



# Taking Titles From Estates



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## Testate Estates and Personal Representatives

- Do you Have A Will?
- Does Your Will Have a Power of Sale?
- Is the Power of Sale unqualified?

## Case Law:

Going v. Emery, 1834 SJC

‘Whenever an executor has the power under a will to sell real estate, no license of any court is necessary to, or can give an additional validity to any sale and conveyance which he may make and it is considered a good reason for refusing such license, that the power already exists.’

MGL ch. 190B Article III  
Section 3-715 23 1/2 (MUPC)

“ . . . sell, lease or encumber to an arm's length third party any real estate of the estate, or an interest in that real estate, for cash, credit or for part cash and part credit, with or without security for unpaid balances and whether the personal representative has been appointed formally or informally; the sale, lease or encumbrance shall be conclusive notwithstanding section 3–302 or any contest of the informal probate proceeding, provided that: (i) if the decedent died without a will, a license has been issued under chapter 202; or (ii) if the decedent died with a will, either: (a) the will, probated formally or informally, empowered the personal representative to sell, lease or encumber that real estate or an interest in that real estate, or (b) a license has been issued under chapter 202.

## The “GOLD” Standard

“To sell, lease, or give options to purchase any property of estate, real or personal, at public or private sale, for such consideration and upon such terms (including credit) as my personal representative shall determine”

## Beware of the QUALIFIED Power of Sale!

“To sell, lease, or give options to purchase any property of estate, real or personal (**OTHER THAN THAT WHICH HAS BEEN SPECIFICALLY BEQUEATHED**), at public or private sale, for such consideration and upon such terms (including credit) as my personal representative shall determine . . .”

## How about an IMPLIED Power of Sale?

- Where the intention of a testator to have his real estate sold and the proceeds divided is plainly discoverable in his will, it gives to the executors a power of sale **without an express statement to that effect**. May v. Brewster, 1905 SJC
- An executor has power to sell real estate devised, although there are no special directions to that effect in the will, **if it is necessary so to do to carry into effect the other purposes of the devise**. Going V. Emery, 1834 SJC

## MGL ch. 184B, § 2

### Statutory Optional Fiduciary Powers

Section 2. The following powers shall be known as the "Statutory Optional Fiduciary Powers" and may be given to the fiduciary in a will or trust by specific reference thereto in said will or trust in addition to all common law and other statutory powers:

(1) Said fiduciary shall have the power without approval of any court:

. . . (f) to sell, exchange or otherwise dispose of the property at public or private sale on such terms as he may determine, **no purchaser being bound to see to the application of any proceeds;**



# REBA TS 10

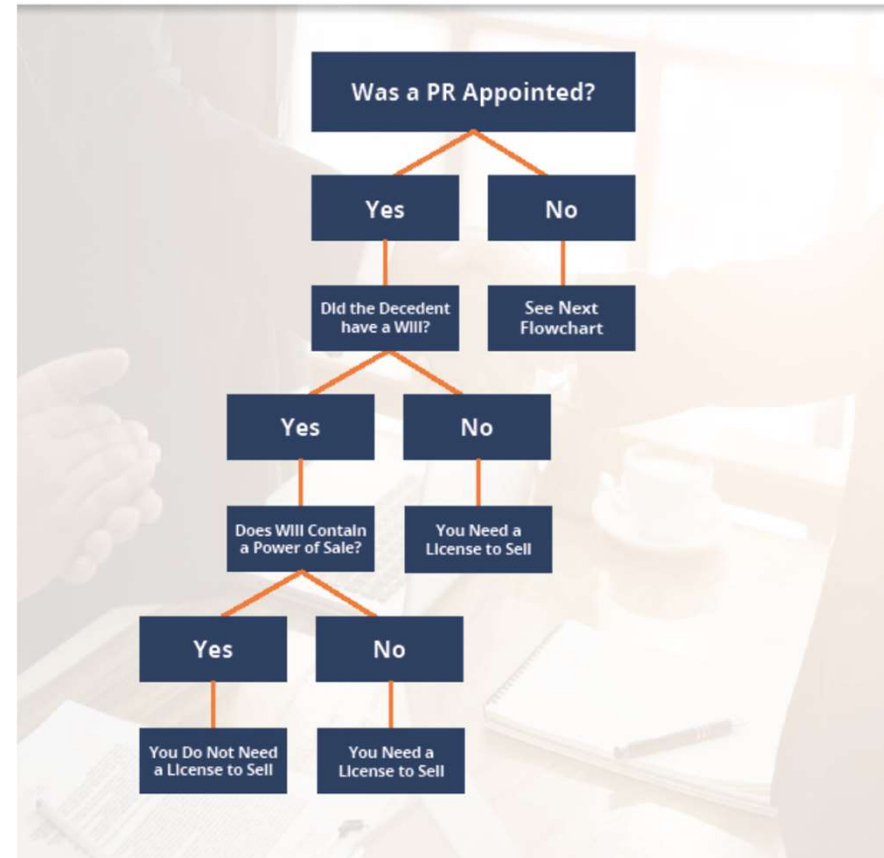
## REBA Title Standard No. 10 Power of Sale Under Will

- The deed of:
- (1) an executor, or
- (2) an administrator CTA, or
- (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
- (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of [Title Standard 78](#),

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

# How Do You Know if You Need a License to Sell?

## DO YOU NEED A LICENSE TO SELL MA REAL PROPERTY?



## When MUST I Get a License to Sell?

**If there is no Will there is no Power of Sale**

**If the Will does not specify a Power of Sale, then there is no Power of Sale**

# How Do You GET a License to Sell?

## PERSONAL REPRESENTATIVE'S PETITION FOR SALE OF REAL ESTATE (G. L. c. 202, § 19) CHECKLIST

DECEDENT DIED WITH OR WITHOUT A WILL	
Form/Document Name	Required or May Need
<input type="checkbox"/> Petition for Sale of Real Estate (MPC 210)	REQUIRED
<input type="checkbox"/> Description of real estate (attached to Petition)	REQUIRED
<input type="checkbox"/> Inventory (MPC 854)	REQUIRED
<input type="checkbox"/> Affidavit of Personal Representative that the gross estate does not necessitate a MA estate tax filing, OR Closing Letter, Release, or Discharge from Commissioner of Revenue	REQUIRED
<input type="checkbox"/> Military Affidavit (MPC 470)	REQUIRED (unless the petition is assented to by all interested persons)
<input type="checkbox"/> Citation – Return of Service (MPC 560)	REQUIRED (unless the petition is assented to by all interested persons and publication is NOT required)
<input type="checkbox"/> Proposed Decree on Petition for Sale of Real Estate (MPC 794)	REQUIRED
<input type="checkbox"/> Proof of Informal Publication, if applicable	REQUIRED
<input type="checkbox"/> Bond (MPC 801)	MAY NEED (if the original appointment bond was with sureties and the penal sum is not sufficient upon sale of the real estate)
<input type="checkbox"/> Assent and Waiver of Notice/Renunciation/Nomination/Waiver of Sureties (MPC 455)	MAY NEED
<input type="checkbox"/> Proof of Guardianship/Conservatorship	MAY NEED

MPC 973 (2/1/17)

## When Can I Get/Use a License to Sell?

**Even if there is a Power of Sale in a Will**

**Petition within 1 year from the date of Bond**

**Must be used within 1 year of date issued**

**IMPORTANT!**

**MUST include the correct description**

**MUST reflect the percentage interest of the decedent**

**Conveyance MUST be for the value of the Decree  
(can be for more BUT NEVER LESS)**

# Example

<b>PETITION FOR SALE OF REAL ESTATE</b> G. L. c. 202, § 19		Docket No. <b>HD19P1948EA</b>	Commonwealth of Massachusetts <b>The Trial Court</b> Probate and Family Court	
Estate of:		<b>Stevon</b> First Name	<b>G.</b> Middle Name	<b>Elliott</b> Last Name
Date of Death:		<b>November 7, 2008</b>		

### I. GENERAL INFORMATION

The Petitioner(s) (hereafter "Petitioner") makes the following statements:

1. The Petitioner is the Personal Representative of the estate:

Name: Linda Moto  
First Name Last Name  
Address: 203 Dearborn Road Pembroke NH 03275  
(City/Town) (State) (Zip)  
Mailing Address, if different: \_\_\_\_\_  
Primary Phone #: (603) 340-1482

2. The court examined and approved the Personal Representative's bond on October 8, 2019. The bond was  
(Date)  
 without surety OR  with personal OR  corporate surety in the total sum amount of \$ \_\_\_\_\_

**FORM ALERT:** The Inventory form (MPC 854) must be filed with this Petition.

3. Any lien for tax imposed by G. L. c. 96C has been released or discharged as evidenced by the following document filed with this Petition:

a closing letter, a release, or a discharge from the Commissioner of Revenue.

OR

- an affidavit of the Personal Representative signed under the penalties of perjury stating that the above estate does not necessitate a Massachusetts estate tax filing.

4. The Division of Medical Assistance  is not interested OR  is interested:

due to the filing of a written statement of claim against the estate pursuant to G. L. c. 118E, § 32C(1).

due to the filing of a notice of claim that an action has been commenced pursuant to G. L. c. 190B, § 3-803(f).

**FORM ALERT:** If interested, the Personal Representative must give notice by citation (if not assented to) of this Petition by certified mail to the Division of Medical Assistance, Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205.

### II. REAL ESTATE

5. The Decedent was at the time of his or her death

the owner of a 25% interest in certain real estate located at:

10 King Street Westfield MA 01085  
(Address) (City/Town) (State) (Zip)

county of: Hampden

MPC 219 (3/1/17)

page 1 of 2

# Example

Bounded and described on an attachment (include docket number and case name on the attachment)  
 Title Reference: Hampden County Book 1157 Page: 305 or Certificate of Title No. \_\_\_\_\_  
 the same being  all  part of the real estate of the Decedent.

**FORM ALERT:** A description of the real estate with the docket number and case name clearly legible must be attached to this Petition.

- 6. That it is for the advantage of all parties interested that the same be sold.
- 7. That an advantageous offer for the purchase of the real estate has been made to the Personal Representative in the sum of Twenty-Six Thousand Two Hundred Fifty dollars (\$ 26,250.00 of which is decedent's 25% interest
- 8. If any heirs or devisees have conveyed or mortgaged his/her interest in the property to a third person, list the third person's name, address, and nature of his/her interest below.

**FORM ALERT:** Do NOT include the names of heirs, devisees, or the Decedent's mortgage.

NAME OF HEIR, DEVISEE, OR MORTGAGEE	ADDRESS	NATURE OF INTEREST

### III. RELIEF REQUESTED

Wherefore the Petitioner requests that the court authorize the Personal Representative to sell the real estate:

- at a private sale in accordance with said offer or for a larger sum.
- at a public auction upon the following terms:

AND

- that the Personal Representative may become the purchaser of the real estate.

### SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: October 10, 2019 Signature of Petitioner: Linda Malo

Information on Attorney for Petitioner, if any: Signature of Attorney: Karen A. Adamski  
 Name: Karen A. Adamski

26 Main Street PO Box 285  
 (Address) (City, Unit, No., etc.)  
Easthampton MA 01027  
 (City/Town) (State) (Zip)  
 Primary Phone #: (413) 527-4600  
 B.B.O. # 960516  
 Email: attorneykadamski@gmail.com





# Petition for License for Debts and Expenses

Commonwealth of Massachusetts  
**The Trial Court**  
**Probate and Family Court Department**

Division \_\_\_\_\_ Docket No. \_\_\_\_\_

**SALE OF REAL ESTATE**  
**ADMINISTRATOR - EXECUTOR**  
**DEBTS, LEGACIES, CHARGES OF ADMINISTRATION**

Name of Deceased \_\_\_\_\_ Date of Death \_\_\_\_\_  
 Domicile at Death \_\_\_\_\_  
(street address) (city or town) (zip)

TO THE HONORABLE JUSTICES OF THE PROBATE AND FAMILY COURT  
 RESPECTFULLY represent(s) \_\_\_\_\_ and \_\_\_\_\_

administrator/trix of the estate  executor/trix of the will - of \_\_\_\_\_

That the debts due from the deceased, as nearly as they can now be ascertained,  
 as shown by the list herewith filed, amount to \$ \_\_\_\_\_  
 The legacies given in the will amount to \$ \_\_\_\_\_  
 The charges of administration amount to \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_

The value of the personal estate in the hands of the petitioner(s) (exclusive of the widow's allowance) is \$ \_\_\_\_\_

The personal estate is therefore insufficient to pay the debts - legacies - and the charges of administration, and it is necessary for that purpose to sell

some  all of the real estate to raise the sum of \$ \_\_\_\_\_  
 An advantageous offer for the purchase of the real estate hereinafter described has been made to the petitioner(s) in the sum of \$ \_\_\_\_\_

The real estate which the petitioner(s) propose(s) to sell is situated in \_\_\_\_\_  
 in the County of \_\_\_\_\_, bounded and described as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I/We certify that the estate of the deceased  does  does not exceed \$1000 in value.  
 WHEREFORE your petitioner(s) request(s) that he/she/they may be authorized to sell the real estate of the deceased  at private sale in accordance with this offer, or  at public auction for a larger sum for the payment of these debts - legacies - and charges of administration upon the following terms: \_\_\_\_\_  
 \_\_\_\_\_

and that he/she/they may become the purchaser(s) of this real estate.



# Petition for License for Debts and Expenses

I/We certify under the penalties of perjury that the following is, to the best of my/our knowledge and belief, a list of debts which appear due from the estate of \_\_\_\_\_

Name of Creditor	Residence, or Usual Place of Business	Nature of Debt	Security	Amount

Moreover, the petitioner(s) certify/certifies that MassHealth  is  is not an interested party in this matter due to:

the filing of a written claim against the estate pursuant to G.L. c. 118E, s 32.

the filing of a Notice of Claim pursuant to G.L.c. 197, s 9(d).

Notice of this petition has been sent to MassHealth, P.O. Box 15205, Worcester, Massachusetts 01615-0205., if required

Date \_\_\_\_\_

\_\_\_\_\_  
 Administrator /trix                       Executor /trix

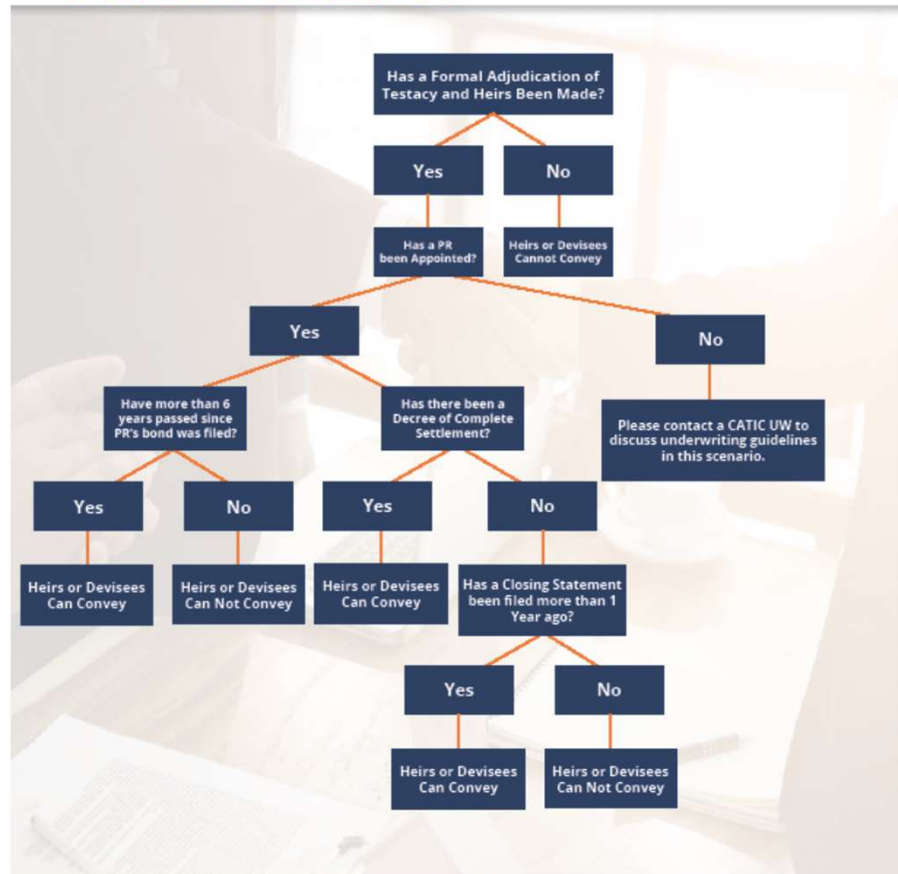
\_\_\_\_\_  
 Administrator /trix                       Executor /trix

The undersigned, being all persons interested, assent to the foregoing petition.

Print Name	Residence	Relationship	Check if Applicable	Sign if you assent to the Petition
			<input type="radio"/> Minor <input type="radio"/> Incompetent	
			<input type="radio"/> Minor <input type="radio"/> Incompetent	

# When Can the Heirs/Devises Convey?

## CAN THE HEIRS/DEVISEES CONVEY MA REAL PROPERTY?



**IMPORTANT!**

**Heirs MUST be determined**

**Testacy MUST be determined**

**Estate MUST be complete**

## “Kinship” Affidavits

In limited circumstances an affidavit as described in REBA Title Standard 14, can be used in place of a probate proceeding:

- died intestate
- more than 25 years ago
- with no probate proceedings open anywhere

or

If Decedent died more than 50 years ago and instruments recorded in the chain of title identify the heirs, you can rely on that information for the identity of the heirs.

## REBA TS 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

## REBA TS 40 Transfers by Devisees Under a Will Containing a Power of Sale

Title dependent on a deed from the devisees under a **duly allowed or admitted will** giving the personal representative a discretionary, as opposed to a mandatory power of sale, is not defective by reason of the failure of the personal representative to join in said deed if:

(1) The testator died on or before March 30, 2012, and:

(a) the probate case includes an allowed final account showing payment of all debts, legacies and expenses of administration;

or

(b) a period of six years has passed from the date of approval of the bond and no outstanding claims appear in the estate;

or

(2) The testator died on or after March 31, 2012, and:

(a) the probate case includes a Decree and Order of Complete Settlement;

or

(b) the estate was opened formally and more than one year has passed since the filing of a Closing Statement (MPC 850) by the personal representative showing payment of all debts, legacies and expenses of administration;

or

(c) the estate was opened informally, more than one year has passed since the filing of a Closing Statement (MPC 850) by the personal representative showing payment of all debts, legacies and expenses of administration, and three years has passed since the date of death without the filing and allowance of a superseding formal probate;

or

(d) a period of six years has passed from the date of approval of the bond and no outstanding claims appear in the estate.

or

(3) The decedent's will is admitted to probate in a **late and limited** proceeding, pursuant to M.G.L. c. 190B § 3-108(4).

## What's a "Late and Limited"?

- **Decedent died after 3/31/2012**
- **More than 3 years have passed since the date of death**
- **FORMAL process to determine testacy and heirs**
- **PR appointment is optional but LIMITED**
  - **Cannot Exercise a Power of Sale in a Will**
  - **Cannot obtain a License to Sell**



## LAND COURT GUIDELINE #14

- **Petition for a New Certificate**
- **Deed Approval**



## Taking Titles from Estates

# Questions





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