

**AMENDED STANDING ORDER 5-11
REGARDING THE APPLICATION OF G.L. c. 190B, ARTICLES I-IV, VI & VII
TO ESTATE CASES PENDING ON MARCH 31, 2012 OR WITH A DECREE
ISSUED PRIOR THERETO**

This Amended Standing Order addresses how the estate administration and trust provisions of the Massachusetts Uniform Probate Code, G.L. c. 190B ("MUPC"), will apply to proceedings pending after March 31, 2012. For the purposes of this Amended Standing Order, "pending" shall mean any petition which will be governed by the MUPC after March 31, 2012 ("Petition") which has been docketed, filed, or date stamped as received by any Division of the Probate and Family Court ("the Court") on or before March 30, 2012:

- A. where a permanent decree has not entered; or
- B. where a permanent decree has entered, but other proceedings may be pending in the matter.

Any petition which is not pending as defined herein shall be returned to the petitioner and an appropriate MUPC petition and filing fee shall be required. If the Court has received after March 31, 2012 a petition for probate of will accompanied by an original will, the original will (and death certificate) shall be retained by the Court and filed as a "Will File" and the remaining documents shall be returned to petitioner.

This Standing Order shall not apply to Public Administrators pursuant to G. L. c. 194 or to Receivers pursuant to G.L. c. 200.

A. Where a Permanent Decree has not Entered

1. Citations

Citations issued by the Court on or before March 30, 2012 ("Pre-MUPC Citations") on pending Petitions shall be served in accordance with the Order of Notice therein, including filing the Return of Service with the Court.

- a. Any Pre-MUPC Citation with a return date after March 31, 2012 issued on a Petition that seeks the appointment of a fiduciary SHALL be accompanied by a supplemental notice form ("MUPC Supplemental Notice") stating information about changes in the obligations of a Court appointed fiduciary pursuant to the MUPC. The MUPC Supplemental Notice shall be served on all interested parties in accordance with the Order of Notice in the Pre- MUPC Citation.
- b. If a Pre-MUPC Citation that has a return day on or before March 30, 2012 has been issued, but an additional Pre-MUPC Citation ("Additional Pre- MUPC Citation") that has a return date after March 31, 2012 is issued by the Court for any reason (i.e., due to failure to serve all parties with the Pre-MUPC Citation, or amendment of the Petition), the Additional Pre-MUPC Citation SHALL be accompanied

by the MUPC Supplemental Notice, which shall be served on all interested parties in accordance with the Order of Notice in the Pre-MUPC Citation.

- c. A Pre-MUPC Citation or an Additional Pre-MUPC Citation with a return date after January 2, 2012 but on or before March 30, 2012 issued on a Petition requesting the appointment of a fiduciary MAY be accompanied by the MUPC Supplemental Notice, which shall be served on all interested parties in accordance with the Order of Notice in the Pre- MUPC Citation.
- d. If publication of the Pre-MUPC Citation was required, publication of the MUPC Supplemental Notice also is required.

After March 31, 2012, if an Additional Citation on a Petition is required for any reason or the Petition requires amendment for any reason, the Petitioner must file a Motion to Substitute accompanied by the appropriate MUPC petition, and a MUPC citation will be issued by the Court which must be served on all interested person in accordance with the Order of Notice therein. There will be no new filing fee for the substitute Petition or the MUPC citation issued thereon.

2. Allowance of Decree and Appointment of Fiduciary

a. Probate of Will

A Petition for probate of will shall proceed as a formal petition for probate of the will presented and appointment of a personal representative ("PR") except that it shall not determine heirs pursuant to MUPC section 3-402. A Decree entered on a Petition for probate of will that has not been amended to seek a determination of heirs shall not determine heirs.

To request a determination of heirs, after March 31, 2012 a Petitioner shall file a Motion to Substitute accompanied by an appropriate MUPC petition ("Substitute Petition"), and a MUPC Citation will be issued by the Court which must be served on all interested persons in accordance with the Order of Notice therein. There will be no new filing fee for the Substitute Petition or the MUPC citation issued thereon.

If service of a Pre-MUPC Citation with a return day on or before March 30, 2012 has been completed timely, and the Petition is presented for allowance to the Court on or before September 28, 2012, the appropriate pre-MUPC Decree for probate of will shall be used and the pre-MUPC bond shall be required. No such uncontested Petition shall be amended or presented for allowance after September 28, 2012 and shall be dismissed by the Court without further notice.

If service of a Pre-MUPC Citation or Additional Pre-MUPC Citation with a return day after March 31, 2012 and of the MUPC Supplemental Notice have been completed timely, and the Petition is presented for allowance on or before September 28, 2012, the appropriate pre-MUPC Decree for probate of will shall be used and the MUPC bond shall be required. No such uncontested Petition shall be amended or presented for allowance

after September 28, 2012 and the Petition shall be dismissed by the Court without further notice.

b. Administration

A Petition for administration shall proceed as a formal petition for appointment of a PR except that it shall not determine heirs or intestacy pursuant to MUPC section 3-402. A Decree entered on a Petition for administration that has not been amended to seek a determination of heirs or intestacy shall not determine heirs or intestacy.

To request a determination of heirs and/or intestacy, after March 31, 2012 a Petitioner shall file a Motion to Substitute accompanied by an appropriate Substitute Petition and a MUPC Citation will be issued by the Court which must be served on all interested persons in accordance with the Order of Notice therein. There will be no new filing fee for the Substitute Petition or the MUPC citation issued thereon.

If service of a Pre-MUPC Citation with a return day on or before March 30, 2012 has been completed timely, and the Petition is presented for allowance to the Court on or before September 28, 2012, the appropriate pre-MUPC Decree for administration shall be used and the pre-MUPC bond shall be required. No such uncontested Petition shall be amended or presented for allowance after September 28, 2012 and shall be dismissed by the Court without further notice.

If service of a Pre-MUPC citation or Additional Pre-MUPC Citation with a return day after March 31, 2012 and of the MUPC Supplemental Notice have been completed timely, and the Petition is presented for allowance on or before September 28, 2012, the appropriate pre-MUPC Decree for administration shall be used and the MUPC bond shall be required. No such uncontested Petition shall be amended or presented for allowance after September 28, 2012 and shall be dismissed by the Court without further notice.

If no citation is necessary for a Petition, the appropriate pre-MUPC Decree for administration shall be used and the pre-MUPC bond shall be required. No such uncontested Petition shall be amended or presented for allowance after September 28, 2012 and shall be dismissed by the Court without further notice.

c. Other Pending Matters

i. Testamentary Trusts

The procedure for a Petition to establish a testamentary trust or a Petition to fill a vacancy in a previously established testamentary trust or other instrument shall follow section A. 2. b above.

ii. License to Sell

A petition for License to Sell that is pending on or filed after March 31, 2012 shall continue to be governed by G. L. c. 202. If a fiduciary is required to file an additional bond pursuant to G. L. c. 205, § 13, the type of bond filed by the fiduciary at the time of appointment shall determine the type of bond filed by the fiduciary at the time of the

Decree authorizing sale.

iii. All other Petitions

If no citation is necessary for the Petition, the appropriate pre-MUPC Decree shall be used, and the pre-MUPC Bond, if applicable, shall be required. No such uncontested Petition shall be amended or presented for allowance after September 28, 2012 and shall be dismissed by the Court without further notice.

If a citation is necessary for the Petition, the procedure shall follow section A. 2. b above.

iv. Allowance of Accounts

Account(s) on which a pre-MUPC citation has been issued by the Court with a return date on or before March 30, 2012 shall be governed after January 2, 2012 by Rule 72 of the Supplemental Rules of the Probate Court and a Decree and Order, rather than a Judgment, shall be used.

Any appearance that is filed timely in response to a Pre-MUPC Citation issued by the Court on or before December 30, 2011 that has a return date after January 2, 2012 shall be considered an appearance for the purpose of opposing the allowance of the Account(s) pursuant to MUPC section 1-401 unless otherwise stated and MUPC section 1-401 and Rule 72 of the Supplemental Rules of the Probate and Family Court shall apply.

Any appearance to object filed in response to a Pre-MUPC Citation issued after January 2, 2012 shall be filed pursuant to MUPC section 1-401 and Rule 72 of the Supplemental Rules of the Probate and Family Court.

The appropriate petition for the allowance of Account(s) filed after January 2, 2012 and on or before March 30, 2012 pursuant Rule 72 of the Supplemental Rules of the Probate and Family Court shall be a general petition. Allowance of Account(s) filed after March 31, 2012 shall be by appropriate MUPC petition and citation.

B. Where a Temporary or Permanent Decree has Entered

A person who has undertaken to act as a voluntary executor or voluntary administrator on or before March 30, 2012 shall be treated after March 31, 2012 as a voluntary personal representative (“VPR”) and shall have all the powers of a VPR pursuant to MUPC section 3-1201.

A fiduciary, other than a trustee, whose appointment is temporary on or before March 30, 2012 shall be treated after March 31, 2012 as a special personal representative (“SPR”) pursuant to MUPC section 3-617 until the expiration of the appointment, except that until the appointment expires, the temporary fiduciary shall have only those powers enumerated in the temporary decree of appointment or in G. L. c. 193, § 11 (which although repealed, will be treated as incorporated by reference into the decree). After March 31, 2012, a temporary fiduciary may request additional powers available to a SPR

pursuant to MUPC section 3-617(b) and/or MUPC section 3-715(b) by filing a Motion for same, and may seek an extension of his or her appointment by filing a Motion to Extend and a MUPC bond shall not be required.

A fiduciary, other than a trustee, whose appointment is permanent on or before March 30, 2012 shall be treated after March 31, 2012 as a personal representative (“PR”) pursuant to MUPC section 3-701 *et seq* and shall have all the powers designated by the MUPC pursuant to MUPC section 3-715(a) unless expressly limited by the terms of the appointment. Such fiduciary shall continue to be obligated to make and return to the Court an Inventory within three months from the date of his or her appointment and shall continue to be obligated to file Account(s) with the Court.

A fiduciary appointed on or before March 30, 2012 (“Pre-MUPC Fiduciary”) shall use a pre-MUPC bond to qualify. All Pre-MUPC Fiduciaries, including trustees, shall continue to have the obligations of their pre-MUPC bonds unless modified after March 31, 2012.

If the MUPC Supplemental Notice WAS SERVED with a Pre-MUPC Citation or an Additional Pre-MUPC Citation issued on the Petition seeking the appointment of the Pre-MUPC Fiduciary, then after March 31, 2012, the Pre-MUPC Fiduciary may substitute a MUPC Bond without further notice.

If the MUPC Supplemental Notice WAS NOT SERVED with a Pre-MUPC Citation or an Additional Pre-MUPC Citation issued on the Petition seeking the appointment of the Pre-MUPC Fiduciary, then after March 31, 2012, the Pre-MUPC Fiduciary may seek to file a MUPC Bond by petition served pursuant to section 1-401.