

## MUPC FACT PATTERNS

- Options with a Will
  - For Administration of the Estate
  - For Appointment of a Fiduciary
- Options without a Will
  - For Administration of the Estate
  - For Appointment of a Fiduciary

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## MUPC OPTIONS

(WITH A WILL)

### 1. TO ADMINISTER THE ESTATE

- Voluntary Administration
- Informal Proceeding
- Formal Testacy

### 2. FOR APPOINTMENT OF PR

- Informal Appointment
- Formal Appointment
- Supervised Administration
- Special Appointment

### 3. FOR COURT OVERSIGHT

- Unsupervised Administration - No oversight
- In and Out
- Supervised Administration – Full oversight

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## VOLUNTARY ADMINISTRATION

(WITH A WILL)

### Elements

- No statute of limitation
- Priority ladder does not apply
- Thirty (30) days must have passed since date of death
- Decedent cannot own real estate at the time of his or her death
- Decedent's personal property (excluding a car) must be **\$25,000** or less
- Decedent is a resident ("inhabitant") of Massachusetts
- Interested person is filing the Voluntary
- The Applicant need not be the nominated PR in the will or a resident of Massachusetts

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**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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**VOLUNTARY ADMINISTRATION**

(WITH A WILL)

**Fact Pattern 1**

Donna dies leaving her spouse Harry and their three children: Andy, Debra and Mary (a minor). Donna owned a house, held as tenants by the entirety and, standing in her name alone, a car and a bank account. Her will leaves her entire estate to Harry but if he predeceases her, equally to their children. The will nominates Harry as the PR and Debra as the alternate.

What are Harry's options?

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## VOLUNTARY ADMINISTRATION

### Answer to Fact Pattern 1

Thirty (30) days have passed since the d/o/d and three years have not passed since d/o/d. Donna owned the real estate as tenancy by the entirety which means Donna did not own real estate at the time of her death. Harry is an interested person and while he is nominated in the will, he need not have been. Harry **may** file a Voluntary if Donna's bank account is \$25,000 or less.

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## INFORMAL PROCEEDING

### Elements

- The statute of limitations and priority ladder apply in informal proceedings.
- An informal proceeding is conducted with pre-filing and post-order notice to interested persons to probate a will &/or appoint a PR by a Magistrate (**UNCOUPLING!**)
- It is the responsibility of the **Petitioner** to obtain and complete the court approved notice form (MPC 550) and to provide notice to all interested persons. The Court **does not** issue notice in an informal proceeding.

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## INFORMAL PROCEEDING

(WITH A WILL)

### Fact Pattern 1

Donna dies leaving her spouse Harry and their three children: Andy, Debra and Mary (a minor). Donna owned a house, held as tenants by the entirety and, standing in her name alone, a car and a bank account. Her will leaves her entire estate to Harry but if he predeceases her, equally to their children. The will nominates Harry as the PR and Debra as the alternate.

What are Harry's options?

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## INFORMAL PROCEEDING

### Answer to Fact Pattern 1

- Harry may file an informal proceeding to probate the will because he is an interested person (surviving spouse) and he has priority as the nominated PR.
- He also may but need not ask the Court to be appointed PR. (**UNCOUPLING!**)
- Harry is the only heir.
- The children are not heirs because they are children of Harry and Donna. However, the children must be listed on the petition as interested persons.

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## INFORMAL PROCEEDING

### Fact Pattern 2 Blended Family

CHANGE FACT PATTERN 1:

Harry also has a child from a prior relationship, Shane-Scott (i.e., Donna's step child).

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## INFORMAL PROCEEDING

### Answer to Fact Pattern 2 Blended Family

- Shane-Scott is Harry's child but not Donna's child. Harry is no longer the sole heir.
- The presence of a step child prevents the surviving spouse from being the sole heir.
- The heirs are Harry and Harry and Donna's 3 children.

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**INFORMAL PROCEEDING**

Answer to Fact Pattern 2 (cont'd)

**Blended Family**

- Mary is now an heir.
- Mary is a minor so Harry cannot file an Informal unless a Guardian or Conservator other than Harry is appointed for Mary.
- If Mary were not a minor, an Informal Petition could be filed.

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**INFORMAL PROCEEDING**

Fact Pattern 3

**Blended Family**

CHANGE FACT PATTERN 1:

In addition to the children Donna and Harry have together, Donna also had a child from a prior relationship, Sandra-Dee (i.e. Harry's step child).

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**INFORMAL PROCEEDING**

Answer to Fact Pattern 3

**Blended Family**

- Sandra-Dee is Donna's child but not Harry's child. Harry is no longer the sole heir.
- The presence of a step child prevents the surviving spouse from being the sole heir.
- The heirs are Harry and all 4 of Donna's children: Andy, Debra, Mary and Sandra-Dee.

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**INFORMAL PROCEEDING**

Answer to Fact Pattern 3 (cont'd)  
Blended Family

- Mary is now an heir.
- Mary is a minor so Harry cannot file an Informal unless a Guardian or Conservator other than Harry is appointed for Mary.
- If Mary were not a minor, an Informal Petition could be filed.

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**INFORMAL PROCEEDING**

Fact Pattern 4  
Parts Unknown

CHANGE FACT PATTERN 1:

Andy is of parts unknown.

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**INFORMAL PROCEEDING**

Answer to Fact Pattern 4  
Parts Unknown

- Harry **cannot** file an informal proceeding because an heir, Andy, is of parts unknown.
- Harry may only file a formal proceeding.

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**INFORMAL PROCEEDING**

**Fact Pattern 5  
Second Spouse**

**CHANGE FACT PATTERN 1:**

Harry and Donna are divorced. Donna marries Sue who is her surviving spouse. Donna and Sue have no children together. The will now leaves everything to Sue but if Sue predeceases, then to Donna's children, Andy, Debra and Mary.

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**INFORMAL PROCEEDING**

**Answer to Fact Pattern 5  
Second Spouse**

- Andy, Debra and Mary are Donna's children but not Sue's children. Sue is not the sole heir.
- The presence of a step child prevents the surviving spouse from being the sole heir.
- The heirs are Sue and Donna's 3 children.

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**INFORMAL PROCEEDING**

**Answer to Fact Pattern 5 (cont'd)  
Second Spouse**

- Mary is now an heir.
- Mary is a minor so Sue cannot file an Informal unless a Guardian or Conservator other than Sue is appointed for Mary.
- If Mary were not a minor, an Informal Petition could be filed.

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**INFORMAL PROCEEDING**

**Fact Pattern 6  
Objections**

CHANGE FACT PATTERN 1:

Debra wants to object to the informal process.

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**INFORMAL PROCEEDING**

**Answer to Fact Pattern 6  
Objections**

- Harry can file an informal proceeding.
- There is no process for objections to be filed in an informal proceeding.
- If Debra wants to object, she must file a formal petition.
- If Debra files a formal proceeding, any action on Harry's informal is stayed. If Harry was already appointed, once he receives notice of the formal probate proceeding, he must refrain from making any distributions during the pendency of the formal petition. Debra may also request further restrictions.<sup>23</sup>

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**FORMAL PROCEEDINGS**

- A Formal Testacy proceeding is litigation conducted before a judge after notice by citation to all interested persons.
- The word "Testacy" is used in the code to refer to a proceeding to establish either that:

a will is valid; or  
there is no valid will (intestacy).

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## FORMAL PROCEEDINGS

### Elements

- Statute of Limitations applies
- Priority Ladder may apply
- Court must make a determination of testacy (decendent died with a valid will or no will (intestacy))
- Court must make a determination of heirs
- Stays Magistrate's ability to act on any Informal
- Stays a previously appointed PR's ability to distribute & may stay the ability to act.

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## FORMAL PROCEEDING

(WITH A WILL)

### Fact Pattern 1

Donna dies leaving her spouse Harry and their three children: Andy, Debra and Mary (a minor). Donna owned a house, held as tenants by the entirety and, standing in her name alone, a car and a bank account. Her will leaves her entire estate to Harry but if he predeceases her, equally to their children. The will nominates Harry as the PR and Debra as the alternate. What are Harry's options?

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## FORMAL PROCEEDING

### Answer to Fact Pattern 1

- Harry can file a Formal Testacy proceeding (with or w/o the appointment of a PR) for the Court to determine if Donna's will is valid.
- The formal proceeding will make a final determination of the identity of Donna's heirs.
- Harry does not have to also request appointment as the PR (though it will be unusual that he will not). **(UNCOUPLING!)**

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**FORMAL PROCEEDING**

**Fact Pattern 2  
Blended Family**

**CHANGE FACT PATTERN 1:**

In addition to the children Donna and Harry have together, Donna also had a child from a prior relationship, Sandra-Dee (i.e., Harry's step child).

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**FORMAL PROCEEDING**

**Answer to Fact Pattern 2  
Blended Family**

- Sandra-Dee is Donna's child but not Harry's child. Harry is no longer the sole heir.
- The presence of a step child prevents the surviving spouse from being the sole heir.
- The heirs are Harry and all 4 of Donna's children: Andy, Debra, Mary and Sandra-Dee.

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**FORMAL PROCEEDING**

**Answer to Fact Pattern 2 (cont'd)  
Blended Family**

- Mary is now an heir.
- Mary is a minor so there will be a question as to whether or not a GAL should be appointed for Mary (See *Virtual Representation/GAL section*).

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## APPOINTMENT PROCEEDINGS

### Elements

- If a will exists, a PR may not be appointed unless the will is (informally or formally) probated.
- Unless a PR is appointed by order of the Court or Magistrate, no person has powers over the assets of an estate.
- A PR appointed in a formal proceeding has the same powers and duties as one appointed informally.
- A formal appointment may be desirable when there is a dispute concerning priority or qualification to serve, but no dispute concerning testacy (whether there is a valid will or not).

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## APPOINTMENT PROCEEDINGS

(WITH WILL)

### Fact Pattern 1

Donna dies leaving her spouse Harry and their three children: Andy, Debra and Mary (a minor). Her will leaves her entire estate to Harry but if he predeceases her, equally to their children. The will nominates Harry as the PR and Debra as the alternate.

What must Harry do in order to handle the estate?

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## INFORMAL APPOINTMENT

### Answer to Fact Pattern 1

- Harry can petition to be appointed PR in an informal proceeding.
- The request for the informal appointment must be combined with a request to probate the will.
- However, Harry may request the will be probated without seeking an appointment. **(UNCOUPLING!)**

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**FORMAL APPOINTMENT**  
Answer to Fact Pattern 1

- Harry can petition to be appointed PR in a formal proceeding.
- The will must have previously been probated either informally or formally (**UNCOUPLING!**) OR the petition must request a determination of testacy (whether there is a valid will and a determination of heirs).

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**FORMAL APPOINTMENT**  
Fact Pattern 2  
Blended Family & Priority

CHANGE FACT PATTERN 1:

In addition to the children Donna and Harry have together, Donna also had a child from a prior relationship, Sandra-Dee (i.e. Harry's step child). Harry, overcome by grief, does not want to be PR of Donna's estate.

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**FORMAL APPOINTMENT**  
Answer to Fact Pattern 2  
Blended Family & Priority

Donna's heirs are Harry, Andy, Debra, Mary and Sandra-Dee. Harry has priority as nominated PR in the will. If Harry renounces or fails to seek appointment, priority passes to Debra as named alternate. If Debra renounces or fails to seek appointment, priority passes down the statutory ladder:  
2) the surviving spouse who is also a devisee (Harry)  
3) other devisees in the will (Harry)  
4) the surviving spouse (Harry)  
5) the other heirs (Andy, Debra, Mary, and Sandra-Dee)  
All of Donna's children are on the same rung of the ladder and have equal priority for appointment. Mary does not qualify to be a PR because she is a minor so she may not serve.

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**FORMAL APPOINTMENT**

**Fact Pattern 3**

**Blended Family & Priority**

CHANGE FACT PATTERN 2:

Donna's will does not nominate an alternate PR. Debra does not want to be a PR with Andy and Sandra-Dee. She does think that her Uncle Bob, Donna's brother, should be involved since he and Donna owned a bakery together. Debra nominates Bob to be PR.

Who will be appointed?

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**FORMAL APPOINTMENT**

**Answer to Fact Pattern 3**

**Blended Family & Priority**

Debra can renounce and nominate another, Bob.

However, Bob may not serve unless Andy and Sandra-Dee both agree because they share equal priority.

If Andy or Sandra-Dee do not agree with Debra's nominee, the Court will adjudicate the appointment, after hearing.

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