

# Another important chapter in state's probate code

By Linda T. Cammuso

The new Massachusetts Uniform Probate Code (MUPC) was signed into law several years ago and several important and significant changes took effect on Jan. 2. The new legislation is designed to simplify, streamline and clarify the probate process. In certain cases it will require less court supervision and estate resolution will be quicker and be less costly, at least in theory.



## Legal Briefs

Among the many changes, terminology has been streamlined and modernized. Previously, probate forms and terminology were different for those who died with a will (testate) and for those who passed without one (intestate). There will no longer be a confusing distinction

between executor and administrator; the term now used to identify the person assigned by the court to manage the estate is personal representative.

The laws of intestate distribution, which apply when someone dies without a will, have also changed and will particularly impact the blended family — i.e., marriages in which the spouses have children from prior unions and may have children together.

Under the former law, if a person died intestate (without a will) and was survived by a spouse:

- If the decedent had descendants (children or grandchildren), the surviving spouse took only half the estate and the descendants took the remaining half.
- If the decedent had no descendants, the surviving spouse took the first \$200,000, and then split the remainder with the decedent's heirs at law (blood relatives).

Under the new law, for intestate estates with surviving spouses:

- If the decedent is not survived by

parents or descendants, the surviving spouse takes the entire estate. There is an exception, though: If the surviving spouse has descendants from a prior relationship (i.e. not of the decedent), the surviving spouse takes the first \$100,000 plus half the remaining estate, and the other half goes to the decedent's nearest heirs at law (blood relatives).

• If the decedent is survived by descendants, the surviving spouse takes the entire estate. The exception to this rule is: If any of the descendants are not common to the decedent and the surviving spouse (i.e. either the decedent or the surviving spouse has descendants from a prior relationship), the surviving spouse takes the first \$100,000 plus half the remaining estate, and the decedent's descendants take the other half.

The new Massachusetts Uniform Probate Code expands the rights of a surviving spouse and at the same time acknowledges the reality of blended families. These

changes highlight the facts that 1) estate planning is not a one-size-fits-all process and 2) creating a customized estate plan with a skilled estate-planning attorney is more important than ever.

The next question: have these changes made your will obsolete or ineffective? Although the new law does not invalidate old wills, your will may rely on default provisions in the law (e.g. definitions of who is defined as a kindred, descendant, heir at law, etc.) that are now different. The short answer is, if you're not certain of the law's effect on your will, you should have it reviewed by a qualified estate planning attorney.

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