

# A Guide to Real Estate Practice under the new MUPC

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**BOSTON BAR ASSOCIATION  
APRIL 26, 2012**



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Real estate can be conveyed when “an estate has been officially administered and the creditors’ claims are either satisfied or barred.”


See, Thomas H. Belknap, “Newhall’s Settlement of Estates and Fiduciary Law in Massachusetts” 5th ed. (1994 & 1997 Supplement), Section 1.6.



**When can we sell the real estate?**

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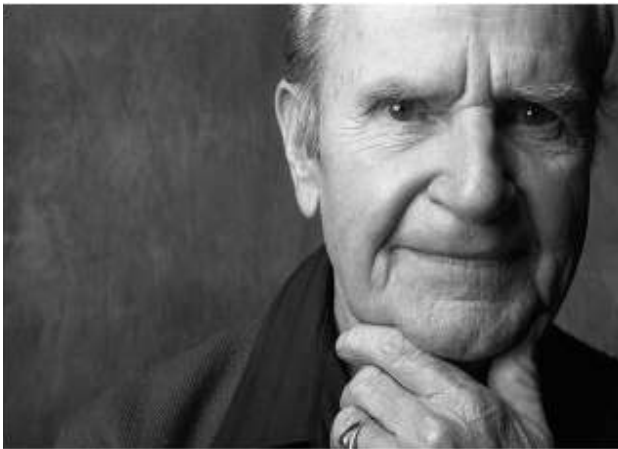
- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts/taxes with preference under federal law;
- (4) reasonable and necessary medical/hospital expenses of the last illness of decedent, including compensation of persons attending the decedent;
- (5) debts/taxes with preference under other laws of the commonwealth;
- (6) debts due DMA;
- (7) all other claims.



**Hierarchy of liens and claims against the Estate.**  
**G.L.c. 190B, §3-805**

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Title to real estate owned by joint tenants or tenants by the entirety devolves to surviving joint tenant(s) or to the surviving tenant by the entirety by operation of law. See REBA Title Standard No. 71.




**Tenancy and the effect of death**  
**G.L.c. 190B, §3-101.**

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Estates of testate and intestate decedents owning property in the Commonwealth

Estates of minors and incapacitated persons, i.e. Guardianship and Conservatorship.

Trusts.



**Jurisdiction of the Probate Courts under G.L.c. 215, §3.**

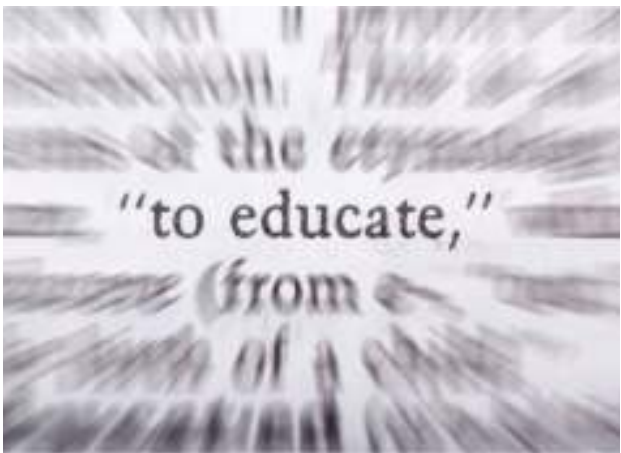
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**“Administration”:** informal *and* formal testate *and* intestate proceedings.

**“Devise”:** all testamentary dispositions, both real and personal.

**“Estate”:** property of the decedent, trust or other person whose affairs are subject to the UPC; there is no longer a distinction between real and personal property.

**“Interested Persons”:** heirs, devisees, children, spouses, creditors, beneficiaries and anyone with a property right in or claims against the estate.



**Definitions  
G.L. c. 190B, §1-201**

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**Someone in charge of an estate** (f/k/a “executor”, “administrator”, “special administrator”, etc.).

A Magistrate (in an informal proceeding) or the Court (in a formal proceeding) may appoint a personal representative.



**The Personal Representative.  
G.L.c. 190B, § 1-201.**

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To simplify and clarify the law concerning the affairs of decedents and missing persons.


To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors.



**The aim of the MUPC:  
G.L.c. 190B § 1-102**

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To determine testacy,  
To determine heirs,  
To appoint a personal representative,  
To establish authority to distribute assets of the probate estate.




**Why is it necessary to file a Probate? G.L.c. 190B § 3-102**

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Title to real estate owned by a tenant in common or sole owner is distributed:

pursuant to a valid Will (testate decedent) or

under the law of intestate succession (intestate decedent dies).



**Intestate succession. G.L.c. 190B § 2-101**

## Presumption of intestacy:



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- If a Will is not probated within 3 years of date of death, the decedent will be deemed to have died intestate. G.L.c. 190B § 3-318.
- Will may be used to show proof of title to real estate, but will not be accepted for Probate. G.L.c. 190B § 3-108.

## Date of death triggers law of intestacy:

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### **If date of death is prior to March 31, 2011:**

- Apply the old G.L.c. 190 § 3
  - Under section 43, paragraph 4, of Chapter 521 of the Acts of 2008, “any accrued right is not impaired” by the enactment of G.L.c. 190B.

### **If date of death is on or after March 31, 2012:**

- Apply the new G.L.c.190B, §201 et. seq.

## Formal and informal proceedings

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### **Informal Proceedings: G.L.c. 190B§ 3-302**

- Conducted by a Magistrate with at least 7 days notice to interested persons by the petitioner for the probate of a will or appointment of a personal representative.
- Can be superseded by a formal proceeding at any time up to three years from the filing of the petition for informal probate.

### **Formal Proceedings: G.L.c. 190B§ 3-401**

- Conducted by a judge with notice by citation to interested parties.
- Is a judicial determination of the validity of a will or the appointment of a personal representative.
- Estate administration is unsupervised once the Court has made the requested determination.

## What is needed in order to sell real estate?

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- Informal proceeding: License to sell is required, regardless of power of sale in the Will;
- Formal proceeding: License to sell required if no power of sale in the Will;
- Formal proceeding: License to sell not required if power of sale is in the Will.



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The “gross estate” is the date of death value of all property, real or personal, tangible or intangible, wherever situated.”



**What is the “gross estate”?**  
**IRC §§2301, 6324.**

## Affidavit as to No Estate Tax Due:

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- Real estate attorneys sometimes forget that a “gross estate” includes all assets owned by the decedent at the time of death, *not just the value of the real estate.*
- See REBA form No. 32 Affidavits under G.L.c. 65, §14(a) as to Title Standards No. 3, 24.






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Deeds of distribution. G.L.c. 190B § 3-908

Letters of Conservator. G.L.c. 190B § 5-420

Disclaimer of property interest. G.L.c. 190B § 2-801



**MUPC now requires recording in the Registries of Deeds or Registry District of the Land Court:**

At CATIC, your success is our business.

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