# MASSACHUSETTS UNIFORM PROBATE CODE

Chapter 521 of the Acts of 2008 Chapter 140 of the Acts of 2012

G.L. c. 190B

Based on the Uniform Probate Code and the Uniform Guardianship and Protective Proceedings Act with modifications for Massachusetts practice

Official Comments by the National Conference of Commissioners on Uniform State Laws.

Massachusetts Comments by Mark A. Leahy, Reporter MBA/BBA Joint Committee on the Uniform Probate Code

Mark A. Leahy, Esq.
Whittum & Leahy
738 Main St., Hingham, MA 02043
781-741-9933
mrklhy@gmail.com
www.massprobatecode.com

# MASSACHUSETTS UNIFORM PROBATE CODE

# ARTICLE, PART AND SECTION ANALYSIS

### Article I

# GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

#### Part 1

# SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section 1-101.	[Short Title.]
1-102. 1-103. 1-104.	[Purposes; Rule of Construction.] [Supplementary General Principles of Law Applicable.] [Severability.]
1-105. 1-106.	[Construction Against Implied Repeal.] [Effect of Fraud and Evasion.]
1-107. 1-108.	[Evidence of Death or Status.] [Acts by Holder of General Power.]
1-109.	[Standard of Proof.]
	Part 2
	DEFINITIONS
1-201.	[General Definitions.]
	Part 3
	SCOPE, JURISDICTION AND COURTS
1-301.	[Territorial Application.]
1-302.	[Subject Matter Jurisdiction.]
1-303. 1-304.	[Venue; Multiple Proceedings; Transfer.] [Reserved.]
1-30 <del>4</del> . 1-305.	[Reserved.]
1-306.	[Reserved.]
1-307.	[Magistrate; Powers.]
1-308.	[Reserved.]

[Oath or Affirmation on Filed Documents.]

1-309. [Reserved.]

1-310.

# Part 4

# NOTICE, PARTIES AND REPRESENTATION IN ESTATE

	LITIGATION AND OTHER MATTERS
1-401. 1-402. 1-403. 1-404.	[Notice; Method and Time of Giving; Objections; Uncontested Matters.] [Notice; Waiver.] [Pleadings; When Parties Bound by Others; Notice.] [Guardian ad Litem and Next Friend.]
	Article II
	INTESTACY, WILLS AND DONATIVE TRANSFERS
	Part 1
	INTESTATE SUCCESSION
2-101.	[Intestate Estate.]

2-101.	[Intestate Estate.]
2-102.	[Share of Spouse.]
2-103.	[Share of Heirs Other Than Surviving Spouse.]
2-104.	[Reserved.]
2-105.	[No Taker.]
2-106.	[Representation.]
2-107.	[Kindred of Half Blood.]
2-108.	[Afterborn Heirs.]
2-109.	[Advancements.]
2-110.	[Debts to Decedent.]
2-111.	[Alienage.]
2-112.	[Dower and Curtesy Abolished.]
2-113.	[Individuals Related to Decedent Through Two Lines.]
2-114.	[Parent and Child Relationship.]

# Part 2

2-201 to 2-299 [Reserved.]

#### Part 3

# SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

2-301.	[Entitlement of Spouse; Premarital Will.]
0 000	10 14 10111 1

2-302. [Omitted Children.]

# Part 4

# **EXEMPT PROPERTY AND ALLOWANCES**

2-401. 2-402. 2-403. 2-404. 2-405.	[Applicable Law.] [Reserved.] [Exempt Property.] [Discretionary Family Allowance.] [Source, Determination, and Documentation.]
	Part 5
	WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS
2-501. 2-502. 2-503. 2-504. 2-505. 2-506. 2-507. 2-508. 2-509. 2-511. 2-512. 2-513. 2-514. 2-515. 2-516. 2-517.	[Who May Make Will.] [Execution of Wills.] [Reserved.] [Self-proved Will.] [Who May Witness.] [Choice of Law as to Execution.] [Revocation by Writing or by Act.] [Revocation by Change of Circumstances.] [Revival of Revoked Will.] [Incorporation by Reference.] [Testamentary Additions to Trusts.] [Events of Independent Significance.] [Separate Writing Identifying Devise of Certain Types of Tangible Personal Property.] [Contracts Concerning Succession.] [Deposit of Will With Court in Testator's Lifetime.] [Duty of Custodian of Will; Liability.] [Penalty Clause for Contest.]
	Part 6
	RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS
2-601. 2-602. 2-603. 2-604. 2-605. 2-606.	[Scope.] [Will May Pass All Property and After-acquired Property.] [Anti-lapse; Deceased Devisee; Class Gifts.] [Failure of Testamentary Provision.] [Increase in Devised Securities; Accessions.] [Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or Insurance; Sale by Conservator or Agent.] [Nonexoneration.]

2-608. 2-609. 2-610.	[Exercise of Power of Appointment.] [Ademption by Satisfaction.] [Annuities.]
	Part 7
	RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS
2-701. 2-702. 2-703. 2-704. 2-705. 2-706. 2-707. 2-708. 2-709. 2-710. 2-711.	[Scope.] [Requirement of Survival.] [Choice of Law as to Meaning and Effect of Donative Dispositions.] [Taxes on QTIPS.] [Class Gifts Construed to Accord with Intestate Succession.] [Life Insurance; Retirement Plan; Account With POD Designation; Transferon-Death Registration; Deceased Beneficiary.] [Survivorship With Respect to Future Interests Under Terms of Trust; Substitute Takers.] [Class Gifts to "Descendants", "Issue", or "Heirs of the Body"; Form of Distribution If None Specified.] [Representation; Per Capita at Each Generation; Per Stirpes.] [Worthier-Title Doctrine Abolished.] [Future Interests in "Heirs" and Like.]
	Part 8
	GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS
2-801. 2-802. 2-803. 2-804.	[Disclaimer of Property Interests.] [Effect of Divorce, Annulment, and Decree of Separation.] [Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations.] [Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by Other Changes of Circumstances.]
	Part 9
	STATUTORY RULE AGAINST PERPETUITIES
2-901. 2-902. 2-903. 2-904. 2-905. 2-906.	[Statutory Rule Against Perpetuities.] [When Nonvested Property Interest or Power of Appointment Created.] [Reformation.] [Exclusions From Statutory Rule Against Perpetuities.] [Prospective Application.] [Supersession].

# ARTICLE III

# PROBATE OF WILLS AND ADMINISTRATION

# PART 1

#### **GENERAL PROVISIONS**

3-101. 3-102. 3-103. 3-104. 3-105. 3-106. 3-107. 3-108. 3-109.	[Devolution of Estate at Death; Restrictions.] [Necessity of Order of Probate For Will.] [Necessity of Appointment For Administration.] [Claims Against Decedent; Necessity of Administration.] [Proceedings Affecting Devolution and Administration.] [Proceedings Within the Exclusive Jurisdiction of Court; Service; Jurisdiction Over Persons.] [Scope of Proceedings; Proceedings Independent; Exception.] [Probate, Testacy and Appointment Proceedings; Ultimate Time Limit.] [Statutes of Limitation on Decedent's Cause of Action.]	
	PART 2	
	VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE	
3-201. 3-202.	[Venue for First and Subsequent Estate Proceedings; Location of Property.] [Appointment or Testacy Proceedings; Conflicting Claim of Domicile in Another State.]	
3-203. 3-204.	[Priority Among Persons Seeking Appointment as Personal Representative.] [Reserved.]	
3-205.	[Judge or Register as Personal Representative.]	
	PART 3	
INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS		
3-301. 3-302. 3-303. 3-304. 3-305. 3-306. 3-307.	[Informal Probate or Appointment Proceedings; Petition; Contents.] [Informal Probate; Duty of Magistrate; Effect of Informal Probate.] [Informal Probate; Proof and Findings Required.] [Informal Probate; Unavailable in Certain Cases.] [Informal Probate; Magistrate Not Satisfied.] [Informal Probate; Notice Requirements.] [Informal Appointment Proceedings; Delay in Order; Duty of Magistrate; Effect of Appointment.] [Informal Appointment Proceedings; Proof and Findings Required.]	
3-308.	[Informal Appointment Proceedings; Proof and Findings Required.]	

3-309. 3-310. 3-311.	[Informal Appointment Proceedings; Magistrate Not Satisfied.] [Reserved.] [Informal Appointment Unavailable in Certain Cases.]
	PART 4
	FORMAL TESTACY AND APPOINTMENT PROCEEDINGS
3-401. 3-402. 3-403. 3-404. 3-405. 3-406. 3-407. 3-408.	<ul> <li>[Formal Testacy Proceedings; Nature; When Commenced.]</li> <li>[Formal Testacy or Appointment Proceedings; Petition; Contents.]</li> <li>[Formal Testacy Proceedings; Notice of Hearing on Petition]</li> <li>[Reserved.]</li> <li>[Formal Testacy Proceedings; Uncontested Cases; Hearings and Proof.]</li> <li>[Formal Testacy Proceedings; Contested Cases; Testimony of Attesting Witnesses.]</li> <li>[Reserved.]</li> <li>[Formal Testacy Proceedings; Will Construction; Effect of Final Order in</li> </ul>
3-409. 3-410. 3-411. 3-412. 3-413. 3-414.	Another Jurisdiction.] [Formal Testacy Proceedings; Order; Foreign Will.] [Formal Testacy Proceedings; Probate of More Than One Instrument.] [Formal Testacy Proceedings; Partial Intestacy.] [Formal Testacy Proceedings; Effect of Order; Vacation.] [Formal Testacy Proceedings; Vacation of Order For Other Cause.] [Formal Proceedings Concerning Appointment of Personal Representative.]
	PART 5
	SUPERVISED ADMINISTRATION
3-501. 3-502. 3-503. 3-504. 3-505.	[Supervised Administration; Nature of Proceeding.] [Supervised Administration; Petition; Order.] [Supervised Administration; Effect on Other Proceedings.] [Supervised Administration; Powers of Personal Representative.] [Supervised Administration; Interim Orders; Distribution and Closing Orders.]
	PART 6
PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY	
3-601. 3-602. 3-603. 3-604. 3-605.	[Qualification.] [Acceptance of Appointment; Consent to Jurisdiction.] [Bond without Sureties.] [Bond With Sureties; Procedure; Reduction.] [Demand For Sureties by Interested Person.]

3-606. 3-607. 3-608. 3-609. 3-610. 3-611. 3-612. 3-613. 3-614. 3-615. 3-616. 3-617. 3-618.	[Terms and Conditions of Bonds.] [Order Restraining Personal Representative.] [Termination of Appointment; General.] [Termination of Appointment; Death or Disability.] [Resignation by Personal Representative.] [Termination of Appointment by Removal; Cause; Procedure.] [Termination of Appointment; Change of Testacy Status.] [Successor Personal Representative.] [Special Representative; Appointment.] [Special Representative; Who May Be Appointed.] [Reserved.] [Special Representative; Formal Proceedings; Power and Duties.] [Termination of Appointment; Special Representative.]
	PART 7
	DUTIES AND POWERS OF PERSONAL REPRESENTATIVES
3-701.	[Time of Accrual of Duties and Powers.]
3-702.	[Priority Among Different Letters.]
3-703.	[General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue.]
3-704.	[Personal Representative to Proceed Without Court Order; Exception.]
3-705.	[Reserved.]
3-706.	[Duty of Personal Representative; Inventory and Appraisement.]
3-707.	[Employment of Appraisers.]
3-708.	[Reserved.]
3-709.	[Duty of Personal Representative; Possession of Estate.]
3-710.	[Power to Avoid Transfers.]
3-711.	[Reserved.]
3-712.	[Improper Exercise of Power; Breach of Fiduciary Duty.]
3-713.	[Sale, Encumbrance or Transaction Involving Conflict of Interest; Voidable Exceptions.]
3-714.	[Persons Dealing with Personal Representative; Protection.]
3-715.	[Transactions Authorized for Personal Representatives; Exceptions.]
3-716.	[Powers and Duties of Successor Personal Representative.]
3-717.	[Co-representatives; When Joint Action Required.]
3-718.	[Powers of Surviving Personal Representative.]
3-719.	[Compensation of Personal Representative.]
3-720.	[Expenses in Estate Litigation.]
3-721.	[Reserved.]

# PART 8

# **CREDITORS' CLAIMS**

3-801.	[Reserved.]
3-802.	[Statutes of Limitations.]
3-803.	[Limitations on Presentation of Claims.]
3-804.	[Manner of Commencement of Claims.]
3-805.	[Classification of Claims.]
3-806.	[Allowance of Claims.]
3-807.	[Payment of Claims.]
3-808.	[Individual Liability of Personal Representative.]
3-809.	[Secured Claims.]
3-810.	[Claims Not Due and Contingent or Unliquidated Claims.]
3-811.	[Counterclaims.]
3-812.	[Execution and Levies Prohibited.]
3-813.	[Compromise of Claims.]
3-814.	[Encumbered Assets.]
3-815.	[Administration in More Than One State; Duty of Personal Representative.]
3-816.	[Final Distribution to Domiciliary Representative.]

#### PART 9

# **SPECIAL PROVISIONS RELATING TO DISTRIBUTION**

3-901.	[Successors' Rights if No Administration.]
3-902.	[Distribution; Order in Which Assets Appropriated; Abatement.]
3-903.	[Right of Retainer.]
3-904.	[Interest on General Pecuniary Devise.]
3-905.	[Reserved.]
3-906.	[Distribution in Kind; Valuation; Method.]
3-907.	[Distribution in Kind; Evidence.]
3-908.	[Distribution; Right or Title of Distributee.]
3-909.	[Improper Distribution; Liability of Distributee.]
3-910.	[Reserved.]
3-911.	[Reserved.]
3-912.	[Private Agreements Among Successors to Decedent Binding on Personal
	Representative.]
3-913.	[Distributions to Trustee.]
3-914.	[Disposition of Unclaimed Assets.]
3-915.	[Distribution to Person Under Disability.]
3-916.	[Apportionment of Estate Taxes.]
3-917.	[Partial Distribution.]

#### PART 10

#### **CLOSING ESTATES**

3-1001.	[Formal Proceedings Terminating Administration; Testate or Intestate Order of General Protection.]
3-1002.	[Reserved.]
3-1003.	[Closing Estates; By Sworn Statement of Personal Representative.]
3-1004.	[Liability of Distributees to Claimants.]
3-1005.	[Limitations on Proceedings Against Personal Representative.]
3-1006.	[Limitations on Actions and Proceedings Against Distributees.]
3-1007.	[Reserved.]
3-1008.	[Reserved.]
	PART 11

#### **COMPROMISE OF CONTROVERSIES**

3-1101.	[Effect of Approval of Agreements Involving Trusts, Inalienable Interests, or
	Interests of Third Persons.]
3-1102.	[Procedure for Securing Court Approval of Compromise.]
3-1103.	[Non-Resident Beneficiaries; Payment of Trust Fund to Foreign Trustee.]

#### **PART 12**

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

3-1201.	[Collection of Personal Property by Affidavit.]
3-1202.	[Effect of Affidavit.]
3-1203.	[Small Estates; Summary Administration Procedure.]
3-1204.	[Small Estates; Closing by Sworn Statement of Personal Representative.]

#### **Article IV**

#### FOREIGN FIDUCIARIES

#### Part 1

#### **DEFINITIONS**

4-101. [Definitions.]

#### Part 2

#### POWERS OF FOREIGN PERSONAL REPRESENTATIVES

4-201.	[Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.]
4-202.	[Payment or Delivery Discharges.]
4-203.	[Resident Creditor Notice.]
4-204.	[Proof of Authority-Bond.]
4-204. 4-205.	[Powers.]
	-
4-206. 4-207.	[Power of Representatives in Transition.] [Ancillary and Other Local Administrations; Provisions Governing.]
	Part 3
	JURISDICTION OVER FOREIGN REPRESENTATIVES
4-301. 4-302. 4-302A. 4-303.	[Jurisdiction by Act of Foreign Personal Representative.] [Jurisdiction by Act of Decedent.] [Proceedings to Determine Property Rights.] [Service on Foreign Personal Representative.]
	Part 4
	CONCLUSIVENESS OF JUDGMENTS
4-401.	[Effect of Adjudication For or Against Personal Representative.]
	ARTICLE V
PRC	TECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY
	PART 1
	GENERAL PROVISIONS AND DEFINITIONS
5-101. 5-102. 5-103. 5-104.	[Definitions and Inclusions.] [Facility of Payment or Delivery.] [Delegation of Powers by Parent or Guardian.] [Reserved.]
5-105. 5-106. 5-107.	[Venue.] [Appointment of Counsel; Guardian ad Litem.] [Protection of Minors]
	PART 2

**GUARDIANS OF MINORS** 

[Appointment and Status of Guardian of Minor.]

5-201.

5-202. 5-203. 5-204.	[Parental or Guardian Appointment of Guardian for Minor.] [Objection by Minor Fourteen or Older to Parental Appointment.] [Court Appointment of Guardian of Minor; Conditions for Appointment; Temporary Guardian.]
5-205. 5-206. 5-207.	[Reserved.] [Procedure for Court Appointment of Guardian of Minor.] [Court Appointment of Guardian of Minor; Qualifications; Priority of Minor's Nominee.]
5-208. 5-209. 5-210. 5-211.	[Bond; Consent to Service by Acceptance of Appointment; Notice.] [Powers, Duties, Rights and Immunities of Guardian of Minor; Limitations.] [Termination of Appointment of Guardian; General.] [Reserved.]
5-211. 5-212.	[Resignation, Removal, and Other Post-appointment Proceedings.]
	PART 3
	GUARDIANS OF INCAPACITATED PERSONS
5-301. 5-302. 5-303. 5-304. 5-305. 5-306. 5-306A. 5-307. 5-308. 5-309. 5-310. 5-311. 5-312. 5-313.	[Nomination of Guardian for Incapacitated Person by Will or Other Writing.] [Reserved.] [Procedure for Court Appointment of a Guardian of an Incapacitated Person.] [Notice in Guardianship or Conservatorship Proceeding.] [Who May Be Guardian; Priorities.] [Findings; Order of Appointment.] [Substituted Judgment.] [Bond; Acceptance of Appointment; Consent to Jurisdiction.] [Emergency Orders; Temporary Guardians.] [Powers, Duties, Rights and Immunities of Guardians, Limitations.] [Termination of Guardianship for Incapacitated Person.] [Removal or Resignation of Guardian; Termination of Incapacity.] [Reserved.] [Religious Freedom of Incapacitated Person.]
	PART 4
	MANAGEMENT OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS
5-401. 5-402. 5-403.	[Management of Estate.] [Protective Proceedings; Jurisdiction of Business Affairs of Protected Persons.] [Reserved.]
5-404. 5-405. 5-406. 5-407.	[Original Petition for Appointment or Protective Order.] [Notice.] [Reserved.] [Findings; Order of Appointment; Permissible Court Orders.]

5-408. 5-409. 5-410.	[Protective Arrangements and Single Transactions Authorized.] [Who May Be Appointed Conservator; Priorities.] [Bond.]	
5-411.	[Terms and Requirements of Bonds.]	
5-412.	[Acceptance of Appointment; Consent to Jurisdiction.]	
5-412A.	[Emergency Orders; Temporary Conservators.]	
5-413.	[Compensation and Expenses.]	
5-414.	[Reserved.]	
5-415.	[Petitions for Orders Subsequent to Appointment.]	
5-416.	[General Duty of Conservator; Plan.]	
5-417.	[Inventory and Records.]	
5-418.	[Accounts.]	
5-419.	[Conservators; Title By Appointment.]	
5-420.	[Recording of Conservator's Letters.]	
5-421.	[Sale, Encumbrance, or Transaction Involving Conflict of Interest Voidable; Exceptions.]	
5-422.	[Persons Dealing With Conservators; Protection.]	
5-423.	[Powers of Conservator in Administration.]	
5-423A.	[Delegation.]	
5-424.	[Distributive Duties and Powers of Conservator.]	
5-425.	[Enlargement or Limitation of Powers of Conservator.]	
5-426.	[Preservation of Estate Plan; Right to Examine.]	
5-427.	[Claims Against Protected Person.]	
5-428.	[Personal Liability of Conservator.]	
5-429.	[Removal or Resignation of Conservator; Termination of Disability; Termination of Proceedings.]	
5-430.	[Payment of Debt and Delivery of Property to Foreign Conservator without Local Proceedings.]	
5-431.	[Foreign Conservator; Proof of Authority; Bond; Powers.]	
	PART 5	
DURABLE POWER OF ATTORNEY		
5-501. 5-502.	[Definition.] [Durable Power of Attorney Not Affected By Lapse of Time, Disability or	

5-50 I.	[Definition.]
5-502.	[Durable Power of Attorney Not Affected By Lapse of Time, Disability or Incapacity.]
	1 7 3
5-503.	[Relation of Attorney in Fact to Court-appointed Fiduciary.]
5-504.	[Power of Attorney Not Revoked Until Notice.]
5-505.	[Proof of Continuance of Durable and Other Powers of Attorney by Affidavit.]
5-506.	[Enforcement.]
5-507.	[Protection; Third Parties.]

#### **Article VI**

#### NONPROBATE TRANSFERS ON DEATH

#### Part 1

#### PROVISIONS RELATING TO EFFECT OF DEATH

6-101. [Nonprobate Transfers on Death.]

#### Part 2

#### **MULTIPLE-PERSON ACCOUNTS**

#### SUBPART 1

#### **DEFINITIONS AND GENERAL PROVISIONS**

6-201 to 6-206 [Reserved.]

#### SUBPART 2

#### **OWNERSHIP AS BETWEEN PARTIES AND OTHERS**

6-211 to 6-216. [Reserved.]

#### **SUBPART 3**

#### PROTECTION OF FINANCIAL INSTITUTIONS

6-221 to 6-227. [Reserved.]

#### Part 3

#### **UNIFORM TOD SECURITY REGISTRATION ACT**

6-301.	[Definitions.]
6-302.	[Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.]
6-303.	[Registration in Beneficiary Form; Applicable Law.]
6-304.	[Origination of Registration in Beneficiary Form.]
6-305.	[Form of Registration in Beneficiary Form.]
6-306.	[Effect of Registration in Beneficiary Form.]
6-307.	[Ownership on Death of Owner.]
6-308.	[Protection of Registering Entity.]
6-309.	[Nontestamentary Transfer on Death.]
6-310.	[Terms, Conditions, and Forms for Registration.]

# 6-311. [Rights of Creditors and Others.]

# **ARTICLE VII**

# TRUST ADMINISTRATION

PART 1

[RESERVED]

PART 2

[RESERVED]

PART 3

[RESERVED]

PART 4

[RESERVED]

#### PART 5

#### STATUTORY CUSTODIANSHIP TRUSTS

7-501.	[Transfer of Property; Statutory Custodianship Trustee; Revocability.]
7-502.	[Application of Income and Principal; Accounting by Trustee.]
7-503.	[Resignation or Removal of Trustee; Appointment to Fill Vacancy.]