

What you need to know about the new MUPC

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Published: December 8th, 2011

Massachusetts is about to embark on what is nothing short of a complete overhaul of its system for administering estates. On Jan. 2, the Massachusetts Uniform Probate Code, or MUPC, which was signed into law nearly three years ago, will finally come into full force and effect (see G.L.c. 190B).

Come the New Year, we will have a system that is almost entirely new, beginning with the basic premises on which the system is constructed and extending through different terminology and processes all the way to approximately 80 newly created forms.

In enacting the MUPC, Massachusetts joins 17 other states and territories that have adopted versions of the Uniform Probate Code.

One of the main purposes of the MUPC is "to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors." G.L.c. 190B, §1-102(b)(3). Beyond that, the MUPC allows for more streamlined processes for administering estates and adds flexibility that currently does not exist in Massachusetts probate law.

Fundamentally, the MUPC shifts responsibility for administering estates from the Probate Court (as under existing law) to interested parties (heirs, named beneficiaries, creditors, etc.). It creates new proceedings with varying levels of court involvement, which can be used for testate and intestate estates alike. And it allows flexibility in choosing how to proceed and breaks down our current notion of continuous court supervision of the entire process into separate proceedings so that parties can be "in and out" of the court as needed.

While it undoubtedly will take time for lawyers to become comfortable with the new procedures and language, in the end the MUPC promises to create a more efficient and less costly system for administering estates, which will relieve clients and the court of many unnecessary burdens.

[Click here to read a related news story about the new MUPC.](#)

New terminology

Most of the existing statutes governing probate matters have been repealed and replaced with parallel (or, in some situations, quite different) provisions. One of the initial adjustments will be familiarizing ourselves with the new statutory references and terminology.

For example, the words "executor" and "administrator" are no longer used to describe the fiduciary administering an estate. Rather, the term "personal representative" is used regardless of whether the decedent left a will.

The term "legacy" is no longer used, as "devise" refers to "a testamentary disposition of real or personal property."

Instead of issuing a "certificate of appointment" of a fiduciary, the court will issue "letters." And the term "magistrate" refers to a court official designated to perform certain new functions.

The MUPC also changes the determination of who is an heir under the intestacy statute.

For example, if a decedent were survived by a spouse and children, all of whom were children of the marriage (i.e., there were no step-children), then the surviving spouse would be the sole heir.

On the other hand, if either the decedent or the surviving spouse had a child with someone else, then the decedent's heirs would be the surviving spouse *and* the decedent's children.

Where to begin

Unlike current Massachusetts law, under which (assuming the decedent's estate does not meet the requirements of a voluntary administration) there is only one proceeding available for a person seeking to administer an estate, now the petitioner may have a choice: informal versus formal proceedings.

The new system is based on the idea that the role of the courts should be to adjudicate disputes, not necessarily to oversee every facet of the probate process. The MUPC reflects that many estates are not contested and do not need judicial determinations.

At the same time, the MUPC allows for formal proceedings (a determination by a judge) in certain circumstances to provide additional safeguards or when requested by a person interested in an estate.

Informal proceedings may be initiated as early as seven days after the decedent's death. The petitioner may choose to (1) probate the will, (2) have a PR appointed (if there is no will), or (3) probate the will and appoint a PR.

The petitioner must give written notice to required persons at least seven days *prior* to filing the petition. The petitioner then can file a complete package with the court, consisting of the petition, bond, affidavit of notice and other required forms. The package will be reviewed by a magistrate, who will either sign the order or decline the petition if not satisfied with it.

Within 30 days *after* the informal probate or appointment of the PR, the petitioner will be responsible for publishing a notice, though no proof of publication is required to be filed with the court.

There are some situations in which an informal probate of a will or appointment of PR is not available, such as when the original will is lost; there is a pending formal petition; there is no death certificate available; or any of the decedent's heirs are incapacitated persons or minors who are not represented by a guardian or conservator. In those cases, the petitioner must bring a formal testacy proceeding.

The process of bringing a formal probate is similar to the current method, which requires a citation to be issued and notice and publication prior to the return date.

Petitioners may choose to initiate a formal probate at the outset in order to obtain a formal adjudication of the heirs and/or a determination that the will is the decedent's last will and testament. A formal testacy proceeding may also be used to set aside an informal probate.

Once appointed, whether informally or formally, the PR has continuing duties and obligations relative to administering the estate. In many situations, a PR will not have any obligation to file papers or seek approval from the court unless desired.

For example, a PR is still required to prepare an inventory within three months after appointment, but now has a choice whether to file it with the court or mail it to all interested parties.

Similarly, a PR is no longer required as a condition of his or her bond to file accounts with the court.

Other new concepts

There are many other new concepts under the MUPC, including a new system for the distribution of intestate property; for determining the priority for appointment of a PR; and for closing the estate administration process.

Article 7 of the MUPC includes new concepts for administering trusts, of which practitioners should be aware. Attorneys should note, however, that legislation to establish the Massachusetts Uniform Trust Code, which would replace Article 7 in its entirety, is pending in the Legislature (see House Bill 3780 (187th General Court)).

Pitfalls

In light of the wholesale changes being wrought by the MUPC, attorneys need to carefully review the new law. There are many potential “traps” awaiting the unprepared attorney, including:

- *Transitional rules.* For matters in which a permanent decree has not entered or where proceedings are pending as of Jan. 2, 2012, attorneys must consult the transitional rules contained in Standing Order 5-11 to determine what is required.
- *Change in the statute of limitations.* Rather than the current 50-year limitation, the general rule under the MUPC is that petitions to probate a will and/or appoint a PR must be filed within three years of a decedent’s death.
- *Marriage no longer revokes a will.* If a decedent married after he executed a will, the will remains valid.
- *Real estate issues.* Although PRs do not have title to real estate, a deed of distribution likely will be required in most cases.
- *Be on the lookout for new Supplemental Rules of the Probate & Family Court.* The Probate Court has proposed combining the Probate Court Rules with the Supplemental Rules of the Probate Court.

What practitioners can do to help

The MUPC overturns hundreds of years of practice and jurisprudence. Adapting to changes of this magnitude will be challenging, but working together, attorneys and the court can create a system that is better for lawyers, the court and, most importantly, clients.

There are many resources available to those who seek to learn more. The Probate Court’s website has a wealth of information and will include the new forms as they become available (<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/mupchub.html>). There are also numerous CLE courses being offered.

Have patience with each other and with the court, as it will take time for new procedures to evolve.

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