

Logistics

Time
Break
Lunch
Facilities

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Trial Court 2011

2



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.

4

GOAL

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

5

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

6

DAY TWO AND BEYOND

-Job Specific Sessions-

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

7

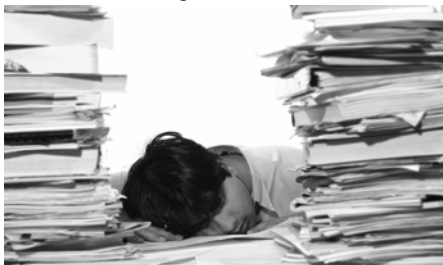
INTRODUCTION

- 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

8

INTRODUCTION

What HAS changed....



EVERYTHING ELSE!!!

9

REPEALED STATUTES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

10

MORE REPEALED STATUTES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

11

REPEALED IN PART STATUTES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 |

12

**MORE REPEALED IN PART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**

13

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**

14

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.

15

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

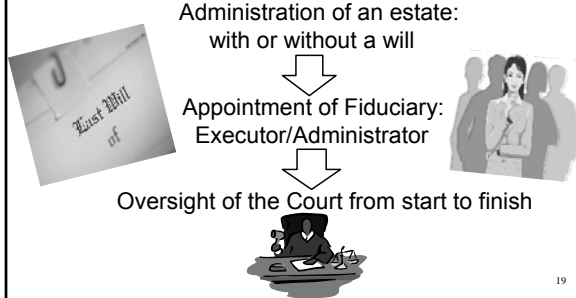
Article 3 Part	Content
1	GENERAL PROVISIONS
2	VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE
3	INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS
4	FORMAL TESTACY AND APPOINTMENT PROCEEDINGS
5	SUPERVISED ADMINISTRATION
6	PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION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



20

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.**

21

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)

22

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).

23

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).

24

**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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25

**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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26

**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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27

Old versus New: Types of Fiduciary

- OLD LAW
 - Executor/trix
 - Administrator/trix
 - CTA
 - DBN
 - DBN CTA
 - Special Administrator
 - Public
- NEW LAW
 - Personal Representative (PR)
 - Supervised PR
 - Successor PR
 - Special PR
 - Public

28

Old versus New: Temporary Fiduciary

- OLD LAW
 - WITH A WILL
 - Motion to Appoint a Temporary
 - Petition for Special Administration
 - WITHOUT A WILL
 - Petition for Special Administration
- NEW LAW
 - INFORMAL
 - Not permitted
 - FORMAL
 - WITH OR WITHOUT A WILL
 - Prayer in Petition (“other”) and motion for Special PR OR
 - Petition for Special PR

29

Old versus New: INFORMAL- PETITION AND NOTICE

- OLD LAW
 - File Petition for Administration or Petition for Probate of Will, will is filed or on file
 - Citation (including publication, if necessary). **NOTICE AFTER FILING.**
- NEW LAW
 - 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.

30

**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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31

**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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32

**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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33

Old versus New:
FORMAL – REPRESENTATION

- OLD LAW
 - Guardian *ad litem* for IP, PP or minors or unborn or unascertained
- NEW LAW
 - Parental Representation for minors or virtual representation for unborn or unascertained persons possible in lieu of Guardian *ad litem*

34

Old versus New:
FORMAL - ALLOWANCE

- OLD LAW
 - Allowance of Petition by Court and appointment of fiduciary
 - Appropriate Bond filed
 - Certified copy of Decree or Cert. of Appointment
- NEW LAW
 - Determination of testacy/heirs &/or appointment of PR by Court or Magistrate
 - Appropriate Bond filed
 - Letters

35

Old versus New:
INFORMALS-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
 - Must file a Petition for Formal Testacy &/or Appointment to object
 - 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.

36

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

37

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)

38

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

39

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

40

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

41

New or Different
Concepts

42

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

43

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

44



Who is an heir at law

Informal & Formal Petition must list:

- Spouse
- Children
- Heirs
- Devisees

46

Who is an heir at law

Heir Categories:

1. Spouse
2. Descendants
3. Parents
4. Parents' Descendants
5. Next of kin

47

Who is an heir at law




- Spouse survives. Spouse and decedent have no children. Decedent's parents are deceased.

SPOUSE IS THE ONLY HEIR


48

Who is an heir at law

Spouse survives. Spouse and decedent's children are all of their marriage.


+

+





SPOUSE IS THE ONLY HEIR
(but must list children on Petition)





49

Who is an heir at law

- Spouse survives. Spouse and decedent have no children. Decedent has surviving parent(s).


+

+






- SPOUSE AND PARENT(S) ARE HEIRS


+




50

Who is an heir at law

Spouse survives. Spouse and decedent have children and spouse has children who are not children of the decedent.


+

+

+


SPOUSE AND DECEDENT'S CHILDREN ARE THE HEIRS.


+


51

Who is an heir at law

Spouse survives. Decedent has children from another relationship.



SPOUSE AND ALL DECEDENT'S CHILDREN ARE HEIRS



52

Who is an heir at law

- No surviving spouse but child or children.



- CHILD OR CHILDREN ARE HEIRS



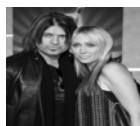
53

Who is an heir at law

- No spouse, no children but parents.



- PARENT(S) ARE HEIRS



54

Who is an heir at law

- No spouse, no children and no parents –



- PARENT'S DESCENDENTS ARE HEIRS

55

Priority of Appointment

Priority of Appointment is a way of determining the ranking of person(s) who may be appointed as PR in both an informal and formal proceeding.

Referred to as the:

“Priority Ladder”

56

Priority of Appointment

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred **in a probated will**;
- (2) the surviving spouse of the decedent who is also a devisee **in the will**;
- (3) other devisees **in the will**;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) if there is no known spouse or next of kin, a public administrator appointed.



57

Priority of Appointment

Regardless of his or her priority, no person is qualified to serve as a PR if:

1. He or she is under the age of 18;
2. The Court finds, in a formal proceeding, the appointment would be contrary to the best interests of the estate.

58

Priority of Appointment

- A person with priority may renounce (decline) the right to serve.
- For (2) – (5) on the ladder, a person with priority may nominate another to serve as PR.
- For (2) – (5) on the ladder, a person with priority may renounce (decline) the right to nominate another to serve as PR.

59

Priority of Appointment NO WILL - 1 PERSON WITH PRIORITY

If there is only one person with the highest priority under the statute and s/he renounces (declines) the right to serve, s/he can:

Nominate *anyone else* to serve and his/her priority passes to the nominee

OR

Renounce (decline) the right to nominate and priority passes to the next highest priority person as determined by the statute

60



Mike Brady died without a will leaving his wife, 3 sons and 3 step-daughters.



Mike's wife, Carol, is on the highest rung of the priority ladder.



What are Carol's options if she does not want to serve?

61



Carol can renounce her right to serve and:



Nominate another (Alice) to serve. Alice now takes Carol's place on the priority rung and assumes Carol's priority in applying to become a PR.

62



Carol can renounce her right to serve and:



Renounce the right to nominate another & priority passes to the person(s) on the next rung - Mike's 3 sons.

The next named person must qualify. While Mike's adult sons qualify, minor sons would not.

63

Priority of Appointment
NO WILL
1+ PERSONS WITH PRIORITY

If there is more than one person with equal highest priority under the statute and one or more

renounces (declines) the right to serve
and
renounces (declines) the right to nominate another,

then priority is in the remaining persons who shared equal highest priority with the person renouncing.


64

Priority of Appointment
NO WILL
1+ PERSONS WITH PRIORITY

If there is more than one person with equal highest priority under the statute and one or more renounces (declines) the right to serve, the renouncing person(s) can nominate another to serve in their place but all remaining persons with highest priority must agree that the nominated person will serve with them.

If they do not agree, a formal petition must be filed.

65




Mo, Larry & Curly are all brothers and next heirs of their deceased father who died without a will.

They all share priority. They are on the **same** rung of the priority ladder, which is the highest rung.

What are Curly's options if he does not want to serve?

66



Curly may or may not renounce the right to serve. If Curly renounces the right to serve and renounces the right to nominate, Mo and Larry can serve together.

Curly may renounce the right to serve & nominate another (Shemp) to serve but Shemp may only serve if Mo & Larry agree. If there is no agreement, a formal petition must be filed.

67

Priority of Appointment EXCEPTIONS WITH A WILL

If the person with highest priority does not want to serve, s/he may renounce (decline) the right to serve; AND

If the will contains language which gives that person the right to nominate someone else, that person can

- nominate someone else to serve (who need not have statutory priority but who assumes the priority of that person) OR
- renounce the right to nominate someone else.

68

Priority of Appointment EXCEPTIONS WITH A WILL

If the person with highest priority does not want to serve, s/he may renounce the right to serve; BUT

If the will contains NO LANGUAGE which gives that person the right to nominate someone else, that person may not nominate someone else and priority passes to the next named person in the will or if none, the next highest priority person as determined by the statute.

69

Priority of Appointment EXCEPTIONS

If the person with highest priority does not want to serve, and s/he fails to renounce

- Any interested person may file a Formal Petition seeking the appointment of any person but the Formal Petition must explain why other persons with higher priority are not appropriate or available

- The Court will appoint the person with the highest priority **but** if those having highest priority were given notice and have failed to request appointment or nominate another and administration is necessary, the Court may appoint in a formal proceeding any suitable person regardless of his or her priority.

70

Priority of Appointment REVIEW

A PR with priority may:

1. Seek to be appointed PR
 2. Renounce the right to be appointed and Nominate another
 - Person nominated takes the place on the priority ladder
 - If more than one person is on the same rung priority ladder, all on the same rung must concur
 - If the PR's priority comes from a nomination in the will (#1 on the ladder), the will **MUST** include language permitting the PR to nominate another otherwise the PR may not nominate another.
 3. Renounce the right to be appointed and renounce the right to nominate another
 - If the PR was the only one on the priority ladder rung, priority drops down to the next rung on the priority ladder
 - If there are multiple people on the same rung of the priority ladder, those remaining on same rung the ladder have priority
 4. Do nothing
- Any other person on the priority ladder may petition for appointment in a FORMAL proceeding and notice must be given to all persons with higher priority.

71

Magistrate

The Code provides that certain proceedings may be determined by a Magistrate.

A Magistrate is an official of the Court designated to perform certain actions authorized by the Code and/or Rule (not yet approved- number to be determined).

A Magistrate may act only on matters in which no hearing is required or requested.

72

Magistrate Informal Proceedings

A Magistrate may:

- Determine Informal Probate of original Will
- Determine Informal Appointment of PR (with priority)
- Approve Bond regardless of penal sum

73

Magistrate Formal Proceedings

Provided all interested persons assent or do not object, a Magistrate may:

- Determine Heirs
- Admit an original Will to probate
- Appoint a PR (not Supervised)
- Enter estate closing Orders
- Perform other acts as authorized

74

Notice Informal versus Formal

Informal:

- No citation issues
- Pre-filing notice is given by mailing on court promulgated sample form.
- Post-decree notice is given by publication on court promulgated sample form.

Formal:

- Citation for publication; AND
- Service of citation on all interested persons who have not assented is given:
 - » In hand; OR
 - » By mail: ordinary, first-class, registered OR certified

Informal Notice

An informal proceeding requires **two** types of notice:

- (1) Notice **prior** to filing the Petition for Informal Probate/Appointment of a Personal Representative;

AND

- (2) Notice **after** the allowance of the informal probate and/or appointment.

76

Informal Notice Persons Entitled to Notice

Notice must be given either **in hand** or by **ordinary mail** to:

- (1) All heirs and devisees;
- (2) Any person having a prior or equal right to appointment not waived in writing and filed with the court;
- (3) Any PR of the decedent whose appointment has not been terminated;
- (4) A conservator or guardian appointed to represent a spouse, devisee or heir **AND** that person;
- (5) The attorney general if there is no spouse or heir of the decedent or any devisee is a charity. (See also UP XXXIV)

77

Informal Notice PARTS UNKNOWN

If an interested person is of **parts unknown**, an informal petition **CANNOT** be filed.

A formal petition must be filed.

78

Informal Notice Publication

A list of the newspapers designated by the Register will be available at each Registry or online.

Petitioner selects the newspaper from the list generally based on the City or Town of the decedent's last domicile.

79

Formal - Notice

A Formal proceeding requires a citation after the filing of the Petition for Formal Probate of Will/Adjudication of Intestacy/Appointment of PR.

The citation must be published and served on all interested persons who have not assented.

Service must be given:

In hand; OR

By mail: ordinary, first class,
registered OR certified

Notice **prior** to Formal Order

(See Probate Court Rule 2, 6 and Standing Order XX on Sufficiency of Notice)

80

Formal Notice Persons Entitled to Notice

Notice must be given either **in hand** or by **certified, registered or ordinary mail** to:

- (1) Surviving spouse;
- (2) Children;
- (3) Other heirs of the decedent;
- (4) Devises and executors named in any will that is being, or has been probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere;
- (5) Any PR of the decedent whose appointment has not been terminated;
- (6) Any other person;
- (7) A conservator or guardian appointed to represent a spouse, heir or devisee AND that person;
- (8) The attorney general if there is no spouse or heir of the decedent or any devisee is a charity. (See also UP XXXIV)

81

Proof of Service

Proof of Service is required to be filed with the Court in the following circumstances:

- **For Informal Proceedings:**
 - Pre filing notice **ONLY**
 - No requirement to file proof of publication
- **For Formal Proceedings:**
 - Proof of service **AND** publication

(See Probate Court Rule 28 and Standing Order XX on Sufficiency of Notice)

82

Statute of Limitations GENERAL RULE

The general rule is that probate cases must be commenced (i.e. "filed") **within 3 years** of a decedent's death.



83

Statute of Limitations APPLICATION

This SOL does NOT apply to:

- Voluntary Administrations
- Actions to Construe a Probated Will
- Determination of Heirs
- Actions by Foreign Fiduciaries

84

**Statute of Limitations
GENERAL RULE**

After 3 years from decedent's death:
– No one may seek the appointment of a PR

AND

– If a will was not offered for probate in this time, there is an assumption of intestacy which is final

85

**Statute of Limitations
EXCEPTIONS**

There are 4 exceptions to the general “3 year” rule applying to original proceedings.

86

**Statute of Limitations
EXCEPTIONS**

1. If a previous formal proceeding was dismissed because of doubt about the fact of the decedent's death an **informal or formal** proceeding may be commenced at any time if it is proved that the death occurred before the dismissal of the prior proceeding with no unreasonable delay in commencing the second proceeding.

87

**Statute of Limitations
EXCEPTIONS**

2. If the estate is of an absentee, disappeared or missing person an **informal or formal** proceeding may be commenced within 3 years from the date the date of death was established (NOT from the date of death).

88

**Statute of Limitations
EXCEPTIONS**

3. If there is a **formal** proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment, it may be brought within the later of 12 months from the allowance of the informal or 3 years from the date of death.

89

**Statute of Limitations
EXCEPTIONS**

4. A **formal** testacy proceeding may be commenced at any time for the sole purpose of establishing a devise of property IF no proceeding concerning the succession or administration of the estate has occurred within 3 years after decedent's death.

90

Statute of Limitations SUBSEQUENT PETITIONS

1. A devisee or heir who was omitted from, or not given notice of, a previous formal proceeding may file a Petition for Order of Complete Settlement at any time to be named (included as) a devisee or heir.
2. A devisee or heir who was omitted from, or not given notice of, a previous formal proceeding may file a Petition to Vacate the previous determination of testacy (if will) or heirs (if no will) but only if certain conditions are met and only within a potentially SHORTENED statute of limitations .

91

FRAUD EXCEPTION

When fraud has occurred, a proceeding for damages may be commenced within 2 years after the fraud is discovered BUT not later than 5 years after the fraud is committed.

92

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

93

**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**

94

**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.

95

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

96

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

97

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?

98

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.

99

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.

100

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?

101

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.

102

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).

103

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.

104

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.

105

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).

106

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.

107

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.

108

INFORMAL PROCEEDING

**Fact Pattern 4
Parts Unknown**

CHANGE FACT PATTERN 1:

Andy is of parts unknown.

109

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.

110

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.

111

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.

112

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.

113

INFORMAL PROCEEDING

**Fact Pattern 6
Objections**

CHANGE FACT PATTERN 1:

Debra wants to object to the informal process.

114

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.

115

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).

116

FORMAL PROCEEDINGS

Elements

- Statute of Limitations applies
- Priority Ladder may apply
- Court must make a determination of testacy (decedent 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.

117

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?

118

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!)**

119

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).

120

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.

121

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*).

122

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).

123

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?

124

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!)**

125

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).

126

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.

127

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.

128

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?

129

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.

130

MUPC OPTIONS

(NO WILL)

1. TO ADMINISTER THE ESTATE

- Voluntary Administration
- 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

131

VOLUNTARY ADMINISTRATION

(NO 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 a resident of Massachusetts

132

VOLUNTARY ADMINISTRATION

(NO WILL)

Fact Pattern 1

Donna dies, leaving her spouse, Harry, and their three children: Andy, Debra and Mary (a minor). Donna and Harry owned their house as tenants by the entirety. Donna owned a car and a bank account in her name alone. Donna does **NOT** have a will.

What are Harry's options?

133

VOLUNTARY ADMINISTRATION

Answer to Fact Pattern 1

Harry is an interested person.

Harry may file a Voluntary Administration if:

- It is more than thirty (30) days since Donna's death
- Donna's bank account is \$25,000 or less.

134

INFORMAL PROCEEDING

(NO WILL)

Fact Pattern 1

Donna dies, leaving her spouse, Harry, and their three children: Andy, Debra and Mary (a minor). Donna and Harry owned their house as tenants by the entirety. Donna owned a car and a bank account in her name alone. Donna does **NOT** have a will.

What are Harry's options?

135

INFORMAL PROCEEDING

(NO WILL)

Answer to Fact Pattern 1

Informal proceedings may not be used to determine/adjudicate intestacy. Only formal proceedings determine/adjudicate intestacy.

(Harry may file an Informal proceeding only to seek appointment of a personal representative.)

136

FORMAL PROCEEDINGS

(NO WILL)

The process for a Formal proceeding to adjudicate intestacy and determine heirs (with or without the appointment of a PR) is the same as a Formal proceeding to adjudicate testacy and determine heirs (with or without the appointment of a PR).

137

INFORMAL APPOINTMENT

(NO WILL)

Fact Pattern 1

Donna dies, leaving her spouse, Harry, and their three children: Andy, Debra and Mary (a minor). Donna and Harry owned their house as tenants by the entirety. Donna owned a car and a bank account in her name alone. Donna does **NOT** have a will.

What are Harry's options?

138

INFORMAL APPOINTMENT

(NO WILL)

Answer to Fact Pattern 1

As surviving spouse, Harry has priority for appointment and may file an Informal proceeding to be appointed PR. This option is available if the Voluntary is not filed (because the estate is over \$25,000).

139

INFORMAL APPOINTMENT

(NO WILL)

Fact Pattern 2

CHANGE FACT PATTERN 1:

Donna had a child, Sandra-Dee, from a prior relationship. Donna had an investment account in her name alone worth \$300,000, and Sandra-Dee needs money for college. Harry and Sandra-Dee do not get along. Harry does nothing after Donna dies. What are Sandra-Dee's options?

140

INFORMAL APPOINTMENT

(NO WILL)

Answer to Fact Pattern 2

Harry, as surviving spouse, has the highest priority to be appointed PR. If Harry does not renounce (decline), Sandra ~~Dee~~ can file (she's an interested person) but she may only seek to have Harry appointed because he has highest priority. If Sandra ~~Dee~~ wants to be appointed, she must file a Formal proceeding to be appointed PR because she does not have the highest priority.

141

INFORMAL APPOINTMENT

(NO WILL)

Fact Pattern 3

CHANGE FACT PATTERN 2:

Harry renounces (declines) and renounces the right to nominate another to serve in his place.

What are Sandra-Dee's options?

142

INFORMAL APPOINTMENT

(NO WILL)

Answer to Fact Pattern 3

If Harry renounces (declines) the right to serve and the right to nominate someone to take his priority, Andy, Debra and Sandra ~~De~~ have equal priority on the ladder. If Mary (minor) has a conservator or guardian, her conservator or guardian may exercise her rights. All persons with equal priority may agree to serve, but if they do not, all must consent to the nominee. If they do not, a Formal proceeding must be filed.

143

BOND

- **c. 205 on Bonds repealed in part & amended in part.**
- **Bond must be filed with Court prior to receiving Letters.**
- **No Appointment of Agent form for out-of-state PR required.**

144

BOND

- Penal sum on a Bond with Sureties must equal dollar for dollar the amount of the personal property.
- The Magistrate may approve a Bond in any amount that meets the statutory requirements. Sufficiency of sureties is never determined by the Magistrate.
- The Court retains the right to require additional sureties in a formal proceeding.

145

DEMAND FOR SURETIES Filing

- A written demand that a PR post sureties on the Bond may be filed by:
 - Any person with an interest of over \$5,000 in an estate or
 - A creditor with a claim of over \$5,000 against the estate.
- The demand may be filed at any time after the filing of a Petition (Informal or Formal)

146

DEMAND FOR SURETIES Filing

A demand may only be made where a Bond without sureties is filed.

The demand may not seek a specific amount or type of sureties.

147

**DEMAND FOR SURETIES
Process**

- The demand must be filed with the Court and a copy mailed to the PR.
- Once the PR receives notice of the demand, the PR must refrain from acting except to preserve the estate and within 30 days file the requested suitable bond with sureties.
- Failure to do so is cause for removal

148

**DEMAND FOR SURETIES
Response**

If there has been no Formal appointment, the Court may consider the suitable amount of the Bond.

If there has been an appointment, to request an increase, decrease or modify the amount or type of sureties on the Bond, a Petition to Modify the Bond must be filed which is acted on by the Court in a formal proceeding.

149

**BONDS
Fact Pattern 1**

Donna dies with a will leaving an estate worth about \$120,000 in personal property only. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate evenly among Sue, Andy and Debra and names Sue as the PR, exempting her from providing sureties on the Bond. Andy and Debra do not trust their step mother Sue and have concerns over her ability to manage their mother's estate. Sue has filed a Petition for Informal Probate and Appointment. Can Andy and Debra file a Demand for Sureties?

150

BONDS

Answer to Fact Pattern 1

Yes.
 Ask the following questions. If the answer to any is NO, a Demand may **NOT** be filed. If the answer to all is YES, a Demand **MAY** be filed.

1. Has a Petition for Appointment been filed?
2. Does the Petition request the PR serve without sureties?
3. Does the person filing the demand have an interest in the estate of over \$5,000?

Sue filed a Petition requesting she serve without sureties. Andy and Debra each have an interest in the estate of \$40,000. Andy and/or Debra may file a Demand for Sureties. Sue must file a Bond with Sureties or the Magistrate shall deny her Petition.

151

BONDS

Fact Pattern 2

ADD THE FOLLOWING FACT:

Sue, the PR, has received in her regular mail a copy of a Demand for Sureties form signed by Andy.

What must Sue do now?

152

BONDS

Answer to Fact Pattern 2

Ask the following questions. If the answer to any is NO, no action needs to be taken in response to a Demand for Sureties. If the answer to all of these questions is YES, a Bond with Sureties must be filed by the PR.

Has the Demand been filed with the Court?

Has the PR received notice of the Demand?

153

BONDS

Answer to Fact Pattern 2

If the Demand is filed with the court, Sue has 30 days from receiving the demand to file a Bond with Sureties. Her failure to file the Bond with Sureties is grounds for a Petition to Remove.

If Sue is unhappy with the Demand, she may also file a Petition to Modify the Bond with the Court.

154

BONDS

Fact Pattern 3

ADD THE FOLLOWING FACTS:

After receiving the Demand for Sureties, Sue files a Bond with Sureties listing the value of the estate at \$120,000, all in personal property. The penal sum on the Bond with Sureties is \$120,000 and is with personal sureties who are Sue's son from her first marriage, Shane Scott, and his wife. Andy and Debra think the estate is worth double the figure Sue has listed on the Bond and also doubt that Shane Scott and his wife qualify. What may Andy and Debra do now about the Bond?

155

BONDS

Answer to Fact Pattern 3

Once Sue files the Bond with Sureties, if Andy and Debra are unhappy with the Bond for any reason:

- the amount of the penal sum,
- the type of sureties (personal versus corporate)
- the identity of sureties,

they must file a Petition to Modify the Bond, which is heard by the Court in a formal proceeding, after notice.

156

GAL

When a spouse, heir at law or devisee is an IP, PP or a minor and is not represented by a guardian or conservator who is not the petitioner a GAL shall be appointed unless the court allows a Motion to Waive a GAL.

157

GAL

If a spouse, heir at law or devisee is an IP, PP or a minor and is otherwise represented by a guardian or conservator (other than the petitioner) no GAL is necessary.

158

PARENTAL REPRESENTATION & GAL

- If there is no conflict of interest and no guardian or conservator has been appointed, a parent may represent a minor child in a formal proceeding.
- There can be no Parental Representation and/or GAL appointment in an informal proceeding. If either is involved, a formal proceeding must be filed.

159

**VIRTUAL REPRESENTATION
& GAL**

- Virtual Representation (VR) is a process by which someone to whom notice has been given binds an unborn or unascertained person with a substantially identical interest.

160

**VIRTUAL REPRESENTATION
& GAL**

- VR eliminates the need for a GAL for unborn and unascertained persons who have substantially identical interests to one who has received notice in a formal proceeding.
- There can be no VR and/or GAL appointment in an informal proceeding. If either is involved, a formal proceeding must be filed.

161

**GALs
Fact Pattern 1**

Donna dies survived by her spouse Harry and their 3 children: Andy, Debra and Mary, a minor. Donna's estate is left entirely to Harry. Harry seeks appointment as the PR of Donna's estate by filing a Petition for Formal Appointment and Determination of Testacy. Andy and Debra have assented to the Petition and Harry has published the citation.

May the Court allow the Petition based on the notice Harry has made?

162

GALs
Answer to Fact Pattern 1

Yes.
While Mary is a minor, there is no question of GAL for Mary in this scenario. Andy, Debra and Mary are the children of both Harry and Donna and are not Donna's heirs at law. Only Harry is Donna's heir at law.

163

GALs
Fact Pattern 2

CHANGE FACT PATTERN 1:
Donna's will leaves half of her estate to Harry and half to her surviving children.

May the Court allow the Petition based on the notice Harry has made?

164

GALs
Answer to Fact Pattern 2

No. The Court may NOT allow the Petition based on just the notice Harry has made.

Harry has filed a Formal Petition. Mary is a minor and devisee so a GAL is necessary. Harry may ask the Court waive a GAL.

165

GALs
Fact Pattern 3

CHANGE FACT PATTERN 1:

Harry is under a guardianship and Andy is his guardian. Debra is nominated as the alternate PR in Donna's will. Debra files a Petition for Formal Probate of Will and Appointment of PR. She publishes the citation and mails a copy of the notice to Andy and Harry.

May the Court allow the Petition based on the notice Debra has made?

166

GALs
Answer to Fact Pattern 3

Yes.

While Harry is an incompetent spouse, Andy is his guardian and is not the petitioner. No GAL is necessary because there is actual representation.

167

GALs
Fact Pattern 4

CHANGE FACT PATTERN 2:

Harry is under a guardianship and Andy is his guardian. Andy is nominated as the alternate PR in Donna's will. Andy files an Informal Petition for Probate of Will and Appointment of PR. He provides notice to Debra and Mary prior to filing.

May a Magistrate allow the Informal Petition based on the notice Andy has made?

168

GALs
Answer to Fact Pattern 4

No.
An Informal Petition may not be filed because:
Harry is not the only devisee and Andy has a conflict of interest as petitioner and guardian AND Mary is a minor and devisee. A Formal Petition must be filed to resolve the issue of a GAL.

169

GALs
Fact Pattern 5

Donna dies survived by her second spouse, Sue, and her child from her first marriage, Mary, who is a minor. Donna's will leaves her entire estate to Sue. Sue seeks appointment as the PR of Donna's estate by filing a Petition for Formal Appointment and Determination of Testacy. Sue has published the citation and mailed a copy to Harry, Mary's father with whom Mary does not live, and to Mary.

May the Court allow the Petition based on the notice Sue has made?

170

GALs
Answer to Fact Pattern 5

No, but...
Sue can request the Court waive the GAL based on Harry's parental representation of Mary.
A parent may represent a minor child as long as there is no conflict of interest. Harry has no conflict as he is not an interested person in Donna's estate. Parental Representation may apply and a GAL may be waived if the Court is satisfied with Harry's representation of Mary's interest.
If Harry were not alive and Mary has a guardian or conservator other than Sue, no GAL would be required.

171

SUPERVISED ADMINISTRATION

Supervised administration is a single proceeding for supervision of the administration of the estate by the PR under the continuing authority of the court.

Supervised administration is most like our current probate process.

172

SUPERVISED ADMINISTRATION

Why would it be used?

- If required in the will
- In complex or large estates
- In hotly contested estates
- In estates where the PR will want Court approval on decisions during administration

173

SUPERVISED ADMINISTRATION

Supervision may be ordered:

In the Formal Order of appointment;
OR

On a Petition brought thereafter.

It is a formal proceeding.

It requires a PR.

174

SUPERVISED ADMINISTRATION FILING REQUIREMENTS

Who can file:

Any interested person or the PR
already appointed

When can it be filed:

At any time, subject to the Statute of
Limitations on testacy proceedings
(generally 3 years from d/o/d), if no
PR has already been appointed.

175

SUPERVISED ADMINISTRATION HOW IS IT FILED

Before Appointment of PR:

By Petition for Formal Appointment of a PR - with or
without a will - which includes a prayer for Supervised
Administration.

After Appointment of PR on Order of Informal Probate (with or without a will):

By Petition for Formal Appointment of a PR - with or
without a will - which includes a prayer for Supervised
Administration

After Appointment of PR on a Formal Order (with or without a will):

By Petition for Supervised Administration

176

SUPERVISED ADMINISTRATION EFFECT ON DISTRIBUTIONS

In a Supervised administration there is a
court appointed PR who has the same duties
and powers as an unsupervised PR except for
the power to make distributions.

A Supervised PR may not make distributions
without a Court order.

The Court may order additional limitations on
the Supervised PR's power.

177

**SUPERVISED ADMINISTRATION
OTHER EFFECTS**

Additional limitations or requirements can be imposed:

On the Formal Order of Appointment;
and/or

By subsequent Orders sought by **motion**.

Additional limitations or requirements on the supervised PR may include:

- The filing of the Inventory
- The filing of Interim Accounts
- Restrictions on the PR's powers

178

**SUPERVISED ADMINISTRATION
EFFECT ON FAMILY
PROTECTIONS**

The designation of exempt property is considered a claim, not a distribution, and does not require specific court approval.

Payment of the discretionary family allowance is a distribution which requires specific court approval.

179

**SUPERVISED ADMINISTRATION
TERMINATION**

The supervision extends until entry of an order of complete settlement of the estate and discharge of the PR or other order terminating the proceeding.

BUT it may be terminated early upon a *General Petition* requesting the termination which may be allowed if all interested persons assent.

180

**SUPERVISED PR
Fact Pattern 1**

Donna dies with a will leaving an estate worth about \$120,000 in personal property only. She is survived by her second spouse Sue and her two children from her first marriage: Andy and Debra. The will divides Donna's estate among Sue, Andy and Debra equally and names Sue as the PR, exempting her from providing sureties on the Bond. Andy and Debra do not trust their step-mother Sue and have concerns over her ability to manage their mother's estate. Sue has not yet been appointed PR but has filed a Petition for Informal Probate and Appointment.

Can Andy and Debra request a Magistrate to supervise the administration on the Informal Petition?

181

**SUPERVISED PR
Answer to Fact Pattern 1**

No.
Since no PR has been appointed, Andy and/or Debra may only request a supervised administration by filing their own Petition for Formal Probate and Appointment with a prayer for supervised administration.

The Magistrate may not act on Sue's pending Petition for Informal Probate and Appointment as this Petition is stayed while Andy and/or Debra Petition for Formal Probate and Appointment is pending.

182

**SUPERVISED PR
Fact Pattern 2**

CHANGE FACT PATTERN 1:
Sue was appointed as a PR on an Order of Informal Probate.

Can Andy and Debra now request the Court supervise the administration?

183

SUPERVISED PR
Answer to Fact Pattern 2

Yes.

Although a PR (Sue) has been appointed, the appointment was made in an informal proceeding so Andy and/or Debra can still only request a supervised administration by filing their own Petition for Formal Appointment of PR with a prayer for supervised administration.

If Sue had been appointed by a Formal Order, Andy and/or Debra could only file a Petition for Supervised Administration.

184

SUPERVISED PR
Fact Pattern 3

CHANGE FACT PATTERN 2:

Donna owned and operated an unincorporated bakery prior to her death.

The Court has now issued a Formal Order Admitting the Will to Probate and Appointing Sue as PR in a supervised administration.

Andy believes Sue is mismanaging the bakery. What are his options?

185

SUPERVISED PR
Answer to Fact Pattern 3

Because the Formal Order of Appointment with supervision has already issued, Andy need only file a **motion** to ask the Court to further limit Sue's powers as PR.

The Court could then issue a separate Order to modify Sue's powers (the modification must also be reflected on the Formal Order of Appointment).

186

SUPERVISED PR

Fact Pattern 4

CHANGE FACT PATTERN 2:

The Court has not yet issued the Formal Order Admitting the Will to Probate and Appointing Sue as PR in a supervised administration. Andy believes Sue is mismanaging the bakery. What are his options?

187

SUPERVISED PR

Answer to Fact Pattern 4

If the Formal Order of Appointment has not yet issued, the Court could consider Andy's requested limitations at the time of Sue's appointment. If Andy's Petition only prayed for a supervised administration, Sue would only be prohibited from making distributions, not from continuing the bakery business (since continuing the business is one of the powers given to a PR). To request this, or any other additional limitations after the Petition is filed, Andy would need to amend his petition by motion.

188

SPECIAL ADMINISTRATION



189

SPECIAL ADMINISTRATION

- A special personal representative (SPR) is most similar to a temporary executor or a Special Administrator.
- Any suitable person may be appointed a SPR.
- The rules governing priority of appointment do not apply.
- The appointment of a SPR may be for up to 90 days unless otherwise ordered or extended by the Court.

190

SPECIAL PERSONAL REPRESENTATIVE

The appointment of a SPR by the Court may be necessary in order to:

- Preserve an estate;
- Secure its proper administration; or
- Perform an act that an appointed PR cannot or should not perform because of a conflict of interest.

191

SPECIAL PERSONAL REPRESENTATIVE

A petition for appointment of a SPR cannot be filed unless a PR has already been appointed or there is an underlying informal or formal proceeding pending, with one exception:

A SPR may be appointed without an underlying probate petition for the limited purpose of obtaining access to a decedent’s safe deposit box to conduct a will search.

192

SPECIAL PERSONAL REPRESENTATIVE

HOW IS IT REQUESTED

(1) Formal Petition:

- request in formal petition under "other"
- include a motion for SPR
- may also be requested ex-parte or with a short order of notice, if emergency

(2) SPR Petition:

- used for will search
- used when PR already appointed and SPR needed for limited purpose

193

SPECIAL PERSONAL REPRESENTATIVE

The filing of a SPR petition STAYS any pending informal petition.

194

SPECIAL PERSONAL REPRESENTATIVE

Hearing/Notice/Duration

- A hearing is required for the appointment of a SPR.
- Prior (motion) notice is required unless waived or shortened by the Court upon finding that an emergency exists.
- A Bond with sureties is required unless excepted.
- The appointment is for up to 90 days unless otherwise ordered by the Court for extraordinary circumstances.
- During the duration of the SPR's appointment, the powers and duties of any previously appointed PR are suspended.

195

**SPECIAL PERSONAL
REPRESENTATIVE**

Powers

- **A SPR has many, but not all, of the powers granted to a PR.**
- **These powers, in general, are limited to collecting and preserving assets of the estate, but include the authority to continue any unincorporated business or entity and to pay debts.**
- **Powers related to selling and distributing assets are specifically excluded by statute.**
- **A SPR's powers may be expanded by will, or by court order in a formal proceeding.**

196

**SPECIAL PERSONAL
REPRESENTATIVE**

- A SPR proceeding is a formal proceeding as long as the SPR continues to serve.
- Upon termination of the SPR's appointment, the proceeding will be informal, formal or supervised, depending on the nature of the prior proceeding.

197

**SPECIAL PR
Fact Pattern 1**

Donna dies with a will leaving as part of her estate an unincorporated bakery which she owned and operated prior to her death. Donna is survived by her spouse, Harry, and their two children, Andy and Debra. The will nominated Harry as PR and Andy as the alternate and states the nominated PR may also serve as a temporary. Harry needs to attend to the business operations immediately.

What are Harry's options?

198

SPECIAL PR
Answer to Fact Pattern 1

Harry is nominated in the will and therefore may file a Petition for Informal Probate of Will and Appointment of a PR giving pre- and post filing notice to Andy and Debra as early as 7 days after Donna's death. This is one of the fastest ways Harry will gain authority to handle the business, as a PR.

If Harry needs to be appointment earlier than 7 days from Donna's death, Harry should file a Petition for Formal Determination of Testacy and Appointment of PR with a motion seeking an emergency appointment as SPR.

199

SPECIAL PR
Fact Pattern 2

CHANGE FACT PATTERN 1:

Harry, overcome by grief, is unable to take action regarding the estate and will neither file a Petition nor a Renouncement and/or Nomination.

What are Andy and Debra's options?

200

SPECIAL PR
Answer to Fact Pattern 2

Andy, as alternate PR, or Debra, as Harry's child, could file a Petition for Formal Determination of Testacy and Appointment of PR seeking their own appointment stating that Harry has failed or refused to act and seeking their own appointment as SPR.

201

**SPECIAL PR
Fact Pattern 3**

CHANGE FACT PATTERN 1:

Donna dies survived by her spouse Harry and their only son Andy. Donna owned the bakery with her brother, Bob. After Donna's death, Harry and Andy have both told Bob that Harry intends to file to be appointed PR but after almost 2 weeks time this hasn't happened.

What are Bob's options?

202

**SPECIAL PR
Answer to Fact Pattern 3**

Bob is not an heir, devisee nor does he have priority for appointment as a PR. But, Bob is an interested person and has standing as co-owner of the bakery to file a Formal Petition seeking the appointment as PR and SPR to run the business.

Bob must give Harry and Andy prior (motion) notice of his request and his appointment will be for 90 days (or longer if the Court finds extraordinary circumstances exist for a longer appointment).

203

**SUCCESSOR PERSONAL
REPRESENTATIVE
Termination of PR's Appointment**

Termination of a PR's appointment occurs without court action upon:

- Death of PR
- Appointment of a guardian or conservator of the PR
- Subsequent appointment of a PR accompanying a change of testacy status.

204

**SUCCESSOR PERSONAL
REPRESENTATIVE**

Termination of PR's Appointment

Termination of a PR's appointment occurs with court action upon:

Acceptance of resignation (reserved)

Removal for cause

205

**SUCCESSOR PERSONAL
REPRESENTATIVE**

Appointment

INFORMAL

In Informal proceedings for appointment of a Successor PR, the Rules of Priority apply to the **PETITIONER** as well as to the person who will be appointed.

FORMAL

In Formal proceedings, any interested person may be Petitioner. The Rules of Priority apply **ONLY** to the person who will be appointed.

206

**SUCCESSOR PERSONAL
REPRESENTATIVE**

Appointment

The guardian/conservator of an IP or PP PR who HAS his or her own individual priority may seek the appointment of a successor PR by filing a Petition for Informal Appointment of Successor PR.

The guardian/conservator of an IP or PP PR who DOES NOT HAVE his or her own individual priority may seek appointment of a successor PR only by filing a Petition for Formal Appointment of Successor PR.

207

SUCCESSOR PR

Fact Pattern 1

Donna dies, survived by her spouse, Harry, and their two children, Andy and Debra. Donna's will nominates Harry, and if not, Debra, as PR. Donna's will leaves half of her estate to Harry, and half to Debra and Andy equally. The will is probated and Harry is appointed PR. Six months after Harry is appointed as PR, Andy is appointed as Harry's guardian.

What are Andy's and Debra's options?

208

SUCCESSOR PR

Answer to Fact Pattern 1

Debra may petition for INFORMAL appointment as Successor PR because she has priority as the named alternate PR. Andy may represent Harry's interests as guardian because Andy is not the petitioner. Andy may consent for Harry, and for himself, to Debra's appointment.

If Andy objects to Debra's informal appointment, he must file a FORMAL proceeding for the appointment of a successor PR.

209

**SUCCESSOR PR
FACT PATTERN 2**

CHANGE FACT PATTERN 1:
Donna's will named Attorney as PR, and no alternate. Attorney is appointed PR and then is placed under guardianship.

What are the Guardian's options?

210

SUCCESSOR PR
Answer to Fact Pattern 2

Attorney's Guardian has the obligation to maintain and protect Donna's estate, and to turn it over to a Successor or Special PR. Except as the named PR in Donna's will, Attorney had no priority, and had no right to nominate. Attorney's Guardian therefore also has no priority or right to nominate.

The next person on the priority ladder may file his or her own petition seeking to be appointed Successor PR but if they do not, Attorney's Guardian may file a Formal petition asking the court to appoint a Successor PR (with or without priority) and may request the appointment of a Special PR until the PR is appointed.

211

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

212

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.

213

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.

214

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.

215

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.

216

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.

217

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.

218

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?

219

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.

220

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?

221

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.

222

**SETTLEMENT &
DISTRIBUTION**

The PR shall proceed expeditiously with the settlement and distribution of a decedent's estate and, unless supervised, do so without adjudication, order, or direction of the court. The PR or any interested person may petition the Court to resolve issues regarding the settlement and distribution of the estate.

223

**SETTLEMENT & DISTRIBUTION
Inventory**

An Inventory is still required and must be made by the PR within 3 months of appointment.

The Inventory form is no longer issued by Court. If the PR files the Inventory with the Court it must be on the Court promulgated form.

224

**SETTLEMENT & DISTRIBUTION
Inventory**

The PR shall file with the Court OR mail to all interested persons a copy of the Inventory and may file the original with court. Failure to do so may result in an Order compelling compliance (Order to Render) or in removal.

While the filing of the Inventory with the Court is no longer required in general, it continues to be required with a Petition for License to Sell.

225

**SETTLEMENT & DISTRIBUTION
Accounts**

Much of G.L. c. 206 is still in effect.

There is no longer a requirement to file an Account with the Court.

If an Account is filed with the Court, it must be on the court promulgated form.

Accounts are allowed by the Court only if requested in a Petition.

226

**SETTLEMENT & DISTRIBUTION
Accounts**

INTERIM ACCOUNTS

The filing of Annual Accounts with the Court is no longer required.

Interim Accounts may be filed with the Court but will not be allowed by the Court unless a Petition for Allowance of an Account is filed with the Court.

227

**SETTLEMENT & DISTRIBUTION
Accounts**

FINAL ACCOUNTS

The filing of a Final Account with the Court is not required unless:

- administration is Supervised or
- it is ordered by the Court or
- the PR is seeking an Order of Complete Settlement of the Estate.

A Final Account will not be allowed unless the Final Account is filed with a Petition for Complete Settlement of the Estate.

228

SETTLEMENT & DISTRIBUTION

Methods for Closing

Unless the administration of the estate is supervised, it is no longer necessary for the PR to take any action to close the estate.

Regardless of whether or not the estate is closed, the PR's power over the estate continues until the PR's incapacity, death, resignation or removal (exception: see Small Estate Closing Statement).

229

SETTLEMENT & DISTRIBUTION

Methods for Closing

To close an estate, the PR may file:

- A Small Estate Closing Statement signed by the PR;
- A Closing Statement signed by the PR;

To close an estate, the PR or any interested person may file:

- A Petition for Complete Settlement of Estate.

230

SETTLEMENT & DISTRIBUTION

Voluntary Administration

Closing procedures do not apply to Voluntary PRs because VPRs are not defined as PRs in the Code.

An estate may be considered a "small estate" and not qualify for Voluntary Administration.

231

**SETTLEMENT & DISTRIBUTION
A Small Estate Closing Statement**

The estate is considered a small estate because:

[the value of the entire estate] – [liens & encumbrances]

is **less** than or equal to the total of:

[the family allowance] + [exempt property] +
[costs & expenses of administration] +
[reasonable funeral expenses] + [reasonable and necessary medical and hospital expenses of the last illness of decedent]

232

**SETTLEMENT & DISTRIBUTION
A Small Estate Closing Statement**

If the estate is a small estate, a PR may file a small estate closing statement if:

- Administration is not supervised;
- There is no court order requiring a formal closing proceeding;
- The PR has disbursed or distributed the estate to persons entitled thereto;
- The PR has sent a copy of the small estate closing statement to all distributees AND all creditors/claimants who have unbarred claims which have not been paid; and
- The PR has furnished a written account to the distributees whose interests are affected.

233

**SETTLEMENT & DISTRIBUTION
A Closing Statement**

A PR may file a Closing Statement if the following 7 requirements are met:

1. Administration is not supervised;
2. There is no court order requiring a formal closing proceeding;
3. Six months have passed since the date of the original appointment;
4. The time for creditor's claims has expired;

234

**SETTLEMENT & DISTRIBUTION
A Closing Statement**

5. The PR has fully administered the estate by:
- distributing the estate to the persons entitled
- AND
- making payment, settlement or other disposition of:
- all claims presented; and all expenses of administration and estate and inheritance and death taxes,
- except as may be specified in the statement

235

**SETTLEMENT & DISTRIBUTION
A Closing Statement**

“Except as may be specified in the statement” means:

If the PR has not fully satisfied all claims prior to distribution, the PR must state:

distribution of the estate assets was made with the assent of the distributees subject to possible liability for undischarged claims

OR

the details of the arrangements made to accommodate outstanding liabilities.

236

**SETTLEMENT & DISTRIBUTION
A Closing Statement**

6. The PR has sent a copy of the sworn statement to all distributees AND all creditors/claimants who have unbarred claims which have not been paid.
7. The PR has furnished an account to the distributees whose interests are affected.

237

SETTLEMENT & DISTRIBUTION
Petition for an Order of Complete Settlement of the Estate

A PR or any interested person may Petition for an Order of Complete Settlement of the Estate if:

1. One year has passed since the date of the original appointment or the petitioner is the PR.
2. The time for creditor's claims has expired.
3. All interested persons have assented to the petition or have been given notice by citation and a complete Return of Service has been filed.
4. The Final Account must be on file with the Court or accompanies the Petition. The Inventory need not be filed unless ordered by the Court.

238

SETTLEMENT & DISTRIBUTION
Petition for an Order of Complete Settlement of the Estate

A Petition for Order of Complete Settlement of the Estate

- MUST request that the Court approve the Final Account.
- MAY request that the Court:
 1. Determine testacy (if not previously determined);
 2. Determine heirs;
 3. Compel or approve a distribution;
 4. Construe any probated will.

239

SETTLEMENT & DISTRIBUTION
Other Orders of Complete Settlement of Issues

Prior to an Order of Complete Settlement of the Estate, there may be multiple Petitions for Order of Complete Settlement of specific issues.

These Petitions do not close the estate but only determine the issue for which relief was requested.

240

SETTLEMENT & DISTRIBUTION

<i>When PR files:</i>	<i>Estate is settled</i>	<i>PR's authority is automatically terminated</i>	<i>Closing Statement may be challenged</i>	<i>PR is discharged from further claim or demand and is exonerated of liability</i>
No Closing Statement	No.	No.	Not Applicable.	No.
Small Estate Closing Statement §3-1204	Yes.	Yes, 1 year after filing closing statement provided no actions involving the PR are pending in the Court.	Yes, for 1 year (by filing a Petition for Complete Settlement). Thereafter, only for fraud or manifest error.	No.
Closing Statement §3-1003	Yes.	No.	Yes, for 1 year (by filing a Petition for Complete Settlement). Thereafter, only for fraud or manifest error.	No.
Petition for Complete Settlement of Estate §3-1001	Yes.	No.	No, except for fraud or manifest error.	Yes, as to all issues determined in the Order of Complete Settlement.

241

SETTLEMENTS Fact Pattern 1

Donna dies leaving a spouse, Harry, and three children, Andy, Debra and Mary. The will leaves everything to Harry. Harry is appointed PR. One year has passed since his appointment as PR.

What are Harry's obligations?

242

SETTLEMENTS Answer to Fact Pattern 1

Harry need not take any action to close the estate.

Harry had to prepare an Inventory within three months of his appointment. The Inventory did not have to be filed with the Court. It did not need to be provided to anyone else because Harry is the only devisee.

Harry has no obligation to prepare or file an Account.

243

SETTLEMENTS

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, who lives with Harry. Sue was appointed PR of Donna's estate. Donna's will leave everything equally to Sue, Andy, Debra and Mary. Sue believes she has administered the estate effectively and fairly. She prepared an Inventory which she provided to Andy, Debra, Mary and to Harry since Harry was appointed Mary's conservator in order to handle Donna's estate issues.

244

SETTLEMENTS

Fact Pattern 2 (continued)

The creditor's time has run (12 months since date of death) and Sue has paid all debts of the estate. She is prepared to make a distribution to Andy, Debra and Mary but she is worried because Harry has complained about her handling of the estate in the past (although he has never asked that the estate be supervised). Sue believes that Harry may create problems.

What are Sue's options?

245

SETTLEMENTS

Answer to Fact Pattern 2

After distributing the estate, Sue can:

1. Do nothing and run the risk that someone may challenge her actions at any later time.
2. File a closing statement with the Court and provide a copy of her Account and a copy of the closing statement to Andy, Debra, Mary and Harry, as conservator for Mary.
3. File a Petition for Complete Settlement of the Estate with the Court requesting the approval of the final account (best protection practice).

246

SETTLEMENTS

Fact Pattern 3

ADD THE FOLLOWING FACTS TO FACT PATTERN 2:

Sue does nothing to close the estate. Harry is upset and disputes how the distributions were made.

What are Harry's options?

247

SETTLEMENTS

Answer to Fact Pattern 3

Harry may file a Petition for an Order of Complete Settlement of an Issue praying for any of the following:

- Compel an accounting;
- Compel a distribution;
- Construe the will;

He may also file a Petition and Order to Render an Inventory, a Petition for Removal and/or a Petition to Restrain Sue's authority.

248

DAY TWO AND BEYOND

-Job Specific Sessions-

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

249

Code References for Slides (1)

Slide No.	Topic	Code Section(s)
21	In and Out	Article III, General Comment
45-55	Heirs at Law	1-201(21), 2-102, 2-103
56-71	Priority of Appointment	3-203, 3-301(3) & (4)(ii)
72-74	Magistrate	1-207(27), 1-307, 3-307 – 309, 3-311, 3-401, 3-405.
75-82	Notice	3-306, 1-401, 3-403,3-414
83-92	Statute of Limitations	3-108, 1-106, 3-1001(c), 3-412,
97, 132	Voluntary Administration	3-1201
144-145	Bond	3-603, 3-604, 3-606, & c.205, 9-35 & , as amended, 1, 5 & 6A
146-149	Demand for Sureties	3-605

250

Code References for Slides (2)

Slide No.	Topic	Code Section(s)
157-161	GAL/VR	1-403 to 1-404
172-180	Supervised Administration	3-501 to 3-505, 3-107, 3-402(c), 3-414 Comment
189-197	Special PR	3-614 to 3-618, 3-203(h)
204-207	Successor PR	3-613, 3-716, 3-203(h), 3-01(a)(6), 3-715(b)
212-214	Exempt Property	2-401, 2-403, 2-405, 3-101, 3-203(b)(1), 3-815(b) & (c), 3-901, 2-802
215-218	Family Allowance	2-404, 2-405, 2-401, 2-403, 3-807, 3-818

251

Code References for Slides (3)

Slide No.	Topic	Code Section(s)
223-228	Inventory & Accounts	3-706, 3-1001, 3-704, 3-105 & c. 206: 2-15, 17 & 31:
231	Voluntary Administration Closing	3-1201 & 3-1202 2-15, 17 & 31
232-233	Small Estate Closing Statement	3-1203, 3-1204
234-237	Closing Statement	3-1003
238-240	Petition for Complete Settlement	3-1001

252
