

Logistics

Time
Break
Lunch
Facilities

All slides copyright Massachusetts
Trial Court 2011

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Because we adopted the MA version of the UPC, which is a law that is substantially identical in the 18 states that have adopted it. The "MUPC" substantially changes our practice of estate administration.

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GOAL

Provide you with knowledge of the changes resulting from the enactment of the MUPC and how the changes affect your job.

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OVERVIEW OF DAY ONE

- Compare old and new laws
- Introduce new or different concepts
- Introduce fact pattern to illustrate basic concepts of the Code where there is will and where there is not
- Discuss options available
- Vary the fact pattern to illustrate changes based on the facts and circumstances

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DAY TWO AND BEYOND

-Job Specific Sessions-

- Review
- Procedural Guideline
- Checklists
- Blank and Completed Forms
- Evaluating Filings
- Docketing/MassCourts
- DVD of Materials
- Hotline

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INTRODUCTION

- Things that have NOT CHANGED
 - Public Administration
 - Absentees
 - Sale of Real Estate
- Things that have MINIMAL CHANGES
 - Foreign Fiduciaries
 - Voluntaries
 - Insolvency
 - Notice in Formal Proceedings to Probate A Will

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INTRODUCTION

What HAS changed....



EVERYTHING ELSE!!!

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REPEALED STATUTES

as of 01/02/12

- c. 189 **Dower and Curtesy**
- c. 190 **Descent & Distribution of Real
and Personal Property**
- c. 190A **Simultaneous Death**
- c. 191A **Disclaimer of Property Interests**
- c. 192 **Probate of Wills**
- c. 193 **Appointment of Administrators**
- c. 195 **Executors and Administrators**

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MORE REPEALED STATUTES

as of 01/02/12

- c. 196 **Allowances and Advancements**
- c. 197 **Payments**
- c. 199A **Foreign Fiduciaries**
- c. 201B **Durable Power of Attorney**
- c. 201C **Statutory Custodianship Trusts**
- c. 201E **Uniform Transfer on Death
Security Registration Act**

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REPEALED IN PART STATUTES

as of 01/02/12

SUBSTANTIALLY

- | | |
|------------------------------------|-------------------------------------|
| c. 191: 1-14, 17-30 | Wills |
| c. 198: 1-7, 8-10, 11-33 | Insolvent Estates |
| c. 203: 3B, 5-14A, 15-39 | Trusts |
| c. 204: 3-3A, 13-18, 37 | Sales-Mortgages |
| c. 205: 2-4, 6, 7-8 | Bonds |
| c. 206: 1,16, 18,
20-22, 23A-30 | Accounts and
Settlements |

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**MORE REPEALED IN PART
STATUTES**

as of 01/02/12

- c. 65C: 5 & 5A **Taxation of Legacies and Successions**
- c. 184: 33A & 33B **General Provisions Relative to Real Property**
- c. 184A: 1-4, 6 & 11 **Statutory Rule Against Perpetuities**
- c. 186: 1 **Estates for Years and at Will**
- c. 215: 8, 30B **Probate Courts**
- c. 259: 5 & 5a **Prevention of Frauds and Perjuries**

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AMENDED STATUTES

as of 01/02/12

- c. 114, 32 **Right of Wife to Interment; Release**
- c. 205, 1, 5, 6A **Bonds**
- c. 210, 7 **Adoption of Children**

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New or Different Concepts

The provisions of the MUPC describe the flexible system of administration of a Decedent's Estate. It is designed to be applicable to both intestate and testate estates and to provide persons interested in a decedent's estate with as little or as much by way of procedural and adjudicative safeguards as may be suitable in varying circumstances.

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Overview of the Code's Articles

Article	Content
1	GENERAL PROVISIONS, DEFINITIONS & PROBATE JURISDICTION OF COURT
2	INTESTACY, WILLS & DONATIVE TRANSFERS
3	PROBATE OF WILLS & ADMINISTRATION
4	FOREIGN FIDUCIARIES
5	PROTECTION OF PERSONS UNDER DISABILITY & THEIR PROPERTY
6	NONPROBATE TRANSFERS ON DEATH
7	TRUST ADMINISTRATION 16

Overview of Article 3

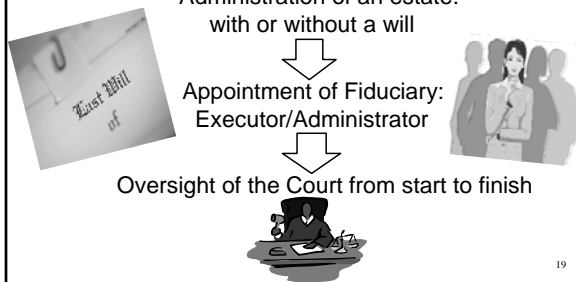
Article 3 Part	Content
1	GENERAL PROVISIONS
2	VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE
3	INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS
4	FORMAL TESTACY AND APPOINTMENT PROCEEDINGS
5	SUPERVISED ADMINISTRATION
6	PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY 17

Overview of Article 3

Article 3 Part	Content
7	DUTIES AND POWERS OF PERSONAL REPRESENTATIVES
8	CREDITORS' CLAIMS
9	SPECIAL PROVISIONS RELATING TO DISTRIBUTION
10	CLOSING ESTATES
11	COMPROMISE OF CONTROVERSIES
12	COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES 18

New or Different Concepts

Historically, 3 elements have been linked:



New or Different Concepts

Now, these 3 elements are **UNCOUPLED**

It is now possible to probate a will without appointing a fiduciary.



It is now possible to appoint a fiduciary without determining intestacy (but if there is a will, it must be probated to have a fiduciary appointed).



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New or Different Concepts

Persons interested in estates may now use an **"IN AND OUT"** relationship with the Court so that any questions relating to the estate may be resolved by the Court without necessarily subjecting the whole estate to Court oversight.



**NOTHING EXCEPT
SELF-INTEREST WILL
COMPEL RESORT TO THE JUDGE.**

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New or Different Concepts

Under the MUPC, the following methods to probate a will/determine intestacy, and/or appoint a personal representative are available:

- Informal (non-adjudicated determination)
- AND/OR
- Formal: unsupervised or supervised (judicial determination after notice to all interested persons)

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New or Different Concepts Informal v. Formal Petition Options

Petition for Informal:

Without a will

Appoint a PR (with priority)

With a will

1. Probate a will; **OR**
2. Probate a will **AND** appoint a PR (with priority).

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New or Different Concepts Informal v. Formal Petition Options

Petition for Formal:

WITHOUT A WILL

1. Determine Heirs; **OR**
2. Adjudicate intestacy & determine heirs; **OR**
3. Appoint a PR, adjudicate intestacy & determine heirs; **OR**
4. Appoint a PR.

WITH WILL

5. Determine Heirs; **OR**
6. Adjudicate testacy; **OR**
7. Appoint PR & adjudicate testacy; **OR**
8. Appoint PR (only after testacy has previously been determined informally or formally).

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**Old versus New:
Types of Proceedings**

<p style="text-align: center;"><u>OLD LAW WITH A WILL</u></p> <ul style="list-style-type: none"> • Voluntary Executor • Petition for Probate of Will • Petition for Administration CTA 	<p style="text-align: center;"><u>NEW LAW WITH A WILL</u></p> <ul style="list-style-type: none"> – Voluntary Statement – Informal Petition – Formal Petition
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**Old versus New:
Types of Proceedings**

<p style="text-align: center;"><u>OLD LAW WITHOUT A WILL</u></p> <ul style="list-style-type: none"> • Voluntary Administrator • Petition for Administration 	<p style="text-align: center;"><u>NEW LAW WITHOUT A WILL</u></p> <ul style="list-style-type: none"> – Voluntary Statement – Informal Petition – Formal Petition
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**Old versus New:
STATUTE OF LIMITATIONS**

<p>• <u>OLD LAW</u></p> <p>Generally, no Statute of Limitations for filing</p>	<p>• <u>NEW LAW</u></p> <p>Generally, new 3 year Statute of Limitations for filing</p>
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Old versus New: Types of Fiduciary

<ul style="list-style-type: none"> • <u>OLD LAW</u> <ul style="list-style-type: none"> - Executor/trix - Administrator/trix - CTA - DBN - DBN CTA - Special Administrator - Public 	<ul style="list-style-type: none"> • <u>NEW LAW</u> <ul style="list-style-type: none"> - Personal Representative (PR) - Supervised PR - Successor PR - Special PR - Public
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Old versus New: Temporary Fiduciary

<ul style="list-style-type: none"> • <u>OLD LAW</u> <ul style="list-style-type: none"> - WITH A WILL <ul style="list-style-type: none"> • Motion to Appoint a Temporary • Petition for Special Administration - WITHOUT A WILL <ul style="list-style-type: none"> • Petition for Special Administration 	<ul style="list-style-type: none"> • <u>NEW LAW</u> <ul style="list-style-type: none"> - INFORMAL <ul style="list-style-type: none"> • Not permitted - FORMAL <ul style="list-style-type: none"> • WITH OR WITHOUT A WILL <ul style="list-style-type: none"> - Prayer in Petition ("other") and motion for Special PR OR - Petition for Special PR
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Old versus New: INFORMAL- PETITION AND NOTICE

<ul style="list-style-type: none"> • <u>OLD LAW</u> <ul style="list-style-type: none"> - File Petition for Administration or Petition for Probate of Will, will is filed or on file - Citation (including publication, if necessary). NOTICE AFTER FILING. 	<ul style="list-style-type: none"> • <u>NEW LAW</u> <ul style="list-style-type: none"> - Notice mailed by petitioner before filing. NOTICE BEFORE FILING. - File Petition for Informal Probate of Will and/or Appointment of PR, will is filed or on file - Publication AFTER Order.
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**Old versus New:
INFORMAL –
REPRESENTATION**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – Guardian <i>ad litem</i> for IP, PP or minors or unborn or unascertained 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – No question of GAL possible
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**Old versus New:
INFORMAL-DETERMINATION**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – Allowance of Probate by Court and appointment of fiduciary – Appropriate Bond filed – Certified copy of Decree or Cert. of Appointment 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – Determination by Magistrate and issuance of Order – Appropriate Bond filed – Letters – Publication Notice after Order – Proof of publication not required to be filed
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**Old versus New:
FORMAL - PETITION & NOTICE**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – File Petition for Administration or Petition for Probate of Will – Issuance of Citation by Court – Service of Citation (including publication, if necessary) 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – File Petition for Formal Testacy &/or Appointment of PR – File Will (if any) with Petition – Issuance of Citation by Court – Service of Citation (always published)
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**Old versus New:
FORMAL – REPRESENTATION**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – Guardian <i>ad litem</i> for IP, PP or minors or unborn or unascertained 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – Parental Representation for minors or virtual representation for unborn or unascertained persons possible in lieu of Guardian <i>ad litem</i>
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**Old versus New:
FORMAL - ALLOWANCE**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – Allowance of Petition by Court and appointment of fiduciary – Appropriate Bond filed – Certified copy of Decree or Cert. of Appointment 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – Determination of testacy/heirs &/or appointment of PR by Court or Magistrate – Appropriate Bond filed – Letters
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**Old versus New:
INFORMALS-CONTEST**

<ul style="list-style-type: none"> • <u>OLD LAW</u> – Rule 2: Notice of Appearance filed before Return date – Rule 16: Affidavit of Objections filed within 30 days of Return date 	<ul style="list-style-type: none"> • <u>NEW LAW</u> – Must file a Petition for Formal Testacy &/or Appointment to object <ul style="list-style-type: none"> • If no Informal appointment already allowed, action for appt. stayed • If Informal appt. already allowed, no distribution after receipt of notice. Further restrictions may be ordered.
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Old versus New: FORMALS-CONTEST

OLD LAW

- Rule 2: Notice of Appearance filed before Return date
- Rule 16: Affidavit of Objections filed within 30 days of Return date

NEW LAW

- Rule 2: Amended
- Rule 16: Repealed
- 4-401 requires Affidavit of Objections within 30 days – similar to Rule 16

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Old versus New: UNSUPERVISED PR - INVENTORY

• OLD LAW

- Inventory warrant issued by the Court
- Original Inventory filed within 90 days

• NEW LAW

- Inventory not issued by Court
- PR shall file or mail to all interested persons a **copy** of Inventory within 90 days
- PR **may** file original with court (but must be Court promulgated form)

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Old versus New: UNSUPERVISED PR -ACCOUNTS

• OLD LAW

- Must file Annual Accounts and Final Account with the Court
- Allowance of Annual Accounts required
- Allowance of Final Account required

• NEW LAW

- Filing of Annual Accounts not required
- Interim Accounts may be filed
- Filing of Final Account not required unless ordered by Court or on a Petition for Complete Settlement of Estate

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Old versus New:
UNSUPERVISED PR - CLOSING

• OLD LAW

- Allowance of Final Account closes the estate and discharges fiduciary's liability
- Fiduciary's power over estate continues until death, resignation or removal

• NEW LAW

- Filing of a Small Estate Closing Statement OR Closing Statement
- Allowance of Petition for Complete Settlement of Estate with final account closes the estate and discharges fiduciary's liability
- Fiduciary's power over estate continues until incapacity, death, resignation or removal

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Old versus New:
SUPERVISED PR - CLOSING

• OLD LAW

- Allowance of Final Account closes the estate and discharges fiduciary's liability.
- Fiduciary's power over estate continues until death, resignation or removal

• NEW LAW

- Allowance of Petition for Complete Settlement of Estate with final account closes the estate and discharges fiduciary's liability
- Fiduciary's power over estate continues until death, resignation or removal

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New or Different
Concepts

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New or Different Concepts

- Heirs at law classification has changed
- There is an order of priority for appointment
- Magistrate
- Notice
- 3 year basic statute of limitations from date of death for filing a proceeding
- Demand for Sureties on the Bond

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New or Different Concepts (cont'd)

- Guardians *ad litem*/Virtual Representation
- Supervised Administration
- Special Personal Representative
- Successor Personal Representative
- Exempt Property & Family Allowances
- Settlement and Distribution

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