

Title Issues Cured by Applying REBA Title Standards and Statutes

~ Practical Skills Session ~



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Jutta Deeney is Senior Underwriter and New England Regional Underwriting Counsel for Stewart Title Guaranty Company, where she is responsible for overseeing the underwriting services throughout New England.

Prior to joining Stewart Title, Jutta worked for another major title insurer, where she served in various roles, including underwriting, loss

prevention and claim services. Prior to her career in the title insurance industry, Jutta worked in both the private sector at a Boston law firm and in the public sector as an associate corporation counsel for the City of Boston.

C-chair of the REBA Standards and Forms Committee, Jutta is a graduate of Suffolk University Law School and the University of Massachusetts.



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Carrie Rainen serves as Treasurer on the REBA Board of Directors. She is also Co-chair of the Association's Standards and Forms Committee, as well as a member of its Women's Networking Group and Strategic Communications Committee.

In addition, Carrie is a member of the Abstract Club, New England Land Title Association (NELTA), and the Merrimack Valley Conveyancers' Association.

She also serves on MCLE's Real Estate and Environmental Law Curriculum Advisory Committee, and is active in CREW Boston, a commercial real estate networking group for women.

As a member of the planning committee for the TomorrowNite gala event, Carrie has fundraised for the benefit of St. Jude Children's Research Hospital for over 25 years. Additionally, she serves on the board of directors for Acting Out! Theater Company in Lawrence.

A Land Court Title Examiner, Carrie participated in the drafting of an Amicus brief on behalf of the Massachusetts Association of Bank Counsel, Inc. in the mortgage foreclosure case of *Bevilacqua v. Rodriguez*. She is licensed to practice in both Massachusetts and New Hampshire.

Carrie received her J.D. from New England School of Law, where she served as Current Developments Editor of the *New England Journal of International and Comparative Law*, and her B.A. from American University.

Updated Title Standards on Death and Title Issues

I. REBA Title Standard No. 41 – List of Heirs

What changed and why?

- Pre-MUPC – Listing of spouse and heirs at law deemed reliable
- MUPC adopted in March of 2012 (10 years ago)
- Question presented: Can listings in an informal probate as to identity of heirs at law and spouse provide reliable evidence?
- Amended in **November 2019**

Pre-Amendment

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.

EXAMPLE LIST OF HEIRS PRE-MUPC

Initial filing with court-seeking to Probate Estate of Decedent.

Form included a place to LIST spouse and heirs.

note bottom of form contained a space for Judge's signature indicating allowance (reliance only upon allowance)

COMMONWEALTH OF MASSACHUSETTS
Middlesex ss. TO THE PROBATE COURT: DOCKET NO. [REDACTED]
PROBATE OF WILL - ~~WITH~~ - WITHOUT - SURETIES
Name of Decedent Eldridge Edgar [REDACTED]

Heirs at law or next of kin of deceased including surviving spouse:

Name	Residence	Relationship
Eldridge Edgar	(minors and incompetents must be so designated) [REDACTED], Jr. 3 [REDACTED] Drive Decatur, Georgia 30032	Son
✓ Roberta Ann [REDACTED]	[REDACTED] Cambridge, Mass. 02139	Daughter

MPC Form 162
Surviving Spouse,
Children Heirs at Law –
filed as part of the
Informal Filing and
allowance

(note completed in both
Informal and Formal
Probates)

- ✓ Must be completed with each filing
- ✓ Provides detailed instructions to aid preparing in arriving at heirs-at-law are

NOTE Justice or Magistrate must approve filing of probate using form MPC 750 (called “Order of Informal Probate of Will and/or Appointment of Personal Representative”)

Formal Probate v. Informal Probate

- In a Formal Probate proceeding, due to nature of proceedings, heirs-at-law are determined upon allowance.
(Form 755 or 757)

SURVIVING SPOUSE, CHILDREN, HEIRS AT LAW G. L. c. 190B, § 3-301	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
<input type="checkbox"/> Original Form <input type="checkbox"/> Amended Form		
Estate of: First Name _____ Middle Name _____ Last Name _____	Division _____	
Date of Death: _____		

ALL PETITIONERS MUST COMPLETE LINE 1 AND LINE 2.

1. The Decedent did not leave a surviving spouse. left a surviving spouse:

NAME OF SURVIVING SPOUSE	ADDRESS (omit if since deceased)

2. a. The Decedent did not have children (biological or adopted). had the following children (biological or adopted):

NAME OF DECEDENT'S CHILD	ADDRESS (omit if deceased)	CHILD OF SURVIVING SPOUSE	A MINOR
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes

b. The surviving spouse has surviving descendants (children, grandchildren, etc.) who are **not** descendants of the Decedent.

Complete line 3 ONLY if the Decedent left children in line 2a who are also heirs at law.

3. a. All of the children listed in 2a **survived** the Decedent.
 b. The following children listed in 2a died **before** the Decedent:

NAME OF PREDECEASED CHILD	DATE OF DEATH

c. The predeceased child(ren) listed in 3b:
 did not leave surviving descendants (children, grandchildren, etc.) (biological or adopted).
 left the following surviving descendants (children, grandchildren, etc.) (biological or adopted):

Complete line 3 ONLY if the Decedent left children in line 2a who are also heirs at law.

3. a. All of the children listed in 2a **survived** the Decedent.
 b. The following children listed in 2a died **before** the Decedent:

NAME OF PREDECEASED CHILD	DATE OF DEATH

c. The predeceased child(ren) listed in 3b:
 did not leave surviving descendants (children, grandchildren, etc.) (biological or adopted).
 left the following surviving descendants (children, grandchildren, etc.) (biological or adopted):

MPC 162 (4/15/16) SCH page 1 of 3

NAME OF SURVIVING DESCENDANT OF PREDECEASED CHILD	ADDRESS (omit if since deceased)	RELATIONSHIP TO DECEDENT	A MINOR
			<input type="checkbox"/> Yes
			<input type="checkbox"/> Yes

Complete line 4 ONLY if the Decedent left NO surviving descendants (children, grandchildren, etc.). Otherwise STOP and go to line 7 and line 8.

4. The Decedent did not leave a surviving parent. left a surviving parent or parents:

NAME OF SURVIVING PARENT(S)	ADDRESS (omit if since deceased)

REBA Title Standard No. 41 – as Amended

The listing of a surviving spouse (if any) and heirs in proceedings filed in a Massachusetts probate court 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:

- A. on an allowed petition for the probate of a will or administration of an estate filed prior to March 31, 2012;

Part A: is the OLD standard

- B. in a Decree and Order of the court that makes a determination of heirs in either a formal or informal probate; or

Part B: NEW – reliance upon Court Order

- C. In an original or duly amended list of Surviving Spouse, Children, Heirs at Law (Form MPC 162), filed with or after a Petition for Informal Appointment of Personal Representative pursuant to G.L. c. 190B, § 3-301 (Form MPC 150) that has been allowed by an Order of Informal Appointment of Personal Representative (a) after 12 months from the approval of the informal petition, or (b) three years from the date of death, whichever is later provided, however, that at least one of the following also applies:

Part C: NEW – reliance on listing, but...

1. a **Decree and Order of Complete Settlement** has been issued but it fails to formally determine the surviving spouse and heirs or fails to confirm the listing of the surviving spouse and heirs on the Form MPC 162;
2. a **Closing Statement (Form MPC 850)** has been duly filed pursuant to G.L. c. 190B, § 3-1003 and no challenge to the Closing Statement or other proceedings involving the personal representative were pending at the end of one year after the Closing Statement was filed;
3. **six years have passed since the allowance of the Bond** of the Personal Representative.

APPLICATION IN THE REAL WORLD

- Until November 2019 – No reliance in an **Informal** Probate unless
 - ✓ Allowance for an **Order of Complete Settlement with a Determination of Heirs**. (*note: Petition for Order of Complete Settlement, which doesn't request Determination of Heirs, leaves heirs undetermined*).
- **ORDER of Complete Settlement** – requires:
 - ✓ Wait at least 1 year from date of death
 - ✓ Wait at least 1 year from the appointment of the PR in the proceeding
 - ✓ Filing fees, publication fees, final account fees
 - ✓ Filing of multiple forms, including Petition for Order of Complete Settlement, Inventory, First and Final Account, Military Affidavit
 - ✓ Provide **notice** to all interested parties
 - ✓ Wait for court to rule on petition

Decedent Died Intestate - Can I Rely on This?
There's No Formal Adjudication of Spouse, Children, Heirs-at-Law

Docket Information	
◆ Docket Date	Docket Text
11/14/2013	Certificate of Death
11/14/2013	Bond without Sureties
11/14/2013	An Interested Person,Billy Don Smith , Filed MPC 455 toAssent and Waiver of Notice
11/14/2013	An Interested Person,Rodney Smith , Filed MPC 455 toAssent and Waiver of Notice
11/14/2013	An Interested Person,Melinda Johnson , Filed MPC 455 toAssent and Waiver of Notice
11/14/2013	Petition for Informal Probate
11/14/2013	Order for Informal Probate of Will and/or Appointment of Personal Representative
11/14/2013	Affidavit as to Military Service
11/14/2013	Bond Without Sureties Approved Tara DeCristofaro

Note: the probate court has had some form revisions and in the early years of the MUPC, the Spouse, Children, & Heirs-at-Law form was included as part of the petition. NOW, a separate form is used.

Date of Death: August 6, 2012

✓ proceeding under MUPC - YES

Do we fall under the New Standard?

- ✓ List of Spouse, children and heirs at law are included in the Petition for Informal – YES
- ✓ Was the PR appointed and Bond approved – YES
- ✓ Have more than six (6) years passed – YES

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

What changed and why?

- In 2019, a question was presented to the Standards and Forms Committee whether additional evidence was reliable of death of a joint owner or life tenant, in addition to those listed in TS 71
- A revised version of TS 71 was adopted in **May of 2019** to reflect these additional sources of information deemed reliable (related to DOR forms)
- In 2020, prompted by increasing difficulties for non-family members to obtain death certificates, further additional sources of evidence of death were added
- TS 71 was further amended in **November 2020** to reflect the alternate sources deemed reliable

Pre-Amendment

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 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.

EXAMPLES: L-8, M-792

Form L-8
THE COMMONWEALTH OF MASSACHUSETTS
Department of Corporations and Taxation
Inheritance Tax Bureau, Room 707
100 Cambridge Street, Boston 02204

NO. 1930

INHERITANCE TAX RELEASE OF LIEN

MUST BE FILED IN DUPLICATE WITH FORMS L16, L16A OR L-55
TOGETHER WITH CERTIFIED COPY OF DEED, IF ANY

Date March 8, 1972

Probate Court.....

Docket No. (if any).....

ESTATE OF EINO KANGAS
NAME OF DECEDENT

LATE OF Lowell, Middlesex County, Massachusetts
CITY OR TOWN

This is to certify that:

An inheritance tax has been paid, or

No inheritance tax is due on any interest that accrued to

ALICE L. KANGAS
NAME OF PERSON(S) TO WHOM INTEREST PASSES

As Surviving Joint Owner(s) As Donee(s)

As Beneficiary(ies) u/Trust As Devisee(s) or Legatee(s)
u/Will, or u/Administration

In Real Estate located in Lowell, Middlesex County, Massachusetts
CITY OR TOWN

As described by Deed dated July 3, 1969 and recorded in
Middlesex North District Deeds Book No. 1891 Page No. 289, or
Registry of Deeds

As described by certificate of Title No. _____ recorded in _____

COUNTY LAND REGISTRATION OFFICE
COMMISSIONER OF CORPORATIONS
AND TAXATION

BK 30285PG358 Form M-792
Certificate Releasing
Massachusetts Estate Tax Lien

Rev. 3/95
Massachusetts
Department of
Revenue

Estate Tax Bureau P.O. Box 7023, Boston, MA 02204

File in triplicate with copy of recorded deed.

Decedent's first name and initial <u>Charles Newton</u>	Last name <u>Peabody</u>
Probate court <u>Middlesex</u>	Date of death <u>08/09/1998</u>

Name Estate of Charles Newton Peabody

Street address
c/o Hilton & Bishop
159 Town Hall Square
Falmouth, MA 02540

City/Town, State, Zip code

Docket number
98P4176

Residence (domicile) at time of death
265 Belknap Road
Framingham MA 01701

This Certificate releases the lien of the Commonwealth of Massachusetts imposed by Chapter 65C of the General Laws, on any and all interests which the decedent may have had in the property described below:

MSL 06/14/99 09:30:56 137 1046

Real Estate (full legal description not necessary)

Location of property 265 Belknap Road Framingham MA 01701
Number 14 Street November 14, 1985 City/Town Middlesex South Zip code 016628
 As described by Deed dated November 14, 1985 and recorded in
Middlesex South Book No. 016628 Page No. 181, or

REBA Title Standard No. 71

2019 Amendments

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
 - NEW** → 2) a Massachusetts Inheritance Tax Lien Release ("L-8 **or L-53**") 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.

REBA Title Standard No. 71

2020 Amendments

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 any county where the real property is located of Massachusetts; 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 any county; or
 - (2) a Massachusetts Inheritance Tax Lien Release ("L-8 or L-53") relative to the decedent's interest in the property; or
 - (3) a Massachusetts Certificate of Release of Estate Tax Lien formerly known as an "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; or
 - (5) a subsequently recorded death certificate of the Survivor that lists the Survivor's marital status as widowed and that identifies the predeceased joint owner as the spouse of the decedent; or
 - (6) in a case in which a previously recorded deed for the real property from such Survivor(s) to an arm's length purchaser for value exists, an affidavit given by an attorney in good standing pursuant to G.L. c. 183 §§ 5A or 5B:
 - (i) that states that a death certificate cannot be obtained because such records are confidential or unavailable in the jurisdiction where the decedent died and includes a supporting narrative, and
 - (ii) that appends a true copy of a published obituary that provides the date of death.

APPLICATION IN THE REAL WORLD

- Prior to Amendment – record title required one of the following:
 - ✓ Death Certificate
 - ✓ Massachusetts Tax Releases
 - ✓ Federal Tax Releases
 - ✓ 20 years since recitation indeed from remainder or joint owner
- Practical issues for down-stream owners
 - ✓ Not possible to obtain death certificate (certain states limit who can obtain)
 - ✓ Death occurred outside of the country
 - ✓ Delay in acquiring documents, when death is certain

Example:

Property owned by Margaret J. Connolly and Michael Connolly

- Margaret and Michael deed to James Connolly and reserve a **life estate**
- Margaret and Michael have both died and James sells the property in 1990 to Bonnie Buyer, but the title exam completed for Bonnie Buyer misses that there is NO death certificate recorded for Michael.
- Bonnie is selling in 2022 to Nellie Newhouse. Nellie's attorney identifies the **life estate** of record held by **Michael**

Issues:

- Bonnie is not related to the Connolly family so she has no idea if Michael has died
- Searching Vital records for a Michael Connolly is time consuming and may be cost prohibitive
- Google searches for obituaries aren't helpful in locating date or place of death (probably due to age)
- Bonnie doesn't have title insurance!

Cure:

- Margaret's death certificate was recorded at the time of sale and can provide proof of Michael's death

893-E-S-R-85

The Commonwealth of Massachusetts
STANDARD CERTIFICATE OF DEATH
RECORDS OF VITAL RECORDS AND STATISTICS

11/14/85 03:38 TR 728 RE 10.00

STATE USE ONLY

DECEDENT NAME FIRST MIDDLE LAST	Margaret J. Connolly	SEX	Female	DATE OF BIRTH (Mo. Day Yr.)	May 6, 1985
PLACE OF BIRTH (City or Town)	Waltham	COUNTY OF BIRTH	Middlesex	HOSPITAL OR OTHER INSTITUTION (Name of hospital or other place where born and number)	Waltham-Neston Hospital
RACE (as shown on Birth Certificate)	White	AGE LAST BIRTHDAY (Mo. Day Yr.)	82	UNDER 1 YEAR	None
HAIR	None	HAIR	None	DATE OF BIRTH (Mo. Day Yr.)	May 1, 1903
COLORED NEVER MARRIED	None	SPOUSE (if wife give maiden name)	None	LEGAL OCCUPATION	At Home
SOCIAL SECURITY NUMBER	None	PLACE OF BIRTH (City or Town)	Waltham	RESIDENCE STREET AND NUMBER CITY OR TOWN COUNTY STATE ZIP CODE	48 Fiske St. Waltham Middlesex Mass. 02154
FATHER FULL NAME	Michael Mulherrins	MOTHER FULL NAME	Mary O Tcole	STATE OF BIRTH (Mo. Day Yr.)	Ireland
FATHER PLACE OF BIRTH (City or Town)	Ireland	MOTHER PLACE OF BIRTH (City or Town)	Ireland	RELATIONSHIP	Son
DECEASED NAME AND ADDRESS	James P Connolly 48 Fiske St. Waltham	DATE OF DEATH	May 8, 1985	PLACE OF DEATH AND LOCATION	Galvary Cemetery Waltham, Mass.
CAUSE OF DEATH	ACUTE MYOCARDIAL INFARCTION 2 HOURS SEVERE CORONARY ARTERY DISEASE YEARS	DATE OF DEATH	May 8, 1985	PLACE OF DEATH AND LOCATION	Galvary Cemetery Waltham, Mass.
OTHER CAUSE OF DEATH	BLEEDING GASTRIC ULCER YES	DATE OF DEATH	May 8, 1985	PLACE OF DEATH AND LOCATION	Galvary Cemetery Waltham, Mass.
DATE OF DEATH	May 8, 1985	PLACE OF DEATH AND LOCATION	Galvary Cemetery Waltham, Mass.	DATE OF DEATH	May 8, 1985
NAME AND ADDRESS OF CERTIFYING PHYSICIAN OR MEDICAL EXAMINER	ADRIAN BLAKE MD 20 HOBBS AVE WALTHAM	DATE SIGNED (Mo. Day Yr.)	May 8, 1985	PLACE OF DEATH AND LOCATION	Galvary Cemetery Waltham, Mass.

BLACK INK ONLY

WALTHAM MAY 10 1985

BR 1574 P014

RECEIVED

REBA Title Standard No. 71

2020 Amendment to Comments and Notes

Notes and Comments

- (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.*
- (3) *When a death certificate or probate is outside of the county where the land is located, it is the recommended practice to note in the title reference of the deed being recorded, the county where the death certificate is recorded or the probate is filed.*
- (4) *The spouse of a widowed Survivor may be identified by his/her birth name on the death certificate issued by the municipality.*
- (5) *An affidavit recorded pursuant to (b)(6) of this Title Standard must be based on personal knowledge, contain sufficient information setting forth the steps taken to obtain the death certificate, cite the statutory or regulatory bar existing which prohibits obtaining the death certificate by the record title owner, contain a recitation of the facts discovered or known to the affiant, and the source of information which establishes that the person identified in the obituary was the owner for whom proof of death is necessary to establish the record title.*
- (6) *For purposes of this Title Standard a published obituary shall include digital publication of the obituary through the funeral home or digital obituary publication service.*

Caveat

- (1) *As to registered land, see Land Court Guideline No. 14 (May 1, 2000, Revised February 27, 2009).*
- (2) *While M-792s, L-8s or L-53s 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.*

EXAMPLE

MA ESTATE TAX RELEASE



Commonwealth of Massachusetts
Department of Revenue
Geoffrey E. Snyder, Commissioner
mass.gov/dor



2021 00103667
Bk: 77709 Pg: 77 Doc: DIS
Page: 1 of 1 05/08/2021 02:17 PM

Letter ID: L0749036352
Issue Date: April 6, 2021
Case ID: 0-001-126-236



CERTIFICATE RELEASING MASSACHUSETTS ESTATE LIEN



ELIZABETH A JONES
16 S MAIN ST
TOPSFIELD MA 01983-1813

This is a copy of a letter sent to: ESTATE OF
CAROLYN F PROCOPIO

In response to your request, the Department of Revenue is issuing this certificate releasing the Massachusetts Estate lien for the Estate of CAROLYN F PROCOPIO. Review the information below and call us at (617) 887-6930 if you have any questions.

Taxpayer Information

Name of Decedent	CAROLYN F PROCOPIO
Social Security Number	***-**-9865
Date of Death	06/24/2020

Lien Information

Address of Property	4 Lamoil Street Woburn, MA 01801-0000
Lien Released Date	03/24/2021
Probate Court	N/A
Docket Number	
Registry where deed was recorded	Middlesex South
Date of Deed	11/04/1998
Book Number	29483
Page Number	120

Commissioner of Revenue

III. REBA Title Standard No. 14 – Missing Probates

What changed and why?

- In 2019, the SFC desired to remove any ambiguity as to a filing of Voluntary Administration for a decedent
- Comment 3 was added in 2019, which stated that a Voluntary Administration was not a probate proceeding
- A Voluntary Administration cannot be employed to convey real property or determine heirs at law, as its sole use is for distribution of personal property of no greater value than a particular statutory dollar amount.
- Thus, if your title examination shows a voluntary administration, it must be treated like a missing probate

Pre-Amendment

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 pursuant to G.L. c. 183, §§ 5A or 5B 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 in the chain of title of land of the decedent identify the heirs.*

Comments

1. (a) *G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. G.L. c. 191, §§ 12 and 13 required wills to be presented promptly. G.L. 197, § 19 precluded a sale of real estate to pay legacies after six years. (All repealed, effective March 31, 2012)*

(b) G.L. c. 190B provides with limited exceptions that a probate may be opened only within 3 years from date of death (G.L. c. 190B, §3-108) and that a proceeding to determine heirs may be opened thereafter (G.L. c. 190B, §3- 402).
2. *When the owner has been dead 25 years without probate or administration, the risk is deemed negligible that others than the grantee from the heirs have a valid interest in the land.*

Amendment

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 pursuant to G.L. c. 183, §§ 5A or 5B 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 in the chain of title of land of the decedent identify the heirs.

Comments

- 1. (a) 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. G.L. 197, § 19 precluded a sale of real estate to pay legacies after six years. (All repealed, effective March 31, 2012)*
(b) G.L. c. 190B provides with limited exceptions that a probate may be opened only within three years from date of death (G.L. c. 190B, §3-108) and that a proceeding to determine heirs may be opened thereafter (G.L. c. 190B, §3- 402).
- 2. When the owner has been dead 25 years without probate or administration, the risk is deemed negligible that others than the grantee from the heirs have a valid interest in the land.*
- 3. For purposes of Title Standard 14, the filing of a Voluntary Administration under G.L. c. 190, §3-1201 or G.L. c. 195, § 16 shall not be deemed a probate proceeding.*

Example

Voluntary Administration

VOLUNTARY ADMINISTRATION STATEMENT PURSUANT TO G.L. c. 190B, § 3-1201	Docket No. 16P1374	Commonwealth of Massachusetts The Trial Court Probate and Family Court
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3. At least 30 days have elapsed since the death of Decedent:

4. A death certificate issued by a public officer is in the possession of the Court or accompanies this statement.

5. The Petitioner is unaware of any unrevoked Will relating to property in Massachusetts.

OR

The original Will and codicil(s) are in the possession of the Court or accompanies this statement. The Petitioner is unaware of any instrument revoking the Will and believes that the Will is the decedent's last Will.

6. Copies of this statement and the death certificate have been sent by certified mail to the Division of Medical Assistance Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205.

7. The probate estate consists entirely of personal property and the total value of all personal property owned by the Decedent and subject to disposition by Will or intestate succession at the time of the Decedent's death does not exceed \$25,000.00, exclusive of one motor vehicle.

REBA Title Standard No. 41

List of Heirs

The listing of a surviving spouse (if any) and heirs in proceedings filed in a Massachusetts probate court 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:

- A. on an allowed petition for the probate of a will or administration of an estate filed prior to March 31, 2012;
- B. in a Decree and Order of the court that makes a determination of heirs in either a formal or informal probate; or
- C. in an original or duly amended list of Surviving Spouse, Children, Heirs at Law (Form MPC 162), filed with or after a Petition for Informal Appointment of Personal Representative pursuant to G.L. c. 190B, § 3-301 (Form MPC 150) that has been allowed by an Order of Informal Appointment of Personal Representative (a) after 12 months from the approval of the informal petition, or (b) three years from the date of death, whichever is later provided, however, that at least one of the following also applies:
 - 1. a Decree and Order of Complete Settlement has been issued but it fails to formally determine the surviving spouse and heirs or fails to confirm the listing of the surviving spouse and heirs on the Form MPC 162;
 - 2. a Closing Statement (Form MPC 850) has been duly filed pursuant to G.L. c. 190B, § 3-1003 and no challenge to the Closing Statement or other proceedings involving the personal representative were pending at the end of one year after the Closing Statement was filed;
 - 3. six years have passed since the allowance of the Bond of the Personal Representative.

Comment

As to paragraph A, although most conveyancers rely on such listings, pre-MUPC case law indicates that the list of heirs set forth in a petition is not conclusive. See Cassidy v. Truscott 287 Mass. 515, 192 NE. 164 (1934); and Hopkins v. Treasurer and Receiver General 276 Mass. 502, 177 N.E. 654 (1931).

The period of six years provided for in paragraph C. 3. is based on M.G.L. c. 202 §20A, which limits the Personal Representative from seeking a license to sell to pay costs of administration after that time period.

Caveat

Paragraph A of this Standard does not apply to a listing of heirs on a petition converted to a probate 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)

Amended November 4, 2019

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 remainderperson(s) 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 a Probate Court in any county of Massachusetts; 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 any county; or
 - (2) a Massachusetts Inheritance Tax Lien Release ("L-8 or L-53") relative to the decedent's interest in the property; or
 - (3) a Massachusetts Certificate of Release of Estate Tax Lien formerly known as an "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; or
 - (5) a subsequently recorded death certificate of the Survivor that lists the Survivor's marital status as widowed and that identifies the predeceased joint owner as the spouse of the decedent; or
 - (6) in a case in which a previously recorded deed for the real property from such Survivor(s) to an arm's length purchaser for value exists, an affidavit given by an attorney in good standing pursuant to G.L. c. 183 §§ 5A or 5B:
 - (i) that states that a death certificate cannot be obtained because such records are confidential or unavailable in the jurisdiction where the decedent died and includes a supporting narrative, and
 - (ii) that appends a true copy of a published obituary that provides the date of death.

Notes and Comments

(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.

(3) When a death certificate or probate is outside of the county where the land is located, it is the recommended practice to note in the title reference of the deed being recorded, the county where the death certificate is recorded or the probate is filed.

(4) The spouse of a widowed Survivor may be identified by his/her birth name on the death certificate issued by the municipality.

(5) An affidavit recorded pursuant to (b)(6) of this Title Standard must be based on personal knowledge, contain sufficient information setting forth the steps taken to obtain the death certificate, cite the statutory or regulatory bar existing which prohibits obtaining the death certificate by the record title owner, contain a recitation of the facts discovered or known to the affiant, and the source of information which establishes that the person identified in the obituary was the owner for whom proof of death is necessary to establish the record title.

(6) For purposes of this Title Standard a published obituary shall include digital publication of the obituary through the funeral home or digital obituary publication service.

Caveat

(1) As to registered land, see Land Court Guideline No. 14 (May 1, 2000, Revised February 27, 2009).

(2) While M-792s, L-8s or L-53s 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)

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

Amended May 6, 2019

Amended November 2, 2020 (to expand sources of evidence which may be relied on for proof of death for joint owners and remainderpersons)

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 pursuant to G.L. c. 183, §§ 5A or 5B 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 in the chain of title of land of the decedent identify the heirs.

Comments

1. (a) G.L. c. 193, § 4 limited the effect of administration proceedings begun after 20 years. G.L. c. 191, §§ 12 and 13 required wills to be presented promptly. G.L. 197, § 19 precluded a sale of real estate to pay legacies after six years. (All repealed, effective March 31, 2012).

(b) G.L. c. 190B provides with limited exceptions that a probate may be opened only within 3 years from date of death (G.L. c. 190B, §3-108) and that a proceeding to determine heirs may be opened thereafter (G.L. c. 190B, §3- 402).
2. When the owner has been dead 25 years without probate or administration, the risk is deemed negligible that others than the grantee from the heirs have a valid interest in the land.
3. For purposes of Title Standard 14, the filing of a Voluntary Administration under G.L. c. 190, § 3-1201 or G.L. c. 195, § 16 shall not be deemed a probate proceeding.

Adopted November 26, 1973

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

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

Amended May 6, 2013 (to restore use of statutory affidavits to identify the heirs of a decedent who died more than 25 years ago.)

Amended May 6, 2019 (to clarify that a Voluntary Administration is not deemed a probate proceeding for purposes of this Standard)