

# **BEYOND THE TITLE: REBA PRACTICE STANDARDS AND OTHER COMMON PRACTICE ISSUES IN ACTION**

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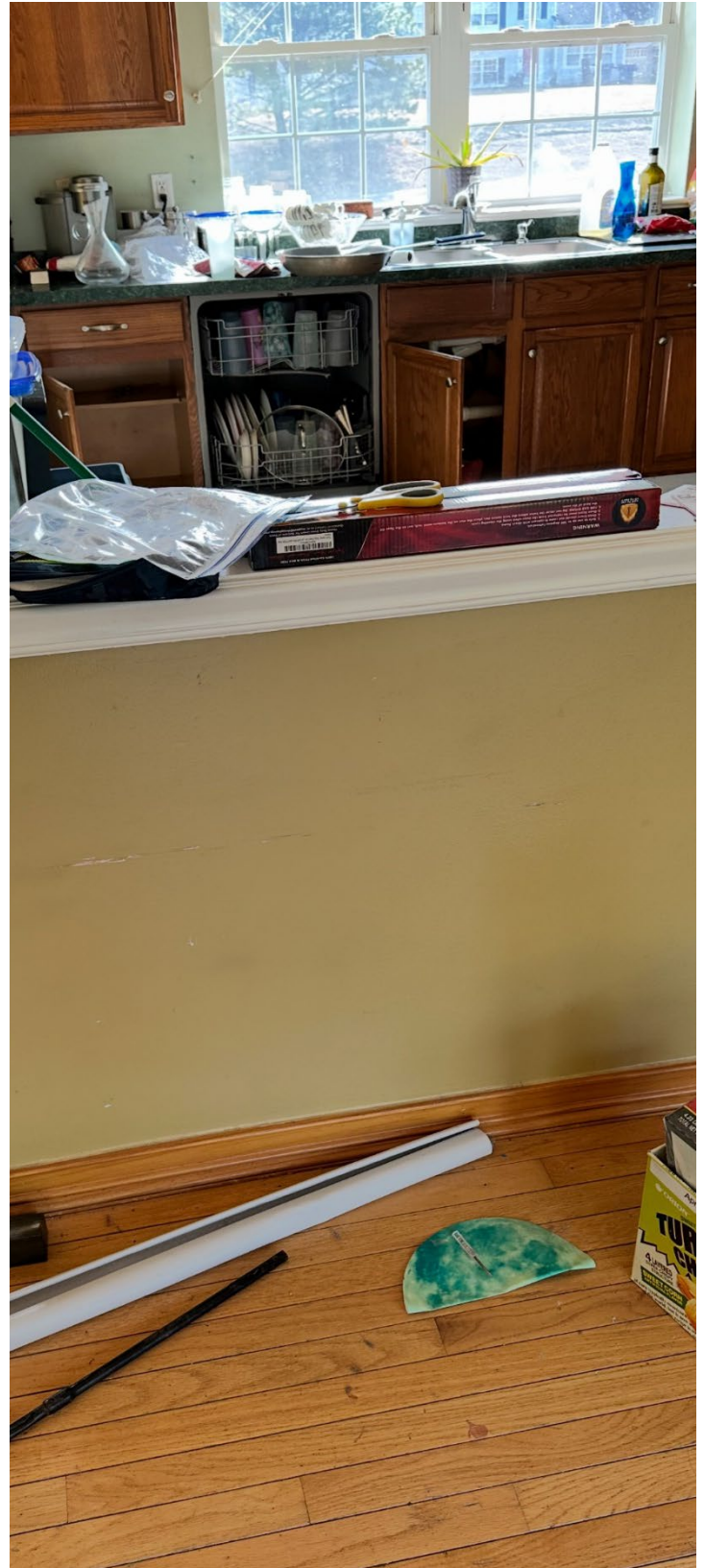
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# AVOIDING DAY OF CLOSING ISSUES: THE FINAL WALKTHROUGH

- Educating sellers on responsibility of what exactly is “broom clean” condition
- Paint, shingles, tiles, siding, old building materials
- Old Mattresses
- Attics, crawl spaces, behind sheds/garages



# TITLE 5:

## 310 CMR 15.301(1) SYSTEM INSPECTIONS

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Except as provided in 310 CMR 15.301(2), 15.301(3), and 15.301(4), a system shall be inspected at or within two years prior to the time of transfer of title to the facility served by the system. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time. If weather conditions preclude the inspection at the time of transfer, the inspection may be completed as soon as weather permits, but in no event later than six months after the transfer provided the seller notifies the buyer in writing of the requirements of 310 CMR 15.300 through 15.305. A copy of the complete inspection report shall be permitted to the buyer or other person acquiring title to the facility served by the system.

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310 CMR 15.301(2), 15.301(3) and 15.301(4) identifies certain transactions not considered to transfers subject to the requirements and/or excluded from the requirements of 310 CMR 15.301(1)

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Practice Suggestion: 310 CMR 15.301(10) requires all reports to be filed with the local governing authority, confirm that the report was filed and the inspector was approved by the local governing authority.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26F</b>	RESIDENTIAL BUILDINGS OR STRUCTURES; EQUIPPING WITH SMOKE DETECTORS UPON SALE OR TRANSFER

Section 26F. All buildings or structures occupied in whole or in part for residential purposes and not regulated by sections twenty-six A, twenty- six B or twenty-six C shall, upon the sale or transfer of such building or structure, be equipped by the seller with approved smoke detectors as provided in section twenty-six E.

The head of the fire department shall enforce the provisions of this section. The provisions of section thirty shall not apply to this section.

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<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26F1/2</b>	CARBON MONOXIDE ALARMS REQUIRED IN CERTAIN RESIDENTIAL STRUCTURES; REGULATION; INSPECTIONS; ENFORCEMENT

Section 26F1/2. (a) Every dwelling, building or structure, including those owned or operated by the commonwealth, occupied in whole or in part for residential purposes, that: (1) contains fossil-fuel burning equipment including, but not limited to, a furnace, boiler, water heater, fireplace or any other apparatus, appliance or device that burns fossil fuel; or (2) incorporates enclosed parking within its structure shall be equipped by the owner with working, approved carbon monoxide alarms in conformance with the requirements of the board of fire prevention regulations; provided, however, that such requirements shall include, but not be limited to, a requirement that a landlord or superintendent shall install either approved monitored battery-powered alarms or approved electrical wiring alarms as defined by the board, as are required to make the alarms operational at the beginning of any rental period by lease or otherwise and shall maintain and, if necessary, replace batteries or such battery-operated or electric hardwired carbon monoxide alarms annually thereafter to insure their continued operability.

(b) The board of fire prevention regulations shall promulgate such regulations as may be necessary to effectuate this section including, but not limited to, the type, installation, location, maintenance and inspectional requirements of carbon monoxide alarms.

(c) Every dwelling, building or structure, occupied in whole or in part for residential purposes, shall, upon sale or transfer of such dwelling, building or structure, be inspected by the head of the fire department for compliance with the requirements of this section.

(d) The state building code may impose stricter carbon monoxide alarm requirements for new construction or dwellings, buildings, or structures substantially renovated so as to constitute the equivalent of new construction. Every such dwelling building or structure, occupied in whole or in part for residential purposes, shall, upon sale or transfer of such dwelling, building or structure, be inspected by the head of the fire department for compliance with the carbon monoxide alarm requirements of the state building code in effect on the date of the issuance of the relevant building permit.

(e) The head of the fire department shall enforce this section.

(f) The department of public health shall promulgate such rules and regulations as may be necessary to effectuate subsection (a) into the state sanitary code as established under section 127A of chapter 111.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26A</b>	AUTOMATIC SPRINKLERS IN HIGH RISE BUILDINGS; ENFORCEMENT; APPEALS

Section 26A. Every building or structure of more than seventy feet in height above the mean grade shall be protected with an adequate system of automatic sprinklers in accordance with the provisions of the state building code, except that sprinklers shall not be required to be installed in patient rooms in hospitals.

The head of the fire department shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction, or failure to act, to the board of appeals as provided in the state building code and section twenty-three of chapter twenty-three B.

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<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26B</b>	AUTOMATIC FIRE WARNING AND SMOKE DETECTION SYSTEMS IN CERTAIN BUILDINGS; ENFORCEMENT; APPEALS

Section 26B. Every building or structure not exceeding seventy feet in height above the mean grade erected or substantially altered to be occupied for residential purposes shall be protected with an approved automatic fire warning system in accordance with the provisions of the state building code. Such system shall include the features of automatic smoke detection in conjunction with the approved fire detection devices.

The head of the fire department as defined in section one shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction, or failure to act, to the board of appeals as provided in the state building code and section twenty-three of chapter twenty-three B.

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<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26C</b>	CERTAIN PUBLIC ACCOMMODATIONS; AUTOMATIC SMOKE OR HEAT DETECTORS

Section 26C. Apartment houses containing six or more dwelling units, hotels, boarding or lodging houses, or family hotels which are not regulated by section twenty-six A or twenty-six B shall be equipped with automatic smoke or heat detectors as provided by the rules and regulations of the board of fire prevention regulations.

The head of the fire department as defined in section one shall enforce the provisions of this section.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XX</b>	PUBLIC SAFETY AND GOOD ORDER
<b>Chapter 148</b>	FIRE PREVENTION
<b>Section 26D</b>	DEFINITIONS APPLICABLE TO SECS. 26D TO 26F

Section 26D. As used in this section and sections twenty-six E and twenty-six F the following terms shall have the following meanings unless the context clearly indicates otherwise: –

“Approved monitored battery power smoke detector”, shall be a smoke detector which is activated by a battery power source provided that the battery is monitored to assure that the following conditions are met:

- (a) a distinctive audible trouble signal is given before the battery is incapable of operating the device for alarm purposes, and that such audible trouble signal is produced at least once every 1 minute for seven consecutive days, and
- (b) the unit is capable of producing an alarm signal for at least four continuous minutes at the battery voltage at which a trouble signal is normally obtained followed by seven days of trouble signal operation, and
- (c) the monitored batteries meeting these specifications are clearly identified on the unit near the battery compartment.

“Approved primary power smoke detector”, shall be a smoke detector which is activated by being permanently wired to a source of alternating current electric power or connected to a source of alternating current electric power by an underwriter's laboratory approved cord with a strain relief and plug retainer; provided, that:

- (a) all power supplies shall be sufficient to operate the alarm signal for at least four continuous minutes, and
- (b) all such detector systems shall be installed in accordance with the Massachusetts Electrical Code.

“Common hallway”, a common corridor or space separately enclosed which provides common access to the required exitways of the residential building or structure.

“Separate sleeping area”, shall mean the area or areas of the dwelling unit in which the bedrooms, or sleeping rooms, are located. Bedrooms, or sleeping rooms, separated by other use areas such as kitchens or living rooms, but not bathrooms, shall be considered as separate sleeping areas.

**Part I**

ADMINISTRATION OF THE GOVERNMENT

**Title XX**

PUBLIC SAFETY AND GOOD ORDER

**Chapter 148**

FIRE PREVENTION

**Section 26E**

RESIDENTIAL BUILDINGS OR STRUCTURES; INSTALLATION OF SMOKE DETECTORS

Section 26E. (a) All one and two family dwellings occupied in whole or in part for residential purposes and not regulated by section twenty-six A or twenty-six B shall be equipped with approved smoke detectors. Owners of such buildings or structures shall install either an approved monitored battery powered smoke detector or an approved primary power smoke detector on each level of habitation and on the basement level; provided, however, that the head of the fire department shall allow the installation of approved monitored battery powered smoke detectors. Such approved smoke detectors shall be installed in the following manner; an approved smoke detector shall be installed on the ceiling of each stairway leading to the floor above, near the base of, but not within each stairway and an approved smoke detector shall be installed outside each separate sleeping area.

(b) Buildings or structures occupied in whole or in part for residential purposes and containing not less than three nor more than five units and not regulated by section twenty-six A, twenty-six B or twenty-six C shall be equipped with approved smoke detectors. Owners of such buildings or structures shall install either an approved monitored battery powered smoke detector or an approved primary power smoke detector outside each separate sleeping area; provided, however, that the head of the fire department shall allow the installation of approved monitored battery powered smoke detectors; and provided, further, that in all common hallways and basements of said residential buildings or structures a series of interconnected approved primary power smoke detectors shall be installed.

(c) For the purposes of this section, approved primary power shall mean an alternating current primary source of electric power furnished by an electric power or light company municipally operated or operating under the authority of the department of telecommunications and energy which is the primary source of electricity or is a secondary source but is permanently wired thereto and will become operational upon the failure of the primary source of power.

(d) The head of the fire department shall enforce the provisions of this section. The provisions of section thirty shall not apply to this section.

# **REBA PRACTICE STANDARD NO. 10: CONVEYANCES AFTER DEATH: RECORDING OF DOCUMENTS**

**Identify type of land: Registered and/or Recorded Land**



**Identify type of ownership: joint ownership or tenancy in common**



**Identify type of conveyance: selling from estate (power of sale under will or license to sell issued by court);**



**Identify any estate tax issue(s): federal and state;**




**Identify any concerns with creditors and/or claims of administration**



**If Registered Land, see Land Court Guideline No. 14 – plan accordingly if Complaint for Certificate After Death needs be filed with the Land Court for Issuance of New Certificate after Death**



 <b>MASSACHUSETTS TRIAL COURT</b>	<b>SUBSEQUENT TO REGISTRATION COMPLAINT COVER SHEET</b> (FOR USE IN ALL "S-CASES")	<b>COURT USE ONLY</b>
<b>COURT DEPARTMENT</b>  <b>LAND COURT</b>	<b>COUNTY</b>	
<b>CASE NAME</b> <i>[In the matter of]</i>  		<b>DOCKET NUMBER</b>  <div style="text-align: center;"> <b>-SBQ-</b> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>2-DIGIT YEAR</span> <span>PLAN NUMBER</span> <span>FILING MONTH</span> <span>SEQUENCE NUMBER</span> </div>

### PART I – FILING REQUIREMENTS

1. Plan Number: \_\_\_\_\_ Other relevant references: \_\_\_\_\_
2. A complaint that describes the claim(s) and includes supporting allegations. (Use Land Court forms where required. Available at <https://www.mass.gov/lists/land-court-forms>.)
3. All supporting documentation and exhibits required by the Registered Land Guidelines, Memoranda issued by the Land Court Chief Title Examiner, and any applicable forms. (Visit <https://www.mass.gov/guides/land-court-registered-land-resources> for more information.)
4. An attested copy of the outstanding Certificate of Title **-or-** if the Certificate of Title has not been prepared, a copy of the deed(s) into the current owner(s) and an attested copy of the most recent prior Certificate of Title.
5. \$50.00 filing fee. (Please make checks payable to either Land Court or Commonwealth of Massachusetts. Credit cards accepted only for in-person filing.)
6. List related cases in the Land Court Department: \_\_\_\_\_

### PART II – TYPE OF ACTION

Using the list below, place an "X" next to the main cause of action asserted in the complaint.

<input type="checkbox"/>	SAD	Subsequent Complaint for Certificate after Death	<input type="checkbox"/>	SNT	Subsequent Complaint for New Certificate after Judgment of Tax Lien Foreclosure
<input type="checkbox"/>	SAP	Subsequent Complaint for Approval of Plan	<input type="checkbox"/>	SVW	Subsequent Complaint for Voluntary Withdrawal Under G.L. Chapter 185, Sec. 52
<input type="checkbox"/>	SCR	Subsequent Complaint for Correction of Records (REGISTRY USE ONLY)	<input type="checkbox"/>	SAT	Subsequent Complaint for Certificate after Termination of Trust
<input type="checkbox"/>	SCV	Subsequent Complaint for Certificate after Divorce	<input type="checkbox"/>	SCT	Subsequent Complaint Involving Trust (Other)
<input type="checkbox"/>	SED	Subsequent Complaint after Eminent Domain Taking	<input type="checkbox"/>	SAC	Subsequent Complaint to Amend and/or Cancel Certificate (Other)
<input type="checkbox"/>	SEM	Subsequent Complaint to Expunge Mortgage, Assignment, or Other Document	<input type="checkbox"/>	SSS	Subsequent Complaint after Sheriff Sale
<input type="checkbox"/>	SLV	Subsequent Complaint after Low Value Sale	<input type="checkbox"/>	SOT	Subsequent Complaint (Other, specify) _____

NAME (ATTORNEY OR PARTY(S))				B.B.O. NUMBER (IF APPLICABLE)	
FIRM OR AGENCY NAME (IF APPLICABLE)				OFFICE OR HOME PHONE NUMBER	
STREET ADDRESS			APT/UNIT #	CELL PHONE NUMBER	
CITY/TOWN		STATE	ZIP CODE	E-MAIL ADDRESS	
DATE		SIGNATURE			



MASSACHUSETTS  
TRIAL COURT

COMPLAINT FOR CERTIFICATE  
AFTER DEATH  
(G.L. c. 185, § 97)

COURT USE ONLY

COURT DEPARTMENT

LAND COURT

COUNTY

CASE NAME

[In the matter of]

DOCKET NUMBER (REQUIRED)

\_\_\_\_-SBQ-\_\_\_\_-\_\_\_\_-\_\_\_\_

**Note: Use this form (in conjunction with Land Court Chief Title Examiner Memorandum Re: Land Court Guideline 14 available at <https://www.mass.gov/lists/land-court-forms>) when you need to file a Complaint to get a new Certificate of Title or Memorandum of Unit Ownership for land issued after the death of the registered owner(s).**

Complaint for new Certificate of Title/Memorandum of Unit Ownership after death of \_\_\_\_\_, the registered owner(s) named in Certificate of Title/Memorandum of Unit Ownership No. \_\_\_\_\_ issued from the \_\_\_\_\_ Registry District.

1. The Plaintiff(s) is/are the ☐ sole heir(s) at law **-or-** ☐ devisee(s) under the will of the deceased owner(s) named above, who lived at the time of death in the city/town of \_\_\_\_\_ in \_\_\_\_\_ County.
2. The Probate & Family Court \_\_\_\_\_ Division has granted letters testamentary, or of administration, on the estate(s) of the deceased owner(s).
3. More than thirty (30) days have passed since the entry of judgment **and** no appeal from the judgment has been taken, or any appeal taken has resulted in the entry of judgment pursuant to the rescript of the Supreme Judicial Court or Appeals Court.

☐ (If applicable) The attached Addendum describes additional facts that are part of this Complaint.

Accordingly, the Plaintiff(s) request(s) that the Land Court issue a new Certificate of Title/Memorandum of Unit Ownership.

**Waiver of Notice by Personal Representative**

I, \_\_\_\_\_, the Personal Representative of the estate(s) of the deceased owner(s), \_\_\_\_\_, waive notice of this complaint and assent to the relief requested in the complaint, and state to the best of my knowledge and belief that all debts, charges, and claims against the estate(s) of the deceased owner(s) are paid, and that no lawsuits against the estate(s) are pending.

Signed under penalty of perjury,

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

**Note: If there is no Personal Representative appointed, then one heir or devisee must sign this section. All Plaintiffs or their attorney(s) must complete the section entitled "Listing of All Plaintiffs," on page 3 of this form. Add additional pages as necessary.**



MASSACHUSETTS  
TRIAL COURT

COMPLAINT FOR CERTIFICATE  
AFTER DEATH  
(G.L. c. 185, § 97)

DOCKET NUMBER (REQUIRED)

\_\_\_-SBQ-\_\_\_-\_\_\_-\_\_\_

Filing Requirements Checklist

Submit attested copies of the following documents:

- ☐ Deceased Owner's Certificate of Title (or Memorandum of Unit Ownership)
- ☐ Probate Court Docket Sheet
- ☐ Allowed Petition (pre-MUPC) **-or-** Petition for Formal (MPC 160)
- ☐ Citation (and a copy of the publication)
- ☐ Approved Bond(s)
- ☐ Will (if testate (died with a valid Will)) and all Codicils (if any)
- ☐ Inventory (if filed)
- ☐ Surviving Spouse, Children, Heirs at Law Form (MPC 162) (if filed)
- ☐ Devisees Form (MPC 163) (if testate (died with a valid Will) and filed)
- ☐ Decree and Order on Petition for Formal Adjudication (MPC 755) (unless the Probate and Family Court Decree is otherwise part of a pre-MUPC filing)
- ☐ If any Probate Court filings have been amended, submit attested copies of the amended filings
- ☐ Land Court Subsequent Complaint Filing Fee of \$50.00

Submit attested copies of the following documents only if they were filed with the Probate Court:

- ☐ Petition for Late and Limited Formal Testacy and/or Appointment (MPC161)
- ☐ Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment (MPC 757)
- ☐ Petition for Order of Complete Settlement (MPC 855)
- ☐ First and Final Account (including all Accounts if more than one)
- ☐ Decree and Order for Complete Settlement (MPC 790)

**Note: Additional documents may be requested by the Land Court.**



MASSACHUSETTS  
TRIAL COURT

COMPLAINT FOR CERTIFICATE  
AFTER DEATH  
(G.L. c. 185, § 97)

DOCKET NUMBER (REQUIRED)

\_\_\_-SBQ-\_\_\_-\_\_\_-\_\_\_

**Listing of All Plaintiffs**  
(Add additional pages as necessary)

PLAINTIFF	PLAINTIFF'S LAWYER (IF ANY)	FRACTIONAL INTEREST CLAIMED
PRINT NAME	PRINT NAME	
PHONE	PHONE	<b>SIGNATURES</b>
EMAIL	EMAIL	X PLAINTIFF'S SIGNATURE
		X LAWYER'S SIGNATURE
ADDRESS	ADDRESS	BBO NUMBER
PRINT NAME	PRINT NAME	
PHONE	PHONE	<b>SIGNATURES</b>
EMAIL	EMAIL	X PLAINTIFF'S SIGNATURE
		X LAWYER'S SIGNATURE
ADDRESS	ADDRESS	BBO NUMBER
PRINT NAME	PRINT NAME	
PHONE	PHONE	<b>SIGNATURES</b>
EMAIL	EMAIL	X PLAINTIFF'S SIGNATURE
		X LAWYER'S SIGNATURE
ADDRESS	ADDRESS	BBO NUMBER
PRINT NAME	PRINT NAME	
PHONE	PHONE	<b>SIGNATURES</b>
EMAIL	EMAIL	X PLAINTIFF'S SIGNATURE
		X LAWYER'S SIGNATURE
ADDRESS	ADDRESS	BBO NUMBER
PRINT NAME	PRINT NAME	
PHONE	PHONE	<b>SIGNATURES</b>
EMAIL	EMAIL	X PLAINTIFF'S SIGNATURE
		X LAWYER'S SIGNATURE
ADDRESS	ADDRESS	BBO NUMBER

## **REBA Practice Standard No. 10**

### **Conveyances After Death: Recording of Documents**

- (1) In a conveyance by the surviving joint owner of real estate, (a) the death certificate (unless it is 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) and (b) Massachusetts estate tax waiver for the deceased joint owner or an affidavit of no estate tax due (see REBA Title Standard 24 and REBA Form No. 2), should be recorded in every instance.
- (2) In a conveyance of real estate by a fiduciary under a license to sell where the probate records are situated in the same county as the Registry of Deeds, no copies of any probate paper or death certificate need be recorded with the deed of conveyance.
- (3) In a conveyance of real estate by a fiduciary under a license to sell where the probate records are situated elsewhere than in the same county as the Registry of Deeds, a certified copy of the license to sell, together with the Massachusetts estate tax waiver or affidavit of no estate tax due (see REBA Title Standard 24 and REBA Form No. 2) should be recorded. No death certificate need be recorded.
- (4) In situations (2) and (3) above, or in any conveyance of real estate by a fiduciary under a general power in a will to sell real estate, a release, discharge or certificate of non-attachment of the federal estate tax lien should be recorded, or there should be proof of payment of the amount shown due by the federal estate tax closing letter, or an affidavit should be recorded stating that there is no federal estate tax lien because of the value of the decedent's estate. (See REBA Title Standard No. 3 and REBA Form No. 3).

NOTE 1: If the death of an owner of real estate occurred more than ten years ago, then the property is free of any estate tax lien and no waiver, affidavit, release or other document relating to any estate tax lien need be filed or recorded. See REBA Title Standards 3 and 24.

NOTE 2: See REBA Title Standard 71 for other acceptable forms of evidence of death of prior deceased joint owners and life tenants where no death certificate appears in the chain of title.

Adopted May 21, 1984

Amended November 18, 1985 (added (4))

Amended November 11, 2003 (added additional clauses to paragraphs (1) and (3) and the word "value" to paragraph (4))

Amended Voted November 15, 2005

# MEMORANDUM

To: Registry District Personnel - Registered Land Divisions

From: Christina T. Geaney, Chief Title Examiner

Date: October 31, 2019

Subject: **Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles**

*THIS MEMORANDUM SUPERSEDES PREVIOUS MEMO DATED OCTOBER 13, 2012*

## **Section I. General Information**

The Land Court Guidelines, first promulgated in May of 2000, and revised on February 27, 2009, include Land Court Guideline 14. Death: The Effect of Death upon Registered Land Titles. Guideline 14 has been supplemented with Memos from the Chief Title Examiner in order to reflect the changes resulting from the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B *et seq.*, with an effective date of March 31, 2012 ("MUPC"), as amended. Until such time as Land Court Guideline 14 is revised by the Court, this Memorandum should be consulted when dealing with the death of any registered land owner(s).

The purpose of this guideline is to assist lawyers in dealing with title to Registered Land upon the death of a registered owner. The methods outlined herein are generally speaking, mutually exclusive:

- A) **METHOD NO. 1** - DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST
- B) **METHOD NO. 2** - COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)
- C) **METHOD NO. 3** - SALE UNDER DECREE (LICENSE) OF PROBATE COURT
- D) **METHOD NO. 4** - DEED UNDER POWER OF SALE IN WILL

**Note:** Reference to "LCP-2 Petition" has been replaced by "Complaint for Certificate After Death," revised as of the date of this Memorandum (also referred to herein as "Complaint").

**Note:** The revised Complaint is to be utilized in all applicable cases as set forth herein. The revised Complaint is available on our website ([www.mass.gov/lists/land-court-forms](http://www.mass.gov/lists/land-court-forms)).

**Note:** To include additional facts or in a case involving more than one death, please attach an Addendum explaining the situation, along with the relevant supporting documentation. (Reference to an Addendum is found on Page 1 of the Complaint.)

**Note:** The Land Court will require, for registered land, **FORMAL** probate proceedings for a Complaint for Certificate After Death whether they are testate or intestate. This will be further explained below under Method No. 2.

**Note:** For **DEED APPROVALS** from probate estates, we will accept a Decree (license) or the use of the power of sale conferred in a will probated in either *informal or formal probate proceedings*. The requirements under Method Nos. 3 and 4 will be discussed more fully herein.

## **Section II. Methods**

### **A) METHOD NO. 1 - DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST**

Because title to land passes in such situations by operation of law to the surviving co-tenant(s) by right of survivorship, it is unnecessary for the surviving owner(s) to obtain a new Certificate of Title or Memorandum of Unit Ownership (reference throughout this Memorandum to Certificate of Title also includes Memorandum of Unit Ownership) in order to deal with the property. It is necessary, however, that evidence of the death be noted on the encumbrance sheet of the outstanding Certificate of Title as follows:

- (1) A certified copy of a death certificate of the deceased owner.
- (2) If the deceased owner was a tenant by the entirety, an Affidavit of No Divorce.

Once the above-referenced documents are registered, the surviving registered owner(s) may deal with the property freely, without Land Court approval.

However, if the surviving registered owner(s) request(s) a Certificate of Title in their name(s), a Subsequent Complaint must be filed with the Land Court Department, along with the statutory filing fee, the material referred to under Subsections 1 and 2 above (as applicable), as well as an attested copy of the outstanding Certificate of Title. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title. There is no court-promulgated form which must be used. The surviving registered owner(s) must simply recite, under oath, the circumstances, request the cancellation of the outstanding Certificate of Title, and request the issuance of a new Certificate of Title in their name(s). An Order of the Land Court will issue and must be presented at the Registry of Deeds for registration.

**B) METHOD NO. 2 - COMPLAINT FOR CERTIFICATE AFTER DEATH (LAND COURT ORDER)**

Method No. 2 is used to obtain a new Certificate of Title after the death of a person in whose name alone a Certificate of Title stands, after the death of both tenants by the entirety, after the death of one tenant in common, or after the death of the last joint tenant. For this method, the Complaint for Certificate After Death must be filed, and the lawyer for Plaintiff(s) or a Land Court Examiner will file the following to initiate a case:

- (1) File the completed Complaint along with the statutory filing fee. Note that this Complaint has two signature sections. The statement in the section entitled "Waiver of Notice by Personal Representative" is to be signed by the Personal Representative of the estate. If no Personal Representative has been appointed, one heir (intestate estate) or devisee (testate estate) must sign the Complaint.
- (2) As provided for in the Complaint, all Plaintiffs, or the lawyer for the Plaintiff(s), will also sign the Complaint in the applicable section entitled "Listing of All Plaintiffs."

**Note:** If the lawyer signs the Complaint, the lawyer should make clear that they represent the Plaintiff(s). If the lawyer represents *less* than all of the Plaintiffs, those Plaintiffs must also sign the Complaint, or provide the Court with a separate written Assent to the Complaint.

- (3) An attested copy of the outstanding Certificate of Title must be filed. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent, prior Certificate of Title.
- (4) Supporting documentation will vary depending upon how title to the property was held:
  - (a) *Tenancy by the Entirety/Joint Tenancy - all Co-Tenants Deceased*
    - (i) ***as to the first to die***, a death certificate. If there are more than two joint tenants, a death certificate must be filed for each deceased registered land owner (except the last to die). In addition, if the property was held as tenants by the entirety, an Affidavit of No Divorce must be filed.

**Note:** The Affidavit of No Divorce must address the fact that at the time of death of the *first to die*, there had been no divorce.



- (ii) ***as to the surviving tenant by the entirety or the last joint tenant to die***, file attested Probate and Family Court copies of the following (as applicable):

TABLE 1 – Attested Probate and Family Court documents
Docket Sheet
Allowed Petition (pre-MUPC) or Petition for Formal (MPC 160)
Citation (and a copy of the publication)
Approved Bond(s)
Will (if testate) and all Codicils (if any)
Inventory (if filed)
Surviving Spouse, Children, Heirs at Law Form (MPC 162) (if filed)
Devises Form (MPC 163) (if testate and filed)
Decree and Order on Petition for Formal Adjudication (MPC 755) (unless the Probate and Family Court Decree is otherwise part of a Pre-MUPC filing)
TABLE 1 – Attested Probate and Family Court documents <i>needed only if filed</i>
Petition for Late and Limited Formal Testacy and/or Appointment (MPC 161)
Decree and Order on Petition for Late and Limited Formal Testacy and/or Appointment (MPC 757)
Petition for Order of Complete Settlement (MPC 855)
First and Final Account (include all Accounts if more than one)
Decree and Order for Complete Settlement (MPC 790)

**Note:** If any of the Probate and Family Court documents in the were amended, attested copies will also be required.

**Note:** Lawyers may not attest these documents.

**Note:** If the opening proceeding was an informal probate, and the time limits prescribed in G.L. c. 190B, § 3-108, have not expired, you may either institute a Formal Probate, or in the alternative, you may petition the Probate and Family Court for a Decree and Order for Complete Settlement. *The Petition/or Order of Complete Settlement (MPC 855) must specifically seek a determination of testacy and heirs.* This Petition for Order of Complete Settlement is a formal probate proceeding, and will result in a Decree and Order for Complete Settlement (MPC 790). Please follow up with the Probate and Family Court regarding this process.

If the time limits prescribed in G.L. c. 190B, § 3-108, have expired, then an **Addendum** addressing this issue is to be included along with the

Complaint, with the relevant supporting documentation. (Reference to the Addendum is found on Page 1 of the Complaint.)

Note: A determination of heirs is not established as a result of the time limits under G.L. c. 190B, § 3-108. This must be determined by the Probate and Family Court in either a testate or intestate estate, and submitted as part of the Complaint to the Land Court. Please follow up with the Probate and Family Court regarding this process.

- (b) Tenancy in Common - for each tenant in common who is deceased, file all of the materials set forth in the preceding (as applicable). If there are surviving tenants in common, each should assent to the Complaint by signing it to indicate that they are aware that the old Certificate of Title is to be cancelled, and a new Certificate of Title is to be issued in their name(s) as well as the name(s) of the new tenant(s) in common.

**Note:** If a surviving tenant in common does not sign the Complaint, a separate written Assent can be filed.

- (c) *Certificate Standing in the Name of One Person* - again, file attested Probate and Family Court Division copies of all probate documentation for the estate of the decedent as set forth in the preceding (as applicable).

The result of this method will be an attested Order of the Land Court which must be registered at the Land Registration Office at the proper Registry of Deeds. In due course, a new Certificate of Title will be drawn in accordance with the Order of the Land Court.

**Note: Deeds of Distribution:** The Land Court will NOT accept, in lieu of the Complaint, a deed from the Personal Representative to the heirs or devisees under the will of the decedent, or to their nominee. If acceptance of a deed from a Personal Representative is requested, it may be registered in connection with a Court Order, but only if the Complaint is based on a formal decree that allows the issuance of a Certificate of Title to the heirs or devisees.

**Note:**

DEBTS: As to decedents dying on or after January 1, 1990, claims of creditors are generally barred after one year from the date of decedent's death.

Different rules may apply to those decedents dying before January 1, 1990.

TAXES: Estate and inheritance taxes are not required to be noted on Certificates of Title (G.L. c. 185, § 46; See also Land Court Guideline 35).

**LEGACIES:** Unless the real property is specifically devised, if a will directs the payment of legacies, the Land Court requires evidence of their payment.

**Note:** If less than one year has elapsed since the date of death, or if there are claims on the estate, any new Certificate of Title will issue subject to the settlement of the estate.

**Note:** If a new Certificate of Title issues subject to the settlement of the estate, a further Subsequent Complaint to Amend the Certificate of Title, together with applicable supporting documentation, is required to remove the settlement of the estate language from the face of the new Certificate of Title.

#### DEVISE TO A TRUST:

*A) Testamentary Trust:* If property is devised to the Trustees of a testamentary trust, attested copies of the Decree appointing the Trustee or the Statement of Confirmation of Testamentary Trustee and the Trustee's Bond(s) must be included, along with the aforementioned probate documentation under Method No. 2 (set forth in the preceding as applicable). The Order of Court will issue to the testamentary Trustee(s) for the benefit of the named beneficiary(ies) of said testamentary trust, under the will of the decedent.

*B) Inter Vivos Trust:* If property is devised to the Trustees of an *inter vivos* trust, which is not of record, the original trust instrument and any amendment(s) thereto, or a Certificate pursuant to G.L. c. 184, § 35, must be filed with the Land Court in connection with the Complaint, along with the aforementioned probate documentation under Method No. 2, (set forth in the preceding as applicable). The Order of Court will issue to the trustee(s), and the original trust document(s) or the aforementioned Certificate will be registered, and noted on the new Certificate of Title issued. *Please note that we will not place title into an expired trust* (See also Land Court Guideline 62. Trusts: Expired).

#### **C) METHOD NO. 3 - SALE UNDER DECREE (LICENSE) OF PROBATE COURT**

Method No. 3 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. One of the advantages of obtaining a Probate and Family Court Decree ("Decree" or "license") is that the property will be sold free of debts of the deceased, costs of administration, legacies, and Massachusetts estate taxes, a tax release being a prerequisite for obtaining the Decree/license.

If utilizing Method No. 3, please present all of the following for a DEED APPROVAL:

- (1) The original or an attested copy of the Decree/license (no more than one year old) containing the property description;
- (2) An attested copy of the Probate and Family Court Docket Sheet;

- (3) An attested copy of the Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750);
- (4) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title; and
- (5) A fully executed deed must be presented. The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

Example Grantor Clause:

***"I, \_\_\_\_\_ as Personal Representative of the Estate of \_\_\_\_\_ holder of a Decree of the Probate and Family Court of \_\_\_\_\_ dated, \_\_\_\_\_ Docket No. #####, by power conferred by said Decree..."***

**Note:** The date of the Decree/license referenced in the deed must be the date that the Decree/license issued. The deed must conform in all respects to the Decree/license, with the consideration equal to or more than the amount specified in the Decree/license. The deed should be executed on or after the date of the Decree/license.

**Note:** The property description in the deed must conform to the description in the Decree/license.

**Note:** If the Personal Representative is the grantee in the deed, the Decree/license of the Probate and Family Court must provide that the Personal Representative is permitted to take title.

If everything is in order, the deed pursuant to the Decree/license is endorsed "Approved for Registration" and signed by a Land Court Title Examiner.

#### **D) METHOD NO. 4 - DEED UNDER POWER OF SALE IN WILL**

Method No. 4 is an alternative to Method No. 2, and is used when an immediate sale is contemplated. The advantage of a sale pursuant to a power of sale in a will is that the property is sold free of debts of the deceased, costs of administration and legacies. ***The power of sale can be used to convey registered land when the will, probated formally or informally, empowered the personal representative to sell the real estate or an interest in that real estate. It is not to be used to distribute the registered land to the devisees or heirs at law, nor is it to be used to effectuate an agreement amongst the devisees as to which of them will take title.***

If utilizing Method No. 4, please present all of the following for a DEED APPROVAL:

- (1) An attested copy of the probated will (and all codicils) must be presented at the Land Court. To use this method, the power of sale in the will must be unequivocal. The clause containing the power should be marked;

- (2) Attested Probate and Family Court copies of the Docket Sheet, Petition for Formal (MPC 160) or Petition for Informal Probate of Will and/or Appointment of Personal Representative (MPC 150), Approved Bond(s), Surviving Spouse, Children, Heirs at Law Form (MPC 162), Devisees Form (MPC 163), and Decree and Order on Petition For Formal Adjudication (MPC 755) or Order of Informal Probate of Will and/or Appointment of Personal Representative (MPC 750). Along with the foregoing, provide current Letters of Authority of the Personal Representative, issued from the Probate Court (not more than 60 days old).
- (3) An attested copy of the outstanding Certificate of Title must be presented. If the Certificate of Title has not been prepared, provide an attested copy of the deed(s) into the current owner, and an attested copy of the most recent prior Certificate of Title;
- (4) The fully executed deed of the Personal Representative must be presented. The grantor clause should clearly state that the Personal Representative is selling pursuant to the power conferred by the probated will of the deceased owner. ***The consideration in the deed must be other than nominal, and must be in favor of an arm's length third party*** (See G.L. c. 190B, § 3-715 23 ½); and

Example Grantor Clause:

***“I, \_\_\_\_\_ as Personal Representative of the Estate of \_\_\_\_\_, pursuant to the power of sale conferred under the probated will, Probate and Family Court, Docket No. #####...”***

- (5) The deed is to be signed and acknowledged by the Personal Representative in their representative capacity.

If everything is in order, the deed, pursuant to power of sale in the probated will is endorsed "Approved for Registration" and is signed by a Land Court Title Examiner.

**Note:** With Method Nos. 3 and 4, where title was held as tenants by the entirety, or as joint tenants, a death certificate and an Affidavit of No Divorce (tenants by the entirety) should be presented to the Land Court Title Examiner, along with the Deed.

**In Summary:** If a Complaint for Certificate After Death is presented, an Order of the Land Court will issue. If a deed under either a Decree/license *or* pursuant to the power of sale conferred in a probated will is presented, the deed is approved, and no Complaint is necessary. This Memorandum is not intended to be exhaustive, and addresses only the most common situations.

**Part I**

## ADMINISTRATION OF THE GOVERNMENT

**Title IX**

## TAXATION

**Chapter 61A**ASSESSMENT AND TAXATION OF AGRICULTURAL AND  
HORTICULTURAL LAND**Section 12**SALE OF LAND OR CHANGE OF USE; LIABILITY FOR CONVEYANCE  
TAX; EXEMPTIONS

Section 12. Any land in agricultural, horticultural or agricultural and horticultural use which is valued, assessed and taxed under the provisions of this chapter, if sold for other use within a period of ten years from the date of its acquisition or the earliest date of its uninterrupted use by the current owner in agriculture or horticulture, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of such land, which tax shall be in addition to such taxes as may be imposed under any other provision of law. Said conveyance tax shall be at the following rate: ten per cent if sold within the first year of ownership; nine per cent if sold within the second year of ownership; eight per cent if sold within the third year of ownership; seven per cent if sold within the fourth year of ownership; six per cent if sold within the fifth year of ownership; five per cent if sold within the sixth year of ownership; four per cent if sold within the seventh year of ownership; three per cent if sold within the eighth year of ownership; two per cent if sold within the ninth year of ownership; one per cent if sold within the tenth year of ownership. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had that transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land on which the use has changed. No conveyance tax shall be imposed under the provisions of this section following the end of the tenth year of ownership. Said conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added to that amount as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for agricultural, horticultural or agricultural and horticultural use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land whose use has changed. Except with respect to eminent domain takings, the provisions of this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which such land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to its parent corporation for no

consideration other than the cancellation and surrender of capital stock of such subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this section. Upon such nonexempt transfer the date of acquisition by the grantor, for purposes of this section, shall be deemed to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section; except that in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. Any land in agricultural or horticultural use which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its acquisition by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption therefrom shall apply to such taxes, so far as the same are applicable.

No conveyance tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under section 1 of chapter 61B.

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## **Part I**

### **ADMINISTRATION OF THE GOVERNMENT**

## **Title IX**

### **TAXATION**

## **Chapter 61A**

### **ASSESSMENT AND TAXATION OF AGRICULTURAL AND HORTICULTURAL LAND**

## **Section 13**

### **CHANGE OF USE; LIABILITY FOR ROLL-BACK TAXES**

Section 13. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of land actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but roll-back taxes shall not apply unless the amount of those taxes as computed under this section, exceeds the amount, if any, imposed under section 12 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 12. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to those provisions. Notwithstanding this paragraph, roll-back taxes shall not be assessed if the land involved, or a lesser interest in the land, is: (a) acquired for a natural resource purpose by (1) the city or town in which it is situated; (2) the commonwealth; or (3) a nonprofit conservation organization; (b) used or converted to a renewable energy generating source pursuant to section 2A; (c) subject to a permanent wetland reserve easement through the agricultural conservation easement program established pursuant to 16 U.S.C. 3865c; or (d) otherwise subject to another federal conservation program; provided, however, that if a portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the

nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the five immediately preceding years, or 10 years where the land has been used to simultaneously site a renewable energy generating source pursuant to section 2A, in which the land was valued, assessed and taxed thereunder. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

- (a) The full and fair value of such land under the valuation standard applicable to other land in the city or town;
- (b) The amount of the land assessment for the particular tax year;
- (c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and,
- (d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to a simple interest rate of 5 per cent per annum. Land which is valued, assessed and taxed under this chapter as of July 1, 2006 shall be exempt from any interest if it remains in the same ownership as it was on that date or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.

If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than \$10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or recreational land under section 1 of chapter 61B or renewable energy generating source pursuant to section 2A.

Land retained as open space as required for the mitigation of development shall be subject to the roll-back taxes imposed by this section.

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<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title IX</b>	TAXATION
<b>Chapter 61A</b>	ASSESSMENT AND TAXATION OF AGRICULTURAL AND HORTICULTURAL LAND
<b>Section 14</b>	SALE FOR OR CONVERSION TO RESIDENTIAL OR COMMERCIAL USE; NOTICE OF INTENT TO CITY OR TOWN; OPTION TO PURCHASE; ASSIGNMENT OF OPTION

Section 14. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.



The discontinuance of agricultural or horticultural use shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the agricultural or horticultural use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation; and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining not less than 70 per cent of the land in use as forest land as defined in section 1 of chapter 61, as land in agricultural or horticultural use as defined in sections 1 and 2 or as recreational land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment.

The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the landowner by certified mail at the address that is specified in the notice of intent.

The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described in this section.

# REBA PRACTICE STANDARD NO.

## 14: ORDERS OF CONDITIONS

Absent an agreement to the contrary, at the sale of property which, according to the record title, may be or is in fact encumbered by an Order of Conditions, the Seller shall provide: (1) Certificate of Compliance from the appropriate authority; or (2) a partial release of the property from the Order of Conditions; or (3) evidence indicating that the property is released from or is in fact not covered by the Order of Conditions, such evidence to be in recordable form and be acceptable to the buyer's and the mortgagee's counsel, if any.

- Adopted November 18, 1985

In [Conservation Comm'n of Norton v. Pesa, 488 Mass. 325, 326 \(2021\)](#), the Supreme Judicial Court held that this **three-year** statute of repose is “personal” to each **new owner**. That means that once a property “changes hands,” the act “permits the commission to commence an action against the subsequent **owner**, so long as it does so within **three years** of the triggering event -- the recording of the deed or date of death by which title was acquired.” Id.

An Order of Conditions is not considered a “title issue.”

Suggested language to add to P&S to address as a condition precedent: Certificates of Compliance for any outstanding Orders of Conditions that is locus specific pertaining to wetlands have been recorded or delivered for recording at closing

## **REBA Practice Standard No. 14**

### **Orders of Condition**

Absent any agreement to the contrary, at the sale of property which, according to the record title, may be or is in fact encumbered by an Orders of Condition, the seller shall provide:

- (1) A certificate of Compliance from the appropriate authority; or
- (2) A partial release of the property from the Orders of Condition; or
- (3) Evidence indicating that the property is released from or is in fact not covered by the Orders of Condition, such evidence to be in recordable form and be acceptable to the buyer's and the mortgagee's counsel, if any.

Adopted November 18, 1985

# REBA PRACTICE STANDARD

## NO. 1: CLOSING ADJUSTMENTS

(1) Buyer is responsible for taxes and common area charges and is entitled to rents for the day deed is delivered;

(2) Real Estate taxes are to be adjusted on the basis of a 365 day year (except for leap year);

(3) Rents are to be adjusted on the basis of the number of days in the applicable month;

(4) Common area charges to be adjusted on the basis of the number of days in the applicable month.

Other common adjustments to be mindful of not covered by standard: fuel adjustments, some municipalities adjust for final readings (review MLC's and final reading statements carefully)

## REBA Practice Standard No. 1

### Closing Adjustments

- (1) Buyer is responsible for taxes and common area charges and is entitled to rents for the day the deed is delivered;
- (2) Real estate taxes are to be adjusted on the basis of a 365 day year (except leap years);
- (3) Rents are to be adjusted on the basis of the number of days in the applicable month;
- (4) Common area charges are to be adjusted on the basis of the number of days in the applicable month.

#### *Comment*

*Whenever reasonably possible, adjustment figures shall be made available at least forty- eight hours prior to the day the deed is delivered.*

*With respect to real estate taxes:*

*The municipal fiscal year starts on July 1 and ends on June 30.*

*Assuming a quarterly system, per G.L. c. 59, §57C, tax payments are as follows:*

*Aug. 1 - 1st quarter of the year - covers taxes for July 1 through September 30.*

*Nov. 1 - 2nd quarter of the year - covers taxes for October 1 through December 31.*

*Feb. 1 - 3rd quarter of the year - covers taxes for January 1 through March 31.*

*May 1 - 4th quarter of the year - cover taxes for April 1 through June 30.*

*NOTE: First 2 quarters of the year are estimates only, each equal to  $\frac{1}{4}$  of the taxes for the prior fiscal year.*

**EXAMPLE 1- Closing Date October 31st:**

*Real estate taxes for the prior fiscal year: \$5,000.00*

1. *\$5,000.00 divided by 365 days to get a Per Diem:  
\$5,000.00 divided by 365 = \$13.6987 -Round up to \$13.70*

*Multiply the number of days in the fiscal year up to and including day prior to closing date:*

*July 1 - October 3d" = 122 days*

*123 days multiplied by \$13.70 = \$1,671.40  
Seller is responsible for \$1,671.40  
Buyer is responsible for \$3,328.60*

*NOTE: A document should be signed at closing to allow a further adjustment once the actual annual tax has been set.*

**EXAMPLE 2 - Closing date March 14:**

*Real estate taxes for the fiscal year: \$5,000.00*

1. *\$5,000.00 divided by 365 days to get a Per Diem:  
\$5,000.00 divided by 365 = 13.6987-Round up to \$13.70*
2. *Multiply the number of days in the fiscal year up to and including the day prior to closing date:*

*July 1 -March JJ11' = 256 days  
256 days multiplied by 13.70 = \$3,507.20  
Seller is responsible for \$3,507.20  
Buyer is responsible for \$1492.80*

Adopted November 15, 1982

Amended November 7, 2016 (To rename standard, to delete former Section (1) and to expand Comment)



# REBA PRACTICE STANDARD NO. 11: DISBURSEMENT OF FUNDS

All disbursements shall be payable to the individual(s) or entity(ies) disclosed in the Closing Disclosure and/or Settlement Statement unless written instructions authorizing otherwise are signed by individual(s) or entity(ies), or the individual(s)' or entity(ies)'' attorney at Closing.

Establish Written Protocols for Wires, including but not limited to:

- verbally confirming wiring instructions;
- require delivery of instructions by mail, dedicated fax, secure or encrypted email, or hand delivery;
- require wet signature on wiring instructions;
- refuse to wire if you receive request to change wiring instructions;
- obtain insurance coverage to insure against a loss; and
- use third party vendor to verify accuracy of wiring instructions.

Communicate your policies to your clients and reinforce that policy

Wire Fraud is here to stay so we all need to protect against it

## **REBA Practice Standard No. 11**

### **Disbursement of Funds**

All disbursements shall be payable to the individual(s) or entity (ies) disclosed in the Closing Disclosure and/or settlement statement unless written instructions authorizing otherwise are signed by such individual(s) or entity(ies), or the individual(s)' or entity(ies)' attorney at closing.

The following are recommended practices to protect against the disbursement of funds based on fraudulent wire instructions. The attorney should take appropriate steps to confirm that wire instructions are genuine. Such steps may include one or more of the following:

- a) Verbally confirming wire instructions with the individual(s) or entity (ies) or the individual(s)' or entity(ies)' attorney at a known number not obtained from an email;
- b) Requiring delivery of wire instructions by mail, dedicated fax<sup>1</sup>, secure or encrypted email, or hand delivery;
- c) Requiring a "wet signature" on wire instructions at or prior to closing;
- d) Requiring signature confirmation of the wire instructions by the individual(s) or entity (ies) or the individual(s)' or entity (ies)' attorney at closing;
- e) Refusing to accept a change of wire instructions, especially after closing but before disbursement has occurred, unless appropriate steps have been taken to confirm that the change is genuine;
- f) Refusing to disburse funds via wire if (1) confirmation of the accuracy and legitimacy of the wiring instructions cannot be made to the satisfaction of the attorney responsible for disbursement, or (2) if the request is made after release of a disbursement check;
- g) Developing a law firm policy relative to the receipt of wire instructions and wire protocols, including the right to refuse to disburse via wire if the instructions cannot be satisfactorily confirmed;
- h) Communicating the firm's policy with all parties in the transaction as soon as practicable, most preferably at the time of signing the purchase and sale agreement;
- i) Obtaining coverage for social engineering fraud/ email compromise fraud via endorsement if not already part of the firm's malpractice insurance policy; and
- j) Including a specific reference to the firm's wire policy in purchase and sale agreements.

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<sup>1</sup> A "dedicated fax" is a telephone line set to only send or receive paper faxes.

## *Notes and Comments*

- (1) The increase in wire and disbursement diversion fraud is alarming, and conveyancing attorneys are a prime target. In a typical scenario, the closing attorney receives an email shortly after closing which requests a change in disbursing instructions. The new disbursing instructions seemingly come from a legitimate party in the transaction. The scam, however, is not limited to changing instructions, but can equally occur with the initial disbursement instructions received by the attorney. It is recommended that attorneys develop and follow written office protocols to protect escrow funds. These protocols should be communicated to all employees, clients, and other firms so that in each transaction expectations of how disbursing and wire instructions are communicated and followed are known.*
- (2) See REBA Form No. 65 for a recommended form for Wire Transfer Authorization.*
- (3) See REBA Ethical Standard No. 5.*

Adopted November 19, 1984

Amended November 5, 2018 (Expanded to focus on fraudulent wire instructions)

Amended May 6, 2019

# REBA PRACTICE STANDARD NO. 19:

## HELOC DISCHARGES



It is considered standard practice for an attorney representing a lender or buyer in a residential loan to require the seller to notify his or her home equity lender to terminate his or her right of withdrawal from the lien of credit at least 14 days before the sale and to cause such termination to be noted on the lender's payoff letter to the attorney representing the buyer or lender. It is considered standard practice for the buyer's and lender's attorneys to decline to close the purchase or acquisition loan if the seller fails to terminate his or her equity loan in a timely manner to assure the proper satisfaction and discharge of the equity loan.



## **REBA Practice Standard No. 19**

### **Home Equity Loan Discharges**

It is considered standard practice for an attorney representing a lender or buyer in a residential loan to require the seller to notify his or her home equity lender to terminate his or her right of withdrawal from the line of credit at least 14 days before the sale and to cause such termination to be noted on the lender's payoff letter to the attorney representing the buyer or lender. It is considered standard practice for the buyer's and lender's attorneys to decline to close the purchase or the acquisition loan if the seller fails to terminate his or her equity loan in a timely manner to assure the proper satisfaction and discharge of the equity loan.

Adopted November 20, 1989

## **REBA PRACTICE STANDARD NO. 26: LAND SUBJECT TO NON-STATUTORY OBLIGATIONS TO PAY ASSESSMENTS**

A conveyancing attorney certifying title to the property which is subject to a declaration of restrictive covenants or other instruments which impose a non-statutory obligation on the land owner to pay assessments in connection with the use of common property or share amenities should obtain written documentation that all outstanding assessments have been paid through the date of conveyance. Evidence of payment should be in written form from a person purporting to be authorized signatory of the homeowner's association or from other entity identified of record as the one responsible for the collection of assessments. The form of such acknowledgment of payments should be, whenever possible in recordable form.

Note: Most often registry will not accept for recording.

Suggested provision to add to any P&S: if the premises is subject to a declaration of restrictive covenants or other instruments imposing upon the seller to pay assessments, the seller shall obtain written documentation in recordable form that all outstanding assessments have been paid through the date of conveyance.

## REBA Practice Standard No. 26

### Land Subject to a Non-Statutory Obligation to Pay Assessments

A conveyancing attorney certifying title to property which is subject to a declaration of restrictive covenants or other instrument which imposes a non-statutory obligation on the land owner to pay assessments in connection with the use of the common property or shared amenities should obtain written documentation that all outstanding assessments have been paid through the date of conveyance. Evidence of payment should be in written form from a person purporting to be an authorized signatory of the homeowner's association or from another entity identified of record as the one responsible for the collection of assessments.

The form of such acknowledgement of payment should be, whenever possible, in recordable form.

#### *Comments*

- 1. While such assessments are not enforceable as a lien as there is no statute permitting the filing of a lien which could result in defeasance of title, they may be enforceable against property as an equitable servitude based upon an implied in fact contract. The obligation to pay such assessments is not extinguished even when the enforcement of other provisions of the underlying instrument is barred by time. Sullivan v. O'Connor, 81 Mass. App. Ct.200 (2012).*
- 2. There is no obligation to record an instrument evidencing payment of assessments and certain Registries and Registry Districts may not accept such an instrument for recording.*
- 3. In those circumstances where there is purportedly no active entity collecting assessments, and assessments are not being made, an indemnification and affidavit under the penalties of perjury in favor of the buyer should be obtained.*

Adopted May 6, 2013

# **REBA PRACTICE STANDARD NO. 29:**

## **DISCHARGE OR PARTIAL RELEASE OF MORTGAGE**

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At the closing of the transaction involving real property encumbered by a private mortgage that is to be discharged or partially released as part of the transactions, the owner shall: 1) Provide the closing attorney not more than 7 days before the scheduled closing date a payoff statement or partial release payment statement from the private mortgagee that complies with M.G.L. c. 183, § 54D...; and, 2) Arrange for the delivery to the closing attorney prior to or at the closing of the fully executed and notarized discharge or partial release, which shall be unconditionally released for recording no later than upon disbursement by the closing attorney to the private mortgagee of good funds in the amount specified in the payoff or partial release statement.

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A private mortgage is a mortgage granted to a person, trust, trustee of trust, another form of fiduciary or entity that (1) is not a federal or state chartered bank, credit union or other lending institution, (2) is not a financial services corporation created by the United States Congress, (3) is not licensed as a lender by the Massachusetts Division of Banks, (4) is not licenses as an insurance company by the Massachusetts Department of Insurance, and (5) is not a governmental agency.

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Hard Money Lenders are private lenders requiring discharge at or in advance of closing.

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When in doubt check with your underwriter.



## REBA Practice Standard No. 29

### Discharge or Partial Release of Private Mortgages

At the closing of a transaction involving real property encumbered by a private mortgage that is to be discharged or partially released as part of the transaction, the owner shall:

1. Provide to the closing attorney not more than 7 days before the scheduled closing date a payoff statement or partial release payment statement from the private mortgagee that complies with M.G.L. c. 183, s. 54D, together with contact information including, without limitation, the telephone number, email address, and disbursement instructions of the private mortgagee or the private mortgagee's attorney; and
2. Arrange for the delivery to the closing attorney prior to or at the closing of the fully executed and notarized discharge or partial release, which shall be unconditionally released for recording no later than upon disbursement by the closing attorney to the private mortgagee of good funds in the amount specified in the payoff or partial release statement.

#### *Comment*

*For purposes of this Practice Standard, a private mortgage is a mortgage granted to a person, trust, trustee of a trust, another form of fiduciary or an entity that (1) is not a federal or state chartered bank, credit union or other lending institution, (2) is not a financial services corporation created by the United States Congress, (3) is not licensed as a lender by the Massachusetts Division of Banks, (4) is not licensed as an insurance company by the Massachusetts Department of Insurance, and (5) is not a governmental agency.*

Adopted November 6, 2017

## **RECORDING CHARGES – WHOSE RESPONSIBILITY**

### **BUYER:**

Deed  
MLC  
Mortgage  
Declaration of Homestead

### **SELLER:**

Discharge(s)  
6(d) Certificate  
Waiver of Right of First Refusal  
Estate Tax Affidavit  
Death Certificate  
Affidavit of No Divorce

### **Documents Specific to Party Who Needs for Transaction:**

Trustee Certificate  
Certificate of Good Standing  
Corporate Vote  
Power of Attorney  
Affidavit of Power of Attorney

## **TITLE EXAM – WHOSE RESPONSIBILITY**

In general, it is the buyer's lender's attorney (or buyer's attorney if no mortgage,) to conduct the title exam, and the buyer generally pays the cost. However, in limited instances, in Worcester County, the seller pays for title, with some exceptions. See attachment.

CUSTOM IN WORCESTER COUNTY ON CITIES AND TOWNS WHERE SELLER  
PAYS FOR TITLE

**WORCESTER**  
**BOYLSTON**  
**WEST BOYLSTON**  
**SHREWSBURY**  
**WESTBOROUGH**  
**GRAFTON**  
**MILLBURY**  
**AUBURN**  
**LEICESTER**  
**PAXTON**  
**HOLDEN**  
**SPENCER**  
**NORTHBOROUGH**

TOWNS WHERE TITLE IS SPLIT BETWEEN BUYER AND SELLER

**BROOKFIELD**  
**EAST BROOKFIELD**  
**WEST BROOKFIELD**  
**NORTH BROOKFIELD**

For all other cities and towns, the buyer customarily pays for title.

# CONTACT INFORMATION FOR PRESENTERS

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