

# MUPC ESTATE ADMINISTRATION PROCEDURAL GUIDE SECOND EDITION



A Guide to Estate Administration Practices &  
Procedures in the Probate and Family Court

## **MUPC Estate Administration Procedural Guide –Second Edition**

### *A Guide to Estate Administration Practices & Procedures in the Probate and Family Court*

#### **Content**

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#### **MUPC Estate Administration Procedure Guide**

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June 2016

The second edition of the MUPC Estate Administration Procedural Guide is the result of the hard work of dedicated Probate and Family Court judges, staff, and practitioners. During the course of this work, the MUPC Procedures Committee devoted countless hours in reviewing the first edition and suggesting recommendations for improvement. These recommendations were analyzed, vetted, and often analyzed again to ensure consistent application.

I am grateful for the dedication of those involved and their determination to produce an updated manual that will benefit the staff and judges of the Probate and Family Court, estate practitioners and members of the public. Thank you.

*Angela M. Ordoñez, Chief Justice  
Probate and Family Court Department*

**Written and Edited by:**

**Hon. Elaine M. Moriarty, Associate Justice, Norfolk Division**

**Hon. Anthony R. Nesi, Associate Justice, Bristol Division**

**Hon. Lisa A. Roberts, Associate Justice, Plymouth Division**

**Thomas P. Jalkut, Nutter, McClennen & Fish, LLP, Boston**

**Christopher G. Mehne, Bowditch & Dewey, LLP, Worcester**

**Evelyn J. Patsos Esq., Administrative Office, Probate & Family Court, Boston**

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# 1

## GENERAL CONSIDERATIONS

### 1.1 General Terms and Abbreviations

Throughout this guide the following abbreviations will be used:

MUPC	Massachusetts Uniform Probate Code, G. L. c. 190B
IP	Incapacitated Person
PP	Protected Person
PR	Personal Representative
SPR	Special Personal Representative
VPR	Voluntary Personal Representative

Throughout this guide the following terms will be used:

Appointment Proceedings: A proceeding to have a PR appointed.

Testacy Proceedings: A formal determination that decedent died with a will (testate) or with no will (intestate).

The term “court” will be used to refer to a judge of the Probate and Family Court or to the entity of the court but does not refer to a magistrate.

For ease of the reader, all citations to the Massachusetts Uniform Probate Code, G. L. c. 190B will be: MUPC at § \_\_\_\_\_. All citations to the Massachusetts Uniform Trust Code, G. L. c. 203E, will be: MUTC at § \_\_\_\_\_.

### 1.2 Time Limits for Filing Actions

#### 1.2.1 Statutory References - MUPC at §§:

- 3-108
- 1-106
- 3-303(7)
- 3-412
- 3-1001(c)

### 1.2.2 General Rule

The general rule is that an informal probate or appointment proceeding or a formal testacy or appointment proceeding must be commenced (i.e. “filed”) within 3 years of a decedent’s death. MUPC at § 3-108. The time limit does not apply to bar the following proceedings, which may be filed at any time:

- 1) Voluntary Administrations
- 2) Actions to Construe a Probated Will
- 3) Determination of Heirs
- 4) Actions by Foreign Fiduciaries
- 5) Appointment of a Successor PR

**Practice Alert:** The time limits provided by § 3-108 shall not apply to pre-MUPC deaths (deaths that occurred prior to 3/31/2012). Prior time limits shall control. See generally, G. L. c. 193, §4 (repealed).

After three years have passed from the decedent's date of death and **UNLESS AN EXCEPTION APPLIES:**

- 1) no one may seek the appointment of a PR.
- 2) no testacy proceeding may be commenced.
- 3) if a will was not offered for probate, there is a presumption of intestacy which is final.
- 4) if a will was informally probated and no formal proceeding to contest the informal probate was commenced within the 3 years, the informally probated will is final.

MUPC at § 3-108 and Comment. See Chapter 4 of this guide for specific requirements to commence a late and limited action authorized by § 3-108(4).

### 1.2.3 General Exceptions

There are 5 exceptions to the general time limit applying to original proceedings.

#### 1) Doubt About Death Exception

If a previous formal proceeding was dismissed because of doubt about the fact of the decedent’s death, an informal or formal proceeding may be commenced at any time if it is proved that the death occurred before the dismissal of the prior proceeding with no unreasonable delay in commencing the second proceeding.

2) Missing Person Exception

If the estate is of an absentee, disappeared or missing person a formal proceeding may be commenced within 3 years from the date on which the death of the person was established (NOT from the date of death).

3) Twelve Month Exception

A formal proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment may be brought within the later of 12 months from the informal allowance of the will or 3 years from date of death.

4) Late and Limited Exception

If the decedent died on or after March 31, 2012 and no proceedings were commenced within three (3) years from date of death, then a formal proceeding may be brought to:

- (a) admit the decedent's will to formal probate and determine both the heirs at law and the devisees;
- (b) determine that the decedent died without a will and determine the heirs at law;
- (c) appoint a PR to administer the estate, including a person designated as a public administrator, in a supervised or unsupervised administration.

Any PR appointed under this exception 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 shall not be presented against the estate. MUPC at § 3-108(4).

A successor is defined as “persons, other than creditors, who are entitled to the property of a decedent under the decedent's will or this chapter.” MUPC at § 1-201(49).

**Practice Alert:** A late and limited appointed PR may not seek a license to sell real estate of the decedent. The PR's authority is limited to confirming title to estate assets in the successors and paying expenses of administration, if any.

See [Chapter 4](#) of this guide for specific requirements to commence a late and limited action authorized by § 3-108(4).

5) Power of Appointment Exception

A formal testacy proceeding may be commenced at any time after three (3) years from the decedent's death for the limited purpose of establishing an instrument to direct or control

ownership of property that passes or is distributable after the decedent's death from one other than the decedent when the property is to be appointed or its transfer is controlled by the terms of the decedent's will or is to be distributed as a part of the decedent's estate.

**Legislative Change:** The fourth exception above was revised and the fifth exception was added by Chapter 140 of the Acts of 2012. The fourth exception permits the appointment of a PR; the fifth exception **does not** permit a PR to be appointed.

#### 1.2.4 Fraud Exception

When fraud has occurred, a proceeding for damages may be commenced within 2 years after the fraud is discovered BUT not later than 5 years after the fraud is committed. MUPC at § 1-106.

#### 1.2.5 Subsequent Petition Exceptions

(1) If a devisee or heir at law was omitted from, or not given notice of, a previous formal proceeding, a PR may request as part of a Petition for Order of Complete Settlement that the court determine testacy as it affects the omitted person and confirm or alter the previous formal decree and order of testacy, as it affects all interested persons, in light of the new evidence. MUPC at § 1001(c).

(2) A devisee or heir at law who was unaware of and given notice only by publication of a previous formal proceeding may file a petition to vacate the previous determination of testacy, including a determination that the decedent left no valid will and determining the heirs at law, prior to the earlier of:

- (a) the entry of any decree on a Petition for Order of Complete Settlement approving the final distribution of the estate;
- (b) six (6) months after the filing of any statement to close the estate;
- (c) three (3) years from the date of death, or
- (d) twelve (12) months from the entry of the formal decree to which the petition to vacate refers.

MUPC at § 3-412.

**Practice Alert:** The “entry” of a decree is the date the entry is made on the court’s docket. See Mass.R.Civ.P. 77 and 79; Mass.R.A.P. 4. The court’s docket is now electronic and is referred to as “MassCourts”.



### 1.3 Identifying Heirs at Law

Heirs at law are those individuals who are entitled by statute to the decedent's property when there is no will (or when the will does not dispose of all assets). For all cases (informal and formal), [\(MPC 162\) Surviving Spouse, Children, Heirs at Law](#) **must be completed** to identify a decedent's surviving spouse, children and heirs at law. For step by step instructions on how to complete this form see [\(MPC 958\) Instructions](#). [Examples](#) of completed forms are also available. See also the [training materials](#) on new and revised forms.

**Practice Alert:** Heirs at law are identified as of the **date of the decedent's death**. For dates of death on or after March 31, 2012, the MUPC at § 2-101, et seq., should be consulted. See section 1.3.2 of this guide. For deaths prior to that date, see generally Chapter 190 (repealed); see also [section 1.3.3](#) of this guide.

**Practice Alert:** Information regarding the decedent's children must **ALWAYS** be listed on form [\(MPC 162\) Surviving Spouse, Children, Heirs at Law](#) **even if** the decedent's children are not statutory heirs at law. MUPC at § 3-301.

#### 1.3.1 Statutory References- MUPC at §§:

2-102  
2-103  
2-105  
2-106  
2-107  
2-108  
2-113  
2-114

#### 1.3.2 Heirs at Law under the MUPC

For dates of death on or after March 31, 2012, any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs at law as follows:

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

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

2/29/16

MUPC at §§ 2-101, et seq. See also the chart in [section 1.3.5](#) of this guide.

**Practice Alert:** The identity of a decedent's heirs at law are only adjudicated by the court in a formal proceeding.

### **1.3.2.1 Certain Pre-Deceased Relatives; Half Blood Relatives; Marital Status; Adopted Children**

When a descendant of the decedent (e.g., the decedent's child) or a descendant of a parent (e.g., the decedent's sibling) dies before the decedent, then his or her surviving descendants substitute and should be identified as an heir at law of the decedent. Therefore, grandchildren, great-grandchildren, nieces and nephews, etc., should always be considered when identifying heirs at law in these two categories. MUPC at §§ 2-103, 2-106.

In addition, relatives of half-blood inherit the same as if they were of whole blood, and an individual is the child of his/her natural parents regardless of their marital status. MUPC at §§ 2-107, 2-114. Further, an adopted individual is the child of his or her adopting parents and not of his or her natural parents, but the adoption of a child by the spouse of a parent (e.g., step-parent adoption) has no effect on the right of the child or a descendent of the child to inherit from or through the natural parent. MUPC at § 2-114.

### **1.3.3 Heirs at Law prior to the MUPC**

For dates of death prior to the effective date of the MUPC (March 31, 2012), any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs at law as follows:

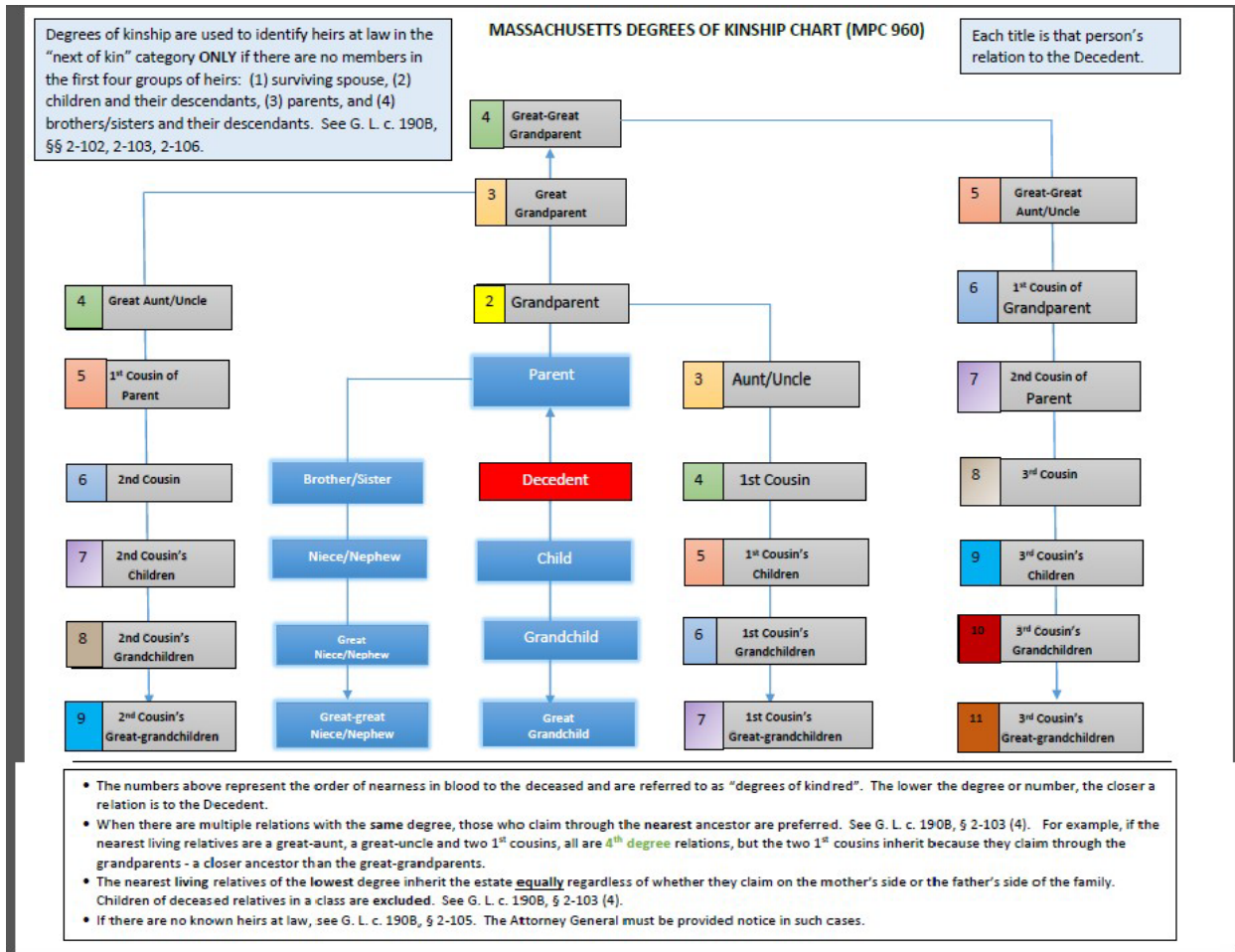
**Intestate Succession Pursuant to G. L. c. 190  
(for dates of death prior to March 31, 2012)**

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

See generally, G. L. c. 190 (repealed).

### 1.3.4 Degrees of Kinship

Degrees of kinship are used to identify heirs at law in the “next of kin” category **only if** there are **NO** surviving members in the first four groups of heirs at law: (1) surviving spouse, (2) decedent’s children and their descendants, (3) parents, and (4) decedent’s brothers/sisters and their descendants. MUPC at §§ 2-102, 2-103, 2-106. For degrees of kinship, see [\(MPC 960\) Massachusetts Degrees of Kinship Chart](#) below.

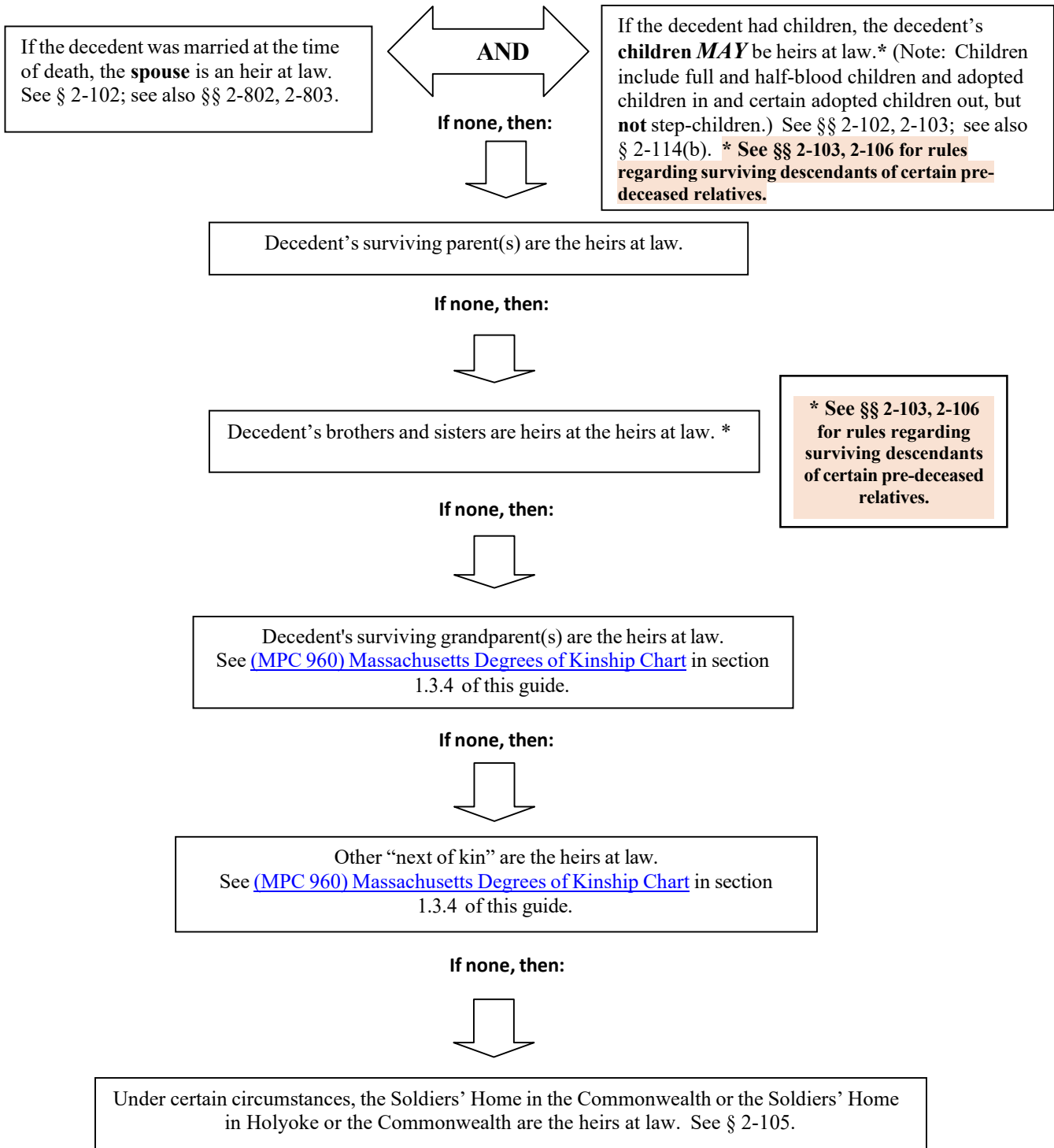


### 1.3.5 Examples

[Examples](#) of completed forms are available. See also the [training materials](#) on new and revised forms.

For additional assistance in identifying heirs at law under the MUPC, see the chart below.

**Heirs at Law under the MUPC may include the following:**



## 1.4 Identifying 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 devise. The beneficiaries are **NOT** devisees.

For all cases (informal and formal) seeking to probate a will, [\(MPC 163\) Devisees](#) must be completed to identify a decedent's devisees. For step by step instructions on how to complete this form see [\(MPC 959\) Instructions](#). [Examples](#) of completed forms are also available. See also the [training materials](#) on new and revised forms.

**Practice Alert:** An informal or formal proceeding may be used to probate a will that contains a testamentary trust or pours over into an inter vivos trust where the petitioner is also the trustee, even if there may be trust beneficiaries who are minors, incompetent or unascertained. The trust beneficiaries (adult or otherwise) do not need to be listed on an informal or formal petition unless they are otherwise devisees or heirs at law. No GAL need be appointed. See [Practice Tip Memorandum, dated May 23, 2012](#).

**Practice Alert:** If the trust is named as devisee on [\(MPC 163\) Devisees](#), the name of the trustee must be listed on any Return of Service to confirm notice on the trust.

### 1.4.1 Anti-Lapse; Deceased Devisee; Class Gifts

If a devisee who is a grandparent or a lineal descendant of a grandparent is dead at the time of execution of the will, fails to survive the testator, or is treated as if s/he pre-deceased the testator, the "issue" of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take per capita at each generation. One who would have been a devisee under a class gift if s/he had survived the testator is treated as a devisee for purposes of this section whether his/her death occurred before or after the execution of the will. MUPC at § 2-603.

**Practice Alert:** The anti-lapse section of the MUPC (§ 2-603) differs significantly from the pre-MUPC statute found in G. L. c. 191, § 22 (repealed).

### 1.4.2 Examples

[Examples](#) of (MPC 163) Devisees are available. See also the [training materials](#) on new and revised forms.

## 1.5 Priority of Appointment

### 1.5.1 Statutory References- MUPC at §§:

- 2-803(c)(1)(iii)
- 2-804(b)
- 3-203
- 3-301(3)
- 3-301(4)(ii)

### 1.5.2 Priority Determination (Priority Ladder)

Priority for appointment is a way of determining the ranking of person(s) who may be appointed PR in an informal or formal proceeding. This is referred to as the “priority ladder.”

Whether the proceedings are informal or formal, a person, or persons collectively, have statutory priority for appointment in the following order:

- 1) the person with priority as determined by a probated will including a person nominated by a power conferred in a probated will;
- 2) the surviving spouse of the decedent who is also a devisee in the will;
- 3) other devisees in the will;
- 4) the surviving spouse of the decedent;
- 5) other heirs at law of the decedent;
- 6) if there is no known spouse or next of kin, a public administrator appointed.

**Practice Alert:** Massachusetts did not adopt the Uniform Probate Code’s version of § 3-203 that grants priority for appointment to a creditor after 45 days from date of death when no person with higher priority petitions for appointment. In order for a creditor to be appointed PR in Massachusetts, the creditor must have a continuing interest in the estate (i.e., the creditor claim period has not expired) and a formal petition must be filed. A creditor cannot petition to be appointed PR in an informal proceeding. All petitions in which a creditor seeks appointment must be presented to a judge.

An objection to an appointment can ONLY be made in a formal proceeding. In case of objection, the priorities stated above apply except that:

1. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court on formal petition of a creditor may appoint **any** qualified person;
2. If there has been an objection by an heir at law or devisee appearing to have a substantial interest in the estate to the appointment of a person other than one whose priority is



determined by will, the court may appoint someone **acceptable** to the heirs at law and devisees or, in default of an agreement, **any** qualified and suitable person. MUPC at § 3-203(b)(2).

### 1.5.3 Priority of the Domiciliary PR

A PR appointed by a court of the decedent's domicile has priority over all other persons for appointment in Massachusetts except where the decedent's will nominates a different person to be the PR in Massachusetts than in the state of domicile. If the decedent's will does not nominate a different person, the domiciliary PR may nominate another, who shall have the same priority as the domiciliary PR. MUPC at § 3-203(g). See also Chapter 11 of this guide.

### 1.5.4 Disqualification from Serving

Regardless of his or her priority, no person is qualified to serve as a PR if:

- 1) the nominee is under the age of 18 or under guardianship or conservatorship. See also section 1.5.5 of this guide.
- 2) the court finds in a formal proceeding that the appointment would be contrary to the best interests of the estate. MUPC at § 3-203(f)(2).
- 3) the nominee has feloniously and intentionally killed the decedent. MUPC at § 2-803(c)(1)(iii).
- 4) the nominee is a former spouse of the decedent and/or a relative of decedent's former spouse, even if nominated in decedent's will unless the express terms of the will state otherwise. MUPC at § 2-804(b).

**Note:** Spouses who are separated, but not divorced, retain rights under the MUPC. MUPC at § 2-802.

### 1.5.5 Minor, Incapacitated Person or Protected Person with Highest Priority

A conservator of the estate of a protected person, or if there is no conservator, a guardian, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs at law and devisees that the protected person or minor would have if qualified for appointment. MUPC at § 3-203(d).

**Practice Alert:** A conservator who represents an heir at law or devisee may nominate him or herself to serve as PR in an informal or formal proceeding. If the conservator also has an interest in the decedent's estate as an heir at law or devisee, the conservator must file an affidavit stating specific facts to warrant a conclusion by the court or magistrate that a conflict of interest does not exist between the conservator and person(s) represented. Failure to submit an affidavit or to state sufficient facts to support the conclusion that a conflict of interest does not exist may result in a denial.

If a successor PR is necessary because of the incapacity of the appointed PR, the conservator or if none, the guardian of the appointed PR assumes the priority that the appointed PR had, if any. If the incapacitated /protected PR had no priority, then his guardian/conservator has no priority to petition informally for the appointment of a successor PR. The guardian/conservator of an incapacitated /protected PR who had no priority may petition formally for the appointment of a successor PR or for the appointment of a SPR.

**Practice Alert:** The MUPC does not permit an attorney in fact under a Durable Power of Attorney to sign an assent or nominate on behalf of an incapacitated principal. For trust actions, see the MUTC at G. L. c. 203E, § 303(3).

### 1.5.6 Options for the Person(s) with Highest Priority

The person or persons with highest priority under (2) – (5) on the priority ladder may:

- 1) serve as PR;
- 2) renounce (decline) the right to serve AND the right to nominate; or
- 3) renounce the right to serve BUT nominate another to serve in his/her place.

**Practice Alert:** If a nomination is not made, the person renouncing is treated as if s/he is no longer on the priority ladder. If the person renouncing does not share equal priority with others, priority will pass to the person or persons with the next highest priority as determined by the statute. If the person renouncing does share equal priority with others, priority will remain with all persons of equal priority who have not renounced.

See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/ Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#), section II (A) and (B); see also Chapter 3 (Informal Proceedings) and Chapter 4 (Formal Proceedings). See [section 1.5.7](#) of this guide when a person with highest priority fails to act.

#### 1.5.6.1 Nomination when One Person has Priority

When the person with highest priority under (2) – (5) on the ladder renounces (declines) the right to serve BUT nominates another to serve in his/her place, the nominee will assume the renouncing person's priority.

See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/ Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#), section II (B); see also Chapter 3 (Informal Proceedings) and Chapter 4 (Formal Proceedings). See [section 1.5.7](#) of this guide when a person with highest priority fails to act.

**Practice Alert:** Appointment of one who does not have statutory priority, including priority resulting from a renunciation or nomination, may only be made in a formal proceeding. MUPC at § 3-203(e).

### 1.5.6.2 Nomination when More than One Person has Priority

When any person with equal priority under (2) – (5) on the ladder renounces (declines) the right to serve BUT nominates another to serve in his/her place, ALL remaining persons with equal priority who have not renounced their right to serve **must agree** that the nominee may serve with them.

If all agree, they may either all petition jointly for appointment or one may petition for the appointment of all. If they do not agree, a formal petition must be filed.

See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/ Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#), section II (C); see also Chapter 3 (Informal Proceedings) and Chapter 4 (Formal Proceedings). See [section 1.5.7](#) of this guide when a person with highest priority fails to act.

**Practice Alert:** When there is more than one person with equal priority under (2) – (5) on the ladder, **ALL** persons **collectively** have priority for appointment. Persons individually do not have priority for appointment.

**Practice Alert:** Appointment of one who does not have statutory priority, including priority resulting from a renunciation or nomination, may only be made in a formal proceeding. MUPC at § 3-203(e).

### 1.5.6.3 Exceptions with a Will

If a will nominates a PR and the nominee does not want to serve, the nominee may renounce (decline) the right to serve; AND

- 1) If the will contains language which gives the nominee the right to nominate someone else, the nominee can:
  - a) renounce the right to nominate; OR
  - b) nominate anyone else to serve (who need not have statutory priority but who assumes the renouncing person's priority as set forth above); OR
- 2) If the will does not contains language which gives the nominee the right to nominate someone else, that person may not nominate someone else and either priority remains with the other persons who shared priority with the person renouncing or, if the

nominee was the only person with priority, priority passes to the next named person in the will or if none, the next person with highest priority as determined by the statute.

See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/ Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#), section II (A) and (B); see also Chapter 3 (Informal Proceedings) and Chapter 4 (Formal Proceedings). See [section 1.5.7](#) of this guide when a person with highest priority fails to act.

### 1.5.7 Failure of Person(s) with Highest Priority to Act

If the person with highest priority does not seek to serve, and fails to act, any interested person may file a formal proceeding seeking the appointment of any person as PR. Likewise, if all persons with equal priority do not seek to serve, and fail to act collectively, any interested person may file a formal proceeding seeking the appointment of any person as PR.

Before formal appointment of one without priority, the court shall determine that those having priority, although provided notice of the proceedings, failed to request appointment or to nominate another for appointment and that administration is necessary. MUPC at § 3-203(e).

### 1.5.8 Examples

**Example 1:** Donna, who was married at her death to Harry, dies with a will that names Donna's best friend as PR. Who has priority to serve?

**Answer:** Donna's best friend named in the will has the highest priority to serve as PR.

**Example 2:** Donna, who was married at her death to Harry, dies without a will. Who has priority to serve?

**Answer:** Harry, Donna's spouse, has highest priority to serve. If he does not want to serve, he can renounce his right to appointment. He may also choose to nominate another to serve for him. If he does not nominate another to act for him, priority passes down the ladder to Donna's other heirs at law.

**Example 3:** Donna dies with a will. She is survived by her husband, Harry, and their two children, Andy and Debra. Her will names Harry as PR and Andy, their son, as the alternate PR. Harry declines to serve. Who has priority to serve as PR?

**Answer:** Andy has priority, because he is the alternate named in the will. MUPC at §§ 3-203(a)(1), 3-203(c).

**Example 4:** Donna dies with a will. Her spouse, Harry, is nominated as PR in her will. Donna and Harry's son, Andy, is named alternate PR. Harry does not want to serve but wants his friend Fran to serve instead and nominates her. Who has priority to serve?

**Answer:** Harry, as nominated as PR in a will, cannot nominate another unless the will contains language specifically allowing for the nominated PR to renounce and nominate another. See MUPC at § 3-203(c). If the will does not include specific language, Harry may not nominate

Fran. He may only renounce his right to serve and priority passes to Andy as the alternate PR nominated in Donna's will.

**Example 5:** Donna dies, but does not have a will. She is a widow with three adult living children, Andy, Debra and Mary. Who has priority to serve as or nominate a PR?

**Answer:** All three children, Andy, Debra and Mary, have equal priority to serve as PR. They can all agree in writing to one or more of them serving as PR. If they cannot agree on who will serve, a formal proceeding must be commenced.

**Example 6:** Donna dies, but does not have a will. She is a widow with three adult living children, Andy, Debra and Mary. None of the children are willing to serve as PR. Who has priority to serve as or nominate a PR?

**Answer:** The three children, Andy, Debra and Mary, all may agree in writing to renounce the right to serve and nominate another mutually agreeable person to serve as PR. If they cannot all agree, a formal proceeding must be commenced by any interested person.

**Example 7:** Donna, who has no surviving family, dies with a will that nominates Bob's Bank to serve as PR. No alternate PR is listed. Four charities are listed as devisees under Donna's will. After Donna's death, Bob's Bank renounces its right to serve as PR and nominates an attorney to serve instead. Who has priority to serve as PR?

**Answer:** Unless the will contains language specifically allowing for the nominated PR to renounce and nominate another, a nominated PR in a will cannot confer priority onto another nominee. MUPC at § 3-203(c). No successor PR is named in Donna's will so priority passes down the ladder to the first rung that appears. Since Donna has no family, priority passes down the priority ladder to the "other devisees in the will" rung, which are the four charities. The four charities named in the will have the highest and equal priority to serve as PR. MUPC at § 3-203(a)(3). A devisee who does not wish to serve may renounce the right to serve and either allow the remaining devisees to serve or nominate another to act as PR, provided all remaining devisees agree that the nominated person will serve with them. If all devisees renounce the right to serve and nominate the same PR, the court can appoint that PR. If the charities do not all agree to renounce the right to serve and/or nominate the same PR, a formal proceeding must be commenced to ask for the appointment of a PR who does not have highest priority. MUPC at § 3-203(e).

**Example 8:** Donna dies with a will which nominates Harry as PR and their son, Andy, as alternate PR. Harry and Donna divorced after she executed her will and the divorce was absolute before she died. Who has priority?

**Answer:** Andy has priority to be appointed PR. As a result of their divorce, Harry's nomination as PR in Donna's will was revoked by operation of law unless the will expressly provided otherwise. MUPC at § 2-804.

**Example 9:** Donna dies without a will leaving no spouse and two adult children, Andy and Debra. Debra is of parts unknown and cannot be found. Who has priority to serve?

**Answer:** Andy and Debra have equal priority. If Debra cannot be found, a formal proceeding

must be filed because the court must find that all people with equal or higher priority have been notified and have failed to act and that the person being appointed is suitable regardless of his or her priority. MUPC at § 3-203(e).

**Example 10:** Donna dies without a will. She has no surviving spouse, but has three adult children, Andy, Debra and Mary. Debra predeceased Donna leaving two adult children. Who has priority to serve?

**Answer:** Donna's two living adult children, Andy and Mary and Debra's two adult children are the heirs at law and all have equal priority to serve. MUPC at §§ 3-203(a)(5), 1-201(21), 2-103(1), 2-106(b).

**Example 11:** Donna dies without a will. At the time of her death, Donna was divorced from Harry and was survived by one child, Mary, who is a minor. Who has priority to serve?

**Answer:** While Mary has priority to serve, she does not qualify to serve. However, pursuant to §§ 3-203(c) and 3-203(d), Mary's conservator, or if none, her guardian, may exercise the same rights as Mary to nominate a qualified person to serve as PR. If Harry becomes Mary's conservator, he may nominate himself or another to act as PR.

**Example 12:** Donna dies without a will. At the time of her death, Donna was divorced from Harry and was survived by one child, Mary, who is a minor and her brother, Bob. Who has priority to serve?

**Answer:** While Mary has priority to serve, she does not qualify to serve. If Bob wishes to act as PR, he would need to file a formal proceeding since Mary, who has highest priority, is a minor and does not qualify to serve.

## 1.6 Venue

Venue means the county where the case must be filed.

### 1.6.1 Statutory References- MUPC at §§

3-201

1-303

G.L. c. 215, § 8A

### 1.6.2 First Proceeding

Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is:

- 1) in the county where the decedent was domiciled at the time of death; OR

- 2) if the decedent was not domiciled in Massachusetts, in any county where property of the decedent was located at the time of death. MUPC at § 3-201(d).

To check domicile:

- 1) Does the death certificate identify the county where the decedent lived?
- 2) Does the petition and death certificate match regarding domicile? If not, the petitioner must file [\(MPC 485\) Affidavit of Domicile](#), to determine proper venue.

For a listing of Massachusetts counties and the cities and towns within, see <https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm>.

### 1.6.3 Examples

**Example 1:** Donna dies domiciled in Worcester county. All of her property is located in Worcester county. Where should a petition be filed?

**Answer:** The petitioner must file in Worcester county. MUPC at § 3-201(a)(1).

**Example 2:** Donna dies domiciled in Suffolk county. She owns real property in Middlesex county. No other property requires probate. Where should a petition be filed?

**Answer:** The petitioner must file in Suffolk county. MUPC at § 3-201(a)(1).

**Example 3:** Donna dies domiciled outside of Massachusetts in Nashua, New Hampshire. All of Donna's property passes outside of probate except for property she owns in Barnstable county. Where should a petition be filed?

**Answer:** The petitioner must file in Barnstable county where the **property** is located. MUPC at § 3-201(a)(2). See also [Chapter 11](#) of this guide.

### 1.6.4 Subsequent Proceedings

Venue for all subsequent proceedings is in the place where the initial proceeding occurred unless transferred pursuant to § 1-303. If the first proceeding were informal, upon application of an interested person and after notice, the court, finding that venue is elsewhere, may transfer the proceeding and the file to the other division.

### 1.6.5 Multiple Proceedings; Transfer

Section 1-303 governs the procedure when a proceeding could be maintained in more than one place and/or if proceedings are commenced in more than one court. For transfers under § 1-303(b), see G.L. c. 215, §8A.

## 1.7 Bonds (MPC 801)

Form [\(MPC 801\) Bond](#) shall be required if the petitioner is seeking the appointment of a PR, SPR, or Successor PR. No bond is necessary if the petitioner is seeking only to probate an original will or apply as voluntary personal representative. All fiduciaries appointed by the court prior to the effective date of the MUPC (i.e., March 31, 2012), continue to have the statutory obligations of their pre-MUPC bonds unless otherwise modified by the court. See [section 1.9](#) of this guide.

**Practice Alert:** To confirm his or her appointment under a probated will, a trustee of a testamentary trust shall file a [Bond \(MPC 801\)](#) along with [\(MPC 275\) Statement of Confirmation of Appointment of Testamentary Trustee](#). The forms shall be filed with the same court where the will was probated. A bond with sureties shall be required unless: (1) sureties are waived by the terms of the trust or (2) found by the court, in a prior formal proceeding, to not be necessary. The filing fee is \$75.00 for the bond. There is no separate filing fee for the Statement of Confirmation of a Testamentary Trustee. Upon payment of an attested copy fee of \$2.50 per page, the register shall issue an attested copy of the Statement of Confirmation of a Testamentary Trustee provided the bond is examined and approved by the court. Letters no longer issue to a testamentary trustee appointed under the MUTC.

### 1.7.1 Statutory References- MUPC at §§:

3-603

3-604

3-606

G. L. c. 205, §§ 9-35 and as amended §§ 1, 5 & 6A

**Note:** G. L. c. 205 on bonds has been repealed in part & amended in part.

Prior to receiving Letters, a PR must file a bond with the court. MUPC at § 3-601. Sureties on the bond are required unless:

- 1) the will directs that there be no bond or waives the requirement;
- 2) all of the heirs at law (if intestate) or all of the devisees (if testate) file a written waiver of sureties. See [\(MPC455\) Assent and Waive of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#).
- 3) the PR is a bank or trust company qualified to do trust business or exercise trust powers in Massachusetts;
- 4) the court concludes that sureties are not in the best interest of the estate.



MUPC at § 3-603.

**Practice Alert:** The sole heir at law of an intestate estate that is seeking his or her own appointment as PR must still request to waive sureties on the bond by filing [\(MPC 455\) Assent and Waive of Notice/Renunciation/Nomination/Waiver of Sureties](#).

Unless § 3-603 applies, the penal sum on a bond with sureties must be listed. The penal sum must equal the amount of the personal property (dollar for dollar) and no minimal amount is required. However, **failure to state a dollar amount subjects the sureties to unlimited liability**.

The magistrate may approve a bond in any amount that meets the statutory requirements as the sufficiency of sureties is never determined by the magistrate. The court retains the right to require additional sureties in a formal proceeding. MUPC at § 3-603.

A bond no longer requires a third party to provide an opinion that the sureties are sufficient and instead requires each personal surety certify that they are a resident of Massachusetts and possess sufficient unencumbered assets in Massachusetts in excess of the penal sum.

No bond required to be given shall be sufficient unless it has been examined and approved by the court or a magistrate. See G. L. c. 205, § 10.

**Note:** After the initial appointment, the PR is obligated to report any change of address to the division. MUPC at § 3-602.

**Practice Alert:** The filing of [\(MPC 360\) Demand for Sureties](#) can drastically change the type of bond required by the PR. MUPC at § 3-605. See also [section 1.8](#) of this guide.

**Note:** An Appointment of Agent form for an out-of-state PR is no longer required. By executing the bond, a PR submits to the jurisdiction of any division in Massachusetts on matters involving the estate.

## 1.8 Demand for Sureties (MPC 360)

If a PR has filed a bond without sureties, a written demand that a PR provide a bond with sureties may be filed by:

- 1) a person having an apparent interest in the estate worth in excess of \$5,000; OR
- 2) a creditor with a claim against the estate in excess of \$5,000.

The demand may be made in either a formal or informal proceeding by completing and filing [\(MPC 360\) Demand for Sureties](#). MUPC at § 3-605. If the demand is made after the

appointment of a PR, the Demand for Sureties must be filed with the division and a copy mailed to the PR.

**Practice Alert:** A petition for an informal or formal proceeding must be filed before a Demand for Sureties may be accepted for filing.

### **1.8.1 Statutory References- MUPC at §: 3-605**

### **1.8.2 Demands Made Prior to the Appointment of a PR**

A Demand for Sureties may be filed prior to the appointment of a PR if an informal or formal petition is on file with the division. In an informal proceeding, if the magistrate has not issued an informal order and the PR provides the requested surety bond or an affidavit that the person demanding the bond ceases to be interested in the estate, the magistrate may issue the informal order without deciding the merits of the demand or the affidavit.

If the PR files [\(MPC 295\) Petition to Modify Bond](#), the magistrate shall refer the case to the judge assigned to the case. MUPC at § 3-604. Thereafter, the court shall hear the matter and issue [\(MPC 776\) Decree and Order to Modify the Bond](#), and either refer the case back to the magistrate to issue the informal order or decide the matter in its entirety. A magistrate shall not decide the merits of a contested demand for surety request. A Demand for Sureties filed in a formal proceeding shall be decided by the court unless uncontested.

If 30 days has passed since the filing of the Demand for Sureties and the PR has failed to either file a bond with sureties, [\(MPC 490\) Affidavit in Support of Release of Demand for Sureties](#) may be filed to indicate that the person demanding the bond ceases to be interested in the estate the magistrate may deny/decline the informal or formal petition. The fiduciary may also file an affidavit that sureties on the bond have been excused by the court.

### **1.8.3 Demands Made After the Appointment of a PR**

A Demand for Sureties may also be filed after the appointment of a PR. After receiving notice, the PR is prohibited from exercising any powers except as necessary to preserve the estate. Unless the person demanding the surety bond ceases to have an interest in the estate or the bond is excused pursuant to a petition filed under section 3-604, the PR must file the demanded bond within 30 days of receipt of notice or be subject to removal and appointment of a successor PR. MUPC at §§ 3-604, 3-605.

If the PR refuses or neglects to file a bond with sureties, or files a Petition to Modify Bond, the magistrate shall not modify the informal order, but shall refer the case to the judge assigned to the case. Thereafter, the court shall hear the matter and issue an order on the bond and may

refer the case back to the magistrate to modify the informal order or decide the case in its entirety. A magistrate shall not decide the merits of a contested demand for surety request. A Demand for Sureties filed in a formal proceeding shall be decided by the court unless uncontested.

**Practice Alert:** Once a PR receives notice of the demand, the PR must refrain from acting except to preserve the estate and within 30 days the PR must file the requested suitable bond with sureties. Failure to do so is cause for removal.

**Practice Alert:** Once a Demand for Sureties is filed, no Letters shall issue by the registry until a bond with sureties is filed or an affidavit of the PR stating that the person demanding the bond has ceased to be interested in the estate is filed or the sureties on the bond are excused by a decree of the court.

## 1.9 Petition to Modify Bond (MPC 295)

In response to the filing of a Demand for Sureties, a PR must file the requested surety bond with the court and may thereafter seek relief by filing [\(MPC 295\) Petition to Modify the Bond](#). A Petition to Modify Bond may request that the court modify the amount of the bond, release or discharge the current surety or sureties, permit the substitution of another bond with the same or different surety or determine the amount of the bond and if sureties are required. MUPC at § 3-604.

All pre-MUPC fiduciaries, including trustees, continue to have the obligations of their pre-MUPC bonds unless modified by the court.

### 1.9.1 Statutory Reference- MUPC at §: 3-604

### 1.9.2 Modifying the Obligation of a Pre-MUPC Bond

Upon the filing of a Petition to Modify Bond, in order to modify the obligation of a pre-MUPC bond, a citation shall issue which follows the Order of Notice stated on the citation issued in the initial informal or formal petition.

If no citation issued in the initial proceeding, the citation on the Petition to Modify the Bond shall state the Order of Notice that would have been required if a citation on the initial petition had issued.

If a Petition to Modify Bond seeking to modify the obligation of a pre-MUPC bond is brought requesting relief from the prior obligation on the bond, the fiduciary may or may not be

required by the court to bring the accounts up to date before the allowance of the petition. See Chapter 10 of this guide.

### 1.9.3 All Other Petitions to Modify the Bonds

Upon the filing of a Petition to Modify Bond to modify the obligation of a MUPC bond, a citation (MPC 567) on a Petition to Modify the Bond shall issue and notice must be given.

## 1.10 Guardians Ad Litem (GAL) and Actual/Parental/Virtual Representation

A GAL must be appointed for a spouse, heir at law, or devisee who is an IP, PP or a minor **UNLESS** any of the following apply:

1. The spouse, heir at law, or devisee is represented by a conservator;
2. The spouse, heir at law, or devisee is represented by a guardian who is not the petitioner;
3. The court (in a formal proceeding) has approved a motion to waive the appointment of a GAL based on parental or virtual representation or for any other reason.

MUPC at §§ 1-403, 1-404.

**Practice Alert:** The question of the appointment of a GAL does not apply to proceedings in which no judicial or magisterial action is taken (e.g., voluntary administration statements, closing statements, small estate closing statements, etc.).

**Legislative Change:** Section 1-404 (a) and (d) was revised by Chapter 140 of the Acts of 2012. Section 1-404(d) now allows the conservator of a spouse, heir at law, or devisee who is an IP, PP, or a minor to be the petitioner in an informal or formal proceeding without triggering a mandatory appointment of a GAL. A guardian may represent an interested person under a legal disability but a guardian cannot be the petitioner.

**Practice Alert:** If a GAL must be appointed by the court, a **FORMAL proceeding is required**. An informal proceeding is **UNAVAILABLE**. An informal proceeding is an administrative proceeding that requires that any spouse, heir at law, or devisee who is an IP, PP, or a minor be represented by a conservator, or a guardian who is not the petitioner.

**Practice Alert:** If the **conservator** of an IP, PP, or a minor also has an interest in the decedent's estate as an heir at law or devisee, the conservator must file an affidavit stating specific facts to warrant a conclusion by the magistrate that a conflict of interest does not exist between the conservator and person(s) represented in order to proceed administratively on an informal or uncontested formal petition. Failure to submit an affidavit or to state sufficient facts to support

the conclusion that a conflict of interest does not exist may result in a denial by the magistrate or court.

### 1.10.1 Statutory References- MUPC at §§:

1-403

1-404

Rule 5 of the Supplemental Rules of the Probate & Family Court

### 1.10.2 Actual, Parental, and Virtual Representation

#### 1) Actual Representation

If a spouse, heir at law, or devisee is an IP, PP, or a minor and is represented by a conservator or, if none, a guardian who is not the petitioner, no GAL is necessary. MUPC at § 1-403 (2)(ii).

#### 2) Parental Representation

If no guardian or conservator has been appointed for a minor heir at law or devisee, a parent *may* represent a minor child in a formal proceeding if there is no conflict of interest. MUPC at § 1-403 (2)(ii).

The determination of whether parental representation is adequate (i.e. that the parent has no conflict of interest in representing the minor child) is one made by the court. See Practice Alerts below. **There can be no parental representation or GAL appointment in an informal proceeding.** If either is involved, a formal proceeding must be filed.

#### 3) Virtual Representation

Virtual Representation (VR) permits a party to whom notice has been given to represent the interests of unborn or unascertained parties with a substantially identical interest in the proceeding who are not otherwise represented. MUPC at § 1-403(2)(iii).

The determination of whether virtual representation is adequate (i.e. that the adult party with a substantially identical interest can represent the unborn or unascertained parties) is made by the court. See Practice Alerts below. **There can be no VR or GAL appointment in an informal proceeding.** If either is involved, a formal proceeding must be filed.

MUPC at § 1-403. See also [section 10.7](#) of this guide.

**Practice Alert:** To waive the appointment of a GAL and request parental or virtual representation, a [motion](#) must be filed and supported by an affidavit of the parent or virtual representative setting forth sufficient facts for consideration by the court. An affidavit from counsel for the petitioner is not sufficient. A motion to waive a GAL supported by an affidavit

may be allowed without a hearing in the discretion of the court; provided, however, that the filer shall be given an opportunity to be heard before such motion is denied.

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

**Practice Alert:** In a proceeding for allowance of an account or a Petition for Order of Complete Settlement, if an heir at law or devisee is deceased at the time court proceedings are commenced, notice must be given to the PR of the **since deceased person’s estate**. MUPC at §§ 1-201(24), 3-1001. If no PR has been appointed, **publication is required**. Assents of the presumptive heirs at law are NOT sufficient. In addition to notice by publication, the court may appoint a GAL or take other appropriate action. See [Chapter 10](#) of this guide.

## 1.11 MUPC Magistrates

A MUPC magistrate (“magistrate”) is an official of the court designated to perform certain actions authorized by the MUPC or Rule 70 of the Supplemental Rules of the Probate and Family Court (2012).

A magistrate may act only on matters in which no hearing is required or requested.

A listing of [MUPC magistrates](#) by county is available.

### 1.11.1 Magistrate’s Role in Informal Proceedings

In an informal proceeding, a magistrate may:

- 1) admit the decedent’s will to probate;
- 2) appoint a PR with priority; AND
- 3) approve a bond regardless of the amount of the penal sum.

### 1.11.2 Magistrate’s Role in Formal Proceedings

A magistrate may perform the following administrative duties, all as exercised under the supervision of the first justice of the division where he or she serves, unless otherwise ordered by the court:

1. Admit a valid and unrevoked will under § 3-409 to probate and determine the heirs at law, if assented to in writing, or if there is no objection to such admission or determination by any interested person;
2. Appoint a PR with priority for appointment in an unsupervised administration, determine the heirs at law and approve any bond of the PR, if assented to in writing, or if there is no objection to such appointment by any interested person;
3. Enter orders and decrees on accounts, including a decree and order for complete settlement of the estate, if assented to in writing, or if there is no objection to the entering of such order by any interested person; and
4. Perform such other acts as the court may authorize as necessary or incidental to the conduct of informal and uncontested formal proceedings.

See generally, Rule 70 of the Supplemental Rules of the Probate and Family Court (2012).

**Note:** Even if assented to in writing, or even if there is no objection to it, a formal petition requesting the appointment of a **creditor** as PR may not be allowed by a magistrate but must be **adjudicated by a judge**.

**Note:** A formal Late and Limited petition may be approved by a magistrate if assented to in writing, or if no objection to it has been filed.

### 1.12 Letters of Authority

Letters of Authority are evidence of a PR or SPR’s appointment and proof of authority to act on behalf of the estate and shall issue only if a PR or SPR is appointed and a bond is approved. See Letters of Authority for Personal Representative (MPC 751) or Letters of Special Personal Representative (MPC 752) (hereafter referred to as “Letters”). The register for each division is responsible for authorizing the issuance of Letters. G. L. c. 217, § 22.

If the magistrate or court appoints a PR, the magistrate or court shall forward the file to the registry to issue the appropriate Letters. An informal order may only authorize the issuance of Letters for a PR. Letters for a SPR may only issue by formal order of the court.

**Practice Alert:** Letters shall not issue to a PR or a SPR unless a bond is on file and approved. MUPC at § 3-601.

### 1.12.1 How to Issue Initial Letters of Authority

Registry staff shall complete all “fillable” fields on Letters, by cross referencing the data contained in the order or decree making the appointment to indicate:

For Letters of Authority for PR:

1. Whether or not the administration is supervised or unsupervised;
2. The date of the appointment; AND
3. Any restrictions placed on the authority of the PR.

For Letters of Authority for SPR:

1. The date of appointment;
2. The expiration date of appointment; AND
3. Any restrictions or expansion of the authority of the SPR.

**Note:** Any order appointing a SPR shall state the duration of the SPR’s appointment which shall be no longer than 90 days unless the court orders otherwise. See section 6.7 of this guide. See also [\(MPC 650\) Order Appointing a SPR](#).

**Practice Alert:** Pursuant to § 3-108(4), the Letters for any PR appointed on a Petition for Late and Limited Formal Testacy and/or Appointment **must indicate that the PR’s authority is limited**. See Chapter 4 of this guide.

Once completed, the original Letters shall be signed by the register and stamped with the court seal over the division information in the caption box as an official record of the court. A copy of the Letters shall be kept in the file. The date the Letters are issued by the magistrate or the court shall be on the docket. The appropriate fee shall be charged for each certified letter that is issued.

### 1.12.2 Supervised PRs

The Letters must indicate that the PR is supervised. Any restrictions on the power of a PR which were ordered by the court shall be endorsed on the PR’s Letters. If they are not, the restrictions are ineffective as to persons dealing in good faith with the supervised PR. MUPC at § 3-504.



If a PR had previously been appointed in an informal proceeding or in a formal proceeding without supervised administration, new Letters must be issued to the supervised PR indicating that the PR is now supervised.

### 1.12.3 Other Restrictions on the Powers of a PR

Only a judge can restrict the powers of a PR. Any restrictions on the power of a PR which are ordered by the court on a formal decree **MUST** be endorsed on the PR's Letters.

**Practice Alert:** A Petition for Late and Limited Formal Testacy and/or Appointment may be approved by a MUPC magistrate if assented to in writing, or if no objection to it has been filed. The limited authority of a PR appointed under the § 3-108(4) exception **MUST** be endorsed on the PR's Letters.

### 1.12.4 How to Re-Certify Letters

Letters do not expire, but third parties may require Letters to have been certified within the past 90 days. If updated or certified Letters are requested, the registry must confirm that the informal order or formal decree is still in effect to issue new Letters. The above procedure to issue initial Letters shall be followed **and the date of the re-certified Letters shall be made part of the docket**. The appropriate fee shall be charged for each certified letter that is issued.



**Fee Alert:** Additional Letters are \$25.00 each.

**Practice Alert:** Any post-appointment modification of a PR's authority must be endorsed on Letters issued thereafter. If the PR's appointment has been terminated by resignation, removal, death, incapacity, change in testacy status, or because one year has passed from the filing of a Small Estate Closing Statement, no additional Letters shall issue. See [Chapter 7](#) of this guide.

## 1.13 Determination of Testacy

"Testacy" refers to the general status of a decedent in regards to wills. It includes the possibility that a decedent left no valid will, and any question about which of several instruments is the valid will. A determination of testacy is a determination that the decedent died with or without a valid will regardless of whether or not a PR has been appointed.

### 1.13.1 Statutory References- MUPC at §§:

3-108

3-401

3-412  
3-414  
3-612  
3-1001(c)

### 1.13.2 A Change of Testacy after an Informal Proceeding

A change of testacy may occur when:

- 1) The court previously issued an informal order appointing a PR in an intestate estate and later a decree is entered in a formal proceeding to probate a will or on a Petition for Order of Complete Settlement in which a testacy status determination is requested. MUPC at § 3-1001.
- 2) The court previously issued an informal order probating the decedent's will, with or without the appointment of a PR, and later a decree is entered in a formal proceeding to adjudicate intestacy or probate a will, or on a Petition for Order of Complete Settlement in which a testacy status determination is requested.

MUPC at § 3-612.

**Practice Alert:** A formal petition to change testacy status must be commenced within 3 years from decedent's date of death unless an exception applies. See [section 1.2](#) of this guide.

### 1.13.3 A Change of Testacy after a Formal Proceeding

A change of testacy may occur after the court previously issued a formal decree adjudicating testacy and later a formal decree is entered on a petition requesting to vacate (in whole or in part) the previously issued formal decree and a subsequent formal decree is entered on a formal petition to probate a later-offered will or to re-determine heirs at law. MUPC at § 3-412.

### 1.13.4 Effect of Change of Testacy on a Previously Appointed PR

Upon the filing of a formal proceeding which seeks a change in testacy status, the petitioner may request confirmation of the acting PR's appointment or seek the appointment of a different PR.

During the pendency of the formal proceeding, the power of the previously appointed PR to make further distributions is suspended pursuant to § 3-401. A petitioner may request orders further restraining the PR from exercising any other powers and may request the appointment of a SPR. See [Chapter 6](#) of this guide.

If a change of testacy determination results in the appointment of a different PR, the prior PR's appointment is terminated. See [Chapter 7](#) of this guide.

If a change of testacy determination does not result in the appointment of a different PR or if the appointment of the prior PR was not confirmed and no request for appointment of a different PR is made within thirty (30) days after expiration of the appeal period, the prior PR may confirm his appointment and restore any powers suspended during the pendency of the change in testacy proceeding by filing a statement of confirmation with the division. See [Chapter 7](#) of this guide.

### 1.13.5 Examples

**Example 1:** Sue, Donna's second spouse, is appointed PR informally over Donna's estate in an intestacy proceeding. Several months later Andy, Donna's son, finds a will naming him as PR. May Andy file a petition for formal probate of the will requesting the court determine that the will is valid and appoint him PR?

**Answer:** Yes. Andy may file (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative requesting a formal testacy determination and request his appointment as PR. Because there is a pending petition for formal probate of the will requesting the appointment of a different PR, Sue's authority as PR is suspended except to preserve the estate. If Andy is appointed, Sue's authority is terminated without further action.

**Example 2:** Sue, Donna's second spouse, is appointed PR informally over Donna's estate in an intestacy proceeding. Several months later Andy, Donna's son, finds a will naming him as PR. May Sue file (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative without requesting the appointment of Andy as PR?

**Answer:** Yes. If no PR is appointed in the formal proceeding, thirty days after the expiration of the appeal period, Sue may confirm her appointment and restore any power suspended during the pendency of the change in testacy proceeding by filing a statement of confirmation with the division.

**Example 3:** Donna dies with a will leaving her estate to her second spouse, Sue. The will is formally probated and Sue is formally appointed PR over Donna's estate. Thereafter, Andy, Donna's son discovers a later dated will leaving Donna's estate equally to Sue and to Donna's children, Andy, Debra and Mary. May Andy file a formal petition to probate the second will requesting that the court determine the second will to be valid?

**Answer:** No, because the earlier dated will was formally probated Andy may not now file (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative. Andy may file a petition requesting the court vacate the previously issued formal decree. He will need to meet the burden of proof and the time requirements of § 3-412.

## 1.14 Execution of a Will

An individual 18 or more years of age who is of sound mind may make a will. MUPC at § 2-501. A conservator may be authorized by the court to make, amend or revoke a protected person's will. MUPC at § 5-407(d)(7).

Pursuant to § 2-502(a), a will must be:

- (1) in writing;
- (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
- (3) signed by at least two individuals, each of whom witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgement of that signature or acknowledgement of the will.

**Note:** A will also may be self-proved either when it is executed or at any time thereafter by the acknowledgment of the testator and affidavits of the witnesses on a form as set out in §2-504 for a self-proved will.

**Practice Alert:** There is no requirement under the MUPC that a will be self-proved in order to admit a will to informal or formal probate. MUPC at § 2-504.

**Note:** Intent that the document constitute the testator's will can be established in a formal proceeding by extrinsic evidence. MUPC at § 2-502(b).

### 1.14.1 Who May Witness

Pursuant to § 2-505:

- (a) An individual generally competent to be a witness may act as a witness to a will.
- (b) The signing of a will by an interested witness **shall not invalidate the will or any provision of it** except that a devise to a witness or a spouse of such witness **shall be void** unless there are 2 other subscribing witnesses to the will who are not similarly benefited thereunder or the interested witness establishes that the bequest was not inserted, and the will was not signed, as a result of fraud or undue influence by the witness.

MUPC at § 2-505.

### 1.14.2 Requirements in Informal Proceedings

In an informal proceeding, a will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under § 2-502 have been met **shall** be probated without further proof. In cases without the attestation clause, a magistrate may *assume* execution if the will appears to have been properly executed. MUPC at § 3-303(c).

**Practice Alert:** A written will is valid if executed in compliance with § 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national. MUPC at § 2-506.

### 1.14.3 Requirements in Formal Proceedings

In a formal proceeding, the following apply:

#### **Uncontested Cases:**

##### (a) Without Self-Proving Affidavit

An attestation clause that meets the requirements of § 2-502 is prima facie evidence of due execution, even if the will is not self-proved. A formal probate may be completed on the strength of the pleadings. MUPC at § 3-405, official UPC Comment.

If there is no attestation clause that meets the requirements of § 2-502, evidence concerning execution of the will may be necessary. The affidavit or testimony of any attesting witness to the instrument is sufficient. See ([MPC 480 Affidavit of Witness](#)). If the affidavit or testimony is not available, execution of the will may be proved by other evidence or affidavit. MUPC § 3-405.

##### (b) With Self-Proving Affidavit

If the will is self-proved, compliance with signature and other requirements of execution are presumed. See generally, MUPC at § 3-406.

#### **Contested Cases:**

##### (a) Without Self-Proving Affidavit

If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within Massachusetts, competent and able to testify, is required. Due execution of a will may be proved by other evidence. MUPC at § 3-406(a).

(b) With Self-Proving Affidavit

A self-proved will creates a rebuttable presumption of compliance with signatures and other requirements of execution, without the testimony of any attesting witnesses, unless there is proof of fraud or forgery effecting the self-proving acknowledgement or affidavit. MUPC at § 3-406(b).

**Note:** Rule 12 of the Supplemental Rules of the Probate and Family Court, Depositions of Witness to Will, is repealed and Rule 27A of the Supplemental Rules of the Probate and Family Court, Depositions and Discovery, now governs. See also G. L. c. 233, § 25.

#### 1.14.4 Tangible Personal Property Memorandum

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. **To be admissible as evidence of the intended disposition**, the writing shall be signed by the testator and shall describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will. MUPC at § 2-513.

**Note:** The tangible personal property memorandum, while potentially useful to interested parties, is NOT admitted to probate as part of a will proceeding. Its use may arise **later** in a **formal proceeding**, if any, concerning the testator's intent regarding the distribution of such property.

## 2

### VOLUNTARY ADMINISTRATION

#### 2.1 Statutory References- MUPC at §§:

3-1201

3-1202

#### 2.2 Criteria to Qualify for Voluntary Administration of Small Estates

To be eligible for voluntary administration of a small estate, the following criteria must be met:

- 1) The decedent must have been a resident of Massachusetts;
- 2) The decedent left an 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 § 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 formal or informal petition seeking probate of a will or appointment of PR has been filed.

**Legislative Change:** Chapter 165 of the Acts of 2014 expanded who could petition to act as VPR of the estate to include any person designated to act as VPR by DMH, DDS or DMA, if a decedent was receiving services from DMH, DDS or DMA.

**Practice Alert:** For purposes of filing a voluntary administration, a creditor is NOT an interested person as defined in § 1-201(24). If an interested person is a minor, the minor's parents may not file on behalf of the minor without authority from the court to do so. See MUPC at § 5-408.

**Note:** The authority of a VPR is limited by law and does not result in an official appointment by the court. MUPC at § 3-1201.

#### 2.3 Venue and Filing Requirements for Voluntary Administration

For a voluntary administration, proper venue is with the Probate and Family Court in the county where the decedent resided. For a listing of Massachusetts counties and the cities and towns

within, see <https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm>. For additional information on venue, see section 1.6 of this guide.

The following documents must be filed for a Voluntary Administration:

- 1) Form [\(MPC 170\) Voluntary Administration Statement](#) (hereafter “the Statement”);
- 2) The original will (if any);
- 3) A certified copy of the death certificate;
- 4) If necessary, [\(MPC 485\) Affidavit of Domicile](#) or [\(MPC 475\) Cause of Death Affidavit](#) (formerly known as “Suspicious Death Affidavit”); and
- 5) Filing fee of \$115.00.

For help in completing the Statement, see [\(MPC 961\) Instructions](#).

### VOLUNTARY ADMINISTRATION CHECKLIST

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



**Fee Alert:** The filing fee is \$115.00. The fee is broken down as follows: \$100 for the filing of the Statement and a \$15.00 surcharge fee to assign a docket number. The \$115.00 filing fee includes one (1) attested copy of the Statement issued by the Register of Probate. Additional attested copies cost \$20.00 each.

**Note:** A pre-MUPC (and post-MUPC) Voluntary Administration Statement may be amended for later discovered assets provided the total estate assets do not exceed the statutory limit of \$25,000. Generally, a [motion](#) to amend the Statement is required (with or without an amended Statement) and may be allowed administratively by a judge. Check with the specific court before filing.

## 2.4 Registry Procedure

If the above filing requirements are met, the registry shall:



- 1) Confirm that there is no formal or informal petition seeking probate of a will or appointment of PR filed in the court;
- 2) Docket the pleadings and documents filed as part of the permanent division record; and issue an attested copy of the Statement duly filed under this section.

**Practice Alert:** Despite the fact that the MUPC currently says otherwise, there can be no Certificate of Appointment issued to VPR because no official appointment is made. Therefore, only an attested copy of the Statement will be provided to the VPR. To issue an attested copy of revised MPC 170 (4/15/16), a **copy** of the original statement should be made and **the copy** dated and attested to by the Register of Probate in the usual manner. By attesting a copy of the original, updated (future) attested copies can be made.

## 2.5 Authority of a VPR

Upon the presentation of a copy of an attested copy of the Statement and tender of a proper receipt in writing and the surrender of any policy, passbook, note, certificate or other evidentiary instrument, a VPR may:

- 1) Receive payment of any debt or obligation in the nature of a debt.
- 2) Receive delivery of any chattel (personal property) or asset scheduled in the Statement, surrender policy, note, passbook or other evidentiary instrument scheduled in the Statement.
- 3) Discharge liability of debtor, obligor or deliverer of assets unless at time of payment or delivery, a written demand was made upon debtor, obligor or deliverer by a duly appointed PR.

**Practice Alert:** The filing of a Voluntary Administration Statement does not result in an official appointment by the court. Under the law, a person designated as a VPR has limited authority. In order to obtain medical records of the decedent, a person interested in the estate may need to be appointed as a PR by the court. For more information on how to be appointed a PR, see Chapters 3 and 4 of this guide.

**Note:** The Registry of Motor Vehicles still allows for the transfer of motor vehicle to a surviving spouse pursuant to G. L. c. 90D, § 15A without any court proceeding. For a copy of the RMV form and instructions, see <http://www.massrmv.com/rmv/forms/title.htm>.

### 2.5.1 Statutory Powers and Duties of a VPR

A VPR is NOT generally considered a PR under § 1-201(37) and therefore has only the powers authorized by § 3-1201. A VPR has the following powers and obligations:

- 1) For purposes of G. L. c. 175, § 113, paragraph (6) and G. L. c. 90, § 2, a VPR shall be deemed the PR of the estate unless and until a PR is appointed.
- 2) A VPR shall, as far as possible out of the assets which come into his/her hands, first pay the necessary expenses of the decedent's funeral, last sickness, and estate administration. A VPR may not charge a fee for his/her services. A VPR shall then pay debts of the deceased in the order specified in § 3-805 and any other debts of the estate and then distribute the balance, if any, in accordance with the law. See MUPC at Part 1 of Article II.
- 3) A VPR shall be liable as a PR for his own wrongs in administration of estate.
- 4) A VPR may sell any chattel (personal property) received and negotiate or assign any chose in action (lawsuit or claim) to convert same to cash in reasonable amount. But see, Marco v. Green, 415 Mass. 732 (1993) (wrongful death action).

MUPC at §§ 3-1201, 3-1202.

**Note:** A VPR is not an appointed fiduciary and therefore he/she is not required to close the estate.

### 2.5.2 Effect of Voluntary Administration Statement on Third Parties

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to § 3-1201 to the VPR is discharged and released to the same extent as if he dealt with a PR of the decedent. Such person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of the Statement.

If any person to whom an attested copy of the Statement is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable to any PR of the estate.

## 2.6 Examples

**Example 1:** Thirty days have passed since Donna died leaving her spouse Harry and their three children: Andy, Debra and Mary. At the time of her death, Donna owned a house, held as tenants by the entirety, a bank account held jointly with Harry with a balance of \$120,000 and, standing in her name alone, a car valued at \$29,000 and a bank account with a \$22,000 balance. Her will leaves her entire estate to Harry but if he predeceases her, equally to their children. The will nominates Harry as the PR and Debra as the alternate. May Harry file to become a VPR?

**Answer:** Yes. Thirty days have passed since the date of death. Donna's real estate and joint bank account pass by law to Harry. Since the value of the car may be excluded, Donna's only asset is the bank account in her sole name which is less than \$25,000. Harry is an interested person and while he is nominated in the will, he need not have been nominated in order to file.

**Example 2:** Thirty days have passed since Donna died leaving her three children: Andy, Debra and Mary (a minor). May Andy become VPR of Donna's estate if Mary, the minor, has no guardian or conservator?

**Answer:** Yes. The fact that Mary is a minor does not affect Andy's ability to file for a VPR.

**Example 3:** Donna died in 2005 leaving her spouse Harry and their two children: Andy and Debra. At the time, Harry believed no probate was necessary since all of Donna's assets were held jointly with Harry. As a result of an unexpected windfall, Harry learns that Donna's estate was entitled to \$19,000 at the time of her death (now valued at \$22,000). May Harry seek to file a VPR in 2012?

**Answer:** Yes. Providing Harry meets the other requirements, Harry may become VPR any time after Donna's death since the time limitations of § 3-108 do not apply to Voluntary Administration proceedings. Also, even though the value to file a Voluntary Administration in 2005 was \$15,000, the requirement that the amount of the personal property be less than \$25,000.00 is applied as of the date of filing not date of death, so Donna's estate qualifies.

**Example 4:** Thirty days have passed since Donna died domiciled in Plymouth county leaving her spouse Harry and their three children: Andy, Debra and Mary (a minor). Donna and Harry owned their home as tenants by the entirety. Donna also owned a car and a bank account with a balance of \$12,000 standing in her name alone. Donna does not have a will. Harry does not want to serve as VPR. May Andy, who currently lives in Burlington, Vermont file to become a VPR of Donna's estate?

**Answer:** Yes. It is more than 30 days since Donna's death and her bank account is less than \$25,000. Andy is an interested person and need not have priority nor be a resident of Massachusetts to file.

**Example 5:** Thirty days have passed since Debra, a recent graduate of Amherst College, was killed in a car accident two weeks after graduation leaving in her native state of New York, her parents, Donna and Harry, and two siblings, Andy and Mary. In addition to personal property located in her apartment in Amherst, Hampshire County, Debra had a long standing checking

account with a \$3,000 balance at Big Bank of America and a savings account with a \$1,000 balance at Little Savings Bank in Amherst. May Donna become VPR of Debra’s estate?

**Answer:** Yes, provided Debra was a resident of Massachusetts as stated on her death certificate (listed as domicile on the Voluntary Administration Statement). If Debra resided in Massachusetts, Donna could become VPR regardless of the fact that Donna does not reside in Massachusetts. If Debra was still a resident of New York according to her death certificate, Donna would need to become appointed in New York in order to access the bank accounts. If the information as to domicile on Debra’s death certificate is incorrect, Donna may file [\(MPC 485\) Affidavit of Domicile](#) as to Debra’s domicile.

**Example 6:** Thirty days have passed since Debra died without a will leaving her parents, Donna and Harry, and two siblings, Andy and Mary. May Donna and Harry apply to be Co-VPRs of Debra’s estate?

**Answer:** Yes. Donna and Harry are both interested persons and the definition of “interested person” under § 1-201(24) includes more than one person.

### 3 INFORMAL PROCEEDINGS

An informal proceeding is an administrative proceeding allowed by a MUPC magistrate or a judge to probate a will or appoint a PR. MUPC at § 1-201(23).

If a decedent died with a will (testate), an informal proceeding may be filed to probate the decedent's will with or without a request for the appointment of a PR. A proceeding may also be filed for the informal appointment of a PR after the formal or informal probate of a will. If the petitioner is requesting the appointment of a PR 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 a decedent died without a will (intestate), a proceeding for informal appointment of a PR may be filed.

An informal proceeding is unavailable if:

- the **original** will is lost, destroyed or otherwise unavailable;
- the **original** will has handwritten words added (interlineations) or crossed out (deletions);
- there is no official death certificate;
- the location or identity of any heir at law or devisee is unknown;
- the person to be appointed PR **does not have priority for appointment** by statute or by renunciation and/or nomination;
- an **heir at law or a devisee, is an incapacitated person, a 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 PR 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 at law or devisee is not represented by a PR;
- supervised administration is necessary;
- a judge must sign an order or final decree for any reason.

**Note:** An adjudication as to the decedent's heirs at law and testacy are made only in a formal proceeding. See [Chapter 4](#) of this guide.

### **3.1 Statutory References- MUPC at §§:**

3-301 through 3-311

### **3.2 Probate Court Jurisdiction**

Pursuant to § 3-301, the court may accept a petition to informally:

- 1) admit a will to probate. MUPC at § 3-301(2);
- 2) appoint a PR to administer an estate under a will. MUPC at § 3-301(3);
- 3) appoint a PR in an intestate estate. MUPC at § 3-301(4).

### **3.3 Filing for Informal Probate and/or Appointment of PR**

Court approved forms are available to petition to informally probate an estate and/or appoint a PR. All required forms must be submitted as a complete packet. Forms may be obtained from:

- 1) the registry in each county Probate and Family Court; or
- 2) the [MUPC Hub](#) located on the Probate and Family Court website.

A complete packet consists of the following court approved forms and documents depending on whether the decedent died with a will (testate) or without a will (intestate):

**INFORMAL CHECKLIST**

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

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### 3.3.1 Submitting Court Pleadings

The petitioner must submit to the registry, either by e-filing (if available), by mail, or in person, a complete informal packet of required forms and documents with the appropriate fee in the form of a check or money order. Cash or credit cards will not be accepted unless the pleadings are delivered in person.



**Fee Alert:** The total filing fee is \$390.00. The fee is broken down as follows: \$375 for the filing of the informal petition, including all required forms/documents and a \$15.00 surcharge fee to assign a docket number. The \$390.00 filing fee includes the initial appointment bond, notice forms and the initial court issued Letters of Authority but does not include any publication costs. Additional Letters are \$25.00 each.

The complete packet should be filed in the Registry of Probate for the county Probate and Family Court where the decedent was domiciled at the time of death; or if the decedent was not domiciled in Massachusetts, in any county where property of the decedent was located at the time of death. See also section 1.6 of this guide. For a listing of Massachusetts counties and the cities and towns within, see <https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm>.

Pleadings will not be returned by the registry nor will filing fees be refunded once the case is docketed. It shall be the responsibility of the petitioner to correct any and all defects. Registry personnel shall not make any edits or corrections to the pleadings.

The registry shall docket the following pleadings and applicable documents:

1. Petition for Informal Probate of Will and/or Appointment of a PR (MPC 150);
2. Surviving Spouse, Children, Heirs at Law (MPC 162);
3. Devisees (MPC 163), if applicable;
4. Original will, unless already in the division's possession and filed;
5. Death certificate, unless already in the division's possession and filed;
6. Notice of Informal Probate & Return of Service (MPC 550);
7. Bond (MPC 801), if applicable;
8. Military Affidavit (MPC 470), if necessary;
9. Authenticated copy of will and appointment, for ancillary proceedings only;
10. Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455), if any;
11. Any required affidavits;
12. Proof of Guardianship/Conservatorship, if applicable.

The proposed Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750) (hereafter “Informal Order”) shall not be docketed.



### 3.3.2 Issuing a Docket Number

After filing, a case number shall be initiated in MassCourts and all filed pleadings shall be docketed with the docket number written on all pleadings/documents. If a decedent's original will has already been filed with the division, or a case has already been initiated for the decedent, the additional pleadings shall be filed in the case already established. Once pleadings are docketed, the case shall be forwarded to appropriate personnel to process the payment.

**Note:** There shall only be one docket number for a decedent.

**Note:** If it is determined that a file should be located in a Probate and Family Court of another county within Massachusetts, the case may be transferred in accordance with the MUPC at § 1-303(c).

### 3.4 Required Elements of the Informal Petition (MPC 150)

Section 3-301 of the MUPC outlines the required contents of [\(MPC 150\) Petition for Informal Probate of Will and/or Appointment of Personal Representative](#) (hereafter "Petition"). The Petition must be verified by the petitioner to be accurate and complete to the best of the petitioner's knowledge and belief. MUPC at § 1-310. For instructions on completing this form see [\(MPC 962\) Instructions](#).

**Note:** The Petition must be signed under the penalties of perjury by the petitioner. If there is an attorney, the attorney also must sign. MUPC at § 1-310, Rule 28 of the Supplemental Rules of the Probate and Family Court (2012).

A complete and verified Petition must contain the following information:

#### 3.4.1 Court Caption

All sections of the caption box should be completed including the name of the estate, date of death and the applicable division in which the Petition is to be filed. Put an "X" next to "Original Form" if this is the first time you are filing this form; put an "X" next to "Amended Form" if you have previously filed this form with the court and are now changing the information.

**Note:** An informal petition can only be amended **prior** to allowance. See [section 3.15](#) of this guide.

### 3.5 Section I - General Information

#### 3.5.1 Information about the Decedent

A death certificate issued by a public officer must be on file with the court or accompany the Petition. The petitioner must also provide the following:

- 1) Name of decedent/Address -- The name of decedent should be listed and match the name on the death certificate. Any other name by which decedent was known should also be listed. The address listed should be that of the decedent at the time of death.
- 2) Age at death -- The age of the decedent at death must be listed and match the information listed on the death certificate.
- 3) Domicile -- The city/town and state of decedent's domicile must be listed and the domicile must be located within the county of filing unless the decedent was not domiciled in Massachusetts but had property located within that county.

**Note:** The death certificate is a good way to check all of the above information about the decedent. If the address of the decedent is recorded differently on the death certificate, [\(MPC 485\) Affidavit of Domicile](#) must be filed.

#### 3.5.2 Information about the Petitioner(s)

The petitioner is likely to be the same person as the PR but does not need to be. The petitioner's name, address, primary phone number and interest in the decedent's estate (i.e., the reason the petitioner may have a right to petition to probate the estate) must be stated. The Petition can expand to add a co-petitioner.

**Practice Alert:** An informal proceeding is **UNAVAILABLE** if the PR to be appointed is an interested person solely due to his or her status as a creditor or as a public administrator.

**Practice Alert:** A **guardian** may represent an heir at law or devisee who is an IP, PP, or a minor, but a **guardian cannot be the petitioner**.



**Magistrate Finding:** The magistrate must make a finding that the petitioner appears to be an interested person as defined in § 1-204(24). MUPC at §§ 1-204(24), 3-303(a)(3), 3-308(a)(3).

### 3.5.3 Time Limits

The Petition must be filed within the time period permitted by law. See [section 1.2](#) of this guide.

Compare the date the Petition is filed to the date of the decedent’s death.

- 1) Have more than 3 years elapsed since the date of death?
  - a) If no, the petitioner has commenced proceedings within the time limits required by law.
  - b) If yes, the petitioner must provide an explanation as to why the action was not commenced within the time permitted by law and include the statutory reference for the exception authorizing a tardy proceeding.

**Practice Alert:** If the decedent died prior to the effective date of the MUPC (i.e., March 31, 2012), the time limits in effect at the time of death shall control. See generally G. L. c. 193, § 4.



**Magistrate Finding:** The magistrate must make a finding that the Petition was filed within the time period permitted by law. MUPC at § 3-303(a)(7).

**Note:** The death certificate is a good way to verify that the Petition is filed within the time period permitted by law.

### 3.5.4 Venue

See [section 1.6](#) of this guide.



**Magistrate Finding:** The magistrate must make a finding that venue is proper. MUPC at §§ 3-303(a)(4), 3-308(a)(4).

**Note:** The death certificate is a good way to verify that venue is proper. If the address of the decedent is recorded differently on the death certificate, [\(MPC 485\) Affidavit of Domicile](#) must be filed.

### 3.5.5 Notice to the Division of Medical Assistance (“DMA”)

The petitioner must give written notice at least seven (7) days prior to petitioning for informal probate or appointment by sending a copy of the signed Petition and death certificate by certified mail to the Division of Medical Assistance, Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205. MUPC at § 3-306(g).

**Legislative Change:** The above procedure was revised by Chapter 165 of the Acts of 2014. The amendment now requires the petitioner to give the Division of Medical Assistance written notice 7 days prior to petitioning for informal probate or appointment by sending a copy of the signed Petition and death certificate by certified mail.

## 3.6 Section II - Persons Interested in the Estate

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

The petitioner is required to certify on the Petition that 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 [\(MPC 162\) Surviving Spouse, Children, Heirs at Law](#) and if the decedent died with a will, [\(MPC 163\) Devisees](#). Instructions are provided to assist the petitioner in completing these two separate forms. See [\(MPC 958\) Instructions](#) and [\(MPC 959\) Instructions](#). [Examples](#) of completed forms and [training materials](#) on new and revised forms are also available. For more information on heirs at law and devisees, section 1.3 and section 1.4 of this guide.

Failure to submit (MPC 162) Surviving Spouse, Children, Heirs at Law, and if applicable, (MPC 163) Devisees, will result in a delay in processing the case.

**Practice Alert:** Children of the decedent (adopted or biological) MUST be listed on (MPC 162) Surviving Spouse, Children, Heirs at Law even if the decedent’s children are not otherwise heirs at law. See [section 1.3](#) of this guide.

**Practice Alert:** In the case of a devise to an existing trust or trustee, or to a trustee or trust described by the will, the trust or trustee is the devisee and must be listed on (MPC 163) Devisees. The beneficiaries of the trust are **NOT** devisees. MUPC at § 1-201(11).

**Practice Alert:** If an heir at law or devisee of the decedent’s estate is since deceased (i.e. died after the death of the decedent), a PR must be appointed for that estate in order to proceed informally. See (MPC 162) Surviving Spouse, Children, Heirs at Law and (MPC 163) Devisees. If no PR is appointed to represent the since deceased’s estate, a **formal** proceeding must be filed.

**Note:** If any devisee is a charity, list the name of the charity and provide notice to the charity and to the Massachusetts Attorney General. See G. L. c. 190B and Uniform Practice XXXIV. MUPC at §§ 2-105, 3-306(d), G. L. c. 12, § 8G and Uniform Practice XXXIV of the Probate Court.

**Practice Alert:** An informal or formal proceeding may be used to probate a will that contains a testamentary trust or pours over into an inter vivos trust where the petitioner is also the trustee, even if there may be trust beneficiaries who are minors, incompetent or unascertained. The trust beneficiaries (adult or otherwise) do not need to be listed on the Petition unless they are otherwise devisees or heirs at law. No GAL need be appointed. See [Practice Tip Memorandum, dated May 23, 2012](#).

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

If the petitioner does not know the name or whereabouts of an heir at law, he or she has a duty to perform a **reasonably diligent search** for the information. MUPC at § 3-301 (a)(1)(ii). If the name or whereabouts of an heir at law cannot be ascertained, an informal petition cannot be filed. A formal proceeding however may be commenced.



**Magistrate Finding:** The magistrate must make a finding that the spouse, heirs at law and any devisees are not incapacitated or protected persons or minors; or if they are, they are represented by conservators or guardians. See MUPC at §§ 1-3-303(a)(8), 3-308(a)(8).

**Practice Alert:** A **guardian** of an heir at law or devisee who is an IP, PP, or a minor CANNOT be the petitioner.

**Legislative Change:** The above was revised by Chapter 140 of the Acts of 2012. The amendment to § 1-404(d) now allows the conservator of a spouse, heir at law or devisee who is an IP, PP, or a minor to be the petitioner in an informal proceeding. **A guardian cannot be the petitioner.**

### 3.7 Section III - Testacy Status

The petitioner must indicate whether or not the decedent died intestate (without a will) or testate (with a will).

#### 3.7.1 Intestate (without a will)

If the decedent died without a will and the petitioner is unaware of any unrevoked will of the decedent, the petitioner may represent the estate as intestate. If the petitioner knows of a will, but is not offering it for probate, the petitioner must state his or her reasons in the space provided.



**Magistrate Finding:** The magistrate must decline the Petition if the Petition indicates the existence of a possible unrevoked will or codicil which is not filed for probate in this division. MUPC at §§ 3-301(4), 3-311.

#### 3.7.2 Testate (with a will)

If the decedent died with a will and the petitioner is offering the decedent's last will and any codicil(s) for probate, the petitioner may represent the estate as testate. If the petitioner is not offering for probate the decedent's unrevoked last will, the petitioner must state his or her reasons in the space provided.

The petitioner must state on the Petition:

1. the date of the decedent's last will and any codicil(s); and
2. that the will submitted for probate is the original will or for an ancillary probate proceeding, that the will is an authenticated copy of a will probated in another jurisdiction and is accompanied by proof of its probate.

**Practice Alert:** A formal petition must be filed to probate a copy of a will or a will with cancellations or interlineations. MUPC at § 3-402(a)&(b). See [Chapter 4](#) this guide.



**Magistrate Finding:** The magistrate must make a finding that (1) an original, **properly executed** and apparently unrevoked will is in the court's possession and that there are no known prior wills which have not been expressly revoked by a later instrument; or (2) an authenticated copy of the will and documents establishing probate in another state or country are in the court's possession. MUPC at §§ 3-303, 2-502, 2-504. See [section 1.14](#) of this guide.

**Note:** The MUPC gives the magistrate two (2) separate methods by which to review the execution requirements. The will is considered properly executed if:

- 1) It contains an attestation clause showing that the execution requirements of § 2-502 have been met; or if none,
- 2) The magistrate **may assume execution** if the will **appears** to have been properly executed.

MUPC at § 3-303(c). See also [section 1.14](#) of this guide.

**Practice Alert:** A will is not required to be self-proved in order to admit to informal or formal probate. MUPC at § 2-504. See also [section 1.14](#) of this guide.

### 3.8 Section IV - Appointment of a PR (if requested)

To acquire the powers and undertake the duties and liabilities of a PR, a person must be appointed by order of the court or magistrate, qualify and be issued Letters. Administration of an estate is commenced by the issuance of Letters. MUPC at § 3-103.

In order to seek the appointment of a PR in an informal proceeding, the nominee must have either statutory priority for appointment or have obtained priority through appropriate renunciation(s)/nomination(s). MUPC at § 3-203. See [section 1.5](#) of this guide.

**Practice Alert:** If someone other than, or in addition to, the petitioner is being nominated for appointment as PR, the petitioner must state the name, address and telephone number of the nominee(s). If there are persons with higher or equal rights to appointment, the petitioner must state this information. All required renunciations/nominations must accompany the Petition. See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#).

**Note:** An Appointment of Agent form is no longer necessary for the appointment of a PR who resides outside of Massachusetts. G. L. c. 195, § 8 repealed by 2008, 521, Sec. 14.

**Practice Alert:** After the initial appointment, the PR must report any change of address to the appointing court. MUPC at § 3-602.



**Magistrate Finding:** The magistrate must make a finding from the statements in the Petition that the person whose appointment is sought has priority entitling that person to the

appointment. MUPC at § 3-308(7). In addition, the magistrate must find that any will to which the requested appointment relates has been formally or informally probated. MUPC at § 3-308(5).

### 3.8.1 Information about Other PRs

The petitioner must disclose if a court has appointed a PR or if an appointment proceeding is pending in Massachusetts or elsewhere. If a PR has been appointed or an appointment is pending, the jurisdiction where the action occurred or is pending must be listed and the PR's name and address identified.

**Note:** If a PR has been appointed in Massachusetts, and the appointment has terminated by death, disability, resignation or removal, a petition for appointment of a successor PR should be used. MUPC at § 3-609. See [Chapter 8](#) of this guide.



**Magistrate Finding:** The magistrate must deny the Petition if it indicates that a PR has been appointed in Massachusetts or elsewhere and continues to serve, unless:

- 1) the decedent was not domiciled in Massachusetts and the petitioner is the domiciliary PR or his or her nominee.
- 2) the decedent was not domiciled in Massachusetts and the decedent's will nominates different PRs to serve in Massachusetts and in the state of domicile.
- 3) a PR is appointed informally and thereafter there is a change of testacy entitling a different PR to appointment and the different PR does not request appointment as part of the formal petition to change testacy but within 30 days brings an informal petition seeking appointment.

MUPC at §§ 3-308(b), 3-612. See also [Chapter 11](#) of this guide.

### 3.8.2 Information about the Bond

The petitioner must indicate if a bond with or without sureties is required and the reasons for any request to waive sureties. If a bond with sureties is required, the petitioner must state the penal sum in a dollar amount. **Failure to state a dollar amount subjects the sureties to unlimited liability.** For additional information, see [section 1.7](#) of this guide.



### 3.9 Section V - Relief Requested

The Petitioner may request that the court/magistrate order any or all of the following:

- 1) Admit the decedent's will to informal probate;
- 2) Appoint the nominee as PR of the estate in an unsupervised administration to serve:
  - a) without sureties on the bond; or
  - b) with sureties on the bond, and

that Letters be issued.

**Note:** No Letters shall issue by the court without an approved bond.

**Note:** Supervised Administration is not available in an informal proceeding.

#### 3.9.1 Verification

The Petition must be verified. This means the petitioner must state, under oath, that the statements in the Petition are true to the best of petitioner's knowledge. The petitioner, not the attorney appearing for the petitioner, must sign the verification. MUPC at § 1-310. See also, Rule 28 of the Supplemental Rules of the Probate and Family Court (2012).



**Magistrate Finding:** The magistrate must make a finding that the Petition is complete and that the petitioner has made oath or affirmation that the statements contained in the Petition are true to the best of the petitioner's knowledge and belief. MUPC at §§ 3-303(a)(1)& (2), 3-308 (a)(1) &(2).

#### 3.9.2 Appearance by Attorney

If the petitioner is represented by counsel, the attorney shall sign the Petition and provide his or her name, address, phone and BBO number. A separate appearance form (MPC 505a) is not required. See Rule 2 of the Supplemental Rules of the Probate and Family Court (2012).

### 3.10 Additional Required Forms

#### 3.10.1 Death Certificate

A certified copy of the death certificate must be filed with the Petition unless it is already on file with the division. MUPC at §§ 3-303(9), 3-308(9).

**Practice Alert:** The date of death on the death certificate and the date of death on the Petition must match. If the cause of death on the death certificate is listed as “pending,” the petitioner must also file [\(MPC 475\) Cause of Death Affidavit](#) (formerly known as a Suspicious Death Affidavit). MUPC at § 2-803.

**Note:** It shall be the petitioner’s responsibility to redact the first five (5) numbers of the decedent’s social security number from the death certificate filed with the court. The filer also must redact other personal identifying information pursuant to any Supreme Judicial Court rule protecting such information.

**Note:** A redacted death certificate may not be sufficient for the Division of Medical Assistance.



**Magistrate Finding:** The magistrate must make a finding that the death certificate issued by a public officer is in the court's possession. MUPC at §§ 3-303(9), 3-308(9).

### 3.10.2 Military Affidavit (MPC 470)

Unless the Petition is assented to by all interested persons, [\(MPC 470\) Military Affidavit](#) must be filed stating whether or not an heir at law, devisee or other interested person is in the military service. If an heir at law, devisee or other interested person is in the military service, his or her written assent to the Petition must be filed or an informal proceeding is not available. Uniform Practice XXV of the Probate Court. A formal proceeding however may be commenced. See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#).

### 3.10.3 Magistrate’s Order (MPC 750)

As part of the complete packet, the petitioner must submit a proposed [\(MPC 750\) Order of Informal Probate of Will and/or Appointment of Personal Representative](#) (hereinafter “Informal Order”). The petitioner is required to complete all applicable sections in preparation for the magistrate’s signature.

If the petitioner is seeking to probate the decedent’s will, after making the findings required by § 3-303, the magistrate shall issue an Informal Order if at least seven (7) days have passed since decedent’s death. If not, the magistrate must delay issuing the Informal Order until 7 days have elapsed. MUPC at §§ 3-302, 3-303.

If the petitioner is seeking the appointment of a PR, after making the findings required by § 3-308, the magistrate shall appoint the petitioner or nominee(s), subject to qualification and acceptance (by executing a sufficient bond), if:

- 1) at least seven (7) days have passed since decedent's death. If not, the magistrate must delay issuing the Informal Order until 7 days have elapsed; OR
- 2) at least thirty (30) days have passed since decedent's death, if the petitioner is seeking the appointment of a PR and the decedent was a non-resident, unless one of the following exceptions apply:
  - a) the PR appointed in the decedent's domicile is the petitioner and nominee; OR
  - b) the decedent's will directs that the estate be subject to the laws of Massachusetts.

MUPC at §§ 3-307, 3-308.

**Practice Alert:** For decedents domiciled both in and out of Massachusetts, the magistrate shall not issue an Informal Order appointing a PR unless at least seven (7) days have elapsed since the decedent's date of date.

**Note:** If an emergency exists requiring the immediate appointment of a PR, a Petition for Special Administration may be filed to protect the assets of the estate.

### 3.11 Additional “May Need” Forms

#### 3.11.1 Bond (MPC 801)

See section 1.7 of this guide.

**If** the petitioner is seeking the appointment of a PR, [\(MPC 801\) Bond](#) shall be required and must be submitted with the informal packet. No bond is necessary if the petitioner is requesting only to probate an original will.

#### 3.11.2 Assent and Waiver of Notice (MPC 455)

See section [3.13.2](#) of this guide.

#### 3.11.3 Renunciation/Nomination (MPC 455)

**If** the petitioner is seeking to appoint a PR who does NOT have statutory priority for appointment, a renunciation and/or nomination by persons with statutory priority shall be required and must be submitted by filing [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) with the informal packet MUPC at § 3-203(a)(2-5). Instructions are provided to assist the petitioner in completing this form. See [\(MPC 941\) Instructions](#). For additional information regarding priority for appointment, see [section 1.5](#) and [section 3.8](#) of this guide.

### 3.11.4 Affidavits

An affidavit is a written declaration or statement of facts made voluntarily. The Affiant certifies under the penalties of perjury that the statements made are true to the best of his or her knowledge and belief. Any of the following affidavits may be required.

#### 3.11.4.1 Cause of Death Affidavit (MPC 475)

**If** the cause of death is listed as “homicide” or “pending,” the petitioner must file [\(MPC 475\) Cause of Death Affidavit](#) (formerly known as Suspicious Death Affidavit) stating whether or not the decedent’s death is the result of a felonious and intentional killing of the decedent by the PR or any person entitled to share in the decedent’s estate. MUPC at § 2-803. Other causes of death do not require the Affidavit.

#### 3.11.4.2 Affidavit of Domicile (MPC 485)

**If** the address of the decedent is incorrectly listed on the death certificate [\(MPC 485\) Affidavit of Domicile](#) must be filed stating facts from the affiant’s personal knowledge.

#### 3.11.4.3 Affidavit of Conservator

**Practice Alert:** **If** the conservator of an IP, PP, or a minor also has an interest in the decedent’s estate as an heir at law or devisee, the conservator must file an affidavit stating specific facts to warrant a conclusion by the magistrate that a conflict of interest does not exist between the conservator and the person(s) represented in order to proceed administratively in an informal proceeding. Failure to submit an affidavit or to state sufficient facts to support the conclusion that a conflict of interest does not exist may result in a denial by the magistrate. MUPC at § 1-404(d).

### 3.12 Proof of Guardianship/Conservatorship

In an informal proceeding, a spouse, heir at law or devisee who is an IP, PP, or a minor must be represented by a conservator, or if not a conservator, a guardian who cannot be the petitioner.

If the appointment is/was within the court in which the filing is being made, the petitioner shall be required to present proof in the form of a docket number. If not, the petitioner must file a certified copy of Letters of guardianship or conservatorship or other proof of appointment.

### 3.13 Notice Requirements for an Informal Proceeding

No citation issues in an informal proceeding. Instead, an informal proceeding requires two types of notice:

- 1) Notice prior to filing the Petition; AND
- 2) Publication notice after the allowance of the Petition.

**Alert:** It is the responsibility of the petitioner to obtain and complete [\(MPC 550\) Notice of Informal Probate and Return of Service](#) and to provide notice to all interested persons who have not waived their right to notice. The court does not issue pre-filing or post publication notice in an informal proceeding.

#### 3.13.1 Notice Prior to Filing the Petition

##### 3.13.1.1 Notice of Informal Probate and Return of Service (MPC 550)

At least seven (7) days prior to petitioning, the petitioner must give written notice of the petitioner's intent to file for informal probate and/or appointment of a PR. MUPC at § 3-306; see [\(MPC 550\) Notice Informal Probate and Return of Service](#).

**Practice Alert:** It is the responsibility of the petitioner to obtain and complete the Notice of Informal Probate and Return of Service and provide notice to all persons entitled unless a written assent and waiver of notice is on file. See [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#). The court is not responsible for issuing notice in an informal proceeding.

##### 3.13.1.2 Persons Entitled to Notice

Notice must be given either by in-hand delivery or first-class ordinary mail to:

- 1) heirs at law;
- 2) devisees, including any devisee that is a charity (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);
- 3) any person having a higher or equal right to appointment not waived in writing and filed with the division;
- 4) any PR of the decedent whose appointment has not been terminated;
- 5) the Attorney General of Massachusetts, if there is no spouse or heir at law of the

- decedent or if any devisee is a charity;
- 6) a conservator or guardian appointed to represent a spouse, heir at law or devisee who is an incapacitated person, protected person, or a minor, and the person represented regardless of age; AND
  - 7) any other person as the petitioner elects.

MUPC at § 3-306(a)(d)(e) and Uniform Practice XXXIV (34) of the Probate Court.

Any person or his or her attorney may assent and waive notice on [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#). Instructions for completing this form are available. See [\(MPC 941\) Instructions](#). Assents are not required in an informal proceeding **unless** a person interested in the estate is on active duty in the military. See section [3.10.2](#) of this guide.

The petitioner need not provide notice to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. MUPC at § 3-306(f).

**Practice Alert:** If it appears from the Petition that a spouse, heir at law or devisee is an IP, PP, or a minor, the petitioner shall give notice to that person and to that person's guardian or conservator. MUPC at § 3-306(e). Notice to the parent(s) of an heir at law or devisee who is a minor is not adequate notice. A parent, however, may petition to be the minor child's guardian or conservator. If a spouse, heir at law or devisee is an incapacitated person, protected person, or a minor, and is not represented by a conservator, or if not a conservator, a guardian who is not the petitioner, an informal proceeding is not available. MUPC at §§ 1-404(d), 3-303, 3-308. A formal proceeding may be filed. See [Chapter 4](#) of this guide.

**Note:** If the address of any interested person or the identity of any heir at law is unknown, an informal proceeding is not available and a formal petition must be filed. MUPC at § 3-301(a)(1)(ii).

**Practice Alert:** If an heir at law or devisee of the decedent's estate is since deceased (i.e. died after the death of the decedent), a PR must be appointed to represent that estate in order to proceed informally. See (MPC 162) Surviving Spouse, Children, Heirs at Law and (MPC 163) Devisees. **Notice of the informal proceeding must be provided to the appointed PR.** If no PR is appointed to represent the since deceased's estate, a formal proceeding must be filed.

### 3.13.1.3 Proof of Service

The petitioner must submit, as part of the complete packet, a return of service stating the names of persons served, how served and the date of service. If a person entitled to notice has assented and waived their right to notice, the petitioner must provide this information along with the written assent and waiver of notice. See [\(MPC 550\) Notice of Informal Probate and](#)

[Return of Service](#) (hereafter “Return of Service”) and [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#).

**Note:** Pursuant to Rule 28 of the Supplemental Rules of the Probate and Family Court (2012), an attorney may sign the Return of Service on behalf of his or her client.



**Magistrate Finding:** The magistrate must make a finding that notice required by § 3-306 has been given to or waived by each person entitled to notice under the law including any guardian or conservator. MUPC at §§ 3-303(a)(6), 3-308(a)(6).

### 3.14 Publication Notice after Informal Probate or Appointment

#### 3.14.1 Informal Probate Publication Notice (MPC 551).

Within 30 days **after** allowance of the informal probate and/or appointment, the petitioner must publish a notice **once** in one of the newspapers designated by the register.

A [list of newspapers](#) designated by the register is available at each registry and on the Probate and Family Court website. The petitioner selects the newspaper from the list generally based on the city or town of the decedent’s last domicile and/or where the proceeding is pending. MUPC at § 3-306(b).

To assist the petitioner in providing the newspaper with the information to be published, a sample form is available that is intended for general use only. See [\(MPC 551\) Informal Probate Publication Notice](#) and the [Instructions](#). The court is not responsible for the content or manner of publication. MUPC at § 3-306(c).

#### 3.14.2 Proof of Publication

There is no general requirement to file proof of publication with the court. The petitioner's failure to give this notice does not affect the validity of the probate, appointment, powers or other duties. MUPC at § 3-306(f).

**Practice Alert:** In most circumstances, the court will **require** proof of publication in a later formal proceeding such as a petition for license to sell real estate or an insolvency proceeding.

### 3.15 Amending a Pleading in an Informal Proceeding

After the Petition is filed with the court and before it is acted on by a MUPC magistrate, a petitioner may amend the Petition, or form (MPC 162) Surviving Spouse, Children, Heirs at Law, or form (MPC 163) Devises, without obtaining court permission in order to correct any errors or omissions. To do so, the petitioner must file a new Petition (MPC 150) or a new (MPC 162) Surviving Spouse, Children, Heirs at Law or new (MPC 163) Devises, clearly designating it as “amended” in the caption. For additional forms that may be required or needed as a result of an amended Petition, see the Informal Checklist in [section 3.3](#) of this guide. **A motion to amend is not required.**



**Fee Alert:** No fee shall be charged for the filing of an amended form.

Notice of an amended Petition, or of an amended (MPC 162) Surviving Spouse, Children, Heirs at Law or amended (MPC 163) Devises, using [\(MPC 550\) Notice of Informal Probate](#), must be provided to persons interested in the estate. See section 3.13 of this guide. A person entitled to notice may waive such right by filing [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#). An assent to a Petition as originally filed will not be deemed an assent to an amended Petition.

**Note:** The time limit for filing an original pleading shall not apply to the filing of an amended Petition if the original pleading was filed within the time limit provided by § 3-108.

**Practice Alert:** Once an Informal Order has entered, an informal petition CANNOT be amended.

### 3.16 Magistrate’s Approval

The magistrate shall review the informal packet for substantive errors. The magistrate may approve the Petition if all statutory requirements are met. See generally, MUPC at §§ 3-303, 3-308. The magistrate shall or may deny/decline the petition based on the following:

The Petition **SHALL** be denied/declined if:

1. the petition indicates that a PR has been appointed in another county in Massachusetts. MUPC at §§ 3-303(b), 3-308(b). **A formal proceeding may be available.** See MUPC at § 3-414.
2. it appears that the will offered for informal probate or another will of the decedent has been the subject of a previous probate order unless the previous probate order relates to a will that



has been probated in another state or country and the petition is filed by an interested person. MUPC at §§ 3-303(b), 3-303(d). **A formal proceeding may be available.** See MUPC at §§ 3-401, 3-414.

3. the petition for appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of Massachusetts, and which is not filed for probate in this court. MUPC at § 3-311. **In this case, an informal appointment is unavailable. A formal proceeding may be available.** See MUPC at § 3-402(a).

4. the petition for probate relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils), the latest of which does not expressly revoke the earlier. MUPC at § 3-304. **In this case, informal probate is unavailable. A formal proceeding may be available.** See MUPC at §§ 3-410; see also MUPC at §§ 2-507, 2-509, 2-513.

The Petition **MAY** be declined if:

1. the magistrate is not satisfied that a will is entitled to be probated in an informal proceeding for any reason. **A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.** MUPC at § 3-305.

2. the magistrate is not satisfied that a requested informal appointment of a PR should be made for any other reason. **A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.** MUPC at § 3-309.

**Practice Alert:** The declination of informal probate of a will or the declination of informal appointment of a PR is not an adjudication and does not preclude a timely filed formal probate or appointment proceeding. MUPC at §§ 3-305, 3-309.

Once approved or denied/declined, an Informal Order shall be docketed in MassCourts and a copy forwarded to the petitioner by mail or in person. The file shall then be forward to the registry to issue Letters (if applicable).

If an informal appointment has been approved, the registry shall be responsible for providing a copy of the Letters to the petitioner either in hand or by mail. No fee shall be charged for the initial letter. If the registry is requested to issue additional copies, a fee shall be charged and collected at the time of the request.

**Note:** A magistrate does not have authority to preside over a contested case. A magistrate shall not act on any informal petition when a formal testacy proceeding is pending. MUPC at § 3-401.

### 3.17 Letters of Authority for Personal Representative (MPC 751)

The registry will no longer issue Certificates of Appointment, but will now issue (MPC 751) Letters of Authority for Personal Representative (hereafter “Letters”). Letters are evidence of the PR’s appointment and proof of authority to act on behalf of the estate and shall issue only if a PR is appointed and a bond is approved. The register for each division is responsible for the issuance of Letters. G. L. c. 217, § 22. See [section 1.12](#) of this guide.

**Practice Alert:** If the magistrate denies or declines the request to appoint a PR, Letters shall not issue.

## 4

### FORMAL PROCEEDINGS

A formal testacy proceeding is an action to establish a will or determine intestacy. MUPC at § 1-201(52). It is conducted before a judge with notice, by citation, to all interested persons. MUPC at §§ 1-201(18), 1-401, 3-401. The proceeding may be contested or uncontested. In certain circumstances, a formal testacy proceeding that is uncontested may be administratively allowed by a MUPC magistrate. See Rule 70 of the Supplemental Rules of the Probate and Family Court.

A formal proceeding may be required for several reasons, including if:

- an informal proceeding 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 at law 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 at law or a devisee is an incapacitated person, 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 at law or devisee is not represented by a personal representative;
- supervised administration is necessary;
- a judge must sign an order or decree for any reason.

#### 4.1 Statutory References- MUPC at §§: 3-401 through 3-414

## 4.2 Probate Court Jurisdiction

Pursuant to § 3-401, the court may accept a petition to formally:

1. admit a will to probate and determine the heirs at law;
2. determine that the decedent died without a will and determine the heirs at law;
3. appoint a PR to administer the estate, including a person designated as a public administrator, in a supervised or unsupervised administration;
4. determine the heirs at law of the decedent.

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;
7. confirm a prior informal appointment in a testate or intestate estate in a supervised or unsupervised administration;
8. appoint a SPR pending the appointment of the PR in the formal proceeding.

## 4.3 Formal Testacy Proceedings

If a decedent died with a will (testate) or more than one will, a formal petition may be filed to probate the will and determine the heirs at law with or without requesting the appointment of a PR. MUPC at § 3-401.

A petition may seek formal probate of a will, within the general time limit provided by § 3-108, without regard to whether the same or a conflicting will has been informally probated. MUPC at § 3-401.

If a decedent died without a will (intestate), a formal petition for an adjudication of intestacy and a determination of heirs at law may be filed with or without the request to formally appoint a PR. MUPC at § 3-401.

**Practice Alert:** Unless a petition in a formal testacy proceeding also requests confirmation of any previous informal appointment, a previously appointed PR, after receipt of notice of the filing of a formal probate proceeding, must refrain from any further distribution of the estate. MUPC at § 3-401.

#### 4.4 Formal Appointment Proceedings

A formal proceeding to appoint a PR may be necessary to determine the priority or qualification of the person nominated for appointment as PR, or of one who previously has been appointed PR in an informal proceeding, if an issue concerning the testacy of the decedent is or may be involved. A formal proceeding to appoint a PR results in an adjudication by the court. MUPC at § 3-414.

A formal petition may also be filed for the formal appointment of a PR after the formal or informal probate of a will.

Pursuant to § 3-414, the court may accept a petition to formally:

- 1) determine who is entitled to appointment as PR under § 3-203;
- 2) appoint a PR in a supervised or unsupervised administration; and
- 3) if appropriate, terminate any prior appointment found to have been improper.

#### 4.5 Filing for Formal Testacy and/or Appointment of PR

Court approved forms are available to petition to formally probate an estate and/or appoint a PR. Forms may be obtained:

- 1) the registry in each county Probate and Family Court; or
- 2) the [MUPC Hub](#) located on the Probate and Family Court website.

The following court approved forms and documents are required or may be needed for a formal proceeding depending on whether the decedent died with a will (testate) or without a will (intestate):

**FORMAL CHECKLIST**

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

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#### 4.5.1 Submitting Court Pleadings

The petitioner must submit to the registry, either by e-filing (if available), by mail, or in person, [\(MPC 160\) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative](#) (hereafter “Petition”), the will (if applicable) and death certificate, with the appropriate fee in the form of a check or money order. Cash or credit cards will not be accepted unless the pleadings are delivered in person.



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



**Fee Alert:** The total filing fee for a Public Administrator is **\$130.00**. The fee is broken down as follows: \$100.00 for the filing of the Petition, a \$15.00 surcharge to assign a docket number, and a \$15.00 citation fee. The filing fee of \$130.00 includes the initial appointment bond, citation, and the initial court issued Letters of Authority, but does not include publication costs.

The forms should be filed in the Registry of Probate for the county Probate and Family Court where the decedent was domiciled at the time of death; or if the decedent was not domiciled in Massachusetts, in any county where property of the decedent was located at the time of death. See also section 1.6 of this guide. For a listing of Massachusetts counties and the cities and towns within, see <https://www.sec.state.ma.us/cis/cisctlist/ctlistcoun.htm>.

Pleadings will not be returned by the registry nor will filing fees be refunded once the case is docketed. It shall be the responsibility of the petitioner to correct any and all defects. Registry personnel shall not make any edits or corrections to the pleadings.

The registry shall docket the following pleadings and applicable documents:

- 1) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative (MPC 160);
- 2) Surviving Spouse, Children, Heirs at Law (MPC 162);
- 3) Devisees (MPC 163), if applicable;
- 4) Death certificate, unless already in the division's possession and filed;
- 5) Decedent's will, unless already in the division's possession and filed;
- 6) Authenticated copy of will and appointment, for ancillary proceedings only;
- 7) Military Affidavit (MPC 470), if necessary;
- 8) Bond (MPC 801), if applicable;

- 9) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455), if any;
- 10) Any required Affidavits;
- 11) Proof of Guardianship/Conservatorship.

The proposed Decree and Order on Petition for Formal Adjudication (MPC 755) (hereafter “Formal Decree”) shall not be docketed.

#### 4.5.2 Issuing a Docket Number

See section [3.3.2](#) of this guide.

### 4.6 Required Elements of the Formal Petition (MPC 160)

Section 3-402 outlines the required contents of [\(MPC 160\) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative](#). Instructions have been developed to assist the petitioner. See [\(MPC 963\) Instructions](#). The Petition must be verified by the petitioner to be accurate and complete to the best of the petitioner’s knowledge and belief. MUPC at § 1-310.

**Note:** The Petition must be signed under the penalties of perjury by the petitioner. If there is an attorney, the attorney also must sign. MUPC at § 1-310 and Rule 28 of the Supplemental Rules of the Probate and Family Court (2012).

A complete and verified Petition must contain the following information:

#### 4.6.1 Court Caption

All sections of the caption box should be completed including the name of the estate, date of death and the applicable division in which the Petition is to be filed. Put an “X” next to “Original Form” if this is the first time you are filing this form; put an “X” next to “Amended Form” if you have previously filed this form with the court and are now changing the information.

**Note:** A formal petition may be amended as a **matter of course** prior to an appearance being timely filed. Thereafter, a motion must be filed requesting court approval along with an amended petition. See [section 4.20](#) of this guide.



## 4.6.2 Section I – General Information

### 4.6.2.1 Information about the Decedent

A death certificate issued by a public officer must be on file with the court or accompany the Petition OR the circumstances which make it impossible for a death certificate to be provided must be listed. MUPC at §§ 3-402(b), 1-107.

- 1) Name of decedent/Address -- The name of decedent should be listed and match the name on the death certificate. Any other name by which decedent was known should also be listed. The address listed should be that of the decedent at the time of death.
- 2) Age at death -- The age of the decedent at death must be listed and match the information listed on the death certificate.
- 3) Domicile -- The city/town and state of decedent's domicile must be listed and the domicile must be located within the county of filing unless the decedent was not domiciled in Massachusetts but had property located in that county.

**Note:** The death certificate is a good way to check all of the above information about the decedent. If the address of the decedent is recorded differently on the death certificate ([MPC 485\) Affidavit of Domicile](#) must be filed.



**Court Note:** The court shall determine the decedent's domicile at death. MUPC at § 3-409.

**Note:** If conflicting claims as to the domicile of a decedent are made in a formal proceeding filed in Massachusetts and in a proceeding after notice pending at the same time in another state, the court shall stay, dismiss, or permit suitable amendment in the Massachusetts proceeding unless it is determined that the Massachusetts proceeding was filed before the proceeding elsewhere. The determination of domicile in the proceeding first commenced shall be accepted as determinative in the proceeding pending in Massachusetts. MUPC at § 3-202.

### 4.6.2.2 Information about the Petitioner(s)

See section [3.5.2](#) of this guide.

**Practice Alert:** If the PR to be appointed is an interested person solely due to his or her status as a **public administrator** pursuant to G. L. c. 194, a formal testacy proceeding must be filed. An informal proceeding is not available. All pre-MUPC forms designated for use solely by a

public administrator, including the pre-MUPC public administrator bond, shall no longer be accepted for filing or approved by the court. A public administrator appointed as PR under the MUPC continues to have his or her statutory obligations under the bond as a public administrator to file an inventory and annual account. See G. L. c. 194, § 2. See also [section 1.5](#) of this guide regarding priority for appointment of a public administrator.

**Practice Alert:** If the PR to be appointed is an interested person solely due to his or her status as a **creditor**, a formal testacy proceeding must be filed. An informal proceeding is not available. The creditor must demonstrate that there is no conflict of interest. A Petition filed by a creditor must be presented to a judge. An uncontested Petition wherein the creditor is seeking appointment as PR cannot be allowed administratively by a magistrate. See generally MUPC at § 3-203 regarding priority for appointment of a creditor.



**Court Note:** The court shall make a finding that the petitioner appears to be an interested person as defined in § 1-204(24). MUPC at § 3-401. If a petitioning creditor is seeking appointment, the court must be satisfied that there is no conflict of interest.

**Note:** Even if assented to in writing, or even if there is no objection to it, a Petition requesting the appointment of a **creditor** as PR may not be allowed by a magistrate but must be **adjudicated by a judge**.

#### 4.6.2.3 Time Limits

The Petition must be filed within the time period permitted by law. MUPC at § 3-108.

For a list of exceptions to the general 3 year rule, see [section 1.2](#) of this guide.

**Practice Alert:** If the decedent died prior to the effective date of the MUPC (i.e., March 31, 2012), the time limits in effect at the time of death shall control. See generally G. L. c. 193, § 4.



**Court Note:** The court must make a finding that the Petition was filed within the time period permitted by law. MUPC at § 3-409.

**Practice Alert:** If a late appointment or testacy proceeding is filed pursuant to § 3-108(4), (MPC 161) Petition for Late and Limited Formal Testacy and/or Appointment must be used. An informal proceeding is not available. See [section 4.19](#) of this guide.

#### 4.6.2.4 Venue

See [section 1.6](#) of this guide.



**Court Finding:** The court must make a finding that venue is proper. MUPC at § 3-409.

**Note:** The death certificate is a good way to verify that venue is proper. If the address of the decedent is recorded differently on the death certificate, [\(MPC 485\) Affidavit of Domicile](#) must be filed.

#### 4.6.2.5 Notice to the Division of Medical Assistance (“DMA”)

The petitioner must give notice once by citation to DMA. To do so, the petitioner must send a copy of the citation when issued by the court together with a copy of the signed Petition and death certificate by certified mail at least fourteen (14) days before the return date 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. MUPC at § 3-306(g).

**Legislative Change:** The above procedure was revised by Chapter 165 of the Acts of 2014.

### 4.7 Section II - Persons Interested in the Estate

#### 4.7.1 Surviving Spouse, Children, Heirs at Law and Devisees

The petitioner is required to certify on the Petition that 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](#). Instructions are provided to assist the petitioner in completing these separate forms. See [\(MPC 958\) Instructions](#) and [\(MPC 959\) Instructions](#). [Examples](#) of completed forms and [training materials](#) on new and revised forms are also available. For more information on heirs at law and devisees, see [section 1.3](#) and [section 1.4](#) of this guide.

Failure to submit (MPC 162) Surviving Spouse, Children, Heirs at Law, and if applicable, (MPC 163) Devisees, will result in a delay in processing the case.

**Practice Alert:** Children of the decedent (adopted or biological) must be listed on (MPC 162) Surviving Spouse, Children, Heirs at Law even if the decedent’s children are not otherwise an

heir at law. See [section 1.3](#) of this guide.

**Practice Alert:** In the case of a devise to an existing trust or trustee, or to a trustee or trust described by the will, the trust or trustee is the devisee and must be listed on (MPC 163) Devisees. The beneficiaries of the trust are **NOT** devisees. MUPC at § 1-201(11).

**Practice Alert:** If an heir at law or devisee of the decedent’s estate is since deceased (i.e. died after the death of the decedent), and if no PR is appointed for that estate, **PUBLICATION** is required.

**Note:** If any devisee is a charity, list the name of the charity and provide notice to the charity and to the Massachusetts Attorney General. See G. L. c. 190B and Uniform Practice XXXIV. MUPC at §§ 2-105, 3-306(d), G. L. c. 12, § 8G and Uniform Practice XXXIV of the Probate Court.

**Practice Alert:** An informal or formal proceeding may be used to probate a will that contains a testamentary trust or pours over into an inter vivos trust where the petitioner is also the trustee, even if there may be trust beneficiaries who are minors, incompetent or unascertained. The trust beneficiaries (adult or otherwise) do not need to be listed on the Petition unless they are otherwise devisees or heirs at law. No GAL need be appointed. See [Practice Tip Memorandum, dated May 23, 2012](#).

**Practice Alert:** If the **conservator** of an IP, PP, or a minor also has an interest in the decedent’s estate as an heir at law or devisee, the conservator must file an affidavit stating specific facts to warrant a conclusion by the magistrate or court that a conflict of interest does not exist between the conservator and the person(s) represented in order to proceed administratively on a formal petition. Failure to submit an affidavit or to state sufficient facts to support the conclusion that a conflict of interest does not exist may result in a denial.

If the petitioner does not know the name or whereabouts of an heir at law, he or she has a duty to perform a **reasonably diligent search** for the information. MUPC at § 3-301 (a)(1)(ii). If the name or whereabouts of an heir cannot be ascertained, the petitioner must state this fact on the Petition. In addition to notice by publication, the court may appoint a GAL or take other appropriate action.

**Practice Alert:** Unless a surviving spouse, heir at law or devisee who is an IP, PP, or a minor is represented by a conservator, or if not a conservator, a guardian who is not the petitioner, the court must appoint a GAL unless a [motion](#) to waive the appointment is allowed by the court. MUPC at §§ 1-403, 1-404. See [section 1.10](#) of this guide.



**Court Note:** The court shall determine the decedent’s heirs at law in a formal testate

(will) or intestate (no will) proceeding. MUPC at §§ 3-402 and 3-409.

## 4.8 Section III - Testacy Status

The petitioner must indicate whether or not the decedent died intestate (without a will) or testate (with a will).



**Court Note:** The court shall determine the status of testacy in a formal proceeding. MUPC at § 3-409.

**Practice Alert:** A final order, decree or judgment of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as binding by a Massachusetts court if it includes, or is based upon a finding that the decedent was domiciled at death in the state where the order was made. MUPC at § 3-408.

### 4.8.1 Intestate (without a will)

If the decedent died without a will and the petitioner is unaware of any unrevoked will of the decedent, the petitioner may represent the estate as intestate. If the petitioner knows of a will, but is not offering it for probate, the petitioner must attach a statement of why such an instrument is not being probated.

### 4.8.2 Testate (with a will)

If the decedent died with a will and the petitioner is offering the decedent's last will and any codicil(s) for probate, the petitioner may represent the estate as testate.

The petitioner must state on the Petition:

1. The date of the decedent's last will and any codicil(s).
2. That the will submitted for probate is:
  - (a) the original will, or if not,
  - (b) that the original will is lost, destroyed or otherwise unavailable and either:
    - (i) a copy of the original will accompanies the Petition; OR
    - (ii) a statement of its contents is attached and incorporated therein.

For an ancillary proceeding, the petitioner must state that the will submitted for probate is:

- (c) an authenticated copy of the will probated in another jurisdiction accompanied by proof of its probate.

**Practice Alert:** A formal petition must be filed to probate a copy of a will or a will with cancellations or interlineations. MUPC at § 3-402(a)&(b).

**Practice Alert:** To probate a copy of a signed will that was executed in accordance with § 2-502, the proponent must prove by a preponderance of the evidence that the original will was not revoked by the decedent.

**Practice Alert:** To probate a copy of an unsigned will, the proponent first must prove by a preponderance of the evidence that the document is a copy of an original will that was executed in accordance with § 2-502. Thereafter, the proponent must prove by a preponderance of the evidence that the original will was not revoked by the decedent.

**Note:** A will from a place which does not provide for probate of a will after death may be proved for probate in Massachusetts by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place. MUPC at § 3-409.

If two or more instruments are offered for probate before a decree is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. MUPC at § 3-410.

If more than one instrument is probated, a decree shall indicate what provisions control in respect to the nomination of a PR, if any. The decree may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. MUPC at § 3-410.

If it becomes evident in the course of a formal testacy proceeding that although one or more instruments are entitled to be probated the decedent's estate is or may be partially intestate, the court shall enter a decree to that effect. MUPC at § 3-411.

**Practice Alert:** After a decree has been entered in a formal testacy proceeding, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate the decree, subject to the time limits of § 3-412. MUPC at § 3-410.



**Court Note:** The court must find that the will is valid and unrevoked in order to admit

the will to formal probate. MUPC at § 3-409. See [section 1.14](#) of this guide.

**Practice Alert:** A final order, decree or judgment of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as binding by a Massachusetts court if it includes, or is based upon a finding that the decedent was domiciled at death in the state where the order was made. MUPC at § 3-408.

#### 4.9 Section IV - Appointment of a PR (if requested)

To acquire the powers and undertake the duties and liabilities of a PR of a decedent, a person must be appointed by order of the court or magistrate, qualify and be issued Letters. Administration of an estate is commenced by the issuance of Letters. MUPC at § 3-103.

A person with or without statutory priority may be appointed PR in a formal proceeding. MUPC at § 3-203.

Information about the PR may be omitted if the petitioner is confirming a prior informal appointment of a PR or is not requesting the appointment of a PR in either a testate or intestate estate.

**Practice Alert:** A Petition filed by a **creditor** must be presented to and heard by a judge. An uncontested Petition cannot be allowed administratively by a magistrate. See [section 1.5](#) of this guide regarding priority for appointment of a creditor.

**Practice Alert:** If someone other than, or in addition to, the petitioner is being nominated for appointment as PR, the petitioner must state the name, address and telephone number of the nominee(s). If there are persons with higher or equal rights to appointment, the petitioner must state this information.

**Note:** An Appointment of Agent form is no longer necessary for the appointment of a PR who resides outside of Massachusetts. G. L. c. 195, § 8 repealed by 2008, 521, Sec. 14.

**Practice Alert:** After the initial appointment, the PR must report any change of address to the appointing court. MUPC at § 3-602.



**Court Note:** If the nominee does not have the highest statutory priority or priority resulting from appropriate renunciation(s)/nomination(s), then the court shall determine who is entitled to appointment as provided by § 3-203. If appropriate, any prior appointment may be terminated. MUPC at § 3-414(b). In addition, the court must make a finding that any will to

which the requested appointment relates has been formally or informally probated. MUPC at § 3-308(5).

**Note:** Even if assented to in writing, or even if there is no objection to it, a formal petition requesting the appointment of a **creditor** as PR may not be allowed by a magistrate but must be **adjudicated by a judge**.

#### 4.9.1 Information about Other PRs

See [section 3.8.1](#) of this guide.

#### 4.9.2 Information about the Bond

The petitioner must indicate if a bond with or without sureties is required and the reasons for any request to waive sureties. If a bond with sureties is required, the petitioner must state the penal sum in a dollar amount. Failure to state a dollar amount subjects the sureties to unlimited liability. For additional information regarding bonds, see section 1.7 of this guide.

#### 4.9.3 Unsupervised/Supervised Administration Request

If the petitioner is requesting the appointment of a PR, the petitioner must indicate whether the PR shall serve in an unsupervised or supervised administration and the reasons for the request. See [Chapter 5](#) of this guide.

#### 4.9.4 Appointment of a SPR

If the petitioner is requesting the appointment of a SPR, the petitioner must state so on the Petition and submit a separate **motion and affidavit** to warrant a conclusion by the court that the appointment is necessary. MUPC at § 3-614. The motion must be presented to a judge for allowance. See generally [Chapter 6](#) of this guide.

**Practice Alert:** For the appointment of a SPR, proper motion notice is required unless waived or shortened by the court upon a finding that an emergency exists. See Chapter 6 of this guide for specific notice requirements and request for an ex-parte hearing.

### 4.10 Section V – Relief Requested

The petitioner may request that the court/magistrate enter a decree to:

- 1) Admit the decedent’s will to formal probate and determine the heirs at law;



- 2) Determine that the decedent died without a will and determine the heirs at law;
- 3) Determine the heirs at law of the decedent;
- 4) Appoint the nominee as PR, in an unsupervised or supervised administration to serve without sureties on the bond or to serve with sureties on the bond in a specified amount; and that Letters be issued;
- 5) Set aside an informal order probating a will;
- 6) Set aside a prior informal appointment.

**Note:** No Letters shall issue without an approved bond.

#### 4.10.1 Verification

See [section 3.9.1](#) of this guide.

#### 4.10.2 Appearance by Attorney

See [section 3.9.2](#) of this guide.

### 4.11 Additional Required Forms

#### 4.11.1 Death Certificate or Proof of Death

A certified copy of the death certificate must be filed with the Petition unless it is already on file with the division, or a determination of death must be made by the court.

**Practice Alert:** The date of death on the death certificate and the date of death on the Petition must match. If the cause of death is listed as “pending,” the petitioner must file [\(MPC 475\) Cause of Death Affidavit](#) (formerly known as a Suspicious Death Affidavit). MUPC at § 2-803.

A certified or authenticated copy of a death certificate issued by an official or agency or a record or report of death by a governmental agency is prima facie evidence of death. MUPC at § 1-107. In the absence of prima facie evidence, the fact of death may be established by evidence, including circumstantial evidence. If a death certificate issued by a public officer is not filed with the Petition, the court may direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable. MUPC at § 3-402(b).

**Note:** It shall be the petitioner’s responsibility to redact the first five (5) numbers of the

decedent's social security number from the death certificate filed with the court. The filer also must redact other personal identifying information pursuant to any Supreme Judicial Court rule protecting such information.

**Note:** A redacted death certificate may not be sufficient for the Division of Medical Assistance.



**Court Note:** The court must make a finding that the testator is dead. MUPC at § 3-409.

#### 4.11.2 Military Affidavit (MPC 470)

See [section 3.10.2](#) of this guide.

#### 4.11.3 Proposed Formal Decree (MPC 755)

The petitioner must submit a proposed [\(MPC 755\) Decree and Order on Petition for Formal Adjudication](#) prior to allowance. The petitioner is required to complete all applicable sections in preparation for the court's signature.

### 4.12 Additional "May Need" Forms

#### 4.12.1 Bond (MPC 801)

See [section 1.7](#) and [section 3.8.2](#) of this guide.

If the petitioner is seeking the appointment of a PR [\(MPC 801\) Bond](#) shall be required. No bond is necessary if the petitioner is requesting only to probate a will or determine heirs at law.

If a bond with sureties is required, the petitioner must state the penal sum in a dollar amount.

**Failure to state a dollar amount subjects the sureties to unlimited liability.**

#### 4.12.2 Assent and Waiver of Notice (MPC 455)

See section [3.10.2](#) and [section 4.14.2](#) of this guide.

#### 4.12.3 Renunciation/Nomination (MPC 455)

A renunciation/nomination is required prior to allowance if the petitioner is seeking the appointment of a PR who does not have statutory priority for appointment and there is no need for a court hearing on that issue. MUPC at § 3-203(a) 2-5. See section 1.5 of this guide.

#### 4.12.4 Affidavits

See [section 3.11.4](#) of this guide.

### 4.13 Proof of Guardianship/Conservatorship

If a spouse, heir at law or devisee is an incapacitated person, protected person, or a minor, and is represented by a conservator, or if none, a guardian who is not the petitioner, no guardian *ad litem* is necessary. MUPC at 1-403(2)(ii). See [section 1.10](#) of this guide.

Minor children of the decedent do not require the appointment of a guardian or conservator **UNLESS** they are an heir at law or a devisee.

The appointment of a guardian *ad litem* may be waived by the court upon a motion filed with the Petition. See [section 1.10](#) of this guide.

If a guardian or conservator is already appointed, the petitioner shall be required to present proof in the form of a docket number if appointed within the division in which the filing is being made or, if appointed from another division or from a court outside of Massachusetts, a certified copy of Letters of guardianship or conservatorship.

### 4.14 Notice Requirements for a Formal Proceeding

#### 4.14.1 Citation for Formal Adjudication (MPC 560)

After the filing of the Petition, the court shall fix a return date and issue a citation. See (MPC 560) Citation for Formal Adjudication. MUPC at § 1-401. See also Rule 6 Supplemental Rules of the Probate and Family Court (2012).



**Fee Alert:** It is the responsibility of the petitioner to submit the appropriate fee in order for the registry to issue a citation. The fee for a citation is \$15.00 in addition to any other filing or court fees.

#### 4.14.2 Persons Entitled to Notice

The petitioner shall be responsible for providing notice to the following interested persons, who have not assented and waived notice in writing:

- 1) surviving spouse;

- 2) **children;**
- 3) heirs at law;
- 4) devisees, including any devisee that is a charity, (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);
- 5) any PRs named in any will that is being, or has been probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere;
- 6) any PR of the decedent whose appointment has not been terminated;
- 7) a conservator or guardian appointed to represent a spouse, heir at law or devisee who is an incapacitated person, protected person, or a minor, and the person represented regardless of age;
- 8) the Attorney General of Massachusetts, if there is no spouse or heir at law of the decedent or any devisee is a charity;
- 9) any other person as the petitioner elects.

MUPC at § 3-403. See also MUPC at §§ 1-401, 1-404 and Uniform Practice XXXIV (34) of the Probate Court.

**Note:** Notice may be served upon an interested person’s attorney, if the attorney has filed an appearance in the matter, or if the interested person has requested that notice be sent to the attorney. MUPC at § 1-401(a), Rule 2 of the Supplemental Rules of the Probate and Family Court (2012).

An interested person entitled to notice (or his/her attorney, if represented) including a GAL, conservator or other fiduciary, may waive the right to notice by filing a written assent and waiver of notice. MUPC at § 1-402; see [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#).

A minor or an incapacitated or protected person **may not** waive notice.

#### **4.14.3 Notice by In-Hand Delivery or Mail**

If an interested person’s identity and whereabouts are known, the petitioner shall provide notice by:

1. mailing a copy of the citation at least 14 days before the return date by certified, registered or ordinary first class mail; OR
2. by delivering a copy of the citation in-hand at least 14 days before the return date.

MUPC at § 1-401(a)(1)(2). See Rule 6 of the Supplemental Rules of the Probate and Family Court (2012).

#### **4.14.4 Notice by Publication**

The petitioner shall give notice by publication by publishing a copy of the citation once in a newspaper designated by the register of probate having general circulation in the county where the proceeding is pending, at least 7 days prior to the return date. MUPC at §§ 1-401(a)(3), 3-403(b), Rule 6 of the Supplemental Rules of the Probate and Family Court (2012).

**Practice Alert:** All formal testacy proceedings require publication in accordance with Rule 6 of the Supplemental Rules of the Probate and Family Court (2012). A formal petition will not be allowed without a prior publication.

**Practice Alert:** If an heir at law or devisee of the decedent's estate is since deceased (i.e., died after the death of the decedent), a PR does **not** have to be appointed in a formal proceeding to represent the estate of the since deceased heir at law or devisee. An affidavit of the since deceased's heirs at law is **not** required. Notice of the proceeding by **publication** is all that is required unless the court orders otherwise. In addition to notice by publication, the court may appoint a GAL or take other appropriate action.

#### 4.14.5 Proof of Notice

The petitioner shall provide the court with proof of notice by filing the complete citation with a completed Return of Service on or before the hearing or return day.

To insure that proper notice was given, the court shall cross reference the names listed in the Petition, and the names of any persons interested in the estate who have filed a written assent and waiver of notice with the names listed on the citation Return of Service.

#### 4.15 Contesting a Formal Petition

Any party to a formal proceeding, who opposes the proceeding for any reason, shall before 10:00 a.m. of the return date enter an appearance in writing. See [\(MPC 505a\) Notice of Appearance and/or Objection](#). MUPC at § 1-401(d), Rule 2 of the Supplemental Rules of the Probate and Family Court (2012).

##### 4.15.1 Filing a Written Notice of Appearance and Objection (MPC 505a)

Objecting to a Petition is time sensitive and requires two (2) steps: (1) filing a written Notice of Appearance and Objection before 10:00 a.m. of the return date and (2) filing a written affidavit of objections within 30 days after the return date.

Copies of both the Notice of Appearance and Objection and the written affidavit of objections must be sent to the petitioner and all interested persons. See Rule 3 of the Supplemental Rules of the Probate and Family Court (2012).

If the Notice of Appearance and Objection and the affidavit of objections is timely filed and meets the requirements of 1-401(e), the formal proceeding shall be considered contested.

**Note:** The return date listed in a citation is NOT a hearing date. It is the deadline date by which an interested party must file his or her written appearance if he or she wishes to contest a Petition.

#### **4.15.2 Filing a Written Affidavit of Objections**

An objecting party who has filed a timely Notice of Appearance and Objection is also required to file a separate written affidavit of objections, stating the specific facts and grounds upon which the objection is based within 30 days after the return date. MUPC at § 1-401(e).

#### **4.15.3 Striking a Notice of Appearance and Objection/Written Affidavit of Objections**

If an affidavit of objections is neither timely filed, nor states the specific facts and grounds upon which the objection is based, the affidavit and the Notice of Appearance and Objection of the party filing such affidavit, may be struck on motion, after notice and a hearing by the court. MUPC at § 1-401(f).

#### **4.15.4 Establishing a Hearing Date After the Return Date**

In order to request a hearing date to appear before the court on a contested Petition, the petitioner must file a Request for a Case Management Conference or other applicable form. The division's judicial case manager may be consulted for further information regarding the scheduling of a hearing date.

**Note:** A contested Petition shall be heard by a judge of the court and not a magistrate. A magistrate has no authority to hear a contested matter.

### **4.16 Uncontested Cases**

If the Petition is uncontested and a hearing is not required, the petitioner shall submit to the court, either in person at the registry or by mail, all necessary documents for allowance by the magistrate or court. See [section 4.5](#) of this guide.

If a formal proceeding is uncontested, the court or the magistrate may enter appropriate orders after the return date on the strength of the pleadings if satisfied that all conditions are met or the court may conduct a hearing and require proof of the matters necessary to support the order sought. MUPC at § 1-401(g), Rule 70 of the Supplemental Rules of the Probate and Family Court (2012).



**Magistrate Note:** A magistrate may act on an uncontested formal petition and must indicate that the action was taken by the magistrate and not by a judge.

**Practice Alert:** If a **creditor** is the petitioner or is seeking to be appointed PR, the Petition must be presented to a judge. A magistrate cannot act on the Petition.

#### 4.17 Letters of Authority of a Personal Representative (MPC 751)

See [section 1.12](#) of this guide.

#### 4.18 Effect of a Formal Decree

A formal testacy proceeding results in an adjudication by the court. A Formal Decree is reversible only on appeal and may be vacated only on limited grounds. MUPC at §§ 4-412 and 4-413. Unlike supervised administration, once a formal decree is issued, the court's involvement ends as to that proceeding.

**Practice Alert:** Any interested person aggrieved by the action of a magistrate in a formal proceeding may be heard by a judge provided that a motion for a hearing is filed within five days of the date of the entry of the magistrate's formal decree and order. See Rule 70 of the Supplemental Rules of the Probate and Family Court (2012).

**Practice Alert:** If the formal proceeding precedes any appointment of a PR, any informal appointment proceedings pending or commenced thereafter is stayed. If the proceeding is commenced after an appointment, the previously appointed PR, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise. MUPC at § 3-401.

#### 4.19 Late and Limited Formal Proceeding

If the decedent died on or after March 31, 2012 and no proceedings were commenced within three (3) years from date of death, then a formal proceeding may be filed to:

- (a) admit the decedent’s will to formal probate and to determine both the heirs at law and the devisees;
- (b) determine that the decedent died without a will and determine the heirs at law;
- (c) appoint a PR to administer the estate, including a person designated as a public administrator, in a supervised or unsupervised administration;
- (d) appoint a SPR pending the appointment of the PR in the formal proceeding.

Any PR appointed under this exception 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 shall not be presented against the estate. MUPC at § 3-108(4). See [section 1.2](#) of this guide.

A successor is defined as “persons, other than creditors, who are entitled to the property of a decedent under the decedent’s will or this chapter.” MUPC at § 1-201(49).

**Practice Alert:** A late and limited appointed PR may not seek a license to sell real estate of the decedent. The PR’s authority is limited by statute to confirming title to estate assets in the successors and paying expenses of administration, if any. MUPC at § 3-108(4).

#### 4.19.1 Filing for Late and Limited Formal Testacy and/or Appointment

The following court approved forms and documents must be filed depending on whether the decedent died with a will (testate) or without a will (intestate):



**FORMAL LATE AND LIMITED CHECKLIST**

<b>DECEDENT DIED WITH A WILL (TESTATE)</b>	
<b>Form/Document Name</b>	<b>Required or May Need</b>
<input type="checkbox"/> Petition for Late and Limited Formal Testacy and/or Appointment <b>(MPC 161)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law <b>(MPC 162)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Devises <b>(MPC 163)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Original Will, if available, if not, a copy or statement of Will contents	<b>REQUIRED</b>
<input type="checkbox"/> Certified Copy of Death Certificate, if available or affidavit	<b>REQUIRED</b>
<input type="checkbox"/> Citation – Return of Service <b>(MPC 560)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment <b>(MPC 757)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Bond <b>(MPC 801)</b>	<b>REQUIRED</b> (only if seeking the appointment of a PR)
<input type="checkbox"/> Military Affidavit <b>(MPC 470)</b>	<b>REQUIRED</b> (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties <b>(MPC 455)</b>	<b>MAY NEED</b>
<input type="checkbox"/> Affidavit - as to cause of death <b>(MPC 475)</b> , execution <b>(MPC 480)</b> domicile <b>(MPC 485)</b> , or no conflict of a Conservator	<b>MAY NEED</b>
<input type="checkbox"/> Proof of Guardianship/Conservatorship	<b>MAY NEED</b>
<input type="checkbox"/> Uniform Counsel Certification Form (CCF 4/07)	<b>MAY NEED</b>
<b>DECEDENT DIED WITHOUT A WILL (INTESTATE)</b>	
<b>Form/Document Name</b>	<b>Required or May Need</b>
<input type="checkbox"/> Petition for Late and Limited Formal Testacy and/or Appointment <b>(MPC 161)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law <b>(MPC 162)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Certified Copy of Death Certificate, if available or affidavit	<b>REQUIRED</b>
<input type="checkbox"/> Citation – Return of Service <b>(MPC 560)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment <b>(MPC 757)</b>	<b>REQUIRED</b>
<input type="checkbox"/> Bond <b>(MPC 801)</b>	<b>REQUIRED</b> (only if seeking the appointment of a PR)
<input type="checkbox"/> Military Affidavit <b>(MPC 470)</b>	<b>REQUIRED</b> (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties <b>(MPC 455)</b>	<b>MAY NEED</b>
<input type="checkbox"/> Affidavit - as to cause of death <b>(MPC 475)</b> , domicile <b>(MPC 485)</b> , or no conflict of a Conservator	<b>MAY NEED</b>
<input type="checkbox"/> Proof of Guardianship/Conservatorship	<b>MAY NEED</b>
<input type="checkbox"/> Uniform Counsel Certification Form (CCF 4/07)	<b>MAY NEED</b>

MPC 968 (3/1/16)

#### 4.19.2 Petition for Late and Limited Formal Testacy and/or Appointment (MPC 161)

A person having a property interest in the estate of the Decedent (other than a creditor), a person having priority for appointment as PR, or a fiduciary representing an interested person may file [\(MPC 161\) Petition for Late and Limited Formal Testacy and/or Appointment](#) (hereafter “Petition”). Instructions have been developed to assist the petitioner. See [\(MPC 964\) Instructions](#).

**Practice Alert:** The time limits provided by § 3-108 do not apply to pre-MUPC deaths (deaths that occurred prior to 3/31/2012). Prior time limits control. See generally, G. L. c. 193, § 4 (repealed).

The procedural requirements for the Petition are the same as filing (MPC 150) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative. Section 4.4 et seq., of this guide should be consulted for specific details.

#### 4.19.3 Proposed Formal Decree (MPC 757)

The petitioner must submit a proposed [\(MPC 757\) Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment](#) prior to allowance. The petitioner is required to complete all applicable sections in preparation for the court’s signature.

**Note:** The Petition may be approved by a magistrate if assented to in writing, or if no objection to it has been filed.

#### 4.19.4 Letters of Authority (MPC 751)

See [section 1.12](#) of this guide.

The authority of any appointed PR under this exception is limited. A PR 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 shall not be presented against the estate. MUPC at § 3-108(4).

**Practice Alert:** Pursuant to 3-108(4), the Letters for any PR appointed on a Petition for Late and Limited **must indicate that the PR’s authority is limited.**

## 4.20 Amending a Pleading in a Formal Proceeding

### 4.20.1 Amending as a Matter of Course

In a formal proceeding, a party may amend the Petition or certain forms, (MPC 162) Surviving Spouse, Children, Heirs at Law or (MPC 163) Devisees, once *as a matter of course* at any time before an appearance has been timely filed. See Rules 3 and 7 of the Supplemental Rules of Probate and Family Court; Rule 15 of the Massachusetts Rules of Civil Procedure.

#### 4.20.1.2 Amending Prior to Service of the Citation

If a pleading is being amended prior to service of the citation, no motion is required, but the petitioner must:

- (a) file the “amended” pleading designating it as such in the caption; and
- (b) serve the amended pleading with current citation and publish as ordered.



**Fee Alert:** No fee shall be charged for the filing of an amended form.

#### 4.20.1.3 Amending After Service of the Citation

If a pleading is being amended after service of the citation, no motion is required, but the petitioner must:

- (a) file the “amended” pleading designating it as such in the caption;
- (b) request, pay for, and serve a new citation, including by publication if required by Rule 6, unless a motion to waive additional alternative service is allowed.



**Fee Alert:** No fee shall be charged for the filing of an amended form.

### 4.20.2 Amending by Leave of Court

A party may amend after an appearance has been filed *only by leave of court*, or with written consent of all parties. See Rules 3 and 7 of the Supplemental Rules of Probate and Family Court; Rule 15 of the Massachusetts Rules of Civil Procedure. To obtain *leave of court*, a motion must be filed and served on all interested persons. If the motion is allowed, the petitioner must:

- (a) file the “amended” pleading;

- (b) request, pay for, and serve a new citation, including by publication if required by Rule 6, unless a motion to waive additional alternative service is allowed.



**Fee Alert:** No fee shall be charged for the filing of an amended form.

## 5

### SUPERVISED ADMINISTRATION

Supervised administration is a single *in rem* proceeding to secure complete administration of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the PR or other order terminating the proceeding. MUPC at § 3-501.

Supervised administration is available only in limited circumstances and is always commenced with a formal proceeding, i.e., in a proceeding conducted before a judge with notice to interested parties.

A PR appointed in a supervised administration is called a “supervised Personal Representative” or “supervised PR.”

#### 5.1 Statutory References -MUPC at §§:

3-501

3-502

3-503

3-504

3-505

3-607

#### 5.2 Persons Who May Request a Supervised Administration

Under § 3-502, any interested person or a PR may request supervised administration.

#### 5.3 When a Supervised Administration May be Sought

A supervised administration may be sought when a PR has already been appointed or when an informal or formal petition requesting the appointment of a PR is pending. A request for supervised administration may be filed at any time subject to the time limits on testacy proceedings if no PR has already been appointed. MUPC at §§ 3-502, 3-108. See section 1.2 of this guide.

##### 5.3.1 If an Informal Proceeding is Pending or Concluded

When an informal petition is pending or concluded, with or without the appointment of a PR, any interested person may file [\(MPC 160\) Petition for Formal Probate of Will/Adjudication of](#)

[Intestacy/Appointment of Personal Representative](#) (hereafter “Formal Petition”), with a prayer requesting the appointment of a PR and supervised administration at any time before final settlement and distribution. MUPC at § 3-502; see also [Chapter 4](#) of this guide.

### **5.3.2 If a Formal Proceeding is Pending**

The petitioner in a pending formal testacy proceeding may move to amend (MPC 160) Formal Petition to add a prayer for supervised administration. Any other interested person must file a separate Formal Petition, with a prayer requesting supervised administration. For more details on amending a Formal Petition, see [Chapter 4](#) of this guide.

### **5.3.3 If a PR has been Appointed in Formal Proceedings**

To request supervised administration after a PR has been appointed in a formal testacy proceeding, any interested person (including the formally appointed PR) may file [\(MPC 280\) Petition for Supervised Administration](#).

## **5.4 Effect of Filing for Supervised Administration**

### **5.4.1 If an Informal Proceeding is Pending**

The filing of a Formal Petition requesting supervised administration of the PR stays any action on any informal petition then pending or thereafter filed. MUPC at § 3-503(a).

### **5.4.2 If a PR has been Appointed in Informal Proceedings**

A proceeding for supervised administration may be brought after a PR is appointed by a request in a timely filed Formal Petition or in a Petition for Supervised Administration. After receiving notice of the filing of a proceeding for supervised administration, a PR shall not exercise the power to distribute any estate. MUPC at § 3-503(c).

The filing of a proceeding for supervised administration shall not affect other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition. MUPC at § 3-503(c). The restrictions on exercise of powers can be sought by a prayer in the petition and motion brought in the proceedings, or by a separate complaint in equity. MUPC at § 3-607(a). Any such request shall be heard by the court within 10 days of filing. MUPC at § 3-607(b).

### **5.4.3 If a Petition for Formal Proceeding is Pending**

Where a Formal Petition is pending and there is no prior informal appointment, there is no fiduciary in place in this scenario. No one has authority to act. If a Formal Petition is pending and there was a prior informal appointment, see [section 5.4.2](#) of this guide.

### **5.4.4 If a PR has been Appointed in Formal Proceedings**

After receiving notice of the filing of a Petition for Supervised Administration, a PR shall not make any distributions. The filing of a Petition for Supervised Administration shall not affect other powers and duties unless the court restricts the exercise of any of them by order pending full hearing on the petition. MUPC at § 3-503(c). The restrictions on exercise of powers can be sought by a prayer in the petition and motion brought in the proceedings, or by a separate complaint in equity. MUPC at § 3-607(a). Any such request shall be heard by the court within 10 days of filing. MUPC at § 3-607(b).

## **5.5 Notice**

### **5.5.1 If a Formal Proceeding is Commenced**

The notice requirements are the same as in a Formal Petition in which supervised administration is not sought. See [section 4.14](#) of this guide.

### **5.5.2 If a Formal Proceeding is Pending**

If notice has already been given by the petitioner on the Formal Petition, a petitioner who seeks to amend his/her petition need give only motion notice to parties who have objected or appeared or requested notice. See Rule 2 of the Supplemental Rules of the Probate and Family Court (2012).

An interested party who files a separate Formal Petition that includes a request for supervised administration must give notice as provided in [section 5.5.1](#) of this guide.

### **5.5.3 If a PR has been Appointed in Formal Proceedings**

If the petition is filed after the PR's appointment in formal proceedings, the division shall issue (MPC 566) Citation on Petition for Supervised Administration. Notice shall be given to all interested persons and may include notice by publication as necessary. See Rule 6 of the Supplemental Rules of the Probate and Family Court (2012).

## 5.6 Interim Orders in Supervised Administration

The supervised PR must get specific court approval before making any distributions from the estate. The approval is sought by motion, with notice to interested persons who requested notice or filed an appearance in the proceeding. MUPC at § 3-505. See [\(MPC 505a\) Notice of Appearance and/or Objection](#).

The supervised PR or any interested person may seek interim orders approving or directing partial distributions or granting other relief. Such orders are sought by motion, with notice to the PR and to interested persons who requested notice or filed an appearance in the proceeding.

## 5.7 When Must/Can a PR be Supervised

The court shall order supervised administration, after notice to interested persons if the will directs supervised administration or if the court deems supervised administration is necessary. MUPC at § 3-502.

### 5.7.1 Where the Will Directs Supervised Administration

If the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration. MUPC at § 3-502.

### 5.7.2 Where the Court Finds Supervised Administration Necessary

If the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate.

In other cases (i.e., if the will is silent regarding the form of administration or in an intestate estate) supervised administration shall be ordered if the court finds that supervised administration is necessary under the circumstances.

If the decedent's will does not require supervised administration, and supervised administration is being sought, the petition should be accompanied by an affidavit of the petitioner setting forth the facts upon which the request for supervised administration is requested.



## 5.8 Hearing

If the decedent's will requires supervised administration, a petition may be allowed by the judge without a hearing.

In all other proceedings in which supervised administration is sought, the petitioner must mark the matter for hearing before a judge. A hearing is also required if decedent's will requires supervised administration and the petition requests the estate be administered without supervision.

## 5.9 Decree and Order Appointing Supervised PR

### 5.9.1 In an Initial Appointment

If supervised administration is being ordered in the initial appointment of the PR in a formal testacy proceeding, [\(MPC 755\) Decree and Order on Petition for Formal Adjudication](#) must be completed to reflect that the PR will serve in a supervised administration and the reasons therefore. Any additional orders to the supervised PR and any additional restrictions the court puts on the powers of the supervised PR should also be reflected in the Decree.

### 5.9.2 In a Subsequent Proceeding

If supervised administration is being ordered on a Petition for Supervised Administration brought after the appointment of a PR in prior formal proceedings, [\(MPC 756\) Decree and Order of Supervised Administration](#) shall issue from the court.

## 5.10 Powers and Duties of a Supervised PR

Supervised PRs have the same duties and powers as unsupervised PRs, except the power to make distributions, unless otherwise ordered by the court. MUPC at § 3-501, 3-504. All supervised PRs are restricted from making any distributions from the estate without prior court approval. MUPC at § 3-504.

"Distributions" are not defined by the MUPC, but include the paying out of any estate funds other than claims (debts, funeral expenses) and expenses such as costs of administration (filing fees, publication and service fees, attorney's fees, PR fees).

**Practice Alert:** The assignment of exempt property (§ 2-403) which **does not** require specific court approval. Payment of the discretionary family allowance (§ 2-404) is a distribution which **requires** specific court approval.

A supervised PR is responsible to the court, as well as to the interested parties, and is subject to direction concerning the estate made by the court on its own motion or on the motion of any interested party. MUPC at § 3-501.

At the time of appointment, the court may further restrict the powers of a supervised PR or make other orders regarding the management of the estate. MUPC at §§ 3-501, 3-504. Such orders may include, for example the:

- 1) requirement that the inventory and/or interim accounts be filed;
- 2) restriction on sale of real estate even if authorized in the will;
- 3) restriction on investment of assets or disposition of assets;
- 4) restriction on the assignment of exempt property;
- 5) imposition of a restriction on disbursements for specific purposes such as attorney's fees, executor's fees, disputed claims, etc;
- 6) modification to the automatic restriction on payments of the discretionary family allowance; AND/OR
- 7) "next event" scheduling to ensure timely administration or filing of required documents such as inventory.

The court may also restrict the powers of a PR and restrain the PR in a separate equity case or enter restrictions as part of its decree appointing a PR in non-supervised formal proceedings.

### **5.11 Letters of Authority for Personal Representative (MPC 650)**

See [section 1.12](#) of this guide.

### **5.12 Termination of Supervision during Supervised Administration**

Supervision of an estate may be terminated prior to the final closing of the estate by order of the court. Termination of supervision may be sought by a petition by the supervised PR or other interested person with notice to all interested persons. An affidavit setting forth the facts upon which the request to terminate supervision is made must accompany the petition. The petition must be presented for allowance. MUPC at §§ 3-501, 3-505.

### **5.13 Closing of Estate under Supervised Administration**

A supervised administration may only be closed upon the entry of the Decree and Order for Complete Settlement (MPC 790) which includes allowance of the final account of the PR. See [Chapter 10](#) of this guide.

## 5.14 Examples

**Example 1:** Donna dies with a will leaving an estate worth about \$120,000 in personal property only. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate among Sue, Andy and Debra equally and names Sue as the PR, exempting her from providing sureties on the bond. Andy and Debra do not trust their step-mother Sue and have concerns over her ability to manage their mother's estate. Sue has not yet been appointed PR but has filed a Petition for Informal Probate and Appointment of PR. Can Andy and Debra request that a magistrate order supervised administration as part of the informal proceeding?

**Answer:** No. Since no PR has been appointed, Andy and/or Debra may only request a supervised administration by filing their own Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of Personal Representative (MPC 160) with a prayer for supervised administration. The magistrate may not act on Sue's pending informal petition as this petition is stayed while Andy and/or Debra formal petition is pending.

**Example 2:** Donna dies with a will leaving an estate worth about \$120,000 in personal property only. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate among Sue, Andy and Debra equally and names Sue as the PR, exempting her from providing sureties on the bond. Andy and Debra do not trust their step-mother Sue and have concerns over her ability to manage their mother's estate. Sue was informally appointed as a PR. Can Andy and Debra now request the court supervise the administration?

**Answer:** Yes. Although a PR (Sue) has been appointed, the appointment was made in an informal proceeding so Andy and/or Debra can still only request a supervised administration by filing their own (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of Personal Representative with a prayer for supervised administration. If Sue had been formally appointed, Andy and/or Debra would file (MPC 280) Petition for Supervised Administration.

**Example 3:** Donna dies with a will leaving an estate worth about \$120,000 in personal property. Donna also owned and operated an unincorporated bakery prior to her death. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate among Sue, Andy and Debra equally and names Sue as the PR, exempting her from providing sureties on the bond. Andy and Debra do not trust their step-mother Sue and have concerns over her ability to manage their mother's estate. The court has not yet issued the formal decree and order admitting the will to probate and appointing Sue as PR in a supervised administration. Andy believes Sue is mismanaging the bakery. Can Andy ask for the court to limit Sue's powers regarding the bakery at the time of her appointment?

**Answer:** Yes. If the formal decree and order of appointment has not yet issued, the court could consider Andy's requested limitations at the time of Sue's appointment. If the formal decree and order only ordered a supervised administration, Sue would only be prohibited from making distributions, not from continuing the bakery business (since continuing the business is one of

the powers given to a PR). To request this, or any other additional limitations after the petition is filed, Andy would need to amend his petition by motion.

**Example 4:** Donna dies with a will leaving an estate worth about \$120,000 in personal property. Donna also owned and operated an unincorporated bakery prior to her death. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate among Sue, Andy and Debra equally and names Sue as the PR, exempting her from providing sureties on the bond. Andy and Debra do not trust their step-mother Sue and have concerns over her ability to manage their mother's estate. The court has now issued a formal decree and order admitting the will to probate and appointing Sue as PR in a supervised administration. Andy believes Sue is mismanaging the bakery. May Andy ask the court to further restrict Sue's powers once there is already a supervised administration in place?

**Answer:** Yes. Because the formal decree and order with supervision has already issued, Andy need only file a motion and may ask the court to further limit Sue's powers as PR. The court could then issue a separate order further limiting Sue's powers.

**Example 5:** Knowing her brother Andy would be difficult, Debra was appointed supervised PR of her mother's estate on a formal petition. Andy and Debra reconciled their differences and no longer want the additional expenses associated with supervised administration. Can the supervised administration be terminated?

**Answer:** Yes. Debra may file a petition to terminate supervision. However, even with the assent of all interested persons, it must be presented to the court for allowance.

## 6

### SPECIAL PERSONAL REPRESENTATIVE

Pursuant to § 3-614, the court may accept petitions for appointment of a Special Personal Representative (“SPR”). Also pursuant to § 3-614, the court may appoint a SPR *sua sponte* (of its own initiative), without petition from any person.

#### 6.1 Statutory References – MUPC at §§:

- 1) Statutes which positively express the law governing SPRs:
  - 3-614
  - 3-615
  - 3-617
  - 3-618
  
- 2) Statutes which create exceptions to general rules for SPRs:
  - 1-201(37) (Note that SPRs are “PRs” but not “general PRs”)
  - 3-203(h)
  - 3-301(a)(1)
  - 3-715(b)
  
- 3) Statutes expressing general rules which apply to SPRs:
  - 3-603 through 3-607

#### 6.2 Preliminary Considerations

##### 6.2.1 When a SPR May be Sought

A [\(MPC 350\) Petition for Appointment of Special Personal Representative](#) (hereafter, “Petition for Appointment of SPR”) cannot be filed unless there is an underlying (MPC 150) Petition for Informal Probate of Will and/or Appointment of Personal Representative, (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative or (MPC 280) Petition for Supervised Administration, with one exception: a SPR may be appointed without an underlying probate petition for the limited purpose of obtaining access to a decedent’s safe deposit box to conduct a will search. A SPR may also be requested by [motion](#) as part of an original (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of PR. See Chapter 4 of this guide.

The formal appointment of a SPR by the court may be necessary in order to:

- 1) preserve an estate;
- 2) secure its proper administration; OR

- 3) perform an act that a general PR cannot or should not perform because of a conflict of interest.

MUPC at § 3-614.

**Note:** The expedited informal appointment process may eliminate the need to seek a formal appointment of a SPR. A PR may be administratively appointed by a magistrate as early as seven (7) days after the decedent's death, if the decedent was domiciled in Massachusetts. See [Chapter 3](#) of this guide.

**Practice Alert:** The appointment of a SPR may result in increased legal fees to the estate and creates an accounting requirement. The need for the appointment should be clearly articulated in any petition or motion filed.

### 6.3 Required Elements of the Petition for Appointment of SPR (MPC 350)

All paragraphs of [\(MPC 350\) Petition for Appointment of SPR](#) must be completed by the petitioner.

If the SPR is requested for any reason other than to conduct a search for a will or codicil in a safe deposit box of the decedent, the petitioner must list the reasons the SPR is necessary in order to preserve the decedent's estate or secure its proper administration. If the appointment sought is without notice, the petition must explain the emergency which exists.

If additional powers are requested, they must be specified in the request found at the end of the petition.

#### 6.3.1 Information about the Decedent

See [section 3.5.1](#) and [section 4.6.2.1](#) of this guide.

#### 6.3.2 Information about the Petitioner(s)

See [section 3.5.2](#) and [section 4.6.2.2](#) of this guide.

#### 6.3.3 Venue

See [section 1.6](#) of this guide.

#### 6.3.4 Information Regarding Other PRs

See [section 3.8.1](#) of this guide.

### **6.3.5 Information Regarding the Proposed PR**

“Any suitable person may be appointed special PR.” MUPC at § 3-615. The general rules governing priority among persons seeking appointment as PRs do not apply to SPRs. MUPC at § 3-203(h).

### **6.3.6 Information Regarding the Bond**

See [section 1.7](#) of this guide.

### **6.3.7 Information Regarding the Division of Medical Assistance**

See 3.5.5 of this guide.

### **6.3.8 Requests**

The petitioner must indicate if the bond of the SPR will be with or without sureties as set forth in the petition. The petitioner may further request that the SPR’s powers be expanded by court order. MUPC at § 3-715(b).

## **6.4 Additional Required Forms**

### **6.4.1 Death Certificate**

See [section 4.11.1](#) of this guide.

### **6.4.2 Bond (MPC 801)**

See [section 1.7](#) of this guide.

### **6.4.3 Docketing and Assignment of Hearing Date**

If a Petition for Appointment of SPR is filed solely to conduct a will search, then a docket number will be assigned to the case. Otherwise, an informal or formal proceeding must be filed simultaneously or on file and the Petition for Appointment of SPR will take the same docket number as the underlying informal or formal petition.

The petitioner is responsible for obtaining a hearing date and time from the court.

## 6.5 Notice Requirements for a Petition for Appointment of a SPR

### 6.5.1 Notice

If the underlying petition is a Petition for Appointment of SPR, **motion notice** must be given by the petitioner unless the assents and waivers of notice of all heirs at law, devisees, and other interested persons are filed with the Petition for Appointment of SPR or the court otherwise orders. See Rule 3, 7A and 8 of the Supplemental Rules of the Probate and Family Court (2012); see also [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#). No citation will be issued pursuant to § 1-401.

If the underlying petition is (MPC 280) Petition for Supervised Administration, a SPR may be requested by [motion](#) at any time. See [Chapter 5](#) of this guide.

If the underlying petition is (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative the appointment of a SPR may be requested by [motion](#). Motion notice must be given by the petitioner unless the assents of all heirs at law, devisees, and other interested persons are filed with the petition or the court otherwise orders. See Rule 3, 7A and 8 of the Supplemental Rules of the Probate and Family Court (2012); see also [section 6.6](#) of this guide below.

### 6.5.2 Certification of Notice

Before [\(MPC 560\) Order Appointing SPR](#) is issued, the petitioner must file a Certificate of Service stating that all parties have either assented and waived notice or been served in hand or by first class mail as provided in Rule 3, 7A and 8 of the Supplemental Rules of the Probate and Family Court (2012), unless an emergency exists. See [section 6.6](#) of this guide below.

## 6.6 Ex-Parte Hearing

A SPR may be appointed without required assents or notice if an emergency exists. To request the emergency appointment of a SPR without required assents or notice, a motion to waive or shorten notice must be filed along with Petition for Appointment of SPR or with the motion for appointment of a SPR submitted with (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative.

An affidavit stating the emergency also shall be filed unless the petition or motion requesting to waive or shorten notice is verified and includes a statement of the emergency. The court may waive the notice requirement and act on the petition or motion for appointment, or may enter an order for shortened notice. MUPC at § 3-614.



## 6.7 Duration of Order

An order appointing a SPR should be for no longer than 90 days, unless the court has found “extraordinary circumstances” and ordered an appointment for a longer period. MUPC at § 3-617.

On a duly-noticed motion, the court may extend the appointment for additional periods of up to 90 days. MUPC at § 3-617. See also [section 7.2](#) of this guide.

## 6.8 Order Appointing SPR (MPC 650) and Letters (MPC 752)

The registry shall check the Order Appointing Special Personal Representative to confirm that an expiration date has been stated. The registry shall issue (MPC 752) Letters of Special Personal Representative. See [section 1.12](#) of this guide.

## 6.9 Effect of Appointment of a SPR

A SPR proceeding is, by definition, a formal proceeding as long as the SPR continues to serve. This means that the appointment of a SPR transforms the case into a formal proceeding for the duration of the SPR's appointment. Upon termination of the SPR's appointment, the proceeding will be informal, formal or supervised, depending on the nature of the prior proceeding.

The authority of any PR previously appointed by the court or magistrate shall be suspended for as long as a SPR has authority. MUPC at § 3-617(c).

**Legislative Change:** Chapter 140 of the Acts of 2012 added section 3-617(c). The amendment makes it clear that the authority of any previously appointed PR shall be suspended upon the appointment of a SPR.

## 6.10 Powers of a SPR

Under § 3-617, a SPR appointed by the court has many, but not all, of the powers granted to a permanent PR under § 3-715(a). These powers are enumerated in § 3-715(b) and, in general, are limited to collecting and preserving assets of the estate. Powers related to selling and distributing assets are specifically excluded by statute. See MUPC at § 3-715, with particular attention to the powers excluded by § 3-715(b). However, a SPR's powers may be expanded by will, or by court order in a formal proceeding. MUPC at § 3-715(b).

<b>EXCEPT AS RESTRICTED OR OTHERWISE PROVIDED BY THE TERMS OF THE WILL, THE SPR IS AUTHORIZED TO:</b>
Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment. <b>3-715(a)(1)</b>
Receive assets from fiduciaries, or other sources. <b>3-715(a)(2)</b>
Perform, compromise or refuse performance of the decedent’s contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the PR, among other possible courses of action, may: (i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser’s note for the sum remaining due secured by a mortgage or deed of trust on the land; or (ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement. <b>3-715(a)(3)</b>
If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally. <b>3-715(a)(5)</b>
Make repairs or alterations in buildings or other structures, demolish any improvements, structures, raze existing or erect new party walls or buildings. <b>3-715(a)(7)</b>
Vote stocks or other securities in person or by general or limited proxy. <b>3-715(a)(12)</b>
Insure the assets of the estate against damage, loss and liability and the PR against liability as to third persons. <b>3-715(a)(15)</b>
Pay taxes, assessments, compensation of a PR other than a special PR, and other expenses incident to the administration of the estate. <b>3-715(a)(18)</b>
Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise. <b>3-715(a)(19)</b>
Allocate items of income or expense to either estate income or principal, as permitted or provided by law. <b>3-715(a)(20)</b>
Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the PR, to advise or assist the PR in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. <b>3-715(a)(21)</b>
Defend and prosecute claims, or proceedings in any jurisdiction for the protection of the estate and of the PR in the performance of duties. <b>3-715(a)(22)</b>
Continue any unincorporated business or venture in which the decedent was engaged at the time of death (i) in the same business form for a period of not more than 4 months from the date of appointment of a general PR if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by Order of the Court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the PR and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate. <b>3-715(a)(24)</b>
Provide for exoneration of the PR from personal liability in any contract entered into on behalf of the estate. <b>3-715(a)(26)</b>

<p><b>EXCEPT AS RESTRICTED OR OTHERWISE PROVIDED BY THE TERMS OF THE WILL, THE SPR IS AUTHORIZED TO:</b></p>
<p>Any other power authorized by the terms of the will. <b>3-715(b)</b></p>

<p><b>THE SPR NEEDS A SPECIFIC COURT ORDER TO DO ANY OF THE FOLLOWING:</b></p>
<p>Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims. <b>3-715(a)(4)</b></p>
<p>Acquire or dispose of tangible and intangible personal property for cash or on credit, at public or private sale; and manage, develop, improve, exchange, change the character of, or abandon an estate asset. <b>3-715(a)(6)</b></p>
<p>Subdivide, develop or dedicate land to public use; adjust boundaries; or adjust differences in valuation by giving or receiving considerations; or dedicate easements to public use without consideration. <b>3-715(a)(8)</b></p>
<p>Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration. <b>3-715(a)(9)</b></p>
<p>Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement. <b>3-715(a)(10)</b></p>
<p>Abandon property when it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate. <b>3-715(a)(11)</b></p>
<p>Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims. <b>3-715(a)(13)</b></p>
<p>Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the PR is liable for any act of the nominee in connection with the security so held. <b>3-715(a)(14)</b></p>
<p>Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate. <b>3-715(a)(16)</b></p>
<p>Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the PR holds a mortgage, pledge or other lien upon property of another person, the PR may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien. <b>3-715(a)(17)</b></p>
<p>Sell, or lease any personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances. <b>3-715(a)(23)</b></p>
<p>Sell, lease or encumber to an arm’s length third party any real estate of the estate, or an interest in that real estate, for cash, credit, or for part cash and part credit, with or without security for unpaid balances and whether the personal representative has been appointed formally or informally; the sale, lease or encumbrance shall be conclusive notwithstanding section 3-302 or any contest of the informal probate proceeding, provided that: (i) if the decedent died without a will, a license has been issued under chapter 202; or (ii) if the decedent died with a will, either: (a) the will, probated formally or informally, empowered the personal representative to sell, lease or encumber that real estate or an interest in that real estate, or (b) a license has been issued under chapter 202. <b>3-715(a)(23 ½)</b></p>

Incorporate any business or venture in which the decedent was engaged at the time of death. <b>3-715(a)(25)</b>
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Satisfy and settle claims of the estate as provided in this code. <b>3-715(a)(27)</b>
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Distribute the estate as provided in this code. <b>3-715(a)(27)</b>
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**Legislative Change:** Chapter 140 of the Acts of 2012 added § 3-715(23 ½) to clarify that a **PR** appointed formally or informally may sell real estate pursuant to a power contained in a will or by license to sell. A SPR has no authority to sell real estate under a power contained in a will unless the will has been admitted to informal or formal probate. A SPR however may seek authority of the court by license.

**Note:** Pursuant to § 3-715(21), a PR previously appointed either informally by a magistrate or formally by the court may delegate his or her powers should the need arise because of a temporary absence, anticipated incapacity or conflict of interest, etc. MUPC at § 3-715(21). See also the Comment to MUPC at § 3-614.

### 6.10.1 Expanding and Modifying a SPR's Powers

#### At Appointment

To expand or modify a SPR's basic powers before the appointment is made, the desired expansion or modification should be listed on the motion or petition seeking the appointment.

#### After Appointment

To expand or modify a SPR's powers after appointment, the petitioner may file a motion requesting the desired expansion or modification. The same notice requirements for the initial petition apply.

## 6.11 Inventory and Accounts

### 6.11.1 Inventory

Unless otherwise stated in the Order Appointing SPR, the SPR's duties with respect to filing an inventory are the same as a PR's duties under § 3-706. See [Chapter 10](#) of this guide.

### 6.11.2 Accounts

Unless, otherwise stated in the Order Appointing SPR, a SPR does not have a duty to file accounts with the division. MUPC at § 3-617(a). See also MUPC at § 3-403(c).

A SPR may seek to have an account, including a final account stating transfer of all assets under management to a duly appointed PR, adjudicated as an interim account of the estate in a formal proceeding in order to limit the SPR's future liability. A SPR whose final account distributes pursuant to a court order all assets to anyone other than a duly appointed PR may use any of the estate closing procedures available to a PR. A SPR may request a discharge of liability on an Interim account. See [Chapter 10](#) of this guide.

## 6.12 Examples

**Example 1:** Donna dies leaving two children, Andy and Debra. Andy believes that Donna executed a will prior to her death. Donna has a safe deposit box at Big Bank. To date, a proceeding to probate the will of Donna or appoint a general PR has not been commenced. May Andy file (MPC 350) Petition for Appointment of SPR seeking to be appointed SPR for the sole purpose of accessing the safety deposit box and conducting a will search?

**Answer:** Yes. Andy may file (MPC 350) Petition for Appointment of SPR and request to be appointed SPR for the sole purpose of conducting a will search. He may not request any other authority.

**Example 2:** Donna died with a will naming her surviving spouse, Harry, PR. Harry does not want to be appointed PR, but is willing to serve temporarily as a SPR. May Harry file an informal petition seeking to be appointed SPR?

**Answer:** No. A SPR may not be appointed in an informal proceeding. Harry would need to file a formal petition requesting appointment as a SPR or he may be appointed PR in an informal proceeding.

**Example 3:** Donna died in a work-related accident leaving her spouse, Harry and their two children, Andy & Debra. Donna had no will. Harry seeks to be appointed immediately as a SPR in order to initiate a wrongful death lawsuit and secure evidence that may be lost. There are no probate assets. May Harry be appointed SPR for this purpose?

**Answer:** Yes. Harry may be appointed SPR for this purpose by filing (MPC 160) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of a Personal Representative along with a motion requesting his appointment as both SPR and PR. If it appears to the court that an emergency exists, the court may order the appointment without notice. MUPC at § 3-614.

**Example 4:** Donna dies without a will leaving her brother Bob. Bob wants to be appointed SPR for the sole purpose of obtaining medical records of Donna from a hospital/health care provider. There are no other probate assets. May Bob file a formal petition seeking appointment as a SPR for the sole purpose of obtaining medical records?

**Answer:** Yes. Pursuant to § 3-614, a SPR may be appointed formally by the court if it finds that "...the appointment is necessary to preserve the estate or secure its proper administration..." Pursuant to § 3-617, a SPR appointed by order of the court in a formal proceeding has a general

PR's power except as limited by § 3-715(b) and in the appointment and duties as prescribed in the Order. Section 3-709 [Duty of a Personal Representative; Possession of Estate] provides: "Except as otherwise provided by a decedent's will, every PR has a right to, and shall take possession or control of the decedent's property..." Therefore, a SPR appointed formally would appear to have the authority to obtain the decedent's medical records, unless the ability to perform this act was specifically limited by the court. The court could issue Letters which limit the SPR's powers to securing medical records.

**Example 5:** Donna dies with a will naming Harry, her surviving spouse, as PR. Overtaken with grief, Harry refuses to petition the court to probate the will and appoint a PR. Prior to her death, Donna hit the lottery for \$1 million on a scratch ticket. May Bob, Donna's brother, petition the court to be appointed SPR in order to have the authority to accept payment of the lottery winnings and prompt Harry to take action?

**Answer:** Yes. Pursuant to § 3-614, a SPR may be appointed formally by the court if it finds that "...the appointment is necessary to preserve the estate or secure its proper administration..." The general rules governing priority among persons seeking appointment as PRs do not apply to SPRs so Bob may be appointed as long as the court finds him suitable. MUPC at § 3-203(h). Pursuant to § 3-617, a SPR appointed by order of the court in a formal proceeding has a PR's power except as limited by § 3-715(b) and in the appointment and duties as prescribed in the order. Section 3-715(2) specifically authorizes a SPR to "receive assets from fiduciaries, or other sources." Harry may then be appointed PR on the same petition filed by Bob or he may file his own informal or formal petition for probate and appointment of a PR.

**Example 6:** Harry was appointed PR of Donna's testate estate two months ago. Harry is currently incapacitated and can no longer act as PR and has filed a resignation. Donna's will names her son, Andy, the alternate PR. Andy is currently on sabbatical in Indonesia and will not be able to file as successor PR until he returns four months from now. May Bob, Donna's brother, petition to be formally appointed SPR in order to administer the estate until Andy can be appointed?

**Answer:** Yes. Pursuant to § 3-614, a SPR may be appointed formally by the court if it finds that "...the appointment is necessary to preserve the estate or secure its proper administration including its administration in circumstances where a general PR cannot or should not act." Section 3-615 provides that "Any suitable person may be appointed special PR." As it appears that the appointment of a SPR is necessary to preserve the estate until Andy can be appointed successor PR, Bob may be appointed SPR. Pursuant to § 3-609, Harry is obligated to account for and deliver the estate assets to Bob as SPR upon his appointment and qualification. Bob, in turn, must do the same upon Andy's appointment.

## 7

### TERMINATION OF APPOINTMENT OF PERSONAL REPRESENTATIVE

Termination of the PR's appointment can occur by:

- 1) operation of Law;
- 2) resignation of the PR; OR
- 3) removal of the PR.

#### 7.1 Statutory References- MUPC at §§:

- 3-402
- 3-608
- 3-609
- 3-610
- 3-611
- 3-612
- 3-1204(b)

#### 7.2 Termination of PR's Appointment by Operation of Law

Termination of a PR's appointment occurs **without** court action:

- 1) upon the death of the PR;
- 2) upon the incapacity of the PR;
- 3) upon the appointment of a different PR or a change in testacy status; OR
- 4) one year after the filing of (MPC 851) Small Estate Closing Statement if no actions are pending against the PR.

Termination of the appointment of a SPR occurs in accordance with the appointment, or upon the appointment of a general PR. See [section 6.7](#) of this guide.

**Note:** If a proceeding is pending on behalf of or against the estate prior to termination, a substitution of a successor PR as party plaintiff or defendant in the proceeding should be made. See Comment to MUPC at § 3-608.

**Note:** Unless the terms of a will state otherwise, a co-PR may continue to exercise all powers incident to the office after termination of the appointment of a co-PR. See MUPC at § 3-718.

### 7.2.1 Upon the Death of the PR

Termination occurs without court action upon the death of the PR. MUPC at § 3-609.

### 7.2.2 Upon the Incapacity of the PR

Termination occurs without court action upon the appointment of a guardian or conservator for the PR. MUPC at § 3-609.

The PR of the estate of a deceased PR, the guardian of an incapacitated PR, or the conservator of a protected PR:

- b) has the duty to protect the estate possessed or being administered by the PR at the time of termination;
- c) has the power to perform acts necessary to protect said estate; AND
- d) has the duty to deliver the estate assets to a successor PR or a SPR upon appointment and qualification, and to account for the estate delivered. If the deceased, protected or incapacitated PR had the obligation to file account(s) with the division, then the PR of the estate of the deceased PR, guardian of incapacitated PR, or conservator of a protected PR has the obligation to do so.

MUPC at § 3-609.

**Note:** The PR of the estate of a deceased co-PR would not have any duty or authority in relation to the estate that was being administered by the deceased co-PR. MUPC at §§ 3-609, 3-718.

### 7.2.3 Upon a Change in Testacy Status

A change in testacy status after appointment of a PR does not automatically terminate the appointment of the PR. Termination of a PR's appointment occurs without court action upon subsequent appointment of a different PR accompanying a change in testacy status. MUPC at § 3-612. See [section 1.13](#) of this guide.

If a change in testacy status occurs after a PR has been appointed, and a different PR IS NOT appointed in the change of testacy status proceedings, and no request for appointment of a different PR is made within thirty (30) days after expiration of the time for appeal of the decree changing testacy status, the previously appointed PR may confirm his/her prior appointment as



PR by filing with the division a statement of confirmation with certification that notice of same has been sent by first class mail to all interested persons.

**Practice Alert:** No statement of confirmation shall be accepted for filing if a different PR was appointed by the court upon a change of testacy status.

#### 7.2.4 One Year After the Filing of a Small Estate Closing Statement (MPC 851)

If no actions or proceedings involving the PR are pending in the division one year after (MPC 851) Small Estate Closing Statement is filed, the appointment of the PR terminates. See [section 10.5.2](#) of this guide.

### 7.3 Termination by Resignation

The process for resignation has 3 steps:

- 1) A PR must give at least fifteen (15) days prior written notice of an intent to resign to all persons interested in the decedent's estate.
- 2) After giving this written notice of intent, the PR files [\(MPC 264\) Statement of Resignation of Personal Representative](#) with the court.
- 3) The written statement of resignation shall be effective only upon the appointment and qualification (by approval of a bond) of a successor PR and delivery of the estate assets to the successor PR.

**Practice Alert:** If no one has petitioned for appointment as successor PR within the 15 day notice of intent period, the filed statement of resignation shall be ineffective as a termination of the resigning PR's appointment.

**Legislative Note:** This section was reserved in G. L. c. 190B as originally enacted and was added as of July 8, 2012 by Chapter 140 of the Acts of 2012. Resignations filed but not accepted before July 8, 2012 shall continue to be governed by Rule 90 of the Supplemental Rules of the Probate Court, and may be accepted "when it is appropriate to do so" even if no successor has been appointed at the court's discretion pursuant to Rule 90. Resignations filed on or after July 8, 2012 are subject to the limitations of § 3-610.

## 7.4 Termination by Removal

Any interested person at any time may file form [\(MPC 265\) Petition for Formal Removal of Personal Representative](#), to request the removal of a PR for cause. MUPC at § 3-611. The division shall issue (MPC 580) Citation on Petition for Removal and notice shall be given to all persons interested. If seeking removal of the PR for cause, petitioner must allege one of the following:

- 1) the PR, or the person who sought appointment of the PR, intentionally misrepresented material facts in the proceedings leading to appointment.
- 2) the PR has:
  - a) disregarded an order of the court;
  - b) become incapable of discharging the duties of PR;
  - c) mismanaged the estate; OR
  - d) failed to perform any duty pertaining to the office of PR; OR
  - e) the PR who was appointed at the place of decedent's domicile seeks to obtain his own or his nominee's appointment as ancillary PR in Massachusetts, unless the decedent's will directs otherwise. See MUPC at § 3-203(g). See [Chapter 11](#) of this guide.

If the court finds there is cause for removal, [\(MPC 766\) Decree and Order for Formal Removal of Personal Representative](#) shall issue.

**Practice Alert:** The failure of a PR to meet a requirement of sureties on a bond within thirty (30) days after receipt of notice of Demand for Sureties is cause for removal. MUPC at § 3-605. See section 1.8 of this guide.

## 7.5 Proper Petition for Termination of Appointment

If a PR is appointed in an informal or formal proceeding, a request to remove the appointed PR **for cause** may only be made by [\(MPC 265\) Petition for Formal Removal of Personal Representative](#) which may be filed at any time. MUPC at § 3-414(b).

However, if a PR is appointed in an informal proceeding and a request to remove the appointed PR is based on allegations that the PR lacks priority or qualifications at the time of the initial

appointment, the request may only be made by [\(MPC 160\) Petition for Formal Appointment of a PR](#) which may be filed only within the § 3-108 time limits (i.e., 3 years from date of death).

## 7.6 Effect of Termination of Appointment

Termination of the appointment of a PR:

- 1) Ends the PR's authority to represent the estate in any pending or future proceeding.
- 2) Does not affect the jurisdiction of the court over the PR.
- 3) Does not affect the PR's liability for transactions or omissions occurring before termination.
- 4) Does not relieve the PR of the duty to preserve assets subject to the PR's control. Unless restrained or enjoined by court order pursuant to § 3-401 or § 3-607, the PR shall:
  - a. continue to perform acts necessary to protect the estate prior to distribution;
  - b. deliver the assets to a successor PR; AND
  - c. account for the assets.

MUPC at § 3-608.

**Practice Alert:** The termination of PR's appointment is not a discharge of the PR pursuant to §§ 3-1001 and 3-1002.

## 8

### SUCCESSOR PERSONAL REPRESENTATIVES

A successor PR may be appointed in informal or formal proceedings and Parts 3 (informal probate and appointment proceedings) and 4 (formal probate and appointment proceedings) of Article 3 of the MUPC apply accordingly, except for the provisions of the § 3-108 time limits which do not apply.

#### 8.1 Statutory Reference-MUPC at §§:

3-301(5)

3-301(6)

3-613

3-706

3-716

#### 8.2 Preliminary Considerations

##### 8.2.1 Distinction from a Change in Testacy Proceeding

A request for appointment of a different PR as part of or within 30 days after a change of testacy status (§ 3-301(5)) is not a successor proceeding as described in this section of the manual. See section 1.13 of this guide, for the procedure to confirm a previous appointment of a PR or seek the appointment of a different PR in a change of testacy status proceeding. In all other instances, a petition for appointment of a successor PR must be filed in order for a successor PR to be appointed.

##### 8.2.2 Successor PR Appointed by Petition for Appointment of a Successor PR

A petition for appointment of a successor PR is filed in order to secure the appointment of a PR to succeed a PR whose appointment has been terminated by death, by appointment of a guardian or conservator, by finalization of (MPC 851) Small Estate Closing Statement, by resignation (§ 3-610), or by removal. MUPC at § 3-613; see [\(MPC 255\) Petition for Informal Appointment of Successor Personal Representative](#) and [\(MPC 270\) Petition for Formal Appointment of Successor Personal Representative](#).

##### 8.2.3 Successor PR to Serve with Previously Appointed Co-PR

If a successor PR is seeking an appointment to serve with a previously appointed co-PR, the successor may seek appointment to act with the prior PR, or the previously appointed PR may resign and both may seek appointment on a petition for appointment of a successor PR. See

(MPC 255) Petition for Informal Appointment of Successor Personal Representative or (MPC 270) Petition for Formal Appointment of Successor Personal Representative.

### **8.3 Required Elements of the Petition for Successor PR (MPC 255 & 270)**

A petition for appointment of a successor PR may be brought informally or formally. See [\(MPC 255\) Petition for Informal Appointment of Successor Personal Representative](#) and [\(MPC 270\) Petition for Formal Appointment of Successor Personal Representative](#). Even if the PR who is being succeeded were appointed before the effective date of the MUPC or by formal MUPC proceedings, the successor PR may be appointed in informal proceedings if all of the requirements for an informal proceeding are met.

#### **8.3.1 Information About the Petitioner(s)**

See [section 3.5.2](#) and [section 4.6.2.2](#) of this guide.

#### **8.3.2 Statement Regarding Supervised Administration**

Supervised Administration is not available in informal proceedings. The Petition for Informal Appointment of Successor PR includes a statement that administration is unsupervised. Supervised Administration may be requested on the Petition for Formal Appointment of Successor PR.

#### **8.3.3 Information Regarding Previously Appointed PR**

The petitioner must identify the previously appointed PR's name and address, the date of appointment and reason for termination of the previous PR's appointment. See generally [Chapter 7](#) of this guide.

#### **8.3.4 Information Regarding the Proposed PR**

See [section 3.8](#) and [section 4.9](#) of this guide.

#### **8.3.5 Identifying Others with Statutory or Equal Rights to Appointment**

The petitioner must describe the priority of the nominee. MUPC at §§ 3-301(6), 3-203(h). The rules for priority for appointment of a successor PR are the same as those for the appointment of a PR. See [section 1.5](#) of this guide.

### 8.3.6 Adoption of Statements in Prior Petition

In an informal proceeding, the petitioner must adopt the statements made in the petition which led to the appointment of the PR being succeeded except as specifically changed or corrected. MUPC at § 3-301(a)(6). The Petition for Formal Appointment of Successor PR includes the same language for simplicity.

**Note:** Changes or corrections should include updated addresses of any interested person. For formal proceeding's they may include a request to change the supervision of the estate previously ordered.

### 8.3.7 Information Regarding the Bond

A successor PR must file a bond to qualify for appointment and obtain Letters. MUPC at § 3-601. See [section 1.7](#) of this guide. If an informal proceeding is filed, the bond must be filed with the petition. The petitioner must indicate if the bond of the successor PR will be with or without sureties.

### 8.3.8 Requests

The request must be for unsupervised administration if the petition is a petition for Informal Appointment of Successor PR. Any further request must be as set forth in the paragraph adopting the prior petition's statement.

## 8.4 Notice Requirements

If a Petition for Informal Appointment of Successor PR is filed, the petitioner shall give notice as provided for informal probate and appointment proceedings including post appointment publication if the successor's appointment is made during the period in which the informal testacy determination may be challenged. See [section 3.13](#) of this guide.

If a Petition for Formal Appointment of Successor PR is filed, the division shall issue a citation for service on all interested persons. See (MPC 561) Citation on Petition for Formal Appointment of Successor Personal Representative.

See also the following:

MUPC ESTATE ADMINISTRATION PROCEDURAL GUIDE – SECOND EDITION

NOTICE REQUIREMENTS FOR AN INFORMAL OR FORMAL PETITION FOR APPOINTMENT OF SUCCESSOR PR

If any Petition for Appointment of Successor PR is filed within the time limit to contest an <b>INFORMAL</b> proceeding as provided by G. L. c. 190B, § 3-108 (i.e., three years from date of death to contest the appointment of the PR; or <u>the later of 12 months from the informal probate or three years from decedent's death to contest probate of the will</u> ), notice must be provided to:	In <b>ALL</b> other cases, notice of any Petition for Appointment of Successor PR must be provided to:	Notice must <b>ALSO</b> be provided to the <b>Attorney General</b> when ...	Notice must <b>ALSO</b> be provided to the <b>Division of Medical Assistance, Estate Recovery Unit ("DMA")</b> when ...	<b>Publication</b> is required when ...
Heirs <b>AND</b> Devisees	<b>Intestate Estate:</b> All Heirs  <b>Testate Estate:</b> All Devisees	1.) There is no known heir at law -OR- 2.) Any devisee is a charity  See Uniform Practice XXXIV	1.) Any Petition for Appointment of Successor PR is <u>filed within the creditor claim period</u> provided by G. L. c. 190B, § 3-803 (i.e., one year from date of death); -OR- 2.) DMA has filed an Appearance or Notice of Claim.	1.) Any Petition for Appointment of Successor PR is <u>filed within the creditor claim period</u> provided by G. L. c. 190B, § 3-803 (i.e., one year from date of death); -OR- 2.) Any Petition for Appointment of Successor PR is <u>filed within the time limit to contest an informal proceeding</u> as provided by G. L. c. 190B, § 3-108 (i.e., three years from date of death to contest the appointment of PR; or <u>the later of 12 months from the informal probate or three years from decedent's death to contest probate of the will</u> ); -OR- 3.) A Formal Petition for Appointment of Successor PR is filed and <u>there are persons interested whose address, identity or whereabouts are unknown</u> . See Rule 6(F) of the Supplemental Rules of the Probate and Family Court.

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**Practice Alert:** If notice is not required to be given to the Attorney General, DMA or by publication as outlined above, any Petition for Appointment of a Successor PR may be allowed without a citation provided assents of all interested persons are filed.

## 8.5 Order of Appointment of Successor PR and Letters

The successor PR may be appointed by either [\(MPC 760\) Order for Informal Appointment of Successor Personal Representative](#) or [\(MPC 765\) Decree and Order for Formal Appointment of Successor Personal Representative](#) and the appropriate Letters shall issue. See section 1.12 of this guide.

## 8.6 Powers and Duties of Successor PR

Except as ordered by the court, a successor PR has the same power and duty as the prior PR to complete the administration and distribution of the estate. The successor PR may not exercise any power expressly made personal to the PR named in the will. MUPC at §§ 3-716, 3-613.

The successor PR is obligated to prepare an inventory, within three (3) months after appointment, stating fair market values as of date of appointment. MUPC at § 3-706. See also [section 10.2](#) of this guide.

After appointment and qualification, a successor PR may be substituted in all actions and proceedings to which the former PR was a party. MUPC at § 3-613.

No notice, process or claim which was given to or served upon the former PR needs to be given again to, or served again upon, the successor PR. MUPC at § 3-613.

A successor PR may initiate a proceeding against a surety on the bond of the prior PR for breach of the prior PR's obligation. MUPC at § 3-613.



## 9 ABSENTEES

The procedures and forms pertaining to the settlement of the estates of an absentee are governed by G. L. c. 200, which was not changed by the MUPC. However, as a result of the presumption under G. L. c. 190B, § 1-107(5), formal testacy proceedings may be brought under § 3-402(b) for a person who has been absent for a continuous period of 5 years, provided the person has not been heard from during this period and the absence of the person cannot be satisfactorily explained after diligent search. Other relevant MUPC provisions include § 3-914 (disposition of unclaimed assets) and § 7-309 (transfers of trust property on death of absentee).

### 9.1 Statutory References- MUPC at §§:

1-107  
3-402(b)  
3-914  
7-309, and  
G. L. c. 200

### 9.2 When an Absentee Petition May be Brought

A petition for appointment of a receiver for an absentee may be brought under G. L. c. 200, § 1 when:

- 1) a person entitled to or having an interest in property within Massachusetts has disappeared or absconded from the place the person was last known to be, and it is not known where the person is; OR
- 2) a person entitled to or having an interest in property within Massachusetts who has a dependent spouse or minor child has disappeared or absconded without making sufficient provision for their support, and it is not known where the person is, or if it is known and the person is not within Massachusetts.

**Practice Alert:** There is no required minimum time away.

### 9.3 Who May Bring the Absentee Petition

Persons who may bring a petition for appointment of a receiver for an absentee are:

- 1) Anyone who would have priority to be appointed as PR of the estate of such absentee if the absentee were deceased. MUPC at § 3-203. See section 1.5 of this guide; OR
- 2) If no one is known to be so entitled, any suitable person or the spouse of such absentee, or someone acting on behalf of such spouse or a minor child of the absentee.

G. L. c. 200, § 1.

#### **9.4 Where the Absentee Petition Must be Filed**

The petition is to be filed in the court for the county where any property of the absentee is situated or found. G. L. c. 200, § 1. A petition may be filed where there is no real or tangible property of the absentee in Massachusetts but there is intangible property. G. L. c. 200, § 8. See [section 9.13](#) of this guide.

#### **9.5 Required Elements for the Petition for Appointment of Receiver (AC 108)**

The Petition for Appointment of Receiver (A.C. 108) must be under oath and include the following information:

- 1) The name, age, occupation and last known residence or address of the absentee
- 2) The date and circumstances of the disappearance or absconding
- 3) The names and residence of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made regarding the absentee's whereabouts
- 4) The amount of such property, real and personal, so far as known, and its location within Massachusetts.

G. L. c. 200, § 1.

**Note:** The Petition for Appointment of Receiver (A.C. 108) is not available online but can be obtained in person or by mail from any division's registry of probate.

#### **9.6 Notice Requirements for a Receiver Petition**

The court shall issue a citation reciting the substance of the petition and calling on the absentee and all persons who claim an interest in the absentee's property to appear at the time and place indicated in order to show cause why a receiver should not be appointed to deal with such property. G. L. c. 200, § 2. The state treasurer must be made a party to every such petition and shall be given notice of all subsequent proceedings.

The return day for the citation shall be between 30 and 60 days of the issuance date. G. L. c. 200, § 3. The citation must be published once in each of 3 successive weeks in the newspaper as stated in the Order of Notice of the citation, and must be posted in 2 or more conspicuous places in the town within Massachusetts where the absentee last resided or was known to have been either temporarily or permanently and upon each such parcel of the absentee's land within the commonwealth. G. L. c. 200, § 3.

The court shall order the citation to be mailed to the last known address of the absentee. The portion of the citation that relates to land must be recorded in the Registry of deeds for the county and district where the land is located. G. L. c. 200, § 3. The court may order other and further notice to be given within or without Massachusetts. G. L. c. 200, § 3.

**Practice Alert:** Rule 6 of the Supplemental Rules of the Probate and Family Court (2012) regarding service of a citation is inapplicable since G. L. c. 200 has a statutory requirement on service.

## 9.7 The Appointment of a Receiver

The absentee or any person who claims an interest in any property of the absentee within Massachusetts may appear and show cause why the petition should not be granted. G. L. c. 200, § 5. After a hearing, the court may dismiss the petition or appoint a receiver of the absentee's property.

If the petition is dismissed, the fees and cost of publishing, serving and recording the citation shall be paid by the petitioner; if a receiver is appointed, they shall be paid by the receiver out of the absentee's property and allowed in the receiver's account. G. L. c. 200, § 4.

In making the appointment, the court may give preference to anyone who would have priority to be appointed PR of the estate of the absentee if the absentee were deceased without leaving a will or to any person who is found by the court to have been an agent of the absentee at the date of the absentee's disappearance or absconding and who is in possession of a substantial portion of the absentee's property. G. L. c. 200, § 5.

If the court appoints a receiver, the judge shall find and record the date of the disappearance or absconding of the absentee.

## 9.8 The Bond (MPC 801)

The appointed receiver is required to give a corporate surety bond in such sum and with such condition as the court orders. See [section 1.7](#) of this guide.

## 9.9 The Schedule of Property

After the approval of the bond, the receiver shall take possession of the property of the absentee and shall file in the Registry of Probate a schedule of the property received. G. L. c. 200, § 6.

**Practice Alert:** For the purpose of filing the required schedule of property received, the receiver may use the court Inventory form ([MPC 854](#)) and adjust it or create his or her own schedule.

## 9.10 Court Orders During Receivership

After the appointment of a receiver, upon petition and after notice, the court may make certain orders during the receivership as follows:

- 1) The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. G. L. c. 200, § 9.
- 2) If any of said property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may order such property to be sold at public or private sale. G. L. c. 200, § 9.
- 3) The court may order all or part of said property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by chapter 200 or investment approved by the court. G. L. c. 200, § 9.
- 4) The court may order the property or its proceeds acquired by mortgage, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and minor child(ren), and to the discharge of such debts and claims for alimony as may be proved against the absentee. G. L. c. 200, § 10.

## 9.11 Termination of Receivership

The court shall order the distribution of the absentee's property 7 years after the date of the disappearance or absconding as found and recorded by the court (or, if the receiver is not

appointed within 6 years after the date of disappearance or absconding, upon 1 year after the date of the appointment of the receiver). G. L. c. 200, § 13.

**Note:** A receiver could be appointed to take charge of the absentee's property under G. L. c. 200, § 1 at any time prior to the application of the 5 year presumption of death under the MUPC at § 1-107(5) but formal probate under § 3-402(b) is possible thereafter, including probate of the absentee's will if it is available to probate within the time limitation exception established in § 3-108(2). In that case, the receiver would be required to pay over the absentee's estate to the PR pursuant to G. L. c. 200, § 12. If no PR were appointed sooner than the expiration of the 7 year period referred to in G. L. c. 200, § 13, the receiver pays over the absentee's estate as if the absentee had died intestate.

If, prior to an order for distribution being made any of the following appears and claims said property, the receiver shall account for, deliver and pay over to such person (after making provision for the payment of certain expenses), pursuant to G. L. c. 200, § 12:

- 1) The absentee
- 2) A duly appointed PR
- 3) Assignee in insolvency
- 4) Trustee in bankruptcy of the absentee's estate OR
- 5) The duly appointed guardian or conservator

If the absentee or a legal representative of the absentee does not appear and claim said property prior to the order of distribution, then the absentee's right in all property shall cease (G. L. c. 200, § 12) and the court shall order the distribution thereof (G. L. c. 200, § 13). The property shall be distributed as follows:

- 1) The receiver shall pay to the commissioner of revenue for Massachusetts, from the amount otherwise available for distribution, the estate tax which would have been imposed if the absentee had died intestate within Massachusetts and the property had passed to the distributees by inheritance.
- 2) The remaining property is distributed as if the absentee had died intestate within Massachusetts on the date of the expiration of said seven years or of said one year, as the case may be.
- 3) If, the absentee or his legal representative appear before the distribution is completed, the court, upon the petition of the receiver or such absentee or legal representative, may make such further order relative to the distribution thereof as it deems just and equitable.

G. L. c. 200, § 13.

**Practice Alert:** G. L. c. 206, § 31 is still in effect and controls the priority of payment in the event the assets of the absentee are insufficient to pay all debts.

## 9.12 After-Found Property

The receiver must file a new petition to take possession of any property belonging to the absentee that was not listed in the initial petition for the appointment of a receiver and to demand and collect debts due the absentee from any person in Massachusetts. G. L. c. 200, § 7.

## 9.13 Procedure for Receivership Where Absentee's Only Property is Intangible

Pursuant to G. L. c. 200, § 8, if there are debts and obligations due or owing to the absentee from persons within Massachusetts, a petition may be filed as provided in § 1, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed.

The division may thereupon issue a citation and may, upon the return thereof and after hearing, dismiss the petition or appoint a receiver. See section 9.6 and section 9.7 of this guide. The court may authorize and direct the receiver to demand and collect the debts and obligations specified in said petition, provided that no public administrator shall be appointed as such receiver when the sole known assets of the estate of the absentee consist of an amount of money standing to the absentee's credit in a savings bank or in the savings department of a trust company and has been inactive during a period of ten years or more next preceding the petition for appointment of a receiver. But see, G. L. c. 200A, Abandoned Property.

The receiver shall give a corporate surety bond, and shall hold the proceeds of such debts and obligations and all property received by him, and distribute the same as hereinafter provided. G. L. c. 200, § 8. See [section 9.8](#) of this guide.

## 9.14 Absentee Beneficiary of an Estate or Trust

Section 3-914(b) of the MUPC deals with the situation in which a PR holds property the disposition of which depends upon the death of an absentee whose death has not been found to have occurred under § 1-107. At any time after 5 years following the absentee's disappearance, the PR may petition the court for an order directing that the property be distributed to the persons who would have taken if the absentee had in fact died on the 5<sup>th</sup> anniversary of the absentee's disappearance.

The court may direct the petitioner to conduct, and to report the results of, a search in any manner the court deems advisable, including by publication, notifying law enforcement officials and other agencies, and engaging a private investigator. MUPC at § 3-914(b)(2). The costs of such search are paid from estate property.

After completion of the report directed by the court, notice of hearing on same is given under § 1-401. See MUPC at § 3-914(b)(3).

If the court finds that the facts warrant a presumption of death under § 1-107, it shall enter an order for the disposition of the subject property.

Section 7-309 of the MUPC, regarding the disposition of trust property, tracks § 3-914 except that it deals with the situation in which a trustee holds property the disposition of which depends upon the death of an absentee whose death has not been found to have occurred under § 1-107.

**Practice Alert:** The MUPC at § 3-914(b)(4) incorrectly references “trust” property rather than “estate” property.

## 10

# INVENTORYING, ACCOUNTING AND CLOSING THE ESTATE

### 10.1 Statutory References-MUPC at §§:

For a PR, Successor PR, and SPR:

3-703

3-704

3-706

3-1001

3-1003

3-1204

For supervised administration:

3-505

**Practice Alert:** For purposes of the Inventory, Accounts and closing an estate, a Voluntary PR is not considered a PR.

### 10.2 Preparing an Inventory

A PR must prepare an inventory within 3 months of appointment listing all personal property wherever located and all real property located in Massachusetts owned by decedent at the time of death stating values as of **date of death**. MUPC at § 3-706.

A successor PR must prepare an inventory of the estate within three (3) months of the date of appointment stating values as of **date of appointment**. MUPC at § 3-706.

**Legislative Change:** The above was revised by Chapter 140 of the Acts of 2012. A successor personal representative is statutorily required to prepare an inventory within 3 months of his/her appointment, listing inventory values as of date of appointment, not date of death.

An inventory must indicate:

- 1) The property's fair market value at the date of decedent's death for a PR, but for a successor PR, as of date of appointment; AND
- 2) The type and amount of any encumbrance on the property listed.

MUPC at § 3-706.



**Practice Alert:** Unless otherwise ordered or required by statute, there is no requirement for a PR appointed under the MUPC to file an inventory with the court. If an inventory is filed with the court, the court promulgated form, [\(MPC 854\) Inventory](#) or [\(MPC 854\(a\)\) Inventory](#) (without schedules) must be used. If the court-promulgated form is being filed by a successor PR, the form should indicate in the space provided that the Inventory is being filed by a successor PR. Either form is available on-line or at the registry.

**Practice Alert:** A Public Administrator continues to be obligated to file the Inventory with the court. G. L. c. 194, § 2.

### 10.2.1 Serving and/or Filing an Inventory

A PR is required to:

- 1) mail a copy of an inventory to all interested persons whose addresses are reasonably available; OR
- 2) file the **original** or a **copy** of [\(MPC 854\) Inventory](#) or [\(MPC 854\(a\)\) Inventory](#) (without schedules) with the court.

**Practice Alert:** The court shall require that an inventory on a court approved form be filed with the court in connection with a Petition for License to Sell, Petition for Allowance of Account or Petition for Order of Complete Settlement.

**Practice Alert:** Failure to serve all interested persons with a copy of an inventory or to timely file an inventory with the court is grounds for removal of the PR. MUPC at § 3-611.

**Note:** A fiduciary may choose to file an inventory with the court where there are a large number of interested persons and the burden of sending an inventory to all would be significant.

### 10.3 Filing of Accounts

Chapter 206, §§ 2 - 6, §§ 8-15 and 17 are still in effect and govern accounts as does Rule 72 and Rule 72a of the Supplemental Rules of the Probate and Family Court (2012) and Uniform Practice XVIA (16A) and XVII (17) of the Probate Court.

A PR appointed after the effective date of the Code (3/31/2012) with a MUPC bond, is not required to file an account with the court unless otherwise required by law or court order. An interim or a final account may be filed voluntarily with the court by the PR with the appropriate fee.

**Practice Alert:** Accounts of a PR may be filed with the court without a petition for allowance provided the appropriate fees for the accounts are paid. Accounts will not be allowed unless the appropriate petition is filed.

A pre-MUPC executor or administrator continues to be obligated to file an annual account with the court until the final account is allowed **unless** a Decree and Order on a Petition to Modify a Bond has entered excusing the fiduciary from this obligation. See Standing Order 5-11 (as amended).

**Practice Alert:** A Public Administrator continues to be obligated to render (“file”) an annual account with the court until the final account of his/her administration is allowed. G. L. c. 194, § 2.

### 10.3.1 The Account Form (MPC 853 or MPC 853(a))

If an account is filed with the court, it must be on one of the court promulgated forms. See [\(MPC 853\) Account](#) (with schedules) or [\(MPC 853\(a\)\) Account](#) (without schedules). The Account form promulgated by the court details the activities of the fiduciary by the use of schedules A, B, C. The Account form lists the estate’s income, gains from sales and property received, payments, distributions, losses and the balance, if any, remaining at the end of the accounting period. See generally, G. L. c. 206, § 2.



**Fee Alert:** To determine the fee to file the Account, see the category, “Accounts”, in the [Probate and Family Court Uniform Fee Schedule](#). The Account fee is in addition to the petition fee for its allowance.

### 10.3.2 Allowance of an Interim Account

An interim account is not an annual account and may cover any discrete period of time which may be less than or more than one year. No interim account of a PR who is not a SPR shall be allowed by the court until the expiration of one year from the Decedent’s date of death. See Uniform Practice XVII (17) of the Probate Court.

An interim account may be allowed by the court only if requested by the filing of [\(MPC 857\) Petition for Allowance of Account](#) at any time prior to the allowance of a final account by Decree and Order of Complete Settlement.

When a Petition for Allowance of Account is filed, a citation shall issue from the registry for service on all interested persons who have not assented or waived notice. See Rule 72 of the Supplemental Rules of the Probate and Family Court and [section 10.8](#) of this guide.

**Practice Alert:** The court shall require that the Inventory be filed with the court in connection with a Petition for License to Sell, Petition for Allowance of Account or Petition for Order of Complete Settlement.



**Fee Alert:** The fee to file (MPC 857) Petition for Allowance of Account is \$75.00 in addition to any account or citation fee.

**Practice Alert:** The allowance of an interim account does not close the estate but only determines the items as stated on the interim account.

**Practice Alert:** A final account may be allowed by the court only if requested in (MPC 855) Petition for Order of Complete Settlement. MUPC at § 3-1001. See section 10.6 of this guide.

### 10.3.3 Allowance of a Final Account

See [section 10.6](#) of this guide.

## 10.4 Petition to Render Inventory/Account (MPC 856)

If there is no court order requiring a PR to file an inventory or account with the court, any person interested in the estate may file [\(MPC 856\) Petition to Render Inventory/Account](#) requesting that the PR render an inventory, and if more than one year has passed since the date of appointment, an account.

After filing the Petition, the court shall issue a citation to be served **in-hand** on the PR, unless otherwise ordered. If no objection is filed by the return date, the court shall issue to the PR [\(MPC 754\) Order to Render](#) by mail. A PR who objects to the petition, must follow the procedure set forth in section 10.9 of this guide. MUPC at § 1-401 (d)-(e). Thereafter, the court shall schedule a hearing and allow or disallow the petition.

If the court orders the PR to file an account, the PR must file a court approved inventory and appropriate petition to allow the account.

**Practice Alert:** Any inventory filed in response to an Order to Render must be on the court promulgated form. See [\(MPC 854\) Inventory](#) or [\(MPC 854\(a\)\) Inventory](#) (without schedules). Any account filed in response to an Order to Render must be on the court promulgated account form, [\(MPC 853\) Account](#) (with schedules) or [\(MPC 853\(a\)\) Account](#) (without schedules) and must be accompanied by [\(MPC 854\) Inventory](#) or [\(MPC 854\(a\)\) Inventory](#) (without schedules)

and the appropriate petition, [\(MPC 857\) Petition for Allowance of Account](#) or [\(MPC 855\) Petition for Order of Complete Settlement](#) and filing fees.

## 10.5 Methods for Closing an Estate

A PR appointed under the MUPC (except a Public Administrator) is not required to close an estate unless ordered by the court or the estate is proceeding under supervised administration. See [Chapter 5](#) of this guide.

**Note:** Closing procedures do not apply to Voluntary PRs because VPRs are not defined as PRs in the Code. MUPC at § 1-201(37).

To close the estate, whether testate (with a will) or intestate (without a will), a PR may file a:

- a) Form [\(MPC 850\) Closing Statement](#). MUPC at § 3-1003;
- b) Form [\(MPC 851\) Small Estate Closing Statement](#). MUPC at § 3-1204; **OR**
- c) Form [\(MPC 855\) Petition for Order of Complete Settlement](#) including a final account on a court approved form. MUPC at § 3-1001; see [section 10.3.1](#) of this guide.

Any person interested in the estate may file (MPC 855) Petition for Order of Complete Settlement, including a request to consider and rule on the PR's final account that is on file with the court.

**Note:** Unless a Closing Statement is filed, or a Decree and Order for Complete Settlement allowing the final account is obtained, the PR is not protected from later claims that the PR breached a fiduciary duty. A PR (and any surety) may be released from his or her bond and discharged only by a Decree and Order of Complete Settlement (MPC 790).

### 10.5.1 Closing by Sworn Closing Statement (MPC 850)

A PR may close the estate by filing with the court a sworn [\(MPC 850\) Closing Statement](#), if all of the following requirements are met:

- 1) The estate is not being administered by a Supervised PR (MUPC at § 3-505);
- 2) There is no court order requiring a formal closing proceeding;
- 3) Six months have passed since the date of the original appointment;
- 4) The time for creditor's claims has expired (MUPC at § 3-803);
- 5) The PR has fully administered the estate by:
  - a) distributing the estate to the persons entitled AND
  - b) making payment, settlement or other disposition of: all claims presented, all expenses of administration, and estate, inheritance and death taxes, except as may be specified in the statement;

- 6) The PR has sent a copy of the sworn Closing Statement to all distributees and to all creditors/claimants who have unbarred claims which have not been paid; AND
- 7) The PR has furnished an accounting to the distributees whose interests are affected.

MUPC at § 3-1003.

The MUPC defines “distributee” as “any person who has received property of a decedent from the decedent’s personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in such trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.” MUPC at § 1-201(13).

**Note:** “Except as may be specified in the statement,” means that if any claims remain undischarged, the statement must state whether the PR has distributed the estate subject to possible liability with agreement of the distributees or state in detail other arrangements that have been made to accommodate outstanding liabilities. MUPC at § 3-1003(a)(2).

**Practice Alert:** The sworn Closing Statement must be signed by the PR. It may not be signed by counsel on behalf of the PR.

If no proceedings involving the PR are pending in the court one year after the Closing Statement is filed, the PR’s Closing Statement may not be challenged except for fraud or manifest error. MUPC at § 3-1003(b).

**Practice Alert:** A Closing Statement must be accepted for filing even if it appears from a prior petition that an interested person is under a legal disability.

### 10.5.2 Closing by Sworn Small Estate Closing Statement (MPC 851)

An estate qualifying as a small estate may be closed by filing with the court a sworn [\(MPC 851\) Small Estate Closing Statement](#). The estate is considered a “small estate” if:

[the value of the entire estate] – [liens and encumbrances]

is **less than** or **equal to** the total of:

[the family allowance; MUPC at § 2-404] + [exempt property; MUPC at § 2-403] + [costs & expenses of administration] + [reasonable funeral expenses] + [reasonable and necessary medical and hospital expenses of the last illness of decedent].

The following additional requirements must be met:

- 1) There is no court order requiring a formal closing proceeding;
- 2) The estate is not being administered by a Supervised PR (MUPC at § 3-505);
- 3) The PR has disbursed or distributed the estate to persons entitled thereto;
- 4) The PR sent a copy of the sworn Small Estate Closing Statement to all distributees AND to all creditors/claimants who have unbarred claims which have not been paid; AND
- 5) The PR has furnished a written accounting to the distributees whose interests are affected.

MUPC at § 3-1204. For a definition of “distributee”, see [section 10.5.1](#) of this guide.

**Practice Alert:** The sworn Small Estate Closing Statement must be signed by the PR. It may not be signed by counsel on behalf of the PR.

If no proceedings involving the PR are pending in the court one year after the Closing Statement is filed, the PR’s Small Estate Closing Statement may not be challenged except for fraud or manifest error. MUPC at § 3-1003(b).

**Practice Alert:** If no actions or proceedings involving the PR are pending in the court one year after the Small Estate Closing Statement is filed, the appointment of the PR **terminates**. MUPC at § 3-1204(c).

**Practice Alert:** A Small Estate Closing Statement must be accepted for filing even if it appears from a prior petition that an interested person is under a legal disability.

### 10.5.3 Notice

A copy of (MPC 850) Closing Statement or a copy of (MPC 851) Small Estate Closing Statement must be given by the PR to all distributees and to all creditors or other claimants of whom the PR is aware whose claims are neither paid nor barred. MUPC at §§ 3-1003, 3-1204. Additionally, notice must be given to the Attorney General of Massachusetts if there is no spouse or heir at law of the decedent or any devisee is a charity. See Uniform Practice XXXIV (34) of the Probate Court.

## 10.6 Closing by Petition for Order of Complete Settlement (MPC 855)

### 10.6.1 Requesting Approval of a Final Account and to Close the Estate

A final account may be allowed by the court only if requested by filing [\(MPC 855\) Petition for Order of Complete Settlement](#) along with the account. MUPC at § 3-1001. See [section 10.3.1](#) of this guide for details regarding the account form that must be filed.

A Petition for Order of Complete Settlement filed to close the estate **shall request approval of the final account** and all of the following requirements must be met:

- 1) One year has passed since the date of the original appointment, or the petitioner is the PR;
- 2) The time for creditor’s claims has expired (see MUPC at § 3-803);
- 3) The final account is filed with the Petition for Order of Complete Settlement or on file with the court at the time of filing the petition;
- 4) All interested persons have assented to the petition or have been given notice.

MUPC at § 3-1001(a)-(c); Uniform Practice XVII of the Probate Court.



**Fee Alert:** The fee to file (MPC 855) Petition for Order of Complete Settlement is \$75.00 in addition to the account fee. To determine the fee to file a final account, see the category, “Accounts”, in the [Probate and Family Court Uniform Fee Schedule](#). The final account fee is in addition to the petition fee for its allowance.

### 10.6.2 Other Permissible Requests for Relief

In addition to requesting the approval of a final account to close the estate, a Petition for Order of Complete Settlement may request that the court:

- 1) make a final determination of testacy, if not previously determined;
- 2) make a final determination of the decedent’s heirs at law, if not previously determined;
- 3) determine and approve a proposed distribution; AND/OR
- 4) construe the will as proposed.

MUPC at § 3-1001(a)-(c).

**Practice Alert:** Even when made in a Petition for Order of Complete Settlement, the request to determine testacy is subject to the time limits provided by § 3-108. See [section 1.2](#) of this guide.

**Practice Alert:** The court shall require that the court approved Inventory form be filed in connection with (MPC 857) Petition for Allowance of Account or (MPC 855) Petition for Order of Complete Settlement.

### 10.6.3 Requesting a Determination of Testacy

a). Pre-MUPC Cases:

**Petition for Administration.** A pre-MUPC decree on a Petition for Administration did not *per se* formally adjudicate the testacy status of an estate. Therefore, you MAY request, as part of a Petition for Order of Complete Settlement, that the court determine (*confirm*) intestacy. **For all requests to formally determine intestacy, a publication is required.** See [section 10.8.3 \(d\)](#) of this guide.

**Probate of Will.** A pre-MUPC decree on a Petition to Probate a Will did *per se* formally adjudicate the testacy status of an estate. Therefore, you **MAY NOT** request, as part of a Petition for Order of Complete Settlement, that the court re-determine testacy.

b). MUPC Cases:

**Petition for Formal.** A MUPC Decree and Order on a Petition for Formal did formally adjudicate the testacy status of an estate. Therefore, you **MAY NOT** request, as part of a Petition for Order of Complete Settlement, that the court re-determine testacy.

**Petition for Informal.** A MUPC informal Order did not formally adjudicate the testacy status of an estate. Pursuant to § 3-108, there is a general three (3) year time limit to determine testacy. Provided the time limit under § 3-108 has not expired, you MAY request, as part of a Petition for Order of Complete Settlement, that the court determine the testacy status of an estate. **For all requests to formally determine testacy, a publication is required.** See section [section 10.8.3 \(d\)](#) of this guide.

#### 10.6.4 Requesting a Determination of the Decedent's Heirs at Law

a). Pre-MUPC Cases:

**Petition for Administration OR Petition to Probate a Will.** A pre-MUPC decree on a Petition for Administration or a Petition to Probate a Will did not formally adjudicate the heirs at law of an estate. Pursuant to § 3-108, there is no time limit to determine the heirs at law. Therefore, you MAY request, as part of a Petition for Order of Complete Settlement, that the court determine the heirs at law. The heirs at law will be determined as of date of death. See generally, G. L. c. 190. **For all requests to formally determine the heirs at law, a publication is required.** See section [section 10.8.3 \(d\)](#) of this guide.

b). MUPC Cases:

**Petition for Formal.** A MUPC Decree and Order on a Petition for Formal did formally adjudicate the heirs at law of an estate. Therefore, you **MAY NOT** request, as part of a Petition for Order of Complete Settlement, that the court re-determine the heirs at law.



**Petition for Informal.** A MUPC informal Order did not formally adjudicate the heirs at law of an estate. Pursuant to § 3-108, there is no time limit to determine the heirs at law. Therefore, you **MAY** request, as part of a Petition for Order of Complete Settlement, that the court determine the heirs at law. The heirs at law of an estate will be determined as of date of death. See generally, G. L. c. 190B. **For all requests to formally determine the heirs at law, a publication is required.** See [section 10.8.3 \(d\)](#) of this guide.

### 10.6.5 Filing Requirements

The following court approved forms and documents are required or may be needed for a Petition for Order of Complete Settlement to close an estate:

**PERSONAL REPRESENTATIVE’S  
PETITION FOR ORDER OF COMPLETE SETTLEMENT  
CHECKLIST**

DECEDENT DIED WITH OR WITHOUT A WILL	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Order of Complete Settlement ( <b>MPC 855</b> )	<b>REQUIRED</b>
<input type="checkbox"/> Decree and Order on Petition for Order of Complete Settlement ( <b>MPC 790</b> )	<b>REQUIRED</b>
<input type="checkbox"/> Citation – Return of Service ( <b>MPC 570</b> )	<b>REQUIRED</b> (unless the petition is assented to by all interested persons including any trust beneficiaries and publication is not required)
<input type="checkbox"/> Military Affidavit ( <b>MPC 470</b> )	<b>REQUIRED</b> (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Final Account ( <b>MPC 853 or MPC 853a</b> )	<b>REQUIRED</b> (if requesting the allowance of PR’s final account)
<input type="checkbox"/> Inventory ( <b>MPC 854 or MPC 854a</b> )	<b>REQUIRED</b> (if requesting allowance of PR’s final account)
<input type="checkbox"/> Surviving Spouse, Children, Heirs at Law ( <b>MPC 162</b> )	<b>REQUIRED</b> (if requesting a formal determination of heirs)
<input type="checkbox"/> Statement of proposed will construction	<b>REQUIRED</b> (if requesting will construction)
<input type="checkbox"/> Affidavit - as to execution ( <b>MPC 480</b> ), domicile ( <b>MPC 485</b> ), or no conflict of a Conservator	MAY NEED
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties ( <b>MPC 455</b> )	MAY NEED
<input type="checkbox"/> Copy of Trust and Affidavit re: Trust Beneficiaries	MAY NEED (if the PR and the trustee are identical, to identify for notice purposes each trust beneficiary including any unborn and unascertained and whether any beneficiary is under a legal disability)
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED
<input type="checkbox"/> Motion of Petitioner and Affidavit of parent or virtual representative to waive appointment of Guardian ad Litem (GAL)	MAY NEED (if an unrepresented heir or devisee is under a legal disability, to request waiver of GAL based on parental or virtual representation)
<input type="checkbox"/> Copy of Power of Attorney	MAY NEED (if requesting the allowance of the PR’s final account, to confirm agent’s authority to receive property for an adult principal)
<input type="checkbox"/> Motion of the accounting PR and Affidavit of a non-accounting co-fiduciary to waive appointment of Guardian ad Litem (GAL) pursuant to Uniform Practice XVIA (16A)	MAY NEED (if requesting the allowance of the PR’s final account, to request waiver of GAL based on independent co-fiduciary representation for an otherwise unrepresented interested person(s) under a legal disability)

## 10.7 Court Appointment of a Guardian Ad Litem

A GAL must be appointed for a spouse, heir at law, or devisee who is an IP, PP or a minor **UNLESS** any of the following apply:

1. The spouse, heir at law, or devisee is represented by a conservator;
2. The spouse, heir at law, or devisee is represented by a guardian who is not the petitioner;
3. The court has allowed a motion to waive the appointment of a GAL based on parental, virtual, or other representation as provided by § 1-403, § 3-915, or for any other reason.

MUPC at §§ 1-403, 1-404, 3-915; see also [section 10.7.2](#), [section 10.7.3](#), [section 10.7.4](#) and [section 10.7.5](#) of this guide.

### 10.7.1 Statutory References- MUPC at §§:

1-403

1-404

3-915

Rule 5 and Rule 72 of the Supplemental Rules of the Probate & Family Court

### 10.7.2 Statutory Waivers of Appointment Pursuant to § 1-403

Pursuant to § 1-403, to the extent there is no conflict of interest between them or among persons represented, the following fiduciaries represent an heir at law or devisee who is an IP, PP, or a minor. **NO** motion to waive the appointment of a GAL is necessary.

1. **Conservator.** If an individual is represented by a conservator, the conservator may represent and bind the person whose estate the conservator controls.

2. **Guardian.** If an individual is represented by a guardian, and no conservator has been appointed, the guardian may represent and bind the incapacitated person or minor.

3. **Independent Trustee of Trust.** An independent trustee of a trust may represent and bind the beneficiaries of the trust in a proceeding to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in a proceeding involving creditors and other third parties. See Practice Alert below when the PR and Trustee are identical.

4. **Personal Representative.** A personal representative of a decedent's estate may represent and bind persons interested in the undistributed assets of a decedent's estate. See Practice Alert below when an heir at law or devisee is since deceased.

**Practice Alert:** If there is a trust, notice shall be given to the **trustee**. The trustee represents the beneficiaries of the trust UNLESS the trustee and the PR are identical. MUPC at §§ 1-201(10), 1-403. If the trustee and the PR are identical, notice also must be given to the trust beneficiaries, unless all beneficiaries have assented and waived notice. MUPC at §§ 1-201(24), 3-1001; see also section 10.8 of this guide.

The PR shall provide a copy of the trust and an affidavit identifying each trust beneficiary and stating whether there are unborn or unascertained beneficiaries and whether any named beneficiary is under a legal disability. The trust and the affidavit shall be returned upon entry of the decree. **Neither the trust nor the affidavit shall be entered on the docket or scanned unless otherwise ordered by the court.**

**Practice Alert:** In a proceeding for allowance of an account or a Petition for Order of Complete Settlement, if an heir at law or devisee is deceased at the time court proceedings are commenced, notice must be given to the PR of the **since deceased person's estate**. MUPC at §§ 1-201(24), 3-1001; see also section 10.8 of this guide. If no PR has been appointed, **publication is required**. Assents of the presumptive heirs at law are NOT sufficient. In addition to notice by publication, the court may appoint a GAL or take other appropriate action.

**Note:** An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. MUPC at § 1-403.

### 10.7.3 Permissive Waivers of Appointment Pursuant to § 1-403

Pursuant to § 1-403, the following persons may represent an heir at law or devisee who is an IP, PP, or a minor. A [motion](#) to waive the appointment of a GAL is **REQUIRED**.

1. **Parent of a Minor.** To the extent there is no conflict of interest, a parent may represent his/her minor child if a guardian or a conservator for the child has not been appointed and parental representation is pre-approved by the court.

2. **Holder of a Power of Appointment.** A holder of a non-testamentary general power of appointment or the holder of a broad special power of appointment may represent and bind all potential appointees.

3. **Virtual Representative.** A party who has a substantially identical interest may represent and bind an unborn or unascertained party who is not otherwise represented, if the virtual representation is pre-approved by the court.

**Practice Alert:** Unborn and unascertained beneficiaries may arise when a class of beneficiaries has not yet closed at the date of death of the testator. For example, if there is a devise or gift to the testator’s “grandchildren” and some grandchildren are living on the testator’s date of death but there is a possibility of more being born, then unborn and unascertained beneficiaries exist. The petition must identify the known members of the class in order to confirm notice and/or assents and must also list “unborn and unascertained beneficiaries”.

**Practice Alert:** For a permissive waiver of the appointment of a GAL based on § 1-403, a [motion](#) must be filed and supported by an affidavit of the [representative](#) setting forth sufficient facts for consideration by the court. An affidavit from counsel for the petitioner is not sufficient. A motion to waive a GAL supported by an affidavit may be allowed without a hearing in the discretion of the court; provided, however, that the filer shall be given an opportunity to be heard before such motion is denied.

**Note:** An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. MUPC at § 1-403.

**Note:** Section 1-108 also permits the court, in its discretion, to waive the appointment of a GAL in a proceeding for allowance of an account where a person entitled to notice has a general power of appointment or the power to appoint among a class of appointees which is broader than the class of persons who would take in default of the exercise of the power.

#### 10.7.4 Permissive Waivers of Appointment Pursuant to § 3-915

Pursuant to § 3-915, a PR [may](#) distribute to an heir at law or devisee who is under a legal disability as follows provided there is [no conflict of interest](#). A [motion](#) to waive the appointment of a GAL is **REQUIRED**.

1. **Express Terms of Will.** A PR may discharge his/her obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

2. **Chapter 201A or Other Statute.** Unless contrary to the express provision in the will or if a conservator has been appointed or a proceeding to appoint a conservator is pending, a PR may discharge an obligation to distribute to a minor or person under disability as authorized by Chapter 201A or any other statute (e.g., G. L. c. 190B, § 5-102, G. L. c. 215, § 41A, G. L. c. 203B).

3. **Agent under Power of Attorney.** If an heir at law or devisee is under disability [other than minority](#), a PR is authorized to distribute to an agent under a power of attorney who has authority to receive property for that party.

4. **Spouse/Parent/Other Close Residential Relative.** If an heir at law or devisee is under disability other than minority, a PR is authorized to distribute to a spouse, parent or other close relative with whom the party resides if the distribution is of amounts not exceeding \$10,000 a year, or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value.

MUPC at § 3-915.

**Practice Alert:** For a permissive waiver of the appointment of a GAL based on § 3-915, a motion to waive a GAL must be filed and supported by an affidavit of the representative. An affidavit from counsel for the petitioner is not sufficient. A motion to waive a GAL supported by an affidavit may be allowed without a hearing in the discretion of the court; provided, however, that the filer shall be given an opportunity to be heard before such motion is denied.

**Practice Alert:** In a proceeding for approval of an account or a distribution, the court shall require a copy of any necessary document to confirm the identity of the representative and the power to distribute in accordance with that document. If requested, the document shall be returned upon entry of the decree. **The document shall not be scanned unless otherwise ordered by the court.**

**Practice Alert:** Persons receiving money or property for a legally disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the legally disabled person. Excess sums must be preserved for future support of the disabled person. The PR is not responsible for the proper application of money or property distributed pursuant to this subsection. MUPC at § 3-915.

**Note:** An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. MUPC at § 1-403.

#### 10.7.5 Permissive Waiver of Appointment Based on Uniform Practice XVIA: Co-Fiduciary Accounts

Pursuant to Uniform Practice XVIA (16A):

If a **non-accounting** co-fiduciary of an accountant, who has received or waived notice relating to the allowance of the account(s), currently represents the interests of a person or persons, the court may waive the appointment of a GAL for such person or persons upon motion of the **accountant** brought ex parte.

Such motion shall be accompanied by an **affidavit** of the **co-fiduciary** representing:

1. that such co-fiduciary has received or waived notice relating to the allowance of the pending account(s);
2. that such co-fiduciary is not aware of any conflict of interest which would prevent him/her from representing the person or persons whose interest would otherwise require appointment of a GAL;
3. that such co-fiduciary has a duty to account in his/her capacity as a fiduciary;
4. that such co-fiduciary recognizes that he/she has a fiduciary duty to review such pending accounts with due care and has done so; and
5. that such fiduciary assents to the allowance of the pending account(s).

Such motion may be allowed without a hearing in the discretion of the court; provided, however, that the accountant shall be given an opportunity to be heard before such motion is denied.

**Practice Alert:** Failure to provide any of the requirements provided by Uniform Practice XVIA (16A) shall result in the appointment of a GAL or other appropriate action by the court.

## 10.8 Notice Requirements (MPC 570)

Unless the written assents and waivers of notice of all persons interested in the proceeding are filed, after the filing of a Petition for Order of Complete Settlement, the registry shall fix a return date and issue a citation. MUPC at §§ 1-401, 1-403, 1-404, 3-1001; see also Rule 6 and Rule 72 of the Supplemental Rules of the Probate and Family Court; (MPC 570) Citation on Petition for Order of Complete Settlement of Estate; [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#).



**Fee Alert:** It is the responsibility of the petitioner to submit the appropriate fee for the registry to issue a citation. The fee for a citation is \$15.00 in addition to any other filing or court fees.

**Practice Alert:** If the only relief requested in the Petition for Order of Complete Settlement is the allowance of the final account, Rule 72 of the Supplemental Rules of the Probate and Family Court applies and no citation need be issued if the written assents and waivers of notice of all persons interested in the account are filed. See Rule 72(b) of the Supplemental Rules of the Probate and Family Court and form MPC 455, Assent and Waiver of Notice/Renunciation/Waiver of Sureties.

### 10.8.1 Persons Entitled to Notice

The petitioner shall provide notice to all interested persons. MUPC at § 3-1001. An interested person entitled to notice (or his/her attorney, if represented) including a GAL, conservator or other fiduciary, may waive the right to notice by filing a written assent and waiver of notice. MUPC at § 1-402; see [\(MPC 455\) Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties](#) and [\(MPC 941\) Instructions](#). A minor or an incapacitated or protected person **may not** waive notice.

Depending upon the particular relief requested, persons who may be interested in the Petition for Order of Complete Settlement may include the following:

- 1) heirs at law;
- 2) devisees (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;
- 3) persons having a property right in or claims against the estate of the decedent;
- 4) an attorney of record who has been designated by the client to receive notice;
- 5) any GAL appointed;
- 6) a fiduciary or other representative pursuant to § 1-403;
- 7) any representative pursuant to § 3-915 on behalf of a legally disabled person and the person represented regardless of age.

MUPC at §§ 1-201(24); 1-401, 1-403, 1-404, 3-915, 3-1001; Rule 5 and Rule 72 of the Supplemental Rules of the Probate and Family Court.

If the proceeding affects a charitable interest or beneficiary, the petitioner must give notice to the charity and to the Attorney General of Massachusetts. The Attorney General must also be provided notice if there is no spouse or heir at law of the decedent. Uniform Practice XXXIV (34) of the Probate Court.

In certain circumstances, the Veterans Administration must be notified. See MUPC at § 2-105.

**Practice Alert:** In a proceeding for allowance of an account or a Petition for Order of Complete Settlement, if an heir at law or devisee is deceased at the time court proceedings are commenced, notice must be given to the PR of the **since deceased person's estate**. MUPC at §§ 1-201(24), 3-1001. If no PR has been appointed, **publication is required**. Assents of the presumptive heirs at law are NOT sufficient. In addition to notice by publication, the court may appoint a GAL or take other appropriate action.

**Note:** An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. MUPC at § 1-403.



## 10.8.2 Military Affidavit (MPC 470)

See [section 3.10.2](#) of this guide.

## 10.8.3 How Notice is Given

The petitioner shall give notice of the proceeding as provided in the citation's Order of Notice and in accordance with Rule 6 of the Supplemental Rules of the Probate and Family Court.

### a. Service within Massachusetts

Service of a citation within Massachusetts shall be given by delivering in hand or by mailing by certified, registered or ordinary first class mail at least fourteen (14) days before the return date.

### b. Service outside of Massachusetts

If it shall appear from the petition that there is anyone interested who is outside of Massachusetts in any part of the United States, its Commonwealths or territories, service of the citation shall be given by delivering in hand or by mailing by certified, registered or ordinary first class mail at least fourteen (14) days before the return day; if in other parts, one (1) month.

### c. Service when Whereabouts are Unknown

If it shall appear from the petition that a person is of parts unknown, service of the citation shall be given by delivery or mailing to the last known address at least one (1) month before the return day. See also Service by Publication below.

### d. Service by Publication

In addition to the service requirements above, publication shall be required if a person's whereabouts, address or identity is unknown. **Publication shall also be required if a Petition for Order of Complete Settlement requests a formal determination of testacy or a formal determination of the decedent's heirs at law** (see [section 10.6.3](#) and [section 10.6.4](#) of this guide). A copy of the citation shall be published once in a newspaper designated by the Register of Probate at least seven (7) days before the return day.

## 10.8.4 Proof of Notice

The petitioner shall provide the court with proof of notice by filing the complete citation with a completed Return of Service on or before the hearing or return day.

## **10.9 Contesting the Allowance of an Account or a Petition for Order of Complete Settlement**

Any party who opposes the proceeding for any reason, shall before 10:00 a.m. of the return date enter an appearance in writing. See [\(MPC 505a\) Notice of Appearance and/or Objection](#). MUPC at § 1-401(d), Rule 2 of the Supplemental Rules of the Probate and Family Court (2012).

### **10.9.1 Filing a Written Notice of Appearance and Objection (MPC 505a)**

Objecting to a formal petition is time sensitive and requires two (2) steps: (1) filing a written Notice of Appearance and Objection before 10:00 a.m. of the return date and (2) filing a written affidavit of objections within 30 days after the return date.

Copies of both the Notice of Appearance and Objection and the written affidavit of objections must be sent to the petitioner and all interested persons. See Rule 3 of the Supplemental Rules of the Probate and Family Court (2012).

If the Notice of Appearance and Objection and the affidavit of objections is timely filed and meets the requirements of 1-401(e), the formal proceeding shall be considered contested.

**Note:** The return date listed in a citation is NOT a hearing date. It is the deadline date by which an interested party must file his or her written appearance if he or she wishes to contest a formal petition.

### **10.9.2 Filing a Written Affidavit of Objections**

An objecting party who has filed a timely Notice of Appearance and Objection is also required to file a separate written affidavit of objections, stating the specific facts and grounds upon which the objection is based within 30 days after the return date. MUPC at § 1-401(e); see also Rule 72 of the Supplemental Rules of the Probate and Family Court (2012).

### **10.9.3 Striking a Notice of Appearance and Objection/Written Affidavit of Objections**

If an affidavit of objections is neither timely filed, nor states the specific facts and grounds upon which the objection is based, the affidavit and the Notice of Appearance and Objection of the party filing such affidavit, may be struck on motion, after notice and a hearing by the court. MUPC at § 1-401(f).

#### 10.9.4 Establishing a Hearing Date After the Return Date

In order to request a hearing date to appear before the court on a contested petition, the petitioner must file a Request for a Case Management Conference or other applicable form. The court's judicial case manager may be consulted for further information regarding the scheduling of a hearing date.

**Note:** A contested petition shall be heard by a judge of the court and not a magistrate. A magistrate has no authority to hear a contested matter.

#### 10.10 Uncontested Cases

If the petition is uncontested and a hearing is not required, the petitioner shall submit to the court, either in person at the registry or by mail, all necessary documents for allowance by the magistrate or court. See [section 1.11](#) and [section 10.6.5](#) of this guide.

The court or the magistrate may enter appropriate orders after the return date on the strength of the pleadings if satisfied that all conditions are met or the court may conduct a hearing and require proof of the matters necessary to support the order sought. MUPC at § 1-401(g), Rule 70 of the Supplemental Rules of the Probate and Family Court (2012).

#### 10.11 Settlement, Termination and Discharge from Liability

Settlement: Settlement of an estate includes the full process of administration, distribution, and closing by a PR.

Termination: Termination ends the rights and powers pertaining to the office of a PR. If a PR's rights and powers are not terminated, the PR's authority over the estate continues. Termination of a PR's appointment is discussed at sections 3-608 through 3-612. See [Chapter 7](#) of this guide.

Discharge: A discharge forever exonerates the PR and his or her sureties from further claim or demand of any interested person and from all liability under a decree discharging the PR unless his or her Account is impeached for fraud or manifest error. MUPC at § 3-1001(b).

<b>WHEN PR FILES:</b>	<b>ESTATE IS SETTLED</b>	<b>PR'S AUTHORITY IS AUTOMATICALLY TERMINATED</b>	<b>CLOSING STATEMENT MAY NOT BE CHALLENGED EXCEPT FOR FRAUD OR MANIFEST ERROR</b>	<b>PR IS DISCHARGED</b>
<b>Nothing</b>	No.	No.	No.	No.
<b>Small Estate Closing Statement §3-1204</b>	Yes.	Yes, one year after the closing statement is filed provided no actions or proceedings involving the PR are pending in the division.	Yes.	No.
<b>Closing Statement §3-1003</b>	Yes.	No.	Yes.	No.
<b>Petition for Complete Settlement of Estate §3-1001</b>	Yes.	No.	Yes.	Yes, if final settlement of the estate is approved.

### 10.12 Discovery of Additional Assets

If additional estate assets are discovered after the court enters a Decree on a Petition for Order of Complete Settlement discharging the PR and sureties from liability, the PR shall use the following procedure to administer the additional estate assets:

1. File an “Affidavit of Additional Assets” listing the value of the additional assets along with a Certificate of Service acknowledging that the Affidavit was sent to all persons interested in the estate, including the Division of Medical Assistance, Estate Recovery Unit and the Attorney General of Massachusetts, if applicable.
2. File a subsequent [\(MPC 801\) Bond](#) to cover the amount of the additional assets. For surety requirements, see [section 1.7](#) of this guide. Form [\(MPC 455\) Assent and Waiver of](#)

[Notice/Renunciation/Nomination/Waiver of Sureties](#) may be filed for each person interested in the estate to waive sureties on the PR's subsequent bond. For instructions on completing this form, see [\(MPC 941\) Instructions](#).

3. If requested, new Letters may be issued from the registry after the affidavit is filed and the bond has been approved.



**Fee Alert:** The fee to file a subsequent bond is \$75.00. The fee for each Letter requested is \$25.00.

4. A PR may close the estate as to the additional assets under any of the available MUPC options (e.g., Petition for Order of Complete Settlement or Closing Statement).



**Fee Alert:** The filing fee for all accounts of additional assets filed shall be in accordance with the [Uniform Fee Schedule](#) based on the value listed in Schedule A and not the \$75.00 fee for an “Amended/Substituted” Account.

## 11 FOREIGN FIDUCIARIES

The MUPC (G. L. c. 190B) applies to the property of nonresidents located in Massachusetts or to the property coming into the control of a fiduciary who is subject to the laws of Massachusetts. MUPC at § 1-301.

Article III governs the procedure for original and ancillary proceedings in Massachusetts. Article IV establishes a simplified procedure for administering a decedent's personal property located in Massachusetts without appointment by the court. Article IV is substantially similar to G. L. c. 199A which is now repealed.

**Practice Alert:** G. L. c. 202, § 32 remains in effect with respect to a Foreign PR's ability to obtain a license to sell a non-resident decedent's real property located in Massachusetts.

### 11.1 Statutory References – MUPC at §§:

1-201  
1-301  
3-201  
3-202  
3-203  
3-307(a)  
3-308  
3-611(b)  
3-803(a)  
3-815  
3-816  
Article IV and  
G. L. c. 199  
G. L. c. 202, § 32

### 11.2 General Terms and Abbreviations

A "Domiciliary Foreign Personal Representative" ("DFPR") is a foreign PR appointed under the law of the jurisdiction of a decedent's domicile. MUPC at § 4-101(2).

A "Foreign Personal Representative" ("FPR") is a PR appointed by a jurisdiction other than Massachusetts or the decedent's state of domicile. MUPC at § 1-201(17).

A “Local Administration” is administration by a PR appointed in Massachusetts pursuant to appointment proceedings described in Article III. MUPC at § 4-101(4).

A “Local Personal Representative” (“LPR”) is any PR appointed in Massachusetts pursuant to appointment proceedings described in Article III and excludes FPRs who acquire the power of a LPR pursuant to § 4-205. MUPC at § 4-101(6).

A “Non-Resident Decedent” (“NRD”) is a decedent who was domiciled in another jurisdiction at the time of death. MUPC at § 1-201(32).

A “Resident Creditor” is a person domiciled or doing business in Massachusetts who is or could be a claimant against the estate of a NRD. MUPC at § 4-101(9).

### **11.3 Original and Ancillary Proceedings**

For a NRD, the provisions of Article III of the MUPC govern (1) original and ancillary proceedings, if any, in a Massachusetts court for probate of the will, appointment, removal, supervision, and discharge of the LPR and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any LPR and the rights of claimants, purchasers, distributees and others in regard to a local administration. MUPC at § 4-207.

#### **11.3.1 Time Limits**

The general 3 year time limit provided by § 3-108 to commence an estate in Massachusetts applies to an original informal or formal proceeding for a NRD. MUPC at § 3-108. The time limits of § 3-108 do not apply to an ancillary proceeding to probate a will previously probated at the testator’s domicile or appointment proceedings relating to an estate in which there has been a prior appointment. MUPC at §§ 3-108, 3-303(d).

#### **11.3.2 Original Proceedings**

There is no requirement under the MUPC that a will first be probated or administration first be taken in the decedent’s state of domicile before a proceeding may be commenced in Massachusetts. The MUPC provides for both informal and formal original proceedings for a NRD. MUPC at §§1-301, 1-302, 3-108, 3-301, 3-303, 3-304, 3-307, 3-308, 3-311, 3-409, 3-816, 4-207.

For additional information regarding informal and formal proceedings, see [Chapter 3](#) and [Chapter 4](#) of this guide.

**Practice Alert:** If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding filed in Massachusetts, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of Massachusetts must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in Massachusetts. MUPC at § 3-202.

**Practice Alert:** A will from a place that does not provide for probate of a will after death may be informally or formally probated in Massachusetts upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place. MUPC at §§ 3-303(e), 3-409.

### 11.3.3 Ancillary Proceedings

An ancillary proceeding is not an original proceeding, but is a second or subsequent probate proceeding that is commenced in a state other than the state of the decedent's domicile. An ancillary proceeding may be necessary when the decedent owned real estate in a state other than the state of domicile. An ancillary proceeding is required because the court of the state of domicile does not have jurisdiction over real property located outside of its borders.

The provisions of Article III govern the procedure for an ancillary proceeding in Massachusetts. MUPC at § 4-207; see also [section 11.5](#) of this guide for proof of authority over personal property only.

#### 11.3.3.1 Informal Ancillary Proceedings

Any person interested in the estate may petition to informally probate the NRD's will at any time by filing [\(MPC 150\) Informal Petition to Probate a Will and/or Appoint a PR](#) accompanied by an authenticated copy of the will and an authenticated copy of the order, decree or judgment issued by the court where it was first probated. MUPC at § 3-303(d); see Chapter 3 of this guide for more information.

A will from a place that does not provide for probate of a will after death may be informally probated in Massachusetts upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place. MUPC at § 3-303(e).



A DFPR (or his or her nominee) may petition for informal appointment in Massachusetts in an intestate (or testate) estate. MUPC at § 3-308(b); see [Chapter 3](#) of this guide for more information.

**Practice Alert:** A DFPR (or his or her nominee) is the only person who has standing to petition for informal appointment in Massachusetts when an appointment has been made in the state of domicile. MUPC at § 3-308(b).

**Practice Alert:** A DFPR has priority for appointment over all other persons except where the decedent's will nominates different persons to be PR in Massachusetts and in the state of domicile. The DFPR may nominate another, who shall have the same priority as the DFPR. MUPC at § 3-203(g). Unless a decedent's will appoints a different person to serve as PR in Massachusetts, the DFPR may obtain removal of anyone else appointed in Massachusetts. MUPC at 3-611(b).

### 11.3.3.2 Formal Ancillary Proceedings

A person interested in the estate may petition to formally probate the NRD's will at any time by filing [\(MPC 160\) Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of PR](#) accompanied by an authenticated copy of the will probated in another jurisdiction and an authenticated copy of the final order, decree or judgment issued by the foreign court. MUPC at § 3-402(a); see [Chapter 4](#) of this guide for more information.

**Practice Alert:** A final order, decree or judgment of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as binding by a Massachusetts court if it includes, or is based upon a finding that the decedent was domiciled at death in the state where the order was made. MUPC at § 3-408.

A will from a place that does not provide for probate of a will after death may be formally proved for probate in Massachusetts upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become effective under the law of the other place. MUPC at § 3-409.

A person interested in the estate may also petition to formally appoint a DFPR in Massachusetts in an intestate (or testate) estate. MUPC at §§ 3-402, 4-207; see [Chapter 4](#) of this guide for more information.

**Practice Alert:** A DFPR has priority for appointment over all other persons except where the decedent's will nominates different persons to be PR in Massachusetts and in the state of domicile. The DFPR may nominate another, who shall have the same priority as the DFPR. MUPC at § 3-203(g). Unless a decedent's will appoints a different person to serve as PR in

Massachusetts, the DFPR may obtain removal of anyone else appointed in Massachusetts. MUPC at 3-611(b).

## 11.4 Final Distribution to DFPR

The estate of a NRD being administered by a LPR shall, *if* there is a DFPR willing to receive it, be distributed to the DFPR for the benefit of the successors of the decedent unless:

- (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of Massachusetts without reference to the local law of the decedent's domicile;
- (2) the LPR, after reasonable inquiry, is unaware of the existence or identity of a DFPR; or
- (3) the court orders otherwise in a proceeding for a closing order under § 3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of Article III.

MUPC at § 3-816. See also, G. L. c. 199, § 2.

**Practice Alert:** Chapter 199, § 1 remains good law and provides that if administration is taken in Massachusetts on the estate of a person who was an inhabitant of any other state or country, the estate found here shall, after payment of debts, be disposed of according to the last will, if any; otherwise real property shall descend according to the laws of Massachusetts, and personal property shall be distributed and disposed of according to the laws of the state or country of which the decedent was an inhabitant.

## 11.5 Proof of Authority

### 11.5.1 Registering a DFPR's Proof of Authority

As an alternative to an ancillary proceeding, if a NRD owned personal property located in Massachusetts and authority is needed in Massachusetts to transfer such **personal property only**, a DFPR may use a simplified procedure known as proof of authority pursuant to § 4-204. To use this procedure, there must be no local administration or pending petition for local administration in Massachusetts. The DFPR files in the court in any division where **personal property** belonging to the NRD is located:

- 1) Authenticated copies of the DFPR's appointment;
- 2) Authenticated copies of the official bond, if any; and
- 3) [Form \(MPC 180\) Foreign Personal Representative's Sworn Statement](#).

MUPC at § 4-204.

Upon the payment of the appropriate fee, the registry shall file and docket these pleadings.



**Fee Alert:** The filing fee is \$90.00. The fee is broken down as follows: \$75 for the filing of the Statement and a \$15.00 surcharge fee to assign a docket number. The \$90.00 filing fee includes one (1) attested copy of the Statement issued by the Register of Probate. Additional attested copies cost \$20.00 each.

**Practice Alert:** A DFPR may file proof of authority in any county where personal property belonging to the decedent is located and gain authority over all personal property of the decedent in Massachusetts.

Proof of authority does not involve opening a full probate. No order or decree is issued by the court and no Letters are granted. The registry shall issue an attested copy of [\(MPC 180\) Foreign Personal Representative's Sworn Statement](#) as evidence of the DFPR's authority to act.

**Practice Alert:** Filing proof of authority in Massachusetts does NOT give the DFPR authority to transfer real estate located in Massachusetts. For authority to transfer real estate, see [Chapter 14](#) of this guide.

### 11.5.2 Effect of Registration-Power of a DFPR to Act in Massachusetts

Provided there is no local administration or petition for local administration pending in Massachusetts, a DFPR who has registered his proof of authority in accordance with § 4-204 may exercise as to the decedent's personal property in Massachusetts, all of the powers of a local PR acting in a similar capacity and may maintain actions and proceedings in Massachusetts subject to any conditions imposed upon nonresident parties generally. MUPC at § 4-205. See also MUPC at §§ 3-715(22), 3-703(c), 3-916(h).

A petition for local administration terminates the power of a DFPR to act but the court may allow the DFPR to exercise limited powers to preserve the estate. MUPC at § 4-206.

### 11.5.3 Registering a FPR's Proof of Authority

If there is no local administration or pending petition for local administration in Massachusetts and no DFPR or proceedings for appointment of a PR are pending in the state of domicile, a FPR who is the PR first appointed in a proceeding in any jurisdiction, may file in any division in Massachusetts where tangible personal property belonging to the NRD is located or where the NRD had a permanent or temporary residence at any time during the 12 months preceding the date of death:

- 1) Authenticated copies of the FPR's appointment;
- 2) Authenticated copies of the official bond, if any; and
- 3) [Form \(MPC 180\) Foreign Personal Representative's Sworn Statement](#).

MUPC at § 4-201(c).

Upon the payment of the appropriate fee, the registry shall file and docket these pleadings.



**Fee Alert:** The filing fee is \$90.00. The fee is broken down as follows: \$75 for the filing of the Statement and a \$15.00 surcharge fee to assign a docket number. The \$90.00 filing fee includes one (1) attested copy of the Statement issued by the Register of Probate. Additional attested copies cost \$20.00 each.

**Practice Alert:** A FPR who files proof of authority pursuant to § 4-201(c) must provide a copy of the above documents to the Commissioner of Revenue. MUPC at § 4-201(c).

Proof of authority does not involve opening a full probate. No order or decree is issued by the court and no Letters are granted. The registry shall issue an attested copy of [\(MPC 180\) Foreign Personal Representative's Sworn Statement](#) as evidence of the FPR's authority to act.

#### **11.5.4 Effect of Registration - Power of a FPR to Act in Massachusetts**

A FPR who has registered his proof of authority in accordance with § 4-204 may accept payment or delivery of personal property pursuant to § 4-201(c) no earlier than one month after filing proof of authority to act with the court. MUPC at § 4-201(c).

The power of a FPR under § 4-201 or § 4-205 shall be exercised only if there is no administration or petition pending in Massachusetts.

## 11.6 Creditor's Claims; Administration in More than One State; Duty of PR

Unsecured creditor's claims that are barred by the law of the state of domicile are also barred in Massachusetts. MUPC at § 3-803(c).

All assets of the estate being administered in Massachusetts are subject to all claims, allowances and charges existing or established against a PR wherever appointed. MUPC at § 3-815(a).

If the estate either in Massachusetts or as a whole is insufficient to cover all family exemptions and allowances (determined by the law of the decedent's domicile) and prior charges and claims, each claimant whose claim has been allowed either in Massachusetts or elsewhere, in administrations of which the PR is aware, is entitled to receive payment of an equal proportion of his claim, after satisfaction of the exemptions, allowances and charges. If a preference or security in regard to a claim is allowed in another jurisdiction but not in Massachusetts, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit. MUPC at § 3-815(b).

In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and Massachusetts is not the state of the decedent's last domicile, the claims allowed in Massachusetts shall be paid their proportionate share of total assets if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the DFPR. MUPC at § 3-815(c).

If local assets are not sufficient to pay all claims allowed in Massachusetts (the amount to which they are entitled) local assets shall be marshaled so that each claim allowed in Massachusetts is paid its proportion as far as possible, after taking into account all dividends on claims allowed in Massachusetts from assets in other jurisdictions. MUPC at § 3-815(c).

## 11.7 Proceedings to Determine Property Rights

In any proceeding in Massachusetts to determine rights in real or personal property

- 1) located in Massachusetts; or
- 2) administered by a fiduciary in Massachusetts; or
- 3) under a will admitted to probate in Massachusetts

The interest of a NRD whose estate is not under local administration may be represented by **any** FPR of a decedent named a party to the proceeding and served in the manner provided by § 3-403 or by other lawful means. MUPC at § 4-302A.

### 11.7.1 Service of Process on a DFPR or FPR

Service of process may be made on a DFPR or FPR by:

- 1) registered or certified mail to last reasonably ascertainable address requesting return receipt signed by addressee only; or
- 2) ordinary first class mail if registered or certified mail is unavailable; or
- 3) in the manner provided under other laws of Massachusetts for service on a DFPR, FPR or decedent immediately prior to death. MUPC at § 4-303(a).

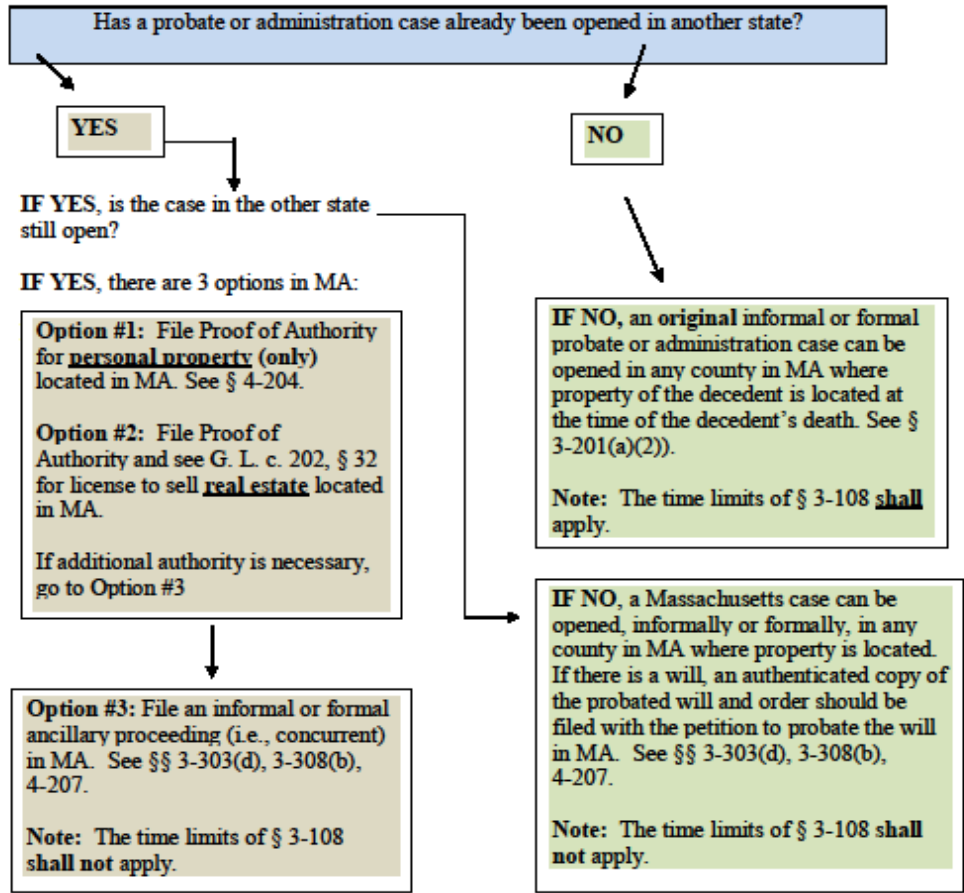
**Note:** This provision is not intended to limit other provisions of law for service of process.

**Practice Alert:** If service is made upon a DFPR or FPR in accordance with § 4-303(a), the DFPR or FPR shall be allowed at least 30 days within which to appear or respond. MUPC at § 4-303(b).

## 11.8 Summary

For a summary of procedural options available to the estate of a NRD, see chart below.

### Non-Resident Decedent



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## 12 INSOLVENT ESTATES

### 12.1 [Currently Reserved]

Click here for court approved [insolvency forms](#)



**13**  
**REAL PROPERTY OF THE ESTATE**

**13.1 [Currently Reserved]**

Click here for court approved [real estate forms](#)

**14**  
**THE MASSACHUSETTS UNIFORM TRUST CODE**  
**G. L. c. 203E**

**14.1 [Currently Reserved]**

For procedural questions, see the [January 24, 2013 MUTC Procedural Advisory](#)

Click here for court approved [trust forms](#)