



Probate and Family Court Department

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Procedural Advisory

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On July 8, 2012, Governor Deval Patrick approved legislation which amends various sections of G. L. c. 190B, the Massachusetts Uniform Probate Code ("MUPC"), and incorporates the Massachusetts Uniform Trust Code ("MUTC") as Chapter 203E of the General Laws. The official Act, referred to as Chapter 140 of the Acts of 2012, may be found at: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter140>

The following is a general summary of procedural changes to estate administration matters as a result of the Act. A separate advisory on trust procedure will be released at the end of November. Edits to the MUPC Estate Administration Procedural Guide are currently underway, including the addition of a new chapter on trusts. Once completed, a revised guideline will be posted on the MUPC Hub page. Changes to forms are as noted below. Any change to guardianship and conservatorship procedure as a result of the Act will also be noted in a separate advisory.

The Massachusetts Uniform Probate Code, G. L. c. 190B:

- **Amendment to Section 1-404 [Guardian ad Litem and Next Friend]**

The last sentence of subsection (d) was struck and replaced with the following:

(d) If it appears in a probate or appointment proceeding that a spouse, heir at law or devisee is an incapacitated or protected person or a minor, notice of all proceedings shall be given to the incapacitated or protected person or minor and to his or her guardian or conservator. Unless the spouse, heir or devisee is under conservatorship or, if not under conservatorship, is under guardianship by someone other than the petitioner or is represented by someone other than the petitioner, the court shall appoint a guardian ad litem who shall be provided notice of all proceedings.

Procedural Update: The amendment now allows the conservator of a spouse, heir at law or devisee who is an incapacitated, protected person or minor to be the petitioner in an

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informal or formal proceeding without triggering a mandatory appointment of a guardian ad litem for notice purposes.

PRACTICE ALERT: If the conservator of an incapacitated person, protected person or a minor has an interest in the decedent's estate as an heir 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.

- **Amendments to Section 3-108 [Probate, Testacy and Appointment Proceedings; Ultimate Time Limit]**

Subsection (4) exception: Subsection (4) of section 3-108 was struck and replaced with the following:

(4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, but the personal representative shall have no right to possess estate assets as provided in section 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;

Procedural Update: The amendment allows a personal representative to be appointed informally or formally in an intestate estate and allows a will to be probated and a personal representative appointed formally in a testate estate, indefinitely if no proceedings occurred within the 3 year statute of limitations period. Although the time limit to commence a proceeding is unlimited (even beyond the pre-MUPC 50 year time limit), the authority granted under this exception is limited to confirming title and paying expenses of administration. No authority is granted to the personal representative to possess or distribute property, except to the extent necessary to confirm title, or to pay creditor claims.

New: Subsection (5) exception: A new exception was added to section 3-108 in subsection (5). Subsection (5) provides:

(5) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

Procedural Update: The new exception will permit a formal proceeding to probate a will after the 3 year time period from the decedent's death has run for the limited purpose of establishing an instrument to direct or control the ownership of property. A proceeding

under this exception may be necessary in order to effectuate a clause in a will exercising a power of appointment granted in a trust.

- **Amendment to Section 3-301 [Informal Probate or Appointment Proceedings; Petition; Contents.]**

The last sentence in subsection (6) of section 3-301 was amended as follows:

(6) A petition for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610, or whose appointment has been terminated by death or removal, shall adopt the statements in the petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the nominee.

Procedural Update: For informal successor proceedings, the nominee must have priority for appointment and not the petitioner. The petitioner may be the nominee seeking appointment as successor personal representative, but does not need to be. Priority for appointment as successor is determined in accordance with § 3-203.

Form Update: The Petition for Informal Appointment of a Successor Personal Representative (MPC 255) and the Order for Informal Appointment of Successor Personal Representative (MPC 760) have been revised. The revised forms are dated 10/23/12 and shall be accepted for filing on or after the release date of 10/26/12.

- **Adoption of Section 3-610 [Resignation by Personal Representative]**

New: Section 3-610 (formerly “reserved”) was adopted and provides:

A personal representative may resign the personal representative’s position by filing a written statement of resignation with the court after having provided at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation shall be ineffective as a termination of appointment and shall be effective only upon the appointment and qualification of a successor representative and delivery of the assets to such successor representative.

Procedural Update: The adoption of section 3-610 now requires a personal representative to give at least 15 days written notice to persons interested in the estate of his/her intent to resign. There is no requirement to file proof of service with the Court. No action will be taken by the Magistrate or the Court with regard to the resignation until a successor is appointed. A resignation becomes fully effective upon the appointment and qualification of a successor and the delivery of estate assets to the successor PR.

Form Update: The Statement of Resignation of a Personal Representative (MPC 264) has been revised. The form does not include or require a return of service. Proof of service is not required to be filed. There is no filing fee for this form. The revised form is dated 10/23/12 and shall be accepted for filing on or after the release date of 10/26/12.

- **Amendment to Section 3-617 [Special Personal Representative; Formal Proceedings; Power and Duties.]**

New: Subsection “(c)” has been added to 3-617 and provides:

(c) Unless otherwise ordered by the court, the authority of any personal representative previously appointed by the court or magistrate shall be suspended for as long as a special personal representative has authority.

Procedural Update: There is no change in procedure or forms at this time.

- **Amendment to Section 3-706 [Duty of personal representative; inventory and appraisalment.]**

New: Subsection (b) has been added to 3-706 and provides:

(b) Within 3 months after appointment, a successor personal representative shall prepare an inventory of the property of the estate, listing it with reasonable detail and indicating the fair market value of each listed item as of the date of the successor personal representative’s appointment, and the type and amount of any encumbrance that may exist with reference to any item.

Procedural Update: A successor personal representative is now statutorily required to prepare an inventory within 3 months after his/her appointment. This section makes it clear that the inventory values to be used are as of date of appointment, not date of death. There is no requirement to file the inventory with the Court. If the inventory is filed with the Court, the successor personal representative may use the court promulgated Inventory form (MPC 854) and should select the “other” box on page 1 of the form to indicate that the inventory is being filed by the successor personal representative.

- **Amendment to Section 3-715 [Transactions Authorized for Personal Representatives; Exceptions.]**

New: Subsection (23½) has been added to section 3-715 to authorize a PR to:

(23½) 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.

Procedural Update: A license to sell real estate is no longer required if there is a power of sale in a will that is probated either informally or formally. A license is still required for intestate estates and when a will does not contain a power of sale. To date, REBA has not revised title standards. For procedures required by the Land Court, *see* <http://www.mass.gov/courts/court-info/trial-court/lc/>