

**Barnstable County Bar Association
Land Court and Probate Court Practice
Presented by:
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Barnstable Probate and Family Court
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When Probate Court and Land Court Meet

Informal v Formal Proceeding: An important initial decision

Informal Proceeding

- Informal Proceedings do not determine heirs, informal proceedings are an administrative proceeding. If all of your documents are in order, a Magistrate will sign your Order of Informal Probate.
- If you make a mistake, you need to correct it by filing some type of Formal Proceeding or possibly a Petition for Complete Settlement. Notice is given seven days prior to the filing or all of the Assents are obtained. You must give seven (7) days' notice to the Division of Medical Assistance prior to filing. In some cases you must give notice to the Attorney General's office and Veteran's Affairs.
- Publication is required within 30 days after filing is often a problem as many do not do the publication on the Informal. The legal ramifications are unknown at this point. If you file any subsequent actions with the court, you must file the proof of publication for your Informal.

Formal Proceeding

- If there is real estate, especially if there is no Will, you may want heirs determined in your initial filing. If you want heirs determined initially, you should file a Formal proceeding to start.
- Notice is 14 days by mail prior to the return date and publication is 7 days prior to the return date.

Forms

- For both Informal and Formal Petitions, make sure the Petitioner is an interested person as defined by M.G.L. Chapter 190B Section 1-201 (24).
- ***Surviving Spouse, Children, Heirs at Law form (MPC 162)*** is a form that often contains errors. You always have to list the Children of the decedent in this form, but the children are not always Heirs. Example: The decedent died after the MUPC on March , 2012, all of the children of the decedent

are also all children of the surviving spouse. In this case, the children are not Heirs. Therefore, do not move on to paragraph 3 on form (MPC 162).

- If the children of the decedent in this case were not all of the Children of the Surviving Spouse, then you would move to paragraph 3 on the form as the children and the surviving spouse take in this case.
- If the decedent died before the MUPC, the spouse and the children would be heirs even if they were an intact family as the laws of intestacy were different prior to the MUPC. In this case, you would proceed to paragraph and complete that section on the form.
- Other common errors on this form occur by listing too many heirs at law.
- Remember: This is your permanent record so please consult the Intestate Succession Charts on pages 18 and 20 of the MUPC Administration Procedural Guide Second Edition which explain intestate succession pre MUPC and post MUPC and the Massachusetts Degree of Kinship Chart (MPC 960).
- ***Decree and Order on Petition for Formal Adjudication (MPC 755)*** Please refer to paragraph 8. The best practice is to list the heirs in the box for the Court. If you just say the heirs are identical to those listed in the original (MPC 162) Surviving Spouse, Children, Heirs at law form, it may not be true. As indicated above, you always have to list the children in this form, but they may not always be heirs.
- In the section at the end of the form entitled “The Court Decrees and Orders”, in paragraph 1 if you have a Will that has already been admitted to probate in another jurisdiction, you still need to check off that the will has not previously admitted to probate as that is referring to probate in Massachusetts.
- ***Petition for Order of Complete Settlement (MPC 855)*** this is considered a Formal Proceeding, so if you started with an Informal Proceeding and now need a determination of heirs, you may get a determination of heirs in this proceeding. Publication is required if you are seeking a Determination of Heirs even if you already published for the Informal as you are required to do. See paragraph 10 of the form to request a determination of heirs if you have not previously requested this.
- ***Petition for Late and Limited (MPC 161)*** This proceeding is used if there has not been an Informal or Formal proceeding within three years of the decedent’s death. A Voluntary Personal Representative does not count. There must have been an Informal or Formal proceeding. If there was a

proceeding in another state, this counts as a proceeding within the three years. You cannot get a license to sell with a Late and Limited proceeding.