

## THE MASSACHUSETTS UNIFORM PROBATE CODE

May 1, 2012

On March 31, 2012 the Massachusetts Uniform Probate Code (“MUPC”) went into effect at long last. The guardianship and conservatorship provisions of the MUPC have been in place since July of 2009. However, the implementation of the probate and estate provisions was delayed several times while the courts prepared for the overhaul of the probate system and technical changes were worked out. The MUPC is finally here and entirely changes the process for probating an estate here in Massachusetts as well as altering who inherits property for those people who die intestate (without a Will). Below are the highlights of the new law.

**Choice of Proceeding:** The MUPC allows for four different types of probate proceedings: Voluntary, Informal, Formal and Supervised. Choosing the most appropriate option is dependent upon on a number of case-specific factors. Voluntary Probate is intended for small estates consisting of less than \$25,000 and involves minimal paperwork and virtually no court involvement. The Informal Probate proceeding is designed to allow for a much quicker, less costly probate proceeding with minimal court involvement for routine estates. A Personal Representative may be appointed and begin administering the estate the same day as the Will and petition are filed, provided heirs and interested parties are given 7 days notice. Formal Probate is similar to the prior system. Interested parties are given notice and an opportunity to object. After the window to object closes, the court appoints the Personal Representative and formally establishes the validity of the will. There is no court oversight over the administration process however. Supervised Probate involves a formal probate proceeding to appoint the Personal Representative and prove the Will, along with court supervision of the entire administration process. In deciding which proceeding is appropriate, the Personal Representative needs to balance the speed and efficiency of the Informal Probate proceeding with the added protections court supervision provides in a Formal or Supervised Probate proceeding.

**Changes in Intestacy Laws:** The MUPC directs that all property not disposed of by Will pass to a decedent’s heirs in the same manner as prior law. However, the share of the surviving spouse is enlarged as follows:

- The surviving spouses takes the entire estate if the decedent has no surviving parents or children (even if the spouse has children from another relationship)
- The surviving spouses also takes the entire estate if all of the decedent’s children are the spouse’s children and the spouse has no other children
- The surviving spouses takes the 1<sup>st</sup> \$200,000 of the decedent’s estate plus  $\frac{3}{4}$  of the balance if the decedent has no children but a surviving parent

- The surviving spouse takes the 1<sup>st</sup> \$100,000 plus ½ of the balance if either the decedent or the spouse has children from another relationship

**Change in Terminology:** The terms Executor and Administrator are no longer used. All fiduciaries appointed to administer a decedent's estate are now called Personal Representatives. In addition, the term "descendants" has replaced the somewhat peculiar term "issue."

**Virtual Representation:** Perhaps the biggest benefit we see from the MUPC is virtual representation. This permits minor, legally incapacitated, unborn or unascertained persons interested in a matter to be bound by a court order involving an estate or trust if their interests are represented by another party with substantially the same interests. In some cases, personal representatives and trustees can represent persons interested in an estate or trust. Conservators and guardians can represent the interests of a protected person. Parents can represent their minor and unborn children. Moreover, a beneficiary with a substantially identical interest in a trust can represent unborn and unascertained beneficiaries, provided there is no conflict. Where appropriate, virtual representation will streamline probate proceedings without the need for a legal guardian to be appointed to represent those whose interests are not otherwise represented.

**Impact of Marriage and Divorce:** Under the MUPC, marriage no longer revokes a pre-marital will. However, a surviving spouse will receive an intestate share of that portion of the estate passing pursuant to the will to anyone other than the decedent's descendants. Moreover, divorce now revokes not only provisions in a will benefiting the former spouse, but non-probate transfers as well, such as life insurance and retirement beneficiary designations.

**Statute of Limitations:** Under the new MUPC, wills must be probated within three years of death. Under the old law it was possible to probate a will for up to fifty years after death.

**Distinguishing Guardianship and Conservatorship:** The MUPC distinguishes between the roles and duties of guardians versus conservators. A guardian makes decisions concerning a protected person's support, care, health and welfare. On the other hand, a conservator is to manage a protected person's property. Another change implemented by the MUPC is that an appointment of a guardian for minor children in a Will is now automatic and becomes effective once an acceptance is filed in court, as opposed to being a nomination that the court had to approve. The MUPC also increases court oversight over guardians and conservators.

While the MUPC aims to streamline the probate process, particularly for uncomplicated estates, nothing replaces good planning. With proper planning, clients can take advantage of the simplified probate process or, possibly, avoid it altogether.