

**Fact Pattern-
Primary Players**

- Decedent **DONNA**
- Husband/Ex of Decedent **HARRY**
- Adult Son **ANDY**
- Adult Daughter **DEBRA**
- Minor Daughter **MARY**
- Second Spouse of Decedent **SUE**

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**Fact Pattern-
Secondary Players**

- Child of Decedent but not Spouse
(spouse's step child) **SANDRA-DEE**
- Child of Spouse but not Decedent
(decedent's step child) **SHANE-SCOTT**
- Brother of Decedent **BOB**

General Assumption

Donna died domiciled in Massachusetts on
January 2, 2012 and it is now March 1, 2012.

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FAMILY PROTECTIONS

Exempt Property and Discretionary Family Allowances replace allowances to widows and children under c.196 (repealed).

These rights are in addition to, and shall not be charged against, any benefit or share derived:

- Under the will (unless otherwise provided in the will)
- By intestate succession or
- By elective share

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Exempt Property

Where a decedent dies domiciled in Massachusetts, there is a \$10,000 Exempt Property allowance in favor of:

the surviving spouse;

OR

if no surviving spouse,
decedent's children (whether minors or adults) jointly.

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Exempt Property

The value of the Exempt Property comes first from the equity (value – loans = equity) in:

- household furniture
- automobiles
- furnishings
- appliances
- personal effects

Provided the item is not specifically devised and the estate is sufficient.

If the equity in these assets is less than \$10,000, the remaining balance may be taken from other assets of the estate, if any.

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Discretionary Family Allowance

For purposes of providing support during the period of administration, a PR may pay a "reasonable" monetary allowance for the benefit of the surviving spouse and decedent's children (whether minor or a dependent adult).

Unless otherwise ordered by the Court, the "reasonable" amount cannot exceed either:

- \$18,000 in a lump sum payment or
- up to \$1,500 per month for up to 1 year.

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Discretionary Family Allowance

The PR may determine the amount and terms of the family allowance in his/her discretion.

The PR or any aggrieved person may file a General Petition for Partial Distribution requesting the Court determine the family allowance or provide other appropriate relief.

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Discretionary Family Allowance

If someone receiving a periodic family allowance dies, the right to any unpaid family allowance terminates as to that person.

If there is a supervised administration, a payment of the discretionary family allowance requires specific court approval.

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Discretionary Family Allowance

When Decedent is survived by:	Payment from PR is:
Spouse and no minor or adult dependent children.	To the surviving spouse
Spouse and minor or adult dependent children all of whom reside with surviving spouse.	To the surviving spouse.
Spouse and minor or adult dependent children where some or all of the children do not reside with surviving spouse.	Partially to the surviving spouse and partially to the children (or the child's guardian or custodian) in the PR's discretion.
No surviving spouse but minor or adult dependent children.	To the children or the child's guardian or custodian in the PR's discretion.

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FAMILY PROTECTIONS

Fact Pattern 1

Donna dies leaving her spouse Harry and their 3 children, Andy, Debra and Mary, a minor. Harry is appointed PR of her estate which consists of her unincorporated bakery, \$45,000 and the house, where Donna lived with Harry and Mary, and its contents. Harry is concerned that the bakery may have major debts and wants to ensure that the family is provided for first.

What are Harry's options?

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FAMILY PROTECTIONS

Answer to Fact Pattern 1

The household furnishings, appliances and Donna's personal effects of up to \$10,000 are exempt property and are not considered part of the estate. In addition, Harry may pay himself a monetary allowance for his and any minor or dependent children's benefit. The allowance may be in an amount up to \$1,500 per month for up to a year or a lump sum of up to \$18,000. Since Andy and Debra do not reside with Harry, he may apportion the family allowance among all the children and himself as he believes their needs require provided any such adult child is dependent on him.

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FAMILY PROTECTIONS

Fact Pattern 2

CHANGE FACT PATTERN 1:

Donna dies leaving her spouse, Sue, and her 3 children from her marriage to Harry: Andy, Debra and Mary, a minor. Sue is appointed PR of her estate which consists of her unincorporated bakery, \$45,000 and the house where Donna lived with Sue and its contents. Mary lives with Harry and Harry had been receiving monthly child support from Donna in the amount of \$500. Harry and Sue do not get along. Harry learns from Andy that Sue plans to pay herself \$12,000 as a family allowance. Harry asks Sue for a family allowance for Mary. Sue sends him \$500, saying that she will send this amount each month for the next year. Harry wants more.

What are Harry's options?

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FAMILY PROTECTIONS

Answer to Fact Pattern 2

Sue is the PR and therefore she may, in her discretion, decide what a "reasonable" family allowance is given the circumstances. Harry may file a General Petition for Partial Distribution and request the Court determine the amount of family allowance for Mary. Andy and Debra are also entitled to a family allowance and may request an allowance from Sue, file their own General Petition for Partial Distribution or join with Harry and file a Petition requesting the Court determine the family allowance for Sue, Andy, Debra and Mary.

Andy, Debra or Harry could also request a Supervised Administration which would prohibit Sue from making any family allowance distribution to herself or any of Donna's children without prior Court approval.

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