



T. Michael Sullivan, Esq.

INSOLVENCY: A CASE STUDY

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AndoverLaw, P.C.

**UNITED STATES V. ESTATE OF ROBERT REITANO, ET AL.
UNITED STATES DISTRICT COURT – MASSACHUSETTS
No. 12-11944-RWZ
SEPTEMBER 4, 2014**



PARTIES

- Plaintiff – United States of America (IRS)

- Defendants – Estate of Robert Reitano
Marci McNicol, a/k/a Marci A. Reitano
Individually and as Executrix

PROCEDURAL HISTORY

United States District Court – District of Massachusetts

- Cross Motions for Summary Judgment
- Defendant did not file a proposed statement of facts with Cross Motion for Summary Judgment. Court relied solely on Plaintiffs version of the facts!!!

SUMMARY OF FACTS

- Robert Reitano died July 25, 2002 with significant tax liabilities. (totaling \$342,538.93)
- Robert's estate had two significant assets (1) 50% share of stock in one company with the fishing boat, the Makaira, as its sole asset and (2) 100% of the shares of another company with the fishing boat, the Sophia Gale, as its sole asset. There was also a Mercedes Benz returned to the lien holder and \$272.61.
- On July 30, 2002, Marci McNicol as Executrix transferred the shares owning the Sophia Gale to herself. The shares were worth \$80,000.
- On April 11, 2003, Marci McNicol transferred the shares owning the Makaira to herself. The shares were worth \$107,500, but the boat was subject to \$61,562.37 of liens.
- The IRS immediately notified Marci of the tax liabilities and later submitted a claim in the probate court on October 27, 2003.

FACTS CONTINUED

- The parties worked together over the years to try to resolve the matter but there was never any resolution.
- Sometime in November of 2008 the IRS informed Marci McNicol that she had violated the Federal Priority Statute.

UNITED STATES' MOTION FOR SUMMARY JUDGMENT

- There is no genuine dispute as to any material fact and The United States is entitled to the following as a matter of law.

(1) Judgment on the tax liability against Robert Reitano's Estate and Marci McNicol as Executrix in the amount of **\$342,538.93** (Total Tax Liabilities as of October 31, 2013) and

(2) Judgment holding Marci McNicol personally liable under the Federal Priority Statute for distributing estate assets without first paying federal tax debts in the amount of **\$125,937.63** (The value of the Sophia Gale \$80,000 + the value of the Makaira minus liens \$45,937.63)

MARCI MCNICOL'S MOTION FOR SUMMARY JUDGMENT

- There is no genuine dispute as to any material fact (McNicol never submitted a Statement of Facts)
- Family Allowances and Funeral and Administrative expenses take priority of the claims of The United States and there was no money left to pay said claims after paying the Family Allowances and Funeral and Administrative Expenses.

ISSUE AND BURDEN OF PROOF

Summary Judgement is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law – Fed. R. Civ. P. 56(a).

- Issue: Whether tax liabilities total \$342,538.93 and whether the facts show Marci McNicol violated the Federal Priority Statute entitling the U.S. to judgement as a matter of law.
- Burden of Proof: McNicol has burden to show that there is a genuine dispute over material facts pertaining to the tax liability (Count 1) and there is a genuine dispute over material facts pertaining to whether the elements of the Federal Priority Statute were met and/or the elements of the Federal Priority Statute were not met (Count 2)

RULE OF LAW

The US Government shall be paid first when the amount in the estate is not enough to pay all debts and an Executrix paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government. *31 US Code § 3713*

Three elements to a Federal Priority Statute Claim

- 1) At the time of the transfer, the debtor or the Estate was insolvent or was rendered insolvent by the transfer
- 2) A fiduciary of the debtor or the debtor's Estate transferred assets of the debtor or the Estate
- 3) Before making the transfer, the fiduciary knew of a debt due the United States, or had notice of facts that would lead a reasonably prudent person to inquire as to the existence of such debt.

COURT'S REASONING

- Count 1 – Defendant made no effort to challenge and did not submit facts contrary to those presented by the United States. Therefore, the Court found in favor of US/IRS.
- Count 2 – Elements of statute of met based upon the Plaintiff's undisputed facts. McNicol admitted to transferring the assets, the estate was insolvent at the time of the transfer and McNicol admitted in her deposition that she knew of the debt at the time of the transfer.

Defendant did not contest the elements of the statute, but instead argues that family allowances, funeral expenses and administrative expenses take priority of the plaintiff's claim.

- Court reasons that the statute penalizes the transfer of the assets. Had McNicol left the assets in the estate, sold them and could show that she used all, some, or most of the estates assets to pay the family allowances, funeral expenses and administrative expenses, "this might be a different case". The statute is clear that at the moment McNicol transferred the boats/stock to herself she violated the statute.

PRE-MUPC V. POST MUPC

- Massachusetts Uniform Probate Code section dealing with Estates went into affect March 31, 2012.
- Intestate – Deaths before March 31, 2012 fell under the old law. As of March 31, 2012 procedure falls under the new law. Estates opened under old law are closed under new law, but the determination of “who gets what” falls under the law in affect at the date of death.

WHAT WERE MARCI MCNICOL'S OPTIONS?

Once the Estate has been opened, McNicol has been appointed, and claims have been filed or she is aware of potential claims she must address them.

- Account – The Personal Representative must take care to account for all their actions. A P.R. should immediately get a Tax ID number and set up a separate bank account to deal with the assets of the Estate.
- Determine Spousal and Family Rights
- Prioritize Claims / Attempt to Settle Claims
- Declare Estate Insolvent
- Payout claims in accordance with court Order.
- Formally Close Estate – Discharge

PRE-MUPC – CLAIMS M.G.L. c. 197 § 2-4 (REPEALED)

- If the executor/administrator after 6 months does not have notice of claims that would render the estate insolvent he or she may pay out claims and not be liable for subsequent claims in excess of the amount remaining in the Estate.
- If two or more creditors seek amounts in excess of what is left in the Estate the executor/administrator may represent the estate insolvent and seek order of the Probate Court.
- If executor/administrator has any doubt as to the validity of a claim, he or she can seek approval to pay the claim from the probate court after notice to all interested persons.

PRE-MUPC – “WIDOWS RIGHTS”

M.G.L.C. 196 §2 (REPEALED)

- The probate court with regard to all the circumstances of the case including living expenses, minor children, income or surviving spouse, etc. may allow the surviving spouse the use of the home and other such parts of the personal property and other articles as are reasonable for a short period of time until the spouse has the opportunity to adjust. Use of the home is for six months.
- Widow may file a Petition for Allowance of Widows Rights.
- Allowance to widow may be proper even though estate is insolvent. Widows allowance take precedence over debts and expenses. *Hooker v. Porter* 173 N.E. 588, 273 Mass. 316 (1930)
- Award of \$15,000 to a widow who was 70 and had “meager” income was in error where there was no showing the widow needed the sum for necessities for a short time until she could adjust *Townsend v. Wood* (1961) 174 N.E.2d 420

MUPC – PRIORITY OF CLAIMS

M.G.L.C. 190B ARTICLE III § 3-805

(a) If the applicable assets of the Estate are insufficient to pay all claims in full, the Personal Representative shall make payments in the following order:

- 1) Costs and Expenses of Administration;
- 2) Reasonable Funeral Expenses;
- 3) Debts and taxes with preference under federal law;
- 4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending to the decedent;
- 5) Debts and taxes with preference under the laws of the Commonwealth
- 6) Debts due to the division of medical assistance;
- 7) All other claims

(b) No preference shall be given in the payments of any claim over any other claim in the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

POST MUPC – CLAIMS

1) Potential Claims **not** served upon the Personal Representative

- Wait until the end of the Claims Period *M.G.L.c. 190B, Article III, § 3-803(a)*.

Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death.
- Formally Close the Estate – Decree and Order of Complete Settlement.
 - If it appears, upon the Decree and Order of Complete Settlement that the entire Estate has been exhausted in paying the charges of administration and debt or claims entitled by law to a preference over the common creditors, such Decree and Order will be a bar to actions brought against the P.R. by a creditor who is not entitled to preference even though the Estate has not been represented insolvent.

2) Challenge the Formal Claims.

- McNicol can challenge the claim and make the creditor provide information to substantiate the claim. (She should not distribute while this is occurring.)
- Challenge can be done **informally without going through the probate court** to reduce fees by asking the creditor to provide information to her (or her lawyer) directly.
- Challenge can be made **formally through the probate court** by submitting a Motion to Strike the claim in which case the Creditor will have to answer and provide information to the judge sufficient to substantiate their claim and have the Motion to Strike denied

MUPC – “FAMILY ALLOWANCES”

- Exempt Property *M.G.L.c. 190B Article II § 2-403*

Decedents surviving spouse entitled to \$10,000 from the Estate. If there is not \$10,000 worth of exempt property in the Estate (Household furniture, automobiles, furnishings, appliances and personal effects), the spouse is entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000 Value.

- Family Allowance *M.G.L.c. 190B Article II § 2-403*

In addition to exempt property rights (\$10,000) the decedent’s surviving spouse and children are entitled, at the discretion of the Personal Representative, to receive up to \$1,500 a month for up to one year or one lump sum not to exceed \$18,000. This Discretionary family allowance is exempt from and has priority over all unsecured claims.

PROCEDURE FOR INSOLVENCY (SLIDE 1)

- If at any time before or after the time for creditors' claims have expired (1 Year), the P.R. has reason to believe claims against the estate will exceed its value.
- Must file Representation of Insolvency (MPC 260) stating:
 - Total of all debts with name and address of claimant
 - Amount of exempt property/family allowance
 - Costs of administration including estimated future costs
 - Funeral expenses
 - Debts and taxes – Federal
 - Expenses of last illness
 - Debt and taxes Commonwealth
 - Debts due DMA
 - The value of the estate chargeable with payment of the forgoing debts and expenses, including the value of any real property, personal property and property located outside the Commonwealth.

REPRESENTATION OF INSOLVENCY (MPC 260)

REPRESENTATION OF INSOLVENCY PURSUANT TO G.L. c. 190B, § 3-807	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
	Estate of: ▼ Division	
First Name Middle Name Last Name		
Date of Death: _____		

1. The Personal Representative(s):

Name: _____

First Name
M.I.
Last Name

pursuant to G.L. c. 190B, § 3-807(b), represents to the Court that the debts claimed as owed by the Decedent at the time of death, according to the list appended, amount to:

	Amount of Debt	Disputed by Personal Representative
The costs and expenses of administration, including future probable charges:		<input type="checkbox"/> Yes <input type="checkbox"/> No
The reasonable funeral expenses:		<input type="checkbox"/> Yes <input type="checkbox"/> No
The debts and taxes with preference under federal law:		<input type="checkbox"/> Yes <input type="checkbox"/> No
The reasonable and necessary medical and hospital expenses of the last illness of the Decedent, including compensation of persons attending the Decedent:		<input type="checkbox"/> Yes <input type="checkbox"/> No
The debts and taxes with preference under other laws of the commonwealth:		<input type="checkbox"/> Yes <input type="checkbox"/> No
The debts due the division of medical assistance:		<input type="checkbox"/> Yes <input type="checkbox"/> No
All other claims:		<input type="checkbox"/> Yes <input type="checkbox"/> No
Total:		

2. Please explain the reason for any disputed debts listed above.

3. The estate of the Decedent known to be chargeable with the payment is as follows:

	Amount
Real Estate not exceeding in value:	
Personal Estate not exceeding in value:	
Other estate assets outside the Commonwealth:	
Balance:	

4. The family exemptions and allowances are: _____

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5. The Personal Representative believes that said estate will probably be insolvent, and certifies under the penalties of perjury that the above is a correct representation of the probable condition of said estate, according to the best knowledge and belief of the Personal Representative.

SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: _____
Signature of Personal Representative

Date: _____
Signature of Co-Personal Representative (if applicable)

Information on Attorney for Personal Representative

Signature of Attorney

(Print name)

(Address)

(Apt. Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

B.B.O. # _____

Email: _____

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PROCEDURE FOR INSOLVENCY SLIDE 2

- Request hearing Date at which time creditors will have the opportunity to present a claim.
- Mail copy of Representation of Insolvency to all known claimants with Notice of Hearing (NO PUBLICATION IS REQUIRED)
- P.R. must file an Affidavit of Notice
- Attend Hearing and contest claims that may be invalid. Failure of claimant to appear may result in dismissal of claim even if P.R. does not dispute it.

ADJUDICATION OF CLAIMS

- If after a hearing, the Court determines the Estate does not have enough funds to pay all claims in full, the Court will issue a Decree and Order of Insolvency (MPC 780)
- Once the Decree and Order have entered the P.R. shall pay out all claims in the order found in *M.G.L.c. 190B Article III, §3-805*.
- A claimant whose claim is not allowed may file an interlocutory appeal under *M.G.L.c. 215* within 30 days.

DECREE AND ORDER OF INSOLVENCY (MPC780)

DECREE AND ORDER OF INSOLVENCY		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of:		Division	
First Name	Middle Name	Last Name	
Date of Death: _____			

After a hearing or on the uncontested Representation of Insolvency filed on _____ (date)

THE COURT FINDS:

1. The Personal Representative has filed a complete and verified Representation of Insolvency.
2. Any required notices have been given or waived by all the interested persons.
3. The Personal Representative has represented that the estate of said Decedent will probably be insufficient for the payment of the Decedent's debts.

IT IS DECREED AND ORDERED that

The Personal Representative pay over what remains in hand among the creditors of the Decedent whose claims have been allowed below in the order provided by G.L. c. 190B, § 3-805.

Name of Creditor	Amount

Date _____ Justice of the Probate and Family Court

SETTLEMENT OF CLAIMS

- If the creditor period has expired, there is only one major claim against the Estate, and that claim is disputed or may result in the Estate becoming insolvent, it may be possible to avoid insolvency proceedings through settlement.
- Often, an Estate is left with a home and a MassHealth lien. In the past, MassHealth has been open to settlement.
- It may be prudent for a P.R. to protect him or herself from any liability by having the Court approve the settlement or compromise through a Petition for Approval of Compromise.

PETITION FOR APPROVAL OF COMPROMISE (MPC 250)

PETITION FOR APPROVAL OF COMPROMISE G.L. c. 190B, §§3-1101, 3-1102	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
	Case Name _____ Date of Death/Appointment/Instrument _____	Division _____

Petitioner(s) (hereafter "Petitioner"), an interested person, makes the following statements:

1. Information about the Petitioner:

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Mailing Address, if different: _____
(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

Interest of the Petitioner (e.g., Personal Representative, trustee, heir, devisee, etc.-see G.L. c. 190B § 1-201(24)):

2. Personal Representative or Trustee was appointed on: _____
(date)

3. A controversy has arisen as to:

- admission to probate of a Will dated _____ ;
date(s)
- administration of the estate;
- distribution of the estate;
- an accounting;
- construction of a Will;
- construction of a Trust created by a written instrument dated _____ ;
date(s)
- the Fiduciary's power and authority;
- approval of arbitration of _____ ;
- other controversy growing out of an estate or Will or trust created by a written instrument as follows:

4. All interested parties who claim a vested interest in said estate or trust, whose interest will be affected by the proposed arbitration or compromise have reached a written agreement to compromise said controversy, a copy of which agreement is filed with this Petition.

5. The interested parties and their interest in the estate or trust are:

Name	Address	State Interest	Indicate if this person is:
			<input type="checkbox"/> Minor <input type="checkbox"/> Incompetent
			<input type="checkbox"/> Minor <input type="checkbox"/> Incompetent
			<input type="checkbox"/> Minor <input type="checkbox"/> Incompetent
			<input type="checkbox"/> Minor <input type="checkbox"/> Incompetent
			<input type="checkbox"/> Minor <input type="checkbox"/> Incompetent

6. There may be unborn persons or persons whose identity cannot be ascertained or whose whereabouts are unknown and cannot be reasonably ascertained.

The Petitioner requests that the Court find that the contest or controversy is in good faith and that the effect of the agreement upon the interests of parties represented by fiduciaries or their representatives is just and reasonable and that the Court approve the agreement and compromise.

Petitioner requests that the Court order the _____ to execute the agreement.
(e.g. Personal Representative, Trustee, etc.)

Petitioner requests that the Court order the _____ administer the
(e.g. Personal Representative, Trustee, etc.)
 estate trust in accordance with the agreement.

SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: _____
 Signature of Petitioner

Date: _____
 Signature of Co-Petitioner (if applicable)

Information on Attorney for Petitioner

 Signature of Attorney

(Print name)

(Address)

(Apt. Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

B.B.O. # _____

Email: _____

DECREE AND ORDER OF COMPROMISE (MPC 755)

DECREE AND ORDER OF COMPROMISE		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
		Division	
Case Name			
Date of Death/Appointment/Instrument: _____			

After hearing or on the uncontested Petition filed on _____
(date)

THE COURT FINDS:

1. The Petitioner is an interested person and has filed a complete and verified Petition.
2. Any required notices have been given to or waived by all interested persons; or their assents are on file with this Court.
3. Any Guardian *ad litem* appointed has filed a report, and/or assented to the Petition; or the report of the Guardian *ad litem* has been considered by the Court.
4. The contest or controversy is in good faith and the effect of the agreement dated _____
(date(s)) upon the interests of parties represented by
fiduciaries or their representatives is just and reasonable.

THE COURT DECREES AND ORDERS:

1. The aforementioned agreement is approved.
2. The agreement shall be executed by the Personal Representative, the Trustee of every affected trust, and other fiduciaries or representatives.
3. Fiduciaries shall administer the trust or estate in accordance with the agreement.
4. Other:

Date _____
Justice of the Probate and Family Court

Reset Form

WHAT ABOUT A PUBLIC ADMINISTRATOR?

M.G.L. c. 194

- A Public Administrator shall faithfully administer upon the estates of persons who die intestate within his county or elsewhere, leaving property in his county to be administered, if there is no known husband, widow or heir of such deceased living in the commonwealth at the time of filing the petition.
- A Public Administrator shall have priority if there is no surviving Personal Representative appointed in the Will or the person died intestate AND there is no surviving spouse, devisees, heirs, next of kin OR all others will priority have declined to serve and nominated / assented to the Public Administrator serving. *M.G.L. c. 190B § 3-203*
- Notwithstanding the foregoing, a public administrator shall apply for letters of administration for an intestate estate or petition for administration with the will annexed of a testate estate when so designated by the division of medical assistance pursuant to subsection (e) of section thirty-two of chapter one hundred eighteen E.

RESIGNATION OF PERSONAL REPRESENTATIVE

- To resign the P.R. files a Statement of Resignation of a Personal Representative (MPC 264) which becomes effective upon approval of the Court after Notice to interested Parties.
- Successor P.R. are appointed by Petition for Appointment of a Successor PR.
- Practice Tip: Have all interested parties Assent to the Statement of Resignation, Assent to the Petition for Appointment of a Successor P.R., Renounce their Rights to Serve and Nominate the Successor P.R. File all pleadings at the same time with Motion to Waive Publication. (Counties treat publication differently) In addition if there are sureties on the Bond arrange for a new Bond for the Successor P.R.

STATEMENT OF RESIGNATION

STATEMENT OF RESIGNATION OF A PERSONAL REPRESENTATIVE G.L. c. 190B § 3-610		Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: _____		Division _____	
First Name _____	Middle Name _____	Last Name _____	
Date of Death _____		_____	

I, the Personal Representative of the above estate, do hereby resign as of _____ (date).
Fifteen (15) days written notice has been given to the persons known to me to be interested in this estate.

I realize this resignation is effective only upon the appointment and qualification of a successor personal representative and the delivery of the assets to that person.

I further understand that the resignation of appointment does not discharge a personal representative from liability for transactions or omissions occurring before resignation is effective, nor does it relieve the personal representative of the duty to preserve assets subject to his control, to account, and to deliver the assets.

SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: _____

Signature of Personal Representative _____
(Print name) _____

(Address) _____ (Apt. Unit, No. etc.) _____
(City/Town) _____ (State) _____ (Zip) _____

Primary Phone #: _____

Information on Attorney for Personal Representative

Signature of Attorney _____
(Print name) _____

(Address) _____ (Apt. Unit, No. etc.) _____
(City/Town) _____ (State) _____ (Zip) _____

Primary Phone #: _____

B.B.O. # _____

Email: _____

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↓ ↓ FOR COURT USE ONLY ↓ ↓	
The above resignation is hereby effective on _____ (date)	

Date _____	<input type="checkbox"/> Justice <input type="checkbox"/> Magistrate

ASSENT FORM

<input type="checkbox"/> ASSENT AND WAIVER OF NOTICE <input type="checkbox"/> RENUNCIATION <input type="checkbox"/> NOMINATION <input type="checkbox"/> WAIVER OF SURETIES	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
	<div style="text-align: right;">Division</div>	
Case Name		

As a person interested in the above-captioned case: (Check all that apply.)

SECTION I. ASSENT AND WAIVER OF NOTICE

I hereby assent to the _____
Name of Pleading
 filed with the Court and I waive my right to any statutory notice related to that specific pleading. I request that the relief requested in that pleading be allowed.

FOR ESTATE AND ADMINISTRATION CASES ONLY:

SECTION II. RENUNCIATION/NOMINATION (Select ONE of the appropriate boxes below.)

(A) I renounce my right to appointment as Personal Representative and my right to nominate, if any.

(B) I renounce my right to appointment as Personal Representative and nominate:

Name: _____
First Name M.I. Last Name
 to serve in my place.

(C) I assent to the nomination of:

Name: _____
First Name M.I. Last Name
 to serve as Personal Representative with
 me or to apply for appointment.

SECTION III. WAIVER OF SURETIES

I assent to the Personal Representative(s) serving without sureties on the bond.

SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: _____
Signature of Interested Person

(Print name)

(Address) (App. Unit, No. etc.)

(City/Town) (State) (Zip)

Primary Phone #: _____

ASSENT

- There continues to be issues with Court Forms.
- The Assent and Waiver of Notice Renunciation Nomination Waiver of Sureties Form is a source of confusion.
- If possible all parties should sign two Assents
 - 1) Assent to the Resignation of the prior Personal Representative.
 - 2) Assent, Renounce, and Nominate Public Administrator.

PETITION FOR APPOINTMENT OF SUCCESSOR PERSONAL REPRESENTATIVE (MPC 270)

PETITION FOR FORMAL APPOINTMENT OF SUCCESSOR PERSONAL REPRESENTATIVE G.L. c. 190B, § 3-613		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of:		Division	
First Name	Middle Name	Last Name	
Date of Death:			

Petitioner(s) (hereafter "Petitioner"), an interested person, makes the following statements:

1. Information about the Petitioner:

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Mailing Address, if different: _____
(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

Interest of the Petitioner (e.g., Personal Representative named in Will, surviving spouse, heir, devisee, etc.-See G.L. c. 190B § 1-201(24)): _____

[click to add](#) [click to remove](#)

2. Administration is unsupervised supervised.

3. The previously appointed Personal Representative

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

was appointed on _____ and _____
(date)

has tendered a resignation which accompanies this Petition is in the possession of the Court.

died on _____ (death certificate attached).
(date)

is now under a guardianship or conservatorship (letters attached).

has been removed by Decree and Order of the Court issued on _____ or such matter is pending.
(date)

other:

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4. The Petitioner requests the following qualified person, who is 18 years of age or older, be appointed:

Self:

Other:

First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Mailing Address, if different: _____
(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

click to add

click to remove

5. The nominee does not have priority for appointment.

OR

The nominee has priority for appointment:

by statute (G.L. c. 190B, § 3-203).

for the following reasons:

Persons with prior or equal rights to appointment are as follows: No one. The following:

First Name M.I. Last Name

click to add

click to remove

Any required renuncements or nominations accompany this Petition.

6. The Petitioner hereby adopts the statements in the Petition that led to the appointment of the person being succeeded, except for the following changes or corrections:

7. A bond with sureties with the penal sum amount of \$ _____ has been or will be filed.

OR

A bond without sureties has been or will be filed and is permissible because:

The Will waives sureties on the bond and no interested person has demanded that a bond with sureties be filed.

All devisees (if a Will is filed) or heirs (if no Will is filed) have waived sureties in writing and the waivers are filed with this Petition or are in the possession of the Court.

Other (include statutory reference): _____

8. The Petitioner requests:

- Unsupervised administration
 - There is no Will.
 - The Will does not direct supervised administration.
 - The Will directs supervised administration, but circumstances have changed since the execution of the Will and there is no necessity for supervised administration because:

OR Supervised administration

- The Will directs supervised administration.
- The Will directs unsupervised administration, but it is necessary for protection of persons interested in the estate because:

No Will directs supervised administration but it is necessary under the circumstances, specifically:

Petitioner requests that the Court:

- formally appoint the nominee as Successor Personal Representative in unsupervised supervised administration to serve:
 - without sureties on the bond.
 - with sureties on the bond with the penal sum amount of \$ _____.

and that Letters be issued.

Petitioner also requests:

SIGNED UNDER THE PENALTIES OF PERJURY

I certify under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief.

Date: _____
Signature of Petitioner

Date: _____
Signature of Co-Petitioner (if applicable)

Information on Attorney for Petitioner

Signature of Attorney

(Print name)

(Address) (Apt. Unit, No. etc.)

(City/Town) (State) (Zip)

Primary Phone #: _____

B.B.O. # _____

Email: _____

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DECREE AND ORDER – SUCCESSOR P.R. (MPC 765)

DECREE AND ORDER FOR FORMAL APPOINTMENT OF SUCCESSOR PERSONAL REPRESENTATIVE		Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Estate of: _____		Division _____	
First Name _____	Middle Name _____	Last Name _____	
Also Known As _____		_____	
Date of Death: _____		_____	

After hearing or on the uncontested Petition for Appointment of Successor Personal Representative filed on _____ (date)

THE COURT FINDS:

- The Petitioner is an interested person and has filed a complete and verified Petition.
- Any required notices have been given or waived by all interested persons.
- The previously appointed Personal Representative(s) was/were appointed on _____ (date).
 - has tendered a resignation which is in possession of the Court.
 - died on _____ (date).
 - is now under a guardianship or conservatorship.
 - was removed by Decree and Order of the Court on _____ (date).
 - other: _____
- The person whose appointment is sought has priority entitling that person for appointment.
OR
 The Court finds that those persons having priority for appointment are not qualified to serve or, although given notice of the proceedings, have failed to request appointment or nominate another for appointment, and that administration is necessary.
- Any Will to which the requested appointment relates has been previously formally or informally probated.

THE COURT DECREES AND ORDERS:

- The following person(s) is/are qualified to serve and is/are appointed as Successor Personal Representative(s).

_____ First Name M.I. Last Name	_____ First Name M.I. Last Name
_____ (Address) (Apt. Unit, No. etc.)	_____ (Address) (Apt. Unit, No. etc.)
_____ (City/Town) (State) (Zip)	_____ (City/Town) (State) (Zip)
Primary Phone #: _____	Primary Phone #: _____

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Estate of: _____ First Name Middle Name Last Name	Docket No.
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click to add

click to remove

2. The Personal Representative shall serve:

in **unsupervised administration.**

The Will does not direct supervised administration.

The Will directs supervised administration, but the Court finds that circumstances bearing on the need for supervised administration have changed since the execution of the Will and there is no necessity for supervised administration because:

in **supervised administration because:**

Decedent's Will directs supervised administration.

The Will directs unsupervised administration, but the Court finds that supervised administration is necessary for protection of persons interested in the estate because:

The Court finds that supervised administration is necessary under the circumstances, specifically:

Unless further restricted below, the Supervised Personal Representative may exercise all of the powers of Personal Representatives except the power to make any distribution of the estate without prior order of the Court

3. The Successor Personal Representative(s) shall serve:

Without surety on the bond because:

The Will waives the requirement of a surety bond.

All of the heirs or devisees have filed a written waiver of sureties on the bond.

The Personal Representative is a bank or trust company.

The Court finds that sureties are not in the best interest of the estate.

With personal corporate surety on the bond with the penal sum amount of _____.

4. Letters of Authority for Personal Representative shall be issued.

5. The Court further orders:

Date _____

Justice

Magistrate

Reset Form

IN SUMMARY

- Marci McNicol should have hired a competent Attorney specializing in Probate Law and Administration to represent and advise her.
- It is essential to know what laws control (Pre-MUPC, Post MUPC)
- Proper Accounting and Court approval can go a long way to help protect the Personal Representative.
- If the process of administering/probating an insolvent Estate was too much for McNicol she could have turned the Estate over to a Public Administrator.