

The MUPC: an Overview

Uniform Probate Code Features Several New Provisions

By TODD C. RATNER, Esq.

In January 2009, the Massachusetts Legislature enacted the new Uniform Probate Code (MUPC). Although certain provisions of the MUPC pertaining to guardians and conservators came into effect on July 1, 2009, most changes are scheduled to take effect on January 2, 2012.

The new MUPC has an impact on the probate process and makes an effort to promote efficiencies for the court in the administration of trusts and estates. Ultimately, the MUPC is designed to simplify, streamline, and clarify the process of settling a decedent's affairs in a manner consistent with the decedent's intent.

Noteworthy provisions to the MUPC have been included to liberalize requirements for the disposition of tangible personal property, streamline procedures for appointment of personal representatives and for probate of certain estates, limit court supervision over testamentary trusts, and change certain default rules.

Here's an overview.

Disposition of Tangible Personal Property

Currently, the Commonwealth of Massachusetts allows a written statement or list providing for the distribution of items of tangible personal property (i.e. jewelry, household furnishings, collectibles, tools, etc.) not otherwise specifically disposed of by a will.

However, understand that this is simply an expression of your wishes and does not create a legal or equitable obligation. The new MUPC provides additional testamentary flexibility by giving a binding effect to a signed written statement or list.

The writing may be prepared prior to or after the execution of the will. Similar to a will, the written statement or list may be revised anytime at your discretion as long as you have the requisite capacity to do so.



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Informal Probate Proceedings

The new MUPC allows for an alternative, cost-effective approach to the formal probate procedures required under the existing code. In the event that an estate administration is uncontested, a new informal procedure has been enacted to facilitate the probate filing. The new informal probate shortens the length of time it takes to appoint an estate administrator, and inventories and accounts are no longer required to be filed with the court, but only need to be provided to the estates' interested parties. However, in the event that an interested party wishes to institute formal proceedings, the interested party may petition the court to do so.

Limited Court Supervision Over Testamentary Trusts

Under the current code, trusts established within your will, otherwise known as testamentary trusts, require the trustee to provide annual accounts to the court. The new MUPC provides that the trustee must only provide accounts to the beneficiaries unless an interested party petitions the court to become further involved. Due to this change in the MUPC, testamentary trusts are more consistent with standalone living trusts in accomplishing their intention of avoiding court oversight.

Default Rules

The new MUPC provides default rules to address gaps in estate planning which you did not effectively provide for during your lifetime. These revised default rules are an attempt to mirror what most people would have wanted under similar circumstances. The revised default rules have addressed the following circumstances:

- **Omitted Children:** Under present Massachusetts law, an omitted child takes an intestate share unless the omission was intentional. Under the new MUPC, the omitted child receives the intestate share if there is no other child living at the signing of the will. However, if there is another child living at the time the testator signed the will, unless the omission is shown to be intentional, the omitted child is limited to a proportionate share of the estate left to the other children.

- **Will Prior to Marriage:** Currently, a marriage revokes a prior will unless the will was executed in contemplation of marriage. Under the new MUPC, a will executed prior to the testator's marriage is no longer automatically revoked. Now, the surviving spouse receives any part of the estate that is not distributed to children of the deceased spouse born prior to the marriage of the deceased and surviving spouse.

- **Intestate Succession:** Under present Massachusetts law, in the event that there is no will, surviving spouse, or children, there is a 50-50 allocation between the surviving spouse and the children. However, in most cases, the intention is that the entire estate is distributed to the surviving spouse. As such, the new MUPC provides that the surviving spouse receives the entire estate if all children of the decedent and all children of the surviving spouse are children of both.

- **Divorce:** Under current Massachusetts law, any provision in favor of a former spouse within a will is revoked. The new MUPC extends this practical rule to all non-testamentary transfers, retirement plans, insurance, and funded trusts. So, if the decedent erroneously did not change a beneficiary designation on an asset from a former spouse to another, the former spouse will be barred as a beneficiary.

- **Descendants of Different Generations:** In the event that a decedent dies without a will, the estate will be distributed per capita at each generation, resulting in members of the same generation receiving an equal share of the estate. Per capita differs from per stirpes, where people do not inherit in their individual capacity but are part of a group represented by a deceased ancestor closer in line to the decedent.

Bottom Line

The MUPC provides for an accommodating procedure for the administration of decedents' estates, allowing as little or as much court oversight as may be appropriate relative to the needs of the interested parties. If you're interested in developing or revising your estate plans to take advantage of the MUPC enhancements, you are encouraged to speak with an experienced estate-planning attorney. ❖

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