

**KEY TAKEAWAYS**  
**MUPC & MUTC UPDATE 2025**

**Heirs at Law/Priority for Appointment/Time Limits for Filing/ Options to Open an Estate**

***From Jamie Jordan and Register DeCristofaro***

1. Remember heirs are determined as of **date of death** and not the date of filing of a petition to open an estate.

For MUPC deaths, if ALL the decedent's children are children of the surviving spouse and neither of them have children from a prior relationship, then the children are NOT heirs at law. As a result, DO NOT check #3A on the Surviving Spouse, Children, Heirs at Law form (MPC 162).

If there is no surviving spouse, then children are NOT children of surviving spouse. When in doubt about who the heirs may be, check with the MUPC Procedural Guide as a primary resource.

2. Standing to file - Question #2 on the Petition for Informal requires the petitioner to state what their interest is in the estate. It must be an interest as stated in c. 190B, §1-201(24).
3. Regarding priority - if there is more than one person with priority for appointment then priority is considered "shared," meaning everyone with shared priority has the right to serve or renounce.

When any person with equal priority under (2) – (5) of the "priority ladder" (see G. L. c. 190B, s. 3-203) renounces (declines) the right to serve BUT nominates another to serve in his/her place, ALL remaining persons with equal priority **who have not renounced their right to serve** must agree that the nominee may serve with them or alone to proceed informally. That is the only time you use section 2(c) on the MPC 455 form.

OTHERWISE, a formal petition is required and #9 on the Petition must state that the nominee is a person without priority. In other words, if you don't have an agreement between those who share priority, you're going to file formally.

4. In an informal proceeding, a spouse, heir at law, or devisee who is an incapacitated person, protected person, or a minor must be represented by a conservator, or if not a conservator, a guardian who cannot be the Petitioner.

5. In terms of time limits - for deaths on or after 3/31/2012, there is a 3-year time limit in which to open an estate unless an exception applies, so timing is always important.
6. If an heir or devisee dies AFTER the decedent, then a PR **must** be appointed over their estate to proceed informally. Otherwise, with no PR, you will file formally which would trigger the question of a GAL.
7. A trust is a devisee. Although the MUPC states that a trust or a trustee is a devisee, **best practice**, is to list both the Trust Name and the Trustee on the Devisee form to avoid any question as to who receives notice and/or stands in that fiduciary capacity. Also, the assent of the trustee or the notice to the trustee must reflect that the assent is given or that notice is sent to them in their capacity as trustee.
8. Keep in mind there are many resources that are easily available online to help you navigate through the process. Take advantage of them:

The 2<sup>nd</sup> Edition of the MUPC Procedural Guide is especially helpful and will answer most of your questions. It's easy to access online.

### **E-Filing**

***From Danielle Smokler:***

1. All information regarding eFiling can be found on mass.gov by searching "eFiling Probate and Family Court".
2. Our specific eFiling page lists out all information regarding registering for eFiling, case types and actions that can be filed, general FAQs, and any additional information you may need.

### **The "FLS"**

***From Evelyn Patsos:***

Everything you need to know to request reassignment of a case to the Fiduciary Litigation Session can be found at: <https://www.mass.gov/probate-and-family-court-rules/probate-and-family-court-amended-standing-order-3-17-fiduciary-litigation-session-pilot-project>

Take advantage of the FLS!

## **Administering the Estate**

### ***From Shea GuntherMaher:***

1. Personal Representative is a fiduciary responsible for collecting, safeguarding and distributing assets and ensuring the payment of debts and expenses, all subject to statutory rights of claimants and creditors.
2. Personal Representative must administer the estate with care, impartiality, and prudence in the best interests of the estate. They must use reasonable diligence and all actions should be within the scope of their statutory powers, or the powers granted under the Will, if any.
3. In the event of a dispute or conflict, the Personal Representative should seek the protection of a court order.

## **Real Estate Issues**

### ***From Evelyn Patsos:***

It's critical to review forms for accuracy *before* you file them. Double check form MPC 162 - Surviving Spouse/Children/Heirs at Law and any proposed decree. Don't check off the box on a proposed decree that states that the heirs at law are as provided in form MPC 162, unless they are! When in doubt, write it out!

Chapter 11 of the MCLE Probate Manual is a great resource for real estate issues.

Don't panic when it comes to clearing title in heirs/devisees. Remember: T-H-C!

## **Options to Close an Estate**

### ***From Jeff Roberts:***

1. Be sure to always only seek the relief you need in a petition for order of complete settlement.
2. Be sure to consider who the interested parties are as they will be different depending on the relief you are requesting and can change your notice requirements and timing.
3. Be sure to always submit a decree that matches the relief you requested in the petition.

## **Coming Soon....**

Keep an eye out for updates to the 2<sup>nd</sup> Edition of the MUPC Procedural Guide as a result of the SJC *Slavin* decision and minor updates to the following:

MPC 162 – Surviving Spouse/Children/Heirs at Law Form

MPC 958 - Instructions for Form (MPC 162) Surviving Spouse, Children, Heirs at Law

MPC 964- Instructions for MPC 161 Petition for Late and Limited Formal Testacy and/or Appointment

MPC 963 - Instructions for Petition for Formal Probate

MPC 962 - Instructions for Petition for Informal Probate