

### **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;



#### **REBATS 10**

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

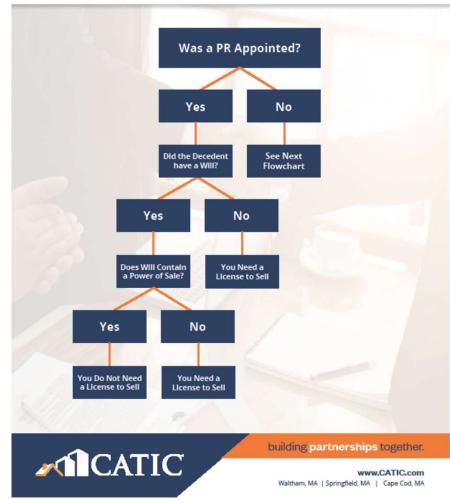
- The deed of:
- (1) an executor, or
- (2) an administrator CTA, or
- (3) a personal representative under a will in a formal proceeding under M.G.L. c. 190B, or
- (4) a personal representative under a will in an informal proceeding under M.G.L. c. 190B conforming to the provisions of <u>Title Standard</u> 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 WITH	OUT A WILL
Form/Document Name	Required or May Need
☐ Petition for Sale of Real Estate (MPC 210)	REQUIRED
☐ Description of real estate (attached to Petition)	REQUIRED
☐ Inventory (MPC 854)	REQUIRED
☐ 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
☐ Military Affidavit (MPC 470)	REQUIRED (unless the petition is assented to by all interested persons)
☐ Citation — Return of Service (MPC 560)	REQUIRED (unless the petition is assented to by all interested persons and publication is NOT required)
☐ Proposed Decree on Petition for Sale of Real Estate (MPC 794)	REQUIRED
☐ Proof of Informal Publication, if applicable	REQUIRED
□ 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)
☐ Assent and Waiver of Notice/Renunciation/Nomination/ Waiver of Sureties (MPC 455)	MAY NEED
☐ 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



SALE OF REAL ESTATE  G. L. c. 202, § 19.    Bestign of   C.   C. 202, § 19.   Bestign of   C.   C. 202, § 19.   Date of Doath:   Movember 7, 2008   L. GENERAL INFORMATION     The Petitioner(a) (herisafter "Petitioner") makes the following statements:   I. The Petitioner's makes the Personal Representative's bord on:   October's 8, 2019   The bolistic makes the following decorrority of the Petition of the Personal Representative's bord on:   October's 8, 2019   The bolistic makes the petition of the Petition of the Petition of the Petition of the Commissions of Revenue.   OR		PET	THON FOR		Docket No.	, I. ¢	OUILIDUMB	th of Mass	echusetta
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The Petitioner(s) (hereafter "Petitioner") makes the following statements:  1. The Petitioner is the Personal Representative of the estate:  Non-e:    Linda   Pembroke   NH   03275	Date of D	Death:	Nove	mber 7, 2008.					
The Petitioner(s) (herisafter "Petitioner") makes the following statements:  1. The Petitioner is the Personal Representative of the estate:    Non-e:				I ČENE	AL INTORKAT	inal "			
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Primary Phone #: [683] 340-4482  2. The court examined and approved the Personal Representative's bord on: October 8, 2019. The bonds (RES)  Without surety OR  with personal OR corporate surety in the personal surriamount of \$.  FORM ALERT: The Inventory form [MPC 886] must be filled with this Patition.  3. Any liter for tax imposed by G. L. c. 86C has been released or discharged as evidenced by the following documentiative with this Polition:  a closing letter, a release, or a discharge from the Commissions of Revenue.  CR  an efficient of the Personal Representative signed under the penalties of perjury stating that the progressive disc independent of the Personal Representative signed under the penalties of perjury stating that the progressive disc independent of the filling of a written statement of claim against the estate pursuant to G. L. c. 118E. § 320-3(1).  I did to the filling of a spice of claim that an action has been commenced pursuant to G. L. c. 1908; § 3-503(f).  FORM ALERT: if interested, the Personal Representative must give notice by cliation (if not assented to) of this Petition by certified mail to the Division of Medical Assistance, Estate Recovery Unit, P.O. Box 1920s, Worseston MA 01816-0206.  5. The Decedent was at the time of his or her death the owner of a 25% (Note that the Color of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section (Claim of the Civil Not Section of the Civil Not Section of the Civil Not Section of th			(yquicae)	i (Api, Jnl	(Nn. ren.)	- (Gity/Town)		(51ate)	· (2lp)
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### **Example**

Title:Reference: Hamp				se hame on the el	
the same belito 🗵 all 🗆					
FORM ALERT: A description to this Patition.	n of the roal estate t	with the docket num	ber and case n	amu clearty legit	is must be attached
8. That it is for the advantage	୍ଦିର ବର୍ଦ୍ଦ <b>ଆ</b> ପ୍ରତମାର Interes	sted that the same be	eold.		
7. Täet an advantageous off	er for the purchase o	f the real estate has h	een made ooth	e Personal Ranga	sentative in:
the sum of Twenty-Stx 7		dred Fifty dolla	is (\$ 26,250.00	of which is	diadent) 5 25 % 11
<ol> <li>If any heirs or devisees he name, address; and natur</li> </ol>	ave conveyed or mor ë of higher interest (	tgaged his/her interee elcw.	t in the property	to a third person.	list the third person's
FORM ALERT: Do NOY linds	ada the names of h	elrs, devisees, or the	Decedent's m	ortgage.	
BANE OF THE PAR	man *	A PADINGS		L Mary	
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	× 4	II. RELIEF REQUES	ED	· · · · ·	
Arcrefore the Petitioner rec	queste that the cou	t authorize the Pers	onal Represen	tative to sell the	eal estate:
et a private sale in acco	rdence with said offe	r or for a larger sum.			
st a public audition upor	the following terms:				
AND	· Y		+ 14, T		
that the Personal Repre	sentative may become	ne the purchaser of th	e real éstate.		
serviy uncertise ponalties of	perjury that the fore	THE PENAL going statements are	true to the heat.		and belief.
ormalian on Altorney for Petit	tioner, if any	KA	11/1	danske	
		∵ Signatúré,for Anto		n A. Adamski	
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			- Wadressi - Saathamistan	1.11 1.	(Aai, Unil, Va. etc.)
	÷ .		(abtrown	- 12	MA 01027
			#. (413) 527-	4600	
· / 1		. B.B.O. # 9604 Email: attor	neykadamski(	Zamall.com	
· · · .					



# Petition for License for Debts and Expenses

Division	-	The Trial Court	Docket No.	
		Probate and Family Court Department  SALE OF REAL ESTATE  ADMINISTRATOR - EXECUTOR	_	
		DEBTS, LEGACIES, CHARGES OF ADMII		
Name of Deceased		Date of D	)eath	
Domicile at Death				_
TO THE HONORABLE III	ISTICES	(street address)  OF THE PROBATE AND FAMILY COURT	(city or town)	(zlp)
RESPECTFULLY represe				a
	`—			
administrator/trix of the	e estate	executor/trix of the will - of		
That the debts due from the as shown by the list herewit	e deceased, th filed, am	as nearly as they can now be ascertained, ount to	\$	
The legacies given in the w	ill amount t	0	\$	
The charges of administrati	on amount	to	\$	
Total			\$	
The value of the personal e the widow's allowance) is	state in the	hands of the petitioner(s) (exclusive of	\$	
		cient to pay the debts - legacies - and the essary for that purpose to sell	<u>-</u>	
some all of the	real estate	to raise the sum of	\$	
An advantageous offer for t has been made to the petit		e of the real estate hereinafter described he sum of	\$	
The real estate which the	petitioner(	s) propose(s) to sell is situated in		
in the County of		, bounded an	d described as follows:	
2				
ž				
1				
I/We certify that the estate	of the dec	eased 🗌 does 🗎 does not exceed \$1000 in	value.	
WHEREFORE your petition	oner(s) req	uest(s) that he/she/they may be authorized to sell t	the real estate of the de	ceased
at private sale in acco	rdance with	n this offer, or at public auction for a larger sum	for the payment of the	se debts -
	administra	tion upon the following terms:		

Commonwealth of Massachusetts



# Petition for License for Debts and Expenses

Name of Creditor	Residence, or Usual Place Business	Nature of Debt	Security	Amount
				8
reover, the petitioner(s) cert	ify/oertifies that MassHealth	s	ested party in this	matter due to:
the filing of a written of the filing of a Notice of the filing of a Notice of	ify/certifies that MassHealth is it is a magainst the estate pursuant to F Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 15	G.L. c. 118E, 5 32.		
the filing of a written of the filing of a Notice of the filing of a Notice of	laim against the estate pursuant to f Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 15	G.L. c. 118E, s 32. (d). (205, Worcester, Mass	achusetts 01615	<b>0205.</b> , if required
the filing of a written of the filing of a Notice of the filing of a Notice of	laim against the estate pursuant to f Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 15	G.L. c. 118E, 5 32.	achusetts 01615	
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the filing of a written of the filing of a Notice of tice of this petition has been	laim against the estate pursuant to F Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 16	G.L. c. 118E, s 32.  (d).  6205, Worcester, Mass  Administrator/trix	achusetts 01615	<b>-0205.</b> , if required Executor / trix
the filing of a written of the filing of a Notice of this petition has been	aim against the estate pursuant to Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 16	G.L. c. 118E, s 32.  (d).  5205, Worcester, Mass.  Administrator/trix  Administrator/trix  going petition.	achusetts 01615	<b>0205.</b> , if required Executor /trix Executor /trix
the filing of a written of the filing of a Notice of the filing of a Notice of the petition has been be	aim against the estate pursuant to Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 16	G.L. c. 118E, s 32.  (d).  5205, Worcester, Mass.  Administrator/trix  Administrator/trix  going petition.	achusetts 01615	0205., if required  Executor /trix  Executor /trix  if you assent to the
the filing of a written of the filing of a Notice of tice of this petition has been te	aim against the estate pursuant to Claim pursuant to G.L.c. 197, s 9 sent to MassHealth, P.O. Box 16	G.L. c. 118E, s 32.  (d).  (d).  (205, Worcester, Mass.  Administrator/trix  Administrator/trix  going petition.  elationship  Check if A	achusetts 01615	0205., if required  Executor /trix  Executor /trix  if you assent to the

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



#### When Can the Heirs/Devisees Convey?

#### **MA REAL PROPERTY?** Has a Formal Adjudication of Testacy and Heirs Been Made? Yes No Has there been a Decree of Complete Settlement? years passed since PR's bond was filed? Please contact a CATIC UW to discuss underwriting guidelines in this scenario. Yes No Yes Heirs or Devisees Has a Closing Statement been filed more than 1 Heirs or Devisees Heirs or Devisees Can Convey Can Convey Can Not Convey Year ago? Heirs or Devisees Heirs or Devisees Can Not Convey Can Convey building partnerships together. **✓**✓ CATIC www.CATIC.com Waltham, MA | Springfield, MA | Cape Cod, MA

**CAN THE HEIRS/DEVISEES CONVEY** 



#### **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;

OI

(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;

OI

(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





## Questions









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Direct: (781) 810-0394 Email: ncox@catic.com