost, destroyed or otherwise unavailable;
- there is no official death certificate;
- the location or identity of any heir or devisee is unknown;
- the person to be appointed Personal representative does not have **priority for appointment** by statute or by renunciation and/or nomination;
- an heir or devisee is an incapacitated or protected person or a minor and is not represented by a conservator or is only represented by a guardian who is also the petitioner;
- the personal representative to be appointed is an interested person solely due to his or her status as a creditor or as a public administrator;
- the estate of a **since deceased** heir or devise is not represented by a personal representative;
- supervised administration is necessary;

Formal Petition (MPC 160)
What's changed?

- Petition reduced from 7 to 4 pages
- New separate forms required to identify Surviving Spouse, Children, Heirs at Law **(MPC 162)** and Devisees **(MPC 163)**
- New "Click on" or Printed Instructions **(MPC 963)**
- Original vs. Amended in caption
- New Section headers
- New Form Alerts
- "Click on" links to other forms
- More instructions on petition

Formal Petition (MPC 160)
What's changed?

PETITION FOR FORMAL	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
☐ PROBATE OF A WILL ☐ ADJUDICATION OF INTESTACY ☐ APPOINTMENT OF A PERSONAL REPRESENTATIVE ☐ OTHER: PURSUANT TO G. L. c. 190B, § 3-402 ☐ Original Form ☐ Amended Form		

Amending a Formal– The Rules

- A party may amend once *as a matter of course* at any time before an appearance has been filed before 10:00 a.m. on the return day.

  - If amending prior to service of the citation:
    - File "amended" pleading;
    - No motion required;
    - Serve amended pleading with current citation and published as ordered.

  - If amending after service of the citation:
    - File "amended" pleading;
    - No motion required;
    - Request and serve new citation ($15) (unless motion for alternative service allowed);
    - Republish if publication notice required by Rule 6.

  See generally, Rules 3 and 7 of the Supplemental Rules of Probate and Family Court; Rule 15 of the Massachusetts Rules of Civil Procedure

Amending a Formal– The Rules

- A party may amend after an appearance has been filed *only by leave of court* or by written consent of all parties.

  - If *by leave of court*, a motion must be filed and served on all interested persons;
  - If allowed, file the "amended" pleading
  - Request and serve a new citation ($15) (unless a motion for alternative service allowed)
  - Republish if publication notice required by Rule 6.

See generally, Rules 3 and 7 of the Supplemental Rules of Probate and Family Court; Rule 15 of the Massachusetts Rules of Civil Procedure

Formal Petition (MPC 160)
What's changed?

I. GENERAL INFORMATION

The Petitioner(s) (hereafter "Petitioner"), an interested person, makes the following statements:

1. Information about the Decedent:

Name: _____ First Name _____ Middle Name _____ Last Name Age at death _____

Also known as: _____ Name

click to add Alias | click to remove

Street Address: _____ (Address) _____ (Apt, Unit, No. etc.) _____ (City/Town) _____ (State) _____ (Zip)

The Decedent was domiciled in _____ (City/Town), _____ (State).

☐ A death certificate issued by a public officer is in the possession of the court or accompanies this Petition.

☐ A death certificate issued by a public officer is not in the possession of the court and does not accompany this Petition. The circumstances which make it impossible for a death certificate to be provided are (See G. L. c. 190B, §§ 3-402(b), 1-107):

2. Information about the Petitioner:

Name: _____ First Name _____ M.I. _____ Last Name

_____ (Address) _____ (Apt, Unit, No. etc.) _____ (City/Town) _____ (State) _____ (Zip)

Mailing Address, if different: _____ (Address) _____ (Apt, Unit, No. etc.) _____ (City/Town) _____ (State) _____ (Zip)

Primary Phone #: _____

The Petitioner's interest in the estate is as follows (e.g., Personal Representative named in a will, surviving spouse, heir, devisee, Public Administrator, creditor, etc. See G. L. c. 190B, § 1-201(24)): _____

Formal Petition (MPC 160)
What's changed?

II. PERSONS INTERESTED IN THE ESTATE

6. The Decedent's surviving spouse, children, heirs at law and devisees (if any), so far as known or ascertainable with reasonable diligence by the Petitioner are as stated in form MPC 162 Surviving Spouse, Children, Heirs at Law **AND** if the Decedent died with a will, form MPC 163 Devisees incorporated herein.

☐ There are additional heirs at law who are not known to the Petitioner (*Formal proceeding required*).

FORM ALERT: Failure to submit this information will result in a delay in processing your case.

Formal Petition (MPC 160)
What's changed?

III. TESTACY STATUS

7. The Decedent died (*select one*):

☐ **Intestate (without a will)**

After the exercise of reasonable diligence, the Petitioner is unaware of any unrevoked testamentary instrument relating to property in Massachusetts, or ☐ see attached statement of why such an instrument is not being probated.

☐ **Testate (with a will)**

The date of the Decedent's last will is _____ .

☐ The dates of all codicils are _____

(select one of the following):

☐ The original will is in the possession of the court or accompanies this Petition.

☐ The original will is lost, destroyed or otherwise unavailable and

☐ a copy of the original will accompanies this Petition OR

☐ a statement of its contents is attached and incorporated herein.

☐ The will has been probated in the state or country of _____ .

An authenticated copy of the will and proof of its probate are filed with this Petition.

The will and any codicils are referred to as the will. The Petitioner, to the best of his or her knowledge, believes the will was validly executed. After the exercise of reasonable diligence, the Petitioner is unaware of any instrument revoking the will and believes that the will is the Decedent's last will.

Formal Petition (MPC 160)
What's changed?

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE
(if requested)

8. ☐ The Petitioner requests that the following qualified person, who is 18 years of age or older, be appointed Personal Representative: ☐ Self only. ☐ Self and other(s): ☐ Other(s):

Name of other(s): First Name | M.I. | Last Name

(Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Mailing Address, if different: (Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Primary Phone #:

MPC 160 (2/26/16) **DRAFT** page 2 of 4

click to add | click to remove

9. *Select all that apply:*

☐ All or some of the nominees have priority for appointment:

☐ by statute. See G. L. c. 190B, § 3-203.

☐ by renunciation and/or nomination. Persons with higher or equal rights to appointment are:

First Name | M.I. | Last Name

click to add | click to remove

FORM ALERT: Any required renunciations/nominations using form MPC 455 must accompany this Petition.

☐ The nominee(s) without priority for appointment are:

First Name | M.I. | Last Name

click to add | click to remove

☐ Persons with priority have failed to request appointment or to nominate the above nominee and administration is necessary.

Formal Petition (MPC 160)
What's changed?

12. The Petitioner requests (*Select one of the following*):

- ☐ Unsupervised administration
  - ☐ The Decedent died intestate (without a will).
  - ☐ The will directs unsupervised administration or is silent on the issue.
  - ☐ The will directs supervised administration, but circumstances have changed since the execution of the will and there is no necessity for supervised administration because:
- ☐ Supervised administration
  - ☐ The will directs supervised administration.
  - ☐ The will directs unsupervised administration, but it is necessary for protection of persons interested in the estate

because:

- ☐ No will directs supervised administration but it is necessary under the circumstances, specifically:

13. ☐ The appointment of a Special Personal Representative is necessary pursuant to G. L. c. 190B, § 3-614 (*See separate motion and affidavit filed with this Petition*).

V. RELIEF REQUESTED

Formal Decree (MPC 755)
What's changed?

- Court "Findings" section is clarified for will copy; testacy; heirs at law
- Court "Decrees and Orders" section revised
- More instructions on Decree (so proposed decrees are correct!)

Formal Decree (MPC 755)
What's changed?

DECREE AND ORDER ON PETITION FOR FORMAL ADJUDICATION	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court

Estate of:

First Name | Middle Name | Last Name

Also Known As:

Date of Death:

Division

After a hearing or on the uncontested Petition for Formal Adjudication dated:

THE COURT FINDS:

1. The Petitioner is an interested person and has filed a complete and verified Petition.
2. The Decedent died on (date)

   ☐ domiciled in Massachusetts OR ☐ .
3. The Petition was filed within the time period permitted by law.
4. Any required notices have been given to or waived by all interested persons and any guardian *ad litem* appointed has assented to the Petition or the report of the guardian *ad litem* has been considered by the court.
5. Venue is proper.

Formal Decree (MPC 755)
What's changed?

6. ☐ The Decedent did not leave a will.

7. ☐ The Decedent left a will.

A. ☐ The original will is filed. The will is dated _____ (date). The dates of all codicils are _____ (date(s)). The will and any codicils are referred to as the will.

Based on a preponderance of credible evidence presented, the court is satisfied that:

The will is valid and unrevoked. There are no known prior wills that have not been expressly revoked by a later instrument. The will is the Decedent's last will.

--OR--

B. ☐ The original will has been lost, destroyed, or is otherwise unavailable. The copy of the will or the statement of its contents is dated _____ (date). The dates of all codicils are _____ (date(s)).

The copy of the will, or the statement of its contents, and any codicils are referred to as the will.

Based on a preponderance of the credible evidence presented, the court is satisfied that:

a. The contents of the will are as stated in the copy or statement filed with the court.

b. The will is valid and unrevoked. There are no known prior wills that have not been expressly revoked by a later instrument. The will is the Decedent's last will.

--OR--

C) ☐ An authenticated copy of the will and of the decree admitting it to probate in the Decedent's state or county of domicile at the death is filed. The authenticated copy is dated _____ (date). The dates of all codicils are _____ (date(s)). The authenticated copy of the will and any codicils are referred to as the will.

Based on a preponderance of credible evidence presented, the court is satisfied that:

The will was duly admitted to probate by the state or country of _____, the Decedent's domicile at death.

--OR--

D) ☐ The will is not a valid will.

Formal Decree (MPC 755)
What's changed?

8. At the time of death, the Decedent's heirs at law were:

☐ identical to those persons stated in the ☐ original ☐ amended MPC 162 Surviving Spouse, Children, Heirs at Law

dated: _____ .
(date)

--OR--

☐ the following named persons *(each and every heir at law must be named)*:

NAME	RELATIONSHIP TO DECEDENT

click to add click to remove

Formal Decree (MPC 755)
What's changed?

THE COURT DECREES AND ORDERS ***(select only that requested on the Petition)*:**

TESTACY DETERMINATION

1. ☐ The Decedent died intestate.

   ☐ The will has not previously been admitted to formal probate and is hereby so admitted.

   ☐ The will is not admitted to formal probate. The Petition is dismissed with prejudice as to that instrument.

DETERMINATION OF HEIRS

2. The Decedent's heirs at law as of date of death are as found above.

APPOINTMENT OF PERSONAL REPRESENTATIVE

Bond (801)
What's Changed?

BOND	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
☐ Without sureties ☐ With personal sureties ☐ With corporate surety Bond #:		

In the Interests of:	Division
First Name / Middle Name / Last Name Incapacitated Person/Protected Person/Ward/Decedent/Trust	

The condition of this bond is the faithful discharge by the fiduciary of all duties according to law (for Public Administrators see G. L. c. 194, § 2). By executing this bond, a Personal Representative or Trustee submits personally to the jurisdiction of any court of the Commonwealth in any proceeding pertaining to the estate that may be instituted by any interested person. By executing this Bond, any other fiduciary submits personally to the jurisdiction of the Court which issued the Letters of Appointment. This bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

Formal Checklist (revised)– (MPC 967)

See Handout

Revised Checklist (MPC 967)

FORMAL CHECKLIST

DECEDENT DIED WITH A WILL (TESTATE)	
Form/Document Name	**Required or May Need**
☐ Petition for Formal Probate of Will/Adjudication of Intestacy/ Appointment of PR **(MPC 160)**	REQUIRED
☐ Surviving Spouse, Children, Heirs at Law **(MPC 162)**	REQUIRED
☐ Devisees **(MPC 163)**	REQUIRED
☐ Original Will, if available, if not, a copy or statement of Will contents	REQUIRED
☐ Certified Copy of Death Certificate, if available or affidavit	REQUIRED
☐ Citation – Return of Service **(MPC 560)**	REQUIRED
☐ Decree and Order on Petition for Formal Adjudication **(MPC 755)**	REQUIRED
☐ Bond **(MPC 801)**	REQUIRED (only if seeking the appointment of a PR)
☐ Military Affidavit **(MPC 470)**	REQUIRED (unless the petition is assented to by all interested persons)
☐ Authenticated Copy of Will and Appointment	REQUIRED (for ancillary probate proceedings only)
☐ Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties **(MPC 455)**	MAY NEED
☐ Affidavit - as to cause of death **(MPC 475)**, execution **(MPC 480)**, domicile **(MPC 485)**, or no conflict of a Conservator	MAY NEED
☐ Proof of Guardianship/Conservatorship	MAY NEED
☐ Uniform Counsel Certification Form (CCF 4/07)	MAY NEED
DECEDENT DIED WITHOUT A WILL (INTESTATE)	
Form/Document Name	**Required or May Need**
☐ Petition for Formal Probate of Will/Adjudication of Intestacy/ Appointment of PR **(MPC 160)**	REQUIRED
☐ Surviving Spouse, Children, Heirs at Law **(MPC 162)**	REQUIRED
☐ Certified Copy of Death Certificate, if available or affidavit	REQUIRED
☐ Citation – Return of Service **(MPC 560)**	REQUIRED
☐ Decree and Order on Petition for Formal Adjudication **(MPC 755)**	REQUIRED
☐ Bond **(MPC 801)**	REQUIRED (only if seeking the appointment of a PR)
☐ Military Affidavit **(MPC 470)**	REQUIRED (unless the petition is assented to by all interested persons)
☐ Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties **(MPC 455)**	MAY NEED
☐ Affidavit - as to cause of death **(MPC 475)**, domicile **(MPC 485)**, or no conflict of a Conservator	MAY NEED
☐ Proof of Guardianship/Conservatorship	MAY NEED
☐ Uniform Counsel Certification Form (CCF 4/07)	MAY NEED

Rev. 3/1/2016

Formal Procedure– New Instructions (MPC 963)

New Instructions (MPC 963)

INSTRUCTIONS FOR FORMAL PROBATE WITH OR WITHOUT A WILL

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

GENERAL INFORMATION

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

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

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

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

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

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

Options to Open an Estate - New Formal

Late and Limited Formal Testacy and/or Appointment Proceeding

Pursuant to G. L. c. 190B, § 3-108(4)

TIME LIMITS FOR FILING

G. L. c. 190B, § 3-108, as amended

The general rule is that testacy and appointment proceedings must be commenced (i.e. "filed") within 3 years of a decedent's death.

This time limit does not apply to bar the following proceedings, which may be filed at any time:

- Voluntary Administrations
- Actions to Construe a Probated Will
- Determination of Heirs
- Actions by Foreign Fiduciaries
- Appointment of Successor PR

TIME LIMITS FOR FILING

G. L. c. 190B, § 3-108, as amended

This time limit does <u>not</u> apply to Pre- MUPC Deaths.

Prior law controls (50 year time limit. See G. L. c. 193, § 4)

TIME LIMITS FOR FILING-
"Late and Limited" § 3-108(4) Exception

"Late and Limited" § 3-108(4) Exception:

- Applies to **MUPC** deaths only
- No proceeding filed
- A PR may be appointed but has LIMITED authority
- **Intestate estate**: PR may be appointed; intestacy and heirs determined (alternative procedure: file MPC 160 to determine heirs only)
- **Testate estate**: PR may be appointed; will admitted to formal probate; testacy, heirs and devisees determined)
- Decoder Newsflash, March 2015

TIME LIMITS FOR FILING- "Late and Limited" § 3-108(4) Exception

Forms:

- Petition for Late and Limited Formal Testacy and/or Appointment (MPC 161)
  - SS/Children/Heirs (MPC 162)
  - Devisees (MPC 163)
- Citation (MPC 560)
- Decree and Order (MPC 757)
- Letters of Authority (MPC 751) (authority MUST be limited)
- New Instructions – (MPC 964)
- New Checklist – (MPC 968)

New Petition for Late and Limited Formal Testacy and/or Appointment Form (MPC 161)

PETITION FOR LATE AND LIMITED FORMAL TESTACY and/or APPOINTMENT PURSUANT TO G. L. c. 190B, § 3-108(4) ☐ Original Form ☐ Amended Form	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: First Name Middle Name Last Name Date of Death:		Division Instructions

(Form Alert: You cannot use this form if the Decedent died prior to March 31, 2012)

New Petition for Late and Limited Formal Testacy and/or Appointment Form (MPC 161)

2. Information about the Petitioner:

Name: First Name | M.I. | Last Name

(Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Mailing Address, if different: (Address) | (Apt, Unit, No. etc.) | (City/Town) | (State) | (Zip)

Primary Phone #:

The Petitioner has a property right in the estate of the Decedent that is the subject of this Petition or is a person having priority for appointment as Personal Representative or other fiduciary representing an interested person. The Petitioner's interest is as follows:

(e.g., Personal Representative named in a will, surviving spouse, heir, devisee, etc. See G. L. c. 190B, §§ 1-201(24), 3-101).

click to add | click to remove

3. No original proceeding relative to the estate has occurred within the three (3) year period after the Decedent's death and a formal testacy proceeding or appointment is necessary for the limited purpose of confirming title in the successors to estate assets listed in #8 below and paying expenses of administration, if any. See G. L. c. 190B, § 3-108(4).

New Petition for Late and Limited Formal Testacy and/or Appointment Form (MPC 161)

II. PERSONS INTERESTED IN THE ESTATE

6. The Decedent's surviving spouse, children, heirs at law and devisees (if any), so far as known or ascertainable with reasonable diligence by the Petitioner are as stated in form MPC 162 Surviving Spouse, Children, Heirs at Law **AND** if the Decedent died with a will, form MPC 163 Devisees incorporated herein.

☐ There are additional heirs at law who are not known to the Petitioner (*Formal proceeding required*).

FORM ALERT: Failure to submit this information will result in a delay in processing your case.

New Petition for Late and Limited Formal Testacy and/or Appointment Form (MPC 161)

IV. ESTATE ASSETS

8. This Petition concerns the succession of the Decedent's interest in the following property:

A. **REAL PROPERTY** (*List all real estate*):

Description of Property	Location of Property	Decedent's Interest

click to add | click to remove

MPC 161 (2/26/16) **DRAFT** page 2 of 5

B. **PERSONAL PROPERTY** (*List all stocks, bonds, securities, cash and other personal property*):

Description of Property	Location of Property	Decedent's Interest

New Petition for Late and Limited Formal Testacy and/or Appointment Form (MPC 161)

13. ☐ The appointment of a Special Personal Representative is necessary pursuant to G. L. c. 190B, § 3-614 (*See separate motion and affidavit filed with this Petition.*).

VI. RELIEF REQUESTED

Wherefore, the Petitioner requests that the court:

☐ Admit the Decedent's will to formal probate and determine both the heirs and devisees.

☐ Determine that the Decedent died without a will and determine the heirs.

☐ Appoint the nominee(s) as Personal Representative of the estate in a(n) ☐ unsupervised ☐ supervised administration to serve ☐ with ☐ without sureties on the bond and that Letters be issued that limit the authority of the Personal Representative to confirming title in the successors to the estate assets identified herein and paying expenses of administration, if any.

☐ Appoint a Special Personal Representative pending the appointment of the nominated Personal Representative.

New Decree and Order on Petition for Late and Limited (MPC 757)

DECREE AND ORDER ON PETITION FOR LATE AND LIMITED FORMAL TESTACY and/or APPOINTMENT Pursuant to G. L. c. 190B, § 3-108(4)	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court

Estate of:

First Name | Middle Name | Last Name

Also Known As:

Date of Death:

Division

After a hearing or on the uncontested Petition for Late and Limited Formal Testacy and/or Appointment dated:

9. ☐ The devisees named in the will are:

☐ identical to those persons stated in the ☐ original ☐ amended MPC 163 Devisees dated: (date).

--OR--

☐ the following named persons *(each and every person must be named)*:

NAME

Letters of Authority (751)
What's Changed?

The authority of any PR appointed must be limited on Letters of Authority

☐ Pursuant to G. L. c. 190B, § 3-108(4), the Personal Representative shall have no right to possess estate assets as provided in § 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims, other than expenses of administration, if any, shall not be paid.

Identifying
Surviving Spouse, Children, Heirs at Law (MPC 162)
and
Devisees (MPC 163)

MUPC Basics

IDENTIFYING HEIRS

Identifying Heirs – Date of Death Controls

- Identify as of <u>date of death</u>
- Pre-MUPC death? Law in effect at time of death controls (See generally, G. L. c. 190)

Identifying Heirs – Why It's Important

- Must be given notice;
- May need representation;
  - Ex: Is an heir a minor or incapacitated/protected person?
- May have priority for appointment as PR or may need to renounce or nominate the PR;
- Shall be adjudicated in a formal proceeding
- Effective April 15, 2016: Surviving Spouse, Children and Heirs at Law are required to be listed on a separate form (MPC 162)

Identifying Heirs

Question:

Can a person be an heir if they die *before* (i.e., predecease) the decedent?

Identifying Heirs

Answer: NO!

Identify Heirs - The concept of representation

The concept of "representation" applies in two circumstances:

1. Decedent's descendants (ex: children or grandchildren of any *predeceased* child, etc.)

2. Descendants of Parents (ex: brothers/sisters or nieces/nephews of any *predeceased* sibling, etc.)

NOTE: The MUPC uses the term "descendant" instead of "issue" and adopts a *per capita at each generation* system.

G. L. c. 190B, § 2-106

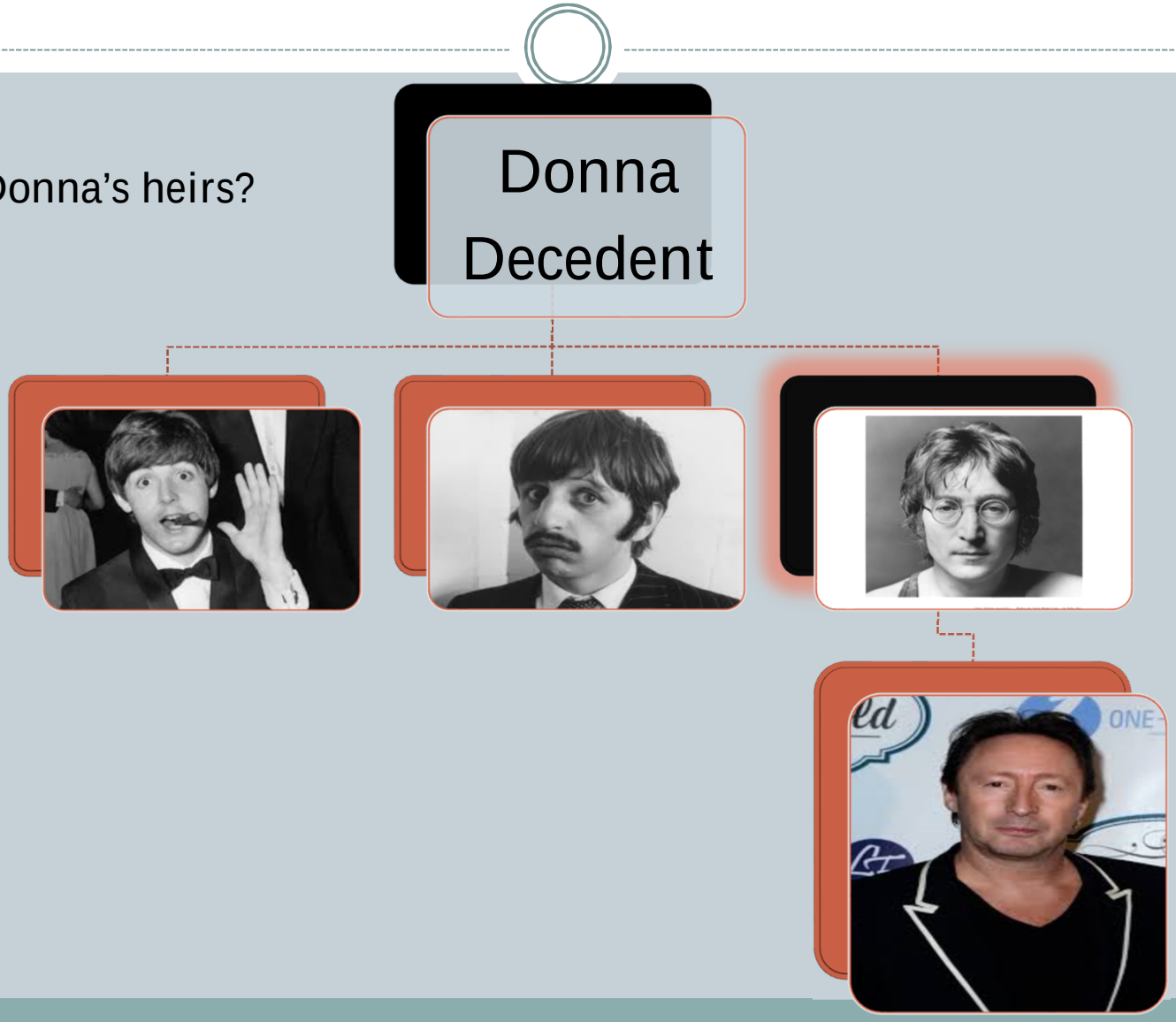
Identify Heirs - The concept of representation

Example:

Donna dies unmarried leaving two surviving children (Paul and Ringo) and one surviving grandchild (Julian) from her son (John) who predeceased her.

Identify Heirs - The concept of representation

Who are Donna's heirs?



Identify Heirs - The concept of representation

Donna Decedent

Identify Heirs - The concept of representation

Heirs under the MUPC

Pattern of intestate succession in order of priority:

1. Spouse
2. Decedent's Descendants (ex: children or grandchildren of any predeceased child, etc.)
3. Parents
4. Parents' Descendants (ex: brothers/sisters or nieces/nephews of any predeceased sibling, etc.)
5. Next of kin
6. Commonwealth of Massachusetts or Soldiers' Home (Ma or Holyoke).

Heirs under the MUPC

See Handout

New Chart

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

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants of any pre-deceased child) and... all surviving children are also children of the surviving spouse and the surviving spouse has no surviving children who are not children of the decedent.	• Spouse **Only**.
2.	Spouse and Children (or the descendants of any pre-deceased child) and... not all surviving children of the Decedent are also children of the surviving spouse; OR the surviving spouse also has surviving children who are not children of the Decedent.	• Spouse **AND** decedent's surviving children (and surviving descendants of any pre-deceased child).
3.	Spouse and **NO** Children	• Spouse **ONLY**, if **no** surviving parents; OR • Spouse **AND** decedent's surviving parent(s).
4.	Children (or descendants of any pre-deceased child) and **NO** Spouse	• Surviving Children **ONLY** (and surviving descendants of any pre-deceased child).
5.	Parents, and **NO** Spouse and NO Children	• Surviving Parent(s) **ONLY**.
6.	Siblings (or descendants of any pre-deceased sibling), and **NO** Spouse, **NO** Children, and **NO** Parents	• Surviving Siblings **ONLY** (and surviving descendants of any pre-deceased sibling).
7.	Kin and **NO** Spouse, **NO** Children, **NO** Parents, **NO** Siblings	• Surviving closest relative according to degrees of kindred (see § 2-103(4)).
8.	No Taker	• Commonwealth or • Soldiers Home (see § 2-105).

Pre-MUPC Heirs (see G. L. c. 190)

See Handout

New Chart

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

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants[1] of any pre-deceased child)	• Spouse **AND** decedent's surviving children (and surviving descendants of any pre-deceased child).
2.	Spouse and **NO** Children	• Spouse **ONLY**, if **no** surviving kindred[2]; OR • Spouse **AND** decedent's surviving kindred.
3.	Children (or descendants of any pre-deceased child) and **NO** Spouse	• Surviving Children **ONLY** (and surviving descendants of any pre-deceased child).
4.	Parents, and **NO** Spouse and **NO** Children	• Surviving Parent(s) **ONLY**.
5.	Siblings (or descendants of any pre-deceased sibling), and **NO** Spouse, **NO** Children, and **NO** Parents	• Surviving Siblings **ONLY** (and surviving descendants of any pre-deceased sibling).
6.	Kin and **NO** Spouse, **NO** Children, **NO** Parents, **NO** Siblings	• Surviving closest relative according to degrees of kindred (see Massachusetts Degree of Kinship Chart (MPC 960).
7.	No Taker	• Commonwealth • Soldiers Home

MUPC vs. Pre MUPC Heirs: Key Differences

MUPC

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants of any pre-deceased child) and… all surviving children are also children of the surviving spouse and the surviving spouse has no surviving children who are not children of the decedent.	• Spouse **Only**.
2.	Spouse and Children (or the descendants of any pre-deceased child) and… not all surviving children of the Decedent are also children of the surviving spouse; OR the surviving spouse also has surviving children who are not children of the Decedent.	• Spouse **AND** decedent's surviving children (and surviving descendants of any pre-deceased child).

Pre MUPC

	If the Decedent is survived by:	The intestate estate passes to:
1.	Spouse and Children (or the descendants[1] of any pre-deceased child)	• Spouse **AND** decedent's surviving children (and surviving descendants of any pre-deceased child).

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

MUPC vs. Pre MUPC Heirs: Key Differences

MUPC

3.	Spouse and **NO** Children	• Spouse **ONLY**, if **no** surviving parents; OR • Spouse **AND** decedent's surviving parent(s).

Pre MUPC

2.	Spouse and **NO** Children	• Spouse **ONLY**, if **no** surviving kindred[2]; OR • Spouse **AND** decedent's surviving kindred.

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

Next of Kin

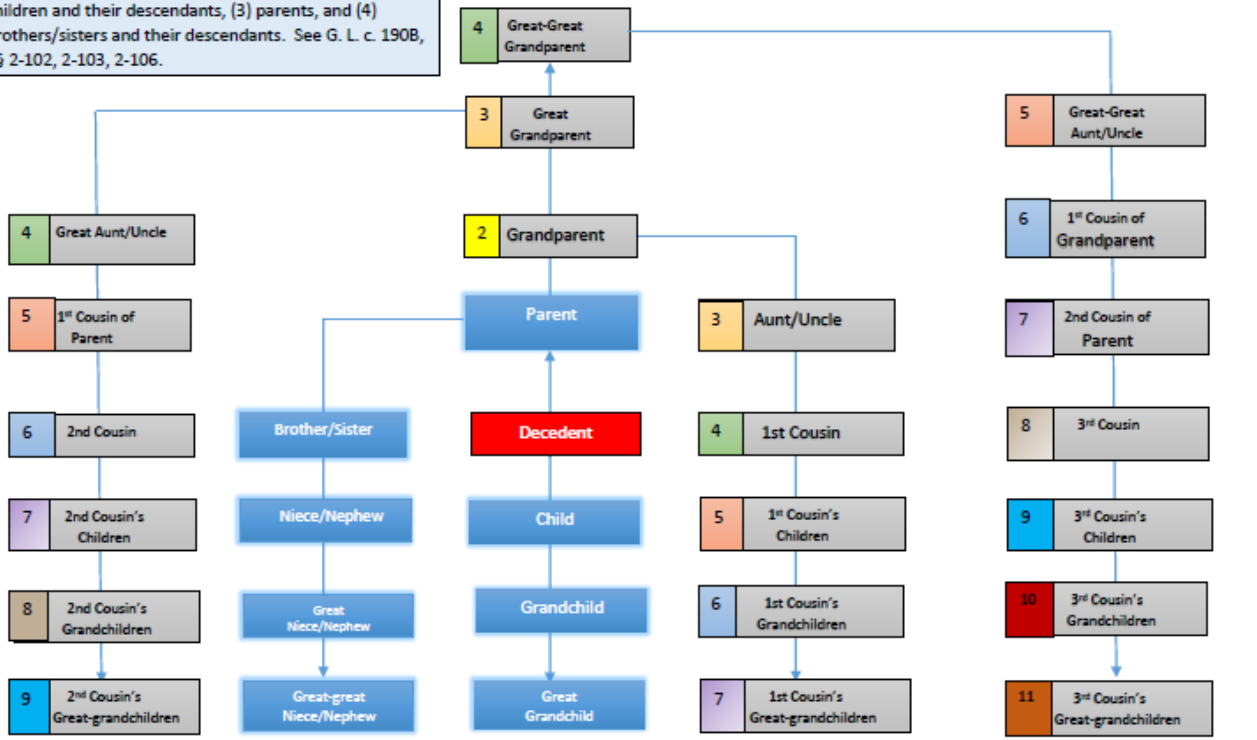
See Handout

New Chart (MPC 960)

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

MASSACHUSETTS DEGREES OF KINSHIP CHART (MPC 960)

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



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

New - Surviving Spouse, Children, Heirs at Law (MPC 162)

SURVIVING SPOUSE, CHILDREN, HEIRS AT LAW G. L. c. 190B, § 3-301 ☐ Original Form ☐ Amended Form	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: First Name Middle Name Last Name Date of Death:		Division Instructions

FORM USE: This form must be used to identify a Decedent's surviving spouse, children and heirs at law. Heirs at law are persons entitled to receive the Decedent's property under the intestacy succession laws if there is no will. For dates of death on or after March 31, 2012, the Massachusetts Uniform Probate Code, G. L. c. 190B, § 2-101, et seq., should be consulted. For deaths prior to that date, see applicable law.

Instructions: Complete ALL applicable sections of this form. For step by step instructions on how to complete this form, click on the instructions link above or see Instructions MPC 958.

ALL PETITIONERS MUST COMPLETE LINE 1 AND LINE 2.

1. The Decedent ☐ did not leave a surviving spouse. ☐ left a surviving spouse:

NAME OF SURVIVING SPOUSE	ADDRESS *(omit if since deceased)*

2. a. The Decedent ☐ did not have children *(biological or adopted)*. ☐ had the following children *(biological or adopted)*:

NAME OF DECEDENT'S CHILD	ADDRESS *(omit if deceased)*	CHILD OF SURVIVING SPOUSE	A MINOR
		☐ Yes ☐ No	☐ Yes
		☐ Yes ☐ No	☐ Yes
		☐ Yes ☐ No	☐ Yes

click to add | click to remove

☐ b. The surviving spouse has children who are not children of the marriage to the Decedent.

Complete line 3 ONLY if the Decedent left children in line 2a.

3. ☐ a. All of the children listed in 2a survived the Decedent.

☐ b. The following children listed in 2a died before the Decedent:

NAME OF PREDECEASED CHILD	DATE OF DEATH

click to add | click to remove

c. The predeceased child(ren) listed in 3b:

New –Instructions (MPC 958)

Instructions for Form (MPC 162) - Surviving Spouse, Children, Heirs at Law

About This Form

Form Use. This form must be used to identify a Decedent's surviving spouse, children and heirs at law. Heirs at law are persons entitled to receive the Decedent's property under the intestacy succession laws if there is no will. For dates of death on or after March 31, 2012, the Massachusetts Uniform Probate Code, G. L. c. 190B, § 2-101, et seq., should be consulted. For deaths prior to that date, see generally, Chapter 190.

Filing Fee. There is no fee to file this form.

Filing with the Court. This form must be filed with the petition to which it relates. Failure to submit this form with the petition to which it relates will result in a delay in processing your case.

Top of the Form

SURVIVING SPOUSE, CHILDREN, HEIRS AT LAW
G. L. c. 190B, § 2-101

☒ Original Form ☐ Amended Form

Docket No.

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court

Estate of:

Donna (First Name) | (Middle Name) | Decedent (Last Name)

Middlesex

Date of Death: April 1, 2016

A B C D

Instructions

A Original or Amended Form

Put an "X" next to "Original Form" if this is the first time you are filing this form; put an "X" next to "Amended Form" if you have previously filed this form with the court and are now changing the information.

B Docket Number

If known, fill in the docket number assigned by the court or leave blank if not yet assigned.

C Decedent's Name and Date of Death

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

EXAMPLE #1

Donna died on April 1, 2016.

She is survived by a spouse, Sam. She had no children, but did have parents. Sadly, her dad died after her on April 2, 2016. To date, his estate has not been probated.

Donna's mother has severe dementia but is not under guardianship or conservatorship.

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

EXAMPLE #2:

Same facts except Donna died PRE MUPC on December 30, 2010.

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

EXAMPLE #3:

Donna died on April 1, 2016. She is survived by a spouse, Sam. She had no children and both parents are deceased.

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

EXAMPLE #4:

Same facts except Donna died PRE MUPC on December 30, 2010.

Practice Alert: Remember to identify surviving "kindred"

(Donna is survived by a niece, Nancy, who is a minor.)

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

EXAMPLE #5:

Donna died on April 1, 2016. She is survived by a spouse, Sam, and their two children, Alaina and Olivia. Both children are minors.

Sam does not have any other children.

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

EXAMPLE #5 (cont'd):

Practice Alert (Intact Family Scenario): Best practice may be to list ONLY the SS on any formal decree determining heirs (MPC 755, MPC 757 or MPC 790)

8. At the time of death, the Decedent's heirs at law were:

☐ identical to those persons stated in the ☐ original ☐ amended MPC 162 Surviving Spouse, Children, Heirs at Law dated: _____ .
(date)

--OR--

☒ the following named persons *(each and every heir at law must be named)*:

NAME	RELATIONSHIP TO DECEDENT
Sam Spouse	Surviving Spouse

click to add | click to remove

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

EXAMPLE #6:

Donna died on April 1, 2016. She is survived by a spouse, Sam, and their two children, Alaina and Olivia. Both children are minors.

Sam has children from a prior marriage.

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

EXAMPLE #7:

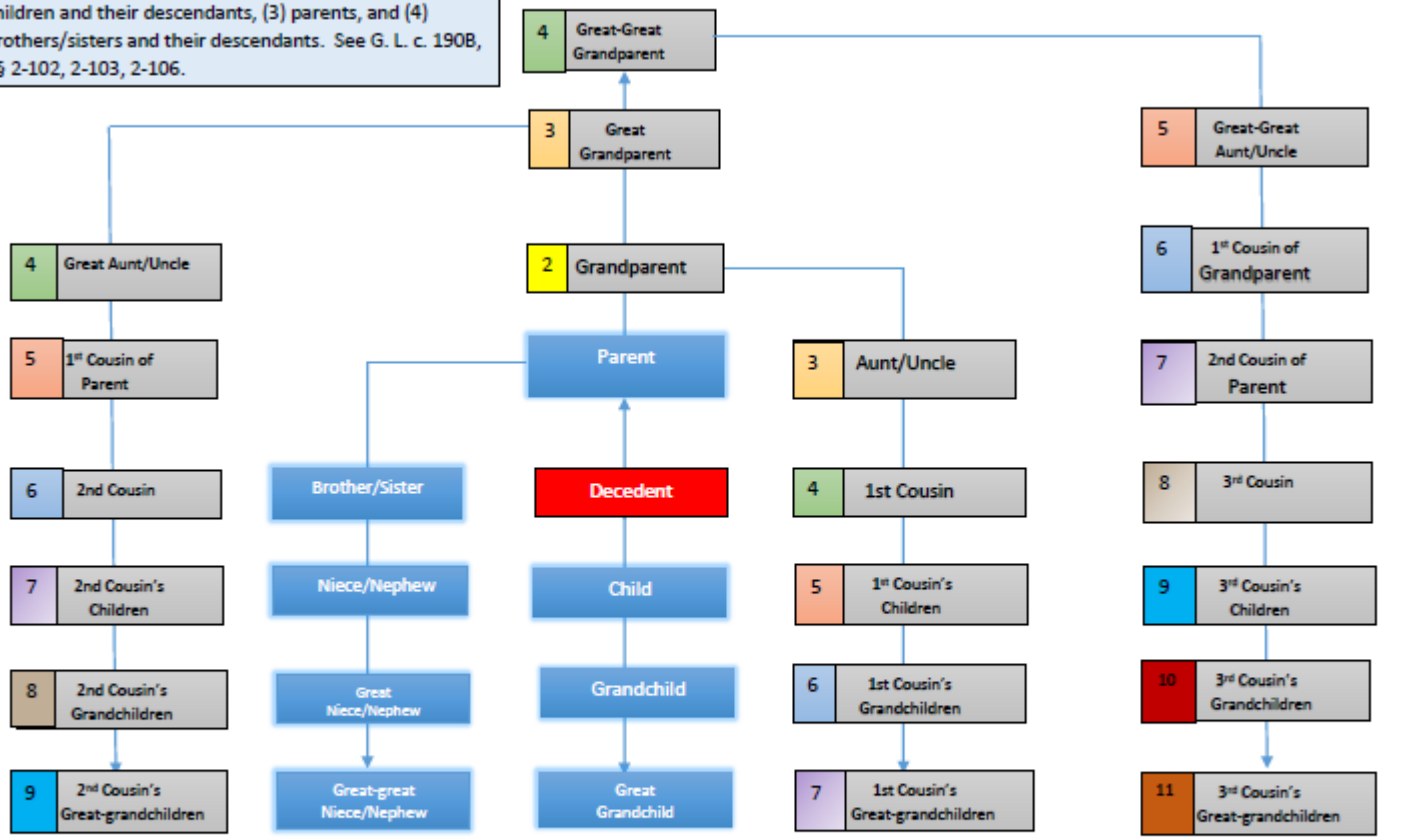
Donna died on April 1, 2016. She was 103 years old. She was never married and never had children. Her parents and her four siblings are all deceased. None of her siblings had any children. A search reveals two surviving cousins of a deceased Aunt, Connie and Connor. Both cousins are minors.

New - Degree of Kinship Chart (MPC 960)

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

MASSACHUSETTS DEGREES OF KINSHIP CHART (MPC 960)

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



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

New - Devisees (MPC 163)

DEVISEES G. L. c. 190B, § 3-301 ☐ Original Form ☐ Amended Form	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: First Name Middle Name Last Name Date of Death:		Division Instructions

Form Use: This form must be used to identify a Decedent's devisees. Devisees are persons, entities, charitable organizations, or trusts designated in a will to receive the Decedent's personal or real property. In the case of a devise to an existing trust or trustee, or to a trustee or trust established by the will, the trust or trustee is the devisee and the beneficiaries are not devisees. For additional information, the Massachusetts Uniform Probate Code, G. L. c. 190B should be consulted.

Instructions: Complete ALL applicable sections of this form. For step by step instructions on how to complete this form, click on the Instructions link above or see Instructions MPC 959.

ALL PETITIONERS MUST COMPLETE LINE 1 AND LINE 2.

1. The Decedent left a will dated _____. ☐ The dates of all codicils are: _____. The will and any codicils are referred to as the will.

2. The following devisees named in the will to inherit personal or real property **were living** at the time of the Decedent's death. *(Note: If the devisee is a trust, list the name of the trust and trustees. If any devisee is a charity, list the name of the charity and provide notice to the Massachusetts Attorney General. See G. L. c. 190B and Uniform Practice XXXIV).*

NAME OF DEVISEE	ADDRESS *(omit if since deceased)*	RELATIONSHIP TO DECEDENT	A MINOR
			☐ Yes
			☐ Yes
			☐ Yes

click to add | click to remove

3. ☐ The following devisees named in the will to inherit personal or real property **were not living** at the time of the Decedent's death.

NAME OF PREDECEASED DEVISEE	DATE OF DEATH	RELATIONSHIP TO DECEDENT

New - Instructions (MPC 959)

Instructions for Form (MPC 163) - Devisees

About This Form

Form Use. This form must be used to identify a Decedent's devisees. Devisees are persons, entities, charitable organizations, or trusts designated in a will to receive the Decedent's personal or real property. In the case of a devise to an existing trust or trustees, or to a trustee or trust established by the will, the trust or trustee is the devisee and the beneficiaries are not devisees. For additional information, the Massachusetts Uniform Probate Code, G. L. c. 190B should be consulted.

Filing Fee. There is no fee to file this form.

Filing with the Court. This form must be filed with the petition to which it relates. **Failure to submit this form with the petition to which it relates will result in a delay in processing your case.**

Top of the Form

A DEVISEES G. L. c. 190B, § 3-301 ☒ Original Form ☐ Amended Form	Docket No. B	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: Donna (First Name) Middle C Smith (Last Name) Date of Death: April 9, [illegible]		Middlesex D Division

A Original or Amended Form

Put an "X" next to "Original Form" if this is the first time you are filing this form; put an "X" next to "Amended Form" if you have previously filed this form with the court and are now changing the information.

B Docket Number

If known, fill in the docket number assigned by the court or leave blank if not yet assigned.

C Decedent's Name and Date of Death

Enter the name of the deceased and date of

There are specific rules that govern

Devisees (MPC 163)

EXAMPLE:

Donna Smith died April 1, 2016 with a will dated March 20, 2000 and a codicil dated April 1, 2015 leaving:

- All tangible personal property to her daughter, Olivia;
- $10,000 to her sister, Cherie, if she survives, otherwise to her son Charlie;
- $1,000 to her brother Al, if he survives, otherwise to his son, Trevor.
- All the rest and residue to the Smith Family Trust, an inter vivos trust dated March 20, 2000, Sam Smith as trustee for the benefit of Sam Smith, Olivia Smith, Alaina Smith and Aaron Smith.
- Al died before Donna on July 1, 2015;
- Cherie died after Donna on April 10, 2016.

Questions?

Closing Remarks. . .