

REBA Title Standard No. 78

**Personal Representative Conveyances Per Power of Sale Under Massachusetts
Uniform Probate Code**

Title derived from a conveyance of an interest in real estate from a decedent's estate by a personal representative appointed pursuant to an informal testacy proceeding under G.L. c. 190B, Section 3-301 et seq. is not on that account defective if such conveyance was made either:

- I. Pursuant to an informally probated will with a provision granting the personal representative the power to sell real estate of the decedent's estate.

OR

- II. Pursuant to a license to sell real estate granted pursuant to G.L. c. 202.

Comment

See G.L. c. 190B, § 3-715 (23 ½), effective as of July 8, 2012.

Adopted May 7, 2012

Amended October 29, 2012 (to reflect enactment of G.L. c. 190B, § 3-715 (23 ½), effective as of July 8, 2012, by shortening former Section I, deleting former Caveat, and adding Comment)

REBA Title Standard No. 10

Power of Sale Under Will

The deed of:

- (1) an executor, or
 - (2) an administrator CTA, or
 - (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
 - (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of Title Standard 78,
- pursuant to a general power in the will to sell real estate conveys to the purchaser for value a title free from the claims of general creditors and of legatees and devisees under the will.

Comments

1. This standard derives from the famous correspondence in 1912 between George A. Sawyer and John C. Gray which has been published with comments in Issue No. 1 of Volume 36 of the Massachusetts Law Quarterly.

2. The above standard applies to deeds given both within and after the period of the statute of limitations on creditors' actions but has no effect on either Federal or Massachusetts death tax liens.

3. Under the law in effect prior to March 31, 2012:

(a) The executor and the administrator CTA (cum testamento annexo – with the will annexed) were the only fiduciaries who had the power to sell without a license of the court; temporary executors, temporary administrators CTA, and special administrators must have obtained court authority to convey real estate.

(b) The power to sell must have attached to the office of the executor/executrix and not the person with respect to an administrator CTA

(c) The reference in the standard to an administrator CTA includes an administrator DBN CTA (de bonis non – of the goods not administered).

Adopted May 17, 1973

Amended May 4, 1994 (deleted "of the testator" in the Standard).

Amended May 5, 2008 (added reference to administrators CTA and expanded Comments)

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 10

REBA Title Standard No. 14

Missing Probates

A title dependent on a deed from heirs of a person for whom there are no Massachusetts probate proceedings is not defective if:

- (1) the decedent died more than 25 years ago, and
 - (a) a recorded affidavit or death certificate shows the date of death and place of residence at death, and
 - (b) an affidavit recorded prior to March 31, 2012 names the decedent's heirs, states that the decedent died intestate, and declares that no probate proceedings have been filed in any jurisdiction,
- or
- (2) the decedent died more than 50 years ago and instruments recorded prior to March 31, 2012 in the chain of title of land of the decedent identify the heirs.

Comment

M.G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. M.G.L. c. 191, §§ 12 and 13 required wills to be presented promptly. M.G.L. c. 197, § 19 (Repealed July 1, 2011) precluded a sale of real estate to pay legacies after six years. Prior to the adoption of M.G.L. c. 191B, when the owner had been dead 25 years without probate or administration, the risk was deemed negligible that others than the grantee from the heirs would have a valid interest in the land under a will later offered for probate, a creditor's claim or a Massachusetts inheritance tax lien.

Adopted November 26, 1973

Amended May 22, 1989 (The phrase "and declare that no probate proceeding have been filed in any jurisdiction," was added.)

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 34

Powers Of Attorney

1. An instrument executed after September 19, 1981, by an agent under a recorded, durable power of attorney containing a power to convey is not on that account defective during any period of disability or incapacity of the principal provided:

(a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and

(b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death.

Comment

See M.G.L. c. 201B effective September 20, 1981 (Repealed: July 1, 2009).

2. An instrument executed after December 31, 1977, by an agent under a recorded power of attorney containing a power to convey is not on that account defective provided:

(a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and

(b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death, mental illness or other disability.

Comment

See M.G.L. c. 201, § 50 effective January 1, 1978 and M.G.L. c. 201B, §§ 4 and 5 (Repealed: July 1, 2009). See M.G.L. c. 190B, §§ 5-502, 5-504, and 5-505 (Effective July 1, 2009).

Caveat

As to an instrument executed prior to January 1, 1978, pursuant to a power of attorney, the power is terminated by the death, mental illness or other disability of, or revocation by, the principal.

Adopted November 6, 1978

Amended May 21, 1984 (Added first paragraph)

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 36

Probate Inventories

A title derived through a decedent's estate is not defective by reason of:

(1) an error in the probate inventory in the identification of the real estate or of the decedent's interest in the real estate,

or

(2) the omission of the real estate in the probate inventory,

or

(3) the absence of a probate inventory.

Comment

For death tax liens see Title Standard Nos. 3, 13, and 24 on Federal Estate Tax Liens, Massachusetts Inheritance Tax Liens and Massachusetts Estate Tax Liens.

Probate inventories are no longer required to be filed with the court in either informal or formal proceedings under M.G.L. c. 190B, §§ 3-306(c) and 3-403(c), respectively. However, the personal representative is required to prepare an inventory within three months of appointment pursuant to M.G.L. c. 190B, § 3-706, and must either mail a copy to all interested parties or file the inventory with the court.

Adopted May 7, 1979

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title

REBA Title Standard No. 41

List of Heirs

The listing of heirs on a petition filed prior to March 31, 2012 in a probate court in connection with the probate of a will or the administration of an estate may be relied upon as complete and accurate in the absence of evidence to the contrary recorded or filed in the appropriate registry of deeds or probate.

Comment

Although most conveyancers rely on such listings, case law indicates that the list of heirs set forth in a petition is not conclusive. See Cassidy v. Truscott, 287 Mass. 515, 192 N.E. 164; and Hopkins v. Treasurer and Receiver General, 276 Mass. 502, 177 N.E. 654.

Caveat

This Standard deals only with conveyances appearing in a title at least two years subsequent to the date of approval of the bond of the executor or administrator.

This Standard does not apply to a listing of heirs on a petition converted to a proceeding under M.G.L. c. 190B pursuant to Probate and Family Court Amended Standing Order 5-11 (Application of M.G.L. c. 190B, Articles I-IV, VI and VII, to Estate Cases Pending on January 2, 2012 or with a Decree Issued Prior Thereto).

Adopted November 26, 1979

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 50

Pretermitted Issue

A title which depends upon a will which fails to name a child or issue of a deceased child of the testator is not on that account defective if:

(1) the locus was sold by that testator's personal representative by license of the Probate Court having jurisdiction;

or

(2) the locus was sold by exercise of a power of sale in that will;

or

(3) 20 years have elapsed since the allowance of the will, and no claim by the unnamed child or issue appears of record;

or

(4) the testator died on or after January 1, 1971, the will was admitted to probate prior to March 31, 2012, one year has elapsed since the approval of the bond of the executor, and no claim by the unnamed child or issue appears of record;

or

(5) the testator died on or after March 31, 2012, one year has elapsed since the date of death of the testator, and no claim by the unnamed child or issue has been filed in the Registry of Probate by or on behalf of such unnamed child or issue.

Comment

See M.G.L. c. 191, § 20 (repealed by Acts of 2008, ch. 521, Sec. 10. See Acts of 2008, ch. 521, Sec. 19 as amended by Acts of 2010, ch. 409, Sec. 23), M.G.L. c. 190B sec. 2-302, and M.G.L. c. 260, § 21.

Caveat

A release by the executor of the power of sale for nominal consideration is not an exercise of a power of sale.

Adopted May 9, 1983

Amended November 14, 1983 (changed 1979 to 1971)

Amended May 7, 2012 (to confirm Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 50

Title Standard No. 71

Evidence of Death of Deceased Joint Owners and Life Tenants

A title derived from surviving joint owner(s), or from remainderpersons after the death of life tenant(s) or from a personal representative or an executor, administrator, guardian, conservator, heir(s) or devisee(s) of such survivor(s) or remainderperson(s) (collectively, "Survivors"), is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

- (a) a death certificate recorded at the Registry of Deeds in the district where the property is located or a death certificate filed with or noted in the docket of a probate or other proceeding in the Probate Court in the county where the real property is located; or
- (b) the recording at the Registry of Deeds in the district where the property is located of
 - (1) a certified copy of an approved or allowed petition for a domestic or foreign probate or administration of the decedent's estate, or a certificate of appointment in such matter, which in either case recites the decedent's date of death, provided that recording of such petition in the Registry of Deeds shall not be necessary if such petition is filed in the same county where the property is located; or
 - (2) a Massachusetts Inheritance Tax Lien Release ("L-8") relative to the decedent's interest in the property; or
 - (3) a Massachusetts Certificate of Release of Estate Tax Lien ("M-792") relative to the decedent's interest in the property; or
 - (4) a deed for the real property from such Survivors that contains a recital that the decedent has died, even if no date or place of death is recited, provided, however, that such deed has been recorded for more than 20 years.

Comment

- (1) As to the recording of a death certificate as a matter of practice, see REBA Practice Standard No. 10.*
- (2) For purposes of this Title Standard, the term "joint owners" shall include joint tenants and tenants by the entirety.*

REBA Title

Proposed Technical Amendment to add 3-715(23a)

SECTION 22A. Subsection (a) of section 3-715 of said chapter 190B is hereby amended by inserting the following clause:-

(23A) sell, lease or encumber to an arm's length third party any real estate 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, whether the personal representative has been appointed formally or informally, which sale, lease or encumbrance shall be conclusive notwithstanding the provisions of 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 so sell, lease or encumber such real estate or interest therein, or
 - b. a license has been issued under chapter 202.

Comment

For a decedent who died with a will containing a power of sale, this section authorizes an informally appointed personal representative to sell real estate of the estate without the need for either formal appointment or a license.

PROPOSED

REBA Title Standard No. 78

**Personal Representative Conveyances Per Power of Sale Under Massachusetts
Uniform Probate Code**

Title derived from a conveyance of an interest in real estate from a decedent's estate by a personal representative appointed pursuant to an informal testacy proceeding under G.L. c. 190B, Section 3-301 et seq. is not on that account defective if such conveyance was made either:

- I. Pursuant to an informally probated will with a provision granting the personal representative the power to sell real estate of the decedent's estate, provided that within the later of (i) 12 months from the date of commencement of the informal probate and (ii) 3 years from the decedent's date of death, either:
 - (a) No proceeding described in G.L. c. 190B, § 3-108, clause (3) has been commenced contesting either such informally probated will or such informally appointed personal representative, or
 - (b) A proceeding as described in (a) above has been commenced and said proceeding has been finally adjudicated in favor of such will or such personal representative, as applicable, or otherwise in favor of the validity of such conveyance.

OR

- II. Pursuant to a license to sell real estate granted pursuant to G.L. c. 202.

Caveat

See G.L. c. 190B, § 3-108 for the time within which a formal testacy or appointment proceeding may be commenced.

REBA Title Standard No. 10

Power of Sale Under Will

The deed of (1) an executor or (2) an administrator CTA pursuant to a general power in a will to sell real estate conveys to the purchaser for value a title free from the claims of general creditors and of legatees and devisees under the will.

Comments

- 1. This standard derives from the famous correspondence in 1912 between George A. Sawyer and John C. Gray which has been published with comments in Issue No. 1 of Volume 36 of the Massachusetts Law Quarterly.*
- 2. The above standard applies to deeds given both within and after the period of the statute of limitations on creditors' actions but has no effect on either Federal or Massachusetts death tax liens.*
- 3. The executor and the administrator CTA (cum testamento annexo – with the will annexed) are the only fiduciaries who have the power to sell without a license of the court; temporary executors, temporary administrators CTA, and special administrators must obtain court authority to convey real estate.*
- 4. The power to sell must attach to the office of the executor/executrix and not the person with respect to an administrator CTA*
- 5. The reference in the standard to an administrator CTA includes an administrator DBN CTA (de bonis non – of the goods not administered).*

Adopted May 17, 1973

Amended May 4, 1994 (deleted "of the testator" in the Standard).

Amended May 5, 2008 (added reference to administrators CTA and expanded Comments)

REBA Title Standard No. 14
Missing Probates

A title dependent on a deed from heirs of a person for whom there are no Massachusetts probate proceedings is not defective if:

(1) the decedent died more than 25 years ago,

and

(a) a recorded affidavit or death certificate shows the date of death and place of residence at death,

and

(b) a recorded affidavit names the decedent's heirs, states that the decedent died intestate, and declares that no probate proceedings have been filed in any jurisdiction,

or

(2) the decedent died more than 50 years ago and recorded instruments in the chain of title of land of the decedent identify the heirs.

Comment

M.G.L. c. 193, § 4 limits the effect of administration proceedings begun after 20 years. M.G.L. c. 191, §§ 12 and 13 require wills to be presented promptly. M.G.L. c. 197, § 19 precludes a sale of real estate to pay legacies after six years.

When the owner has been dead 25 years without probate or administration, the risk is negligible that others than the grantee from the heirs will have a valid interest in the land under a will later offered for probate, a creditor's claim or a Massachusetts inheritance tax lien.

Affidavits of death and kinship are admissible in evidence under M.G.L. c. 183, § 5A if properly recorded.

Adopted November 26, 1973

Amended May 22, 1989 (The phrase "and declare that no probate proceeding have been filed in any jurisdiction," was added.)

REBA Title Standard No. 34
Powers Of Attorney

1. An instrument executed after September 19, 1981, by an agent under a recorded, durable power of attorney containing a power to convey is not on that account defective during any period of disability or incapacity of the principal provided:

- (a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and
- (b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death.

Comment

See M.G.L. c. 201B effective September 20, 1981.

2. An instrument executed after December 31, 1977, by an agent under a recorded power of attorney containing a power to convey is not on that account defective provided:

- (a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and
- (b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death, mental illness or other disability.

Comment

See M.G.L. c. 201, § 50 effective January 1, 1978 and M.G.L. c. 201B, §§ 4 and 5.

Caveat

As to an instrument executed prior to January 1, 1978, pursuant to a power of attorney, the power is terminated by the death, mental illness or other disability of, or revocation by, the principal.

Adopted November 6, 1978

Amended May 21, 1984 (Added first paragraph)

**REBA Title Standard No. 36
Probate Inventories**

A title derived through a decedent's estate is not defective by reason of:

- (1) an error in the probate inventory in the identification of the real estate or of the decedent's interest in the real estate,
or
- (2) the omission of the real estate in the probate inventory,
or
- (3) the absence of a probate inventory.

Comment

For death tax liens see Title Standard Nos. 3, 13, and 24 on Federal Estate Tax Liens, Massachusetts Inheritance Tax Liens and Massachusetts Estate Tax Liens.

Adopted May 7, 1979
(9-1-82)

**REBA Title Standard No. 41
List Of Heirs**

The listing of heirs on a petition filed in a probate court in connection with the probate of a will or the administration of an estate may be relied upon as complete and accurate in the absence of evidence to the contrary recorded or filed in the appropriate registry of deeds or probate.

Comment

Although most conveyancers rely on such listings, case law indicates that the list of heirs set forth in a petition is not conclusive. See Cassidy v. Truscott , 287 Mass. 515, 192 N.E. 164; and Hopkins v. Treasurer and Receiver General , 276 Mass. 502, 177 N.E. 654.

Caveat

This standard deals only with conveyances appearing in a title at least two years subsequent to the date of approval of the bond of the executor or administrator.

Adopted November 26, 1979
(9-1-82)

REBA Title Standard No. 50
Pretermitted Issue

A title which depends upon a will which fails to name a child or issue of a deceased child of the testator is not on that account defective if:

(1) the locus was sold by that testator's personal representative by license of the Probate Court having jurisdiction;

or

(2) the locus was sold by exercise of a power of sale in that will;

or

(3) 20 years have elapsed since the allowance of the will, and no claim by the unnamed child or issue appears of record;

or

(4) the testator died on or after January 1, 1971 , and one year has elapsed since the approval of the bond of the executor and no claim by the unnamed child or issue appears of record.

Comment

See M.G.L. c. 191, § 20 and M.G.L. c. 260, § 21.

Caveat

A release by the executor of the power of sale for nominal consideration is not an exercise of a power of sale.

Adopted May 9, 1983
Amended November 14, 1983 (changed 1979 to 1971)

REBA Title Standard No. 71
Evidence of Death of Deceased Joint Owners and Life Tenants

A title derived from surviving joint owner(s), or from remainderpersons after the death of life tenant(s) or from an executor, administrator, guardian, conservator, heir(s) or devisee(s) of such survivor(s) or remainderperson(s) (collectively, "Survivors"), is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

(a) a death certificate recorded at the Registry of Deeds in the district where the property is located or a death certificate filed with or noted in the docket of a probate or other proceeding in the Probate Court in the county where the real property is located; or (b) the recording at the Registry of Deeds in the district where the property is located of (1) a certified copy of an allowed petition for a domestic or foreign probate or administration of the decedent's estate, or a certificate of appointment in such matter, which in either case recites the decedent's date of death, provided that recording of such petition in the Registry of Deeds shall not be necessary if such petition is filed in the same county where the property is located; or (2) a Massachusetts Inheritance Tax Lien Release ("L-8") relative to the decedent's interest in the property; or (3) a Massachusetts Certificate of Release of Estate Tax Lien ("M-792") relative to the decedent's interest in the property; or (4) a deed for the real property from such Survivors that contains a recital that the decedent has died, even if no date or place of death is recited, provided, however, that such deed has been recorded for more than 20 years.

Comment

(1) As to the recording of a death certificate as a matter of practice, see REBA Practice Standard No. 10.

(2) For purposes of this Title Standard, the term "joint owners" shall include joint tenants and tenants by the entirety.

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(11-5-08)

Caveat

(1) As to registered land, see Land Court Guideline No. 14 (May 1, 2000).

(2) While M-792s or L-8s are considered sufficiently reliable evidence of death under the circumstances discussed in this title standard, an Estate Tax Affidavit pursuant to G.L. c. 65C, §14(a) is not.

Adopted: November 14, 2005

Amended November 5, 2008 (to delete a requirement in subsection (b)(3) that, to establish evidence of death, an M-792 must have been recorded for at least 20 years)



REPORT OF THE REBA TITLE STANDARDS COMMITTEE

Presented by Title Standards Committee Co-Chairs:

Richard M. Serkey, Esq.

&

Nancy M. Weissman, Esq.

Proposed New REBA Title Standard No. 78

Proposed Revisions to REBA Title Standard No. 10

Proposed Revisions to REBA Title Standard No. 14

Proposed Revisions to REBA Title Standard No. 34

Proposed Revisions to REBA Title Standard No. 36

Proposed Revisions to REBA Title Standard No. 41

Proposed Revisions to REBA Title Standard No. 50

Proposed Revisions to REBA Title Standard No. 71

PROPOSED

REBA Title Standard No. 10 Power of Sale Under Will

The deed of:

- (1) an executor, or-
- (2) an administrator CTA, or
- (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
- (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of Title Standard No. 78.

pursuant to a general power in ~~the~~ will to sell real estate conveys to the purchaser for value a title free from the claims of general creditors and of legatees and devisees under the will.

Comments

1. *This standard derives from the famous correspondence in 1912 between George A. Sawyer and John C. Gray which has been published with comments in Issue No. 1 of Volume 36 of the Massachusetts Law Quarterly.*
2. *The above standard applies to deeds given both within and after the period of the statute of limitations on creditors' actions but has no effect on either Federal or Massachusetts death tax liens.*
3. Under the law in effect prior to March 31, 2012:
 3. (a) *The executor and the administrator CTA (cum testamento annexo -- with the will annexed) ~~are~~ were the only fiduciaries who ~~have had~~ the power to sell without a license of the court; temporary executors, temporary administrators CTA, and special administrators must ~~obtain~~ have obtained court authority to convey real estate.--*
 4. (b) *The power to sell must ~~attach~~ have attached to the office of the executor/executrix and not the person with respect to an administrator CTA.*
 5. (c) *The reference in the standard to an administrator CTA includes an administrator DBN CTA (de bonis non -- of the goods not administered).*

Adopted May 17, 1973

Amended May 4, 1994 (deleted "of the testator" in the Standard);

Amended May 5, 2008 (added reference to administrators CTA and expanded Comments

Amended May , 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 10



PROPOSED

**REBA Title Standard No. 10
Power of Sale Under Will**

The deed of:

- (1) an executor, or
- (2) an administrator CTA, or
- (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
- (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of Title Standard No. 78,

pursuant to a general power in the will to sell real estate conveys to the purchaser for value a title free from the claims of general creditors and of legatees and devisees under the will.

Comments

1. *This standard derives from the famous correspondence in 1912 between George A. Sawyer and John C. Gray which has been published with comments in Issue No. 1 of Volume 36 of the Massachusetts Law Quarterly.*
2. *The above standard applies to deeds given both within and after the period of the statute of limitations on creditors' actions but has no effect on either Federal or Massachusetts death tax liens.*
3. *Under the law in effect prior to March 31, 2012:*
 - (a) *The executor and the administrator CTA (cum testamento annexo – with the will annexed) were the only fiduciaries who had the power to sell without a license of the court; temporary executors, temporary administrators CTA, and special administrators must have obtained court authority to convey real estate.*
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Amended May 4, 1994 (deleted "of the testator" in the Standard)

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Amended May __, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 10





REBA Title Standard No. 14 Missing Probates

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- (1) the decedent died more than 25 years ago, and
 - (a) a recorded affidavit or death certificate shows the date of death and place of residence at death, and
 - (b) ~~an affidavit~~ recorded affidavit prior to March 31, 2012 names the decedent's heirs, states that the decedent died intestate, and declares that no probate proceedings have been filed in any jurisdiction,

or

- (2) the decedent died more than 50 years ago and recorded instruments recorded prior to March 31, 2012 in the chain of title of land of the decedent identify the heirs.

Comment

M.G.L. c. 193, § 4 ~~limits~~ limited the effect of administration proceedings begun after 20 years. M.G.L. c. 191, §§ 12 and 13 ~~require~~ required wills to be presented promptly. M.G.L. c. 197, § 19 ~~precludes~~ (Repealed July 1, 2011) precluded a sale of real estate to pay legacies after six years.

~~When~~ Prior to the adoption of M.G.L. c. 190B, when the owner ~~has~~ had been dead 25 years without probate or administration, the risk ~~is~~ was deemed negligible that others than the grantee from the heirs ~~will~~ would have a valid interest in the land under a will later offered for probate, a creditor's claim or a Massachusetts inheritance tax lien.

~~Affidavits of death and kinship are admissible in evidence under M.G.L. c. 183, § 5A if properly recorded.~~

Adopted November 26, 1973-

Amended May 22, 1989 (The phrase "and declare that no probate proceeding have been filed in any jurisdiction," was added.)

Amended May , 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 14



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PROPOSED

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Comment

M.G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. M.G.L. c. 191, §§ 12 and 13 required wills to be presented promptly. M.G.L. c. 197, § 19 (Repealed July 1, 2011) precluded a sale of real estate to pay legacies after six years.

Prior to the adoption of M.G.L. c. 190B, when the owner had been dead 25 years without probate or administration, the risk was deemed negligible that others than the grantee from the heirs would have a valid interest in the land under a will later offered for probate, a creditor's claim or a Massachusetts inheritance tax lien.

Adopted November 26, 1973

Amended May 22, 1989 (The phrase "and declare that no probate proceeding have been filed in any jurisdiction," was added.)

Amended May __, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 14



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PROPOSED

**REBA Title Standard No. 34
Powers Of Attorney**

1. An instrument executed after September 19, 1981, by an agent under a recorded, durable power of attorney containing a power to convey is not on that account defective during any period of disability or incapacity of the principal provided:
 - (a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and
 - (b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death.

Comment

See M.G.L. c. 201B effective September 20, 1981. (Repealed: July 1, 2009).

- 2.- An instrument executed after December 31, 1977, by an agent under a recorded power of attorney containing a power to convey is not on that account defective provided:
 - (a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and
 - (b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death, mental illness or other disability.

Comment

See M.G.L. c. 201, § 50 effective January 1, 1978 and M.G.L. c. 201B, §§ 4 and 5. 201B, §§ 4 and 5 (Repealed: July 1, 2009). See M.G.L. c. 190B, §§5-502, 5-504, and 5-505 (Effective July 1, 2009).

Caveat

As to an instrument executed prior to January 1, 1978, pursuant to a power of attorney, the power is terminated by the death, mental illness or other disability of, or revocation by, the principal.

Adopted November 6, 1978

Amended May 21, 1984 (Added first paragraph)

Amended May 2, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 34



PROPOSED

**REBA Title Standard No. 34
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Comment

See M.G.L. c. 201B effective September 20, 1981 (Repealed: July 1, 2009).

2. An instrument executed after December 31, 1977, by an agent under a recorded power of attorney containing a power to convey is not on that account defective provided:
 - (a) the power of attorney had not, at the time of such execution, terminated pursuant to its own terms; and
 - (b) there has been recorded an affidavit signed by the attorney in fact or agent under the penalties of perjury stating that the attorney in fact or agent did not have at the time of such execution pursuant to the power of attorney, actual knowledge of the revocation or of the termination of the power of attorney by death, mental illness or other disability.

Comment

See M.G.L. c. 201, § 50 effective January 1, 1978 and M.G.L. c. 201B, §§ 4 and 5 (Repealed: July 1, 2009). See M.G.L. c. 190B, §§5-502, 5-504, and 5-505 (Effective July 1, 2009).

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Adopted November 6, 1978

Amended May 21, 1984 (Added first paragraph)

Amended May 2, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 34



PROPOSED

**REBA Title Standard No. 36
Probate Inventories**

A title derived through a decedent's estate is not defective by reason of:

- (1) an error in the probate inventory in the identification of the real estate or of the decedent's interest in the real estate,
- or
- (2) the omission of the real estate in the probate inventory,
- or
- (3) the absence of a probate inventory.

Comment

For death tax liens see Title Standard Nos. 3, 13, and 24 on Federal Estate Tax Liens, Massachusetts Inheritance Tax Liens and Massachusetts Estate Tax Liens.

Probate inventories are no longer required to be filed with the court in either informal or formal proceedings under MGL c. 190B, §§3-306(c) and 3-403(c), respectively.

However, the practitioner may nonetheless find an inventory filed in such proceedings because the personal representative is required to prepare an inventory within three months of appointment pursuant to MGL c. 190B, §3-706, and must either but has the option of mailing a copy to all interested parties or filing the inventory with the court or both.

Adopted May 7, 1979

(9-1-82) Amended May _____, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

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REBA Title Standard No. 36

PROPOSED

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- or
- (3) the absence of a probate inventory.

Comment

For death tax liens see Title Standard Nos. 3, 13, and 24 on Federal Estate Tax Liens, Massachusetts Inheritance Tax Liens and Massachusetts Estate Tax Liens.

Probate inventories are no longer required to be filed with the court in either informal or formal proceedings under MGL c. 190B, §§3-306(c) and 3-403(c), respectively. However, the personal representative is required to prepare an inventory within three months of appointment pursuant to MGL c. 190B, §3-706, and must either mail a copy to all interested parties or file the inventory with the court.

Adopted May 7, 1979

Amended May ____, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)

REBA Title Standard No. 36

PROPOSED

**REBA Title Standard No. 41
List of Heirs**

The listing of heirs on a petition filed prior to March 31, 2012 in a probate court in connection with the probate of a will or the administration of an estate may be relied upon as complete and accurate in the absence of evidence to the contrary recorded or filed in the appropriate registry of deeds or probate.

Comment

Although most conveyancers rely on such listings, case law indicates that the list of heirs set forth in a petition is not conclusive. See Cassidy v. Truscott, 287 Mass. 515, 192 N.E. 164; and Hopkins v. Treasurer and Receiver General, 276 Mass. 502, 177 N.E. 654.

Caveat

This standard deals only with conveyances appearing in a title at least two years subsequent to the date of approval of the bond of the executor or administrator.

This Standard does not apply to a listing of heirs on a petition converted to a proceeding under M. G.L. c. 190B pursuant to Probate and Family Court Amended Standing Order 5-11 regarding the (Application of G.L. c 190B, Articles I-IV, VI and VII, to Estate Cases Pending on January 2, 2012 or with a Decree Issued Prior Thereto).

Adopted November 26, 1979
Amended May _____, 2012 (to conform Standard to passage of M.G.L. c. 190B, effective March 31, 2012)





PAULA M. CAREY
CHIEF JUSTICE

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
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FOR IMMEDIATE RELEASE

NOTICE FROM CHIEF JUSTICE OF THE PROBATE AND FAMILY COURT HONORABLE PAULA M. CAREY

RE: NEW PROBATE LAW TO TAKE EFFECT ON MARCH 31, 2012

On March 31, 2012, the Massachusetts Uniform Probate Code (MUPC), G. L. c. 190B, will take effect and dramatically alter probate and estate administration practice in Massachusetts. Monday, April 2, 2012 will be the first date the Probate and Family Court will be operating under the new law. For the past two years, the MUPC Implementation Committee, consisting of Probate and Family Court judges, registers, court staff and members of the bar have worked tirelessly to develop new court forms, procedures, rules, revised filing fees and educational materials to assist court staff and practitioners transition to the new law.

The new MUPC forms, an online procedural guide and other valuable resources, including all articles of the Code, are currently available on the Probate and Family Court website, MUPC hub page, and will be updated periodically. The Probate and Family Court's MUPC hub page can be accessed at:

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/mupchub.html>

The version of the Code that will go into effect on March 31, 2012 does not include technical changes to the MUPC, the Massachusetts Uniform Trust Code (MUTC), or revised filing fees that were incorporated in the comprehensive bill (S 2128) which is still pending in the Legislature. Due to the pending legislation, the Uniform Fee Schedule that is effective as of March 31, 2012 does not include specific references to actions and pleadings that will be utilized under the MUPC. Once the Legislature has acted, the Probate and Family Court will post a revised Uniform Fee Schedule.

I extend my sincere gratitude to the members of the Implementation Committee, the UPC Estate Task Force, the Massachusetts Bar Association, the Boston Bar Association, practitioners, and to all of the judges, registers and employees of the Trial Court for their dedication and commitment to this new law and its successful implementation.