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# RECENT MAJOR CHANGES MADE TO THE MASSACHUSETTS UNIFORM PROBATE CODE

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*After 20 years in the making, the new Massachusetts Uniform Probate Code (“MUPC”) finally became effective on March 31, 2012, with additional amendments in July, 2012. This reform represents a major overhaul of the rules for estate planning and probate administration. All of the provisions apply to Wills made before March 31, 2012 as well as current and future Wills and probate proceedings. These changes affect many aspects of estate planning and Probate. If you have a Will or are thinking of creating one, you should discuss the effect of these rules with your attorney.*

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## I. PROBATE PROCEEDINGS

Recognizing how intrusive and inefficient court procedures can be, the new law allows for an “informal” process for probating an estate, as well as a “formal” process. The testator’s (person making the Will) preference for the formal or informal process can be stated in the Will. Families can elect to use the informal process when they do not expect any disputes. The informal process should be quicker and less expensive than the formal probate procedure, as there is little court supervision once the initial petition is accepted. Another benefit of the informal process is that the estate’s accounting and financial information will no longer become a public record. The personal representative (formerly “executor”) only needs to supply financial information to interested parties of the estate (relatives and beneficiaries) and is not required to submit it to the court unless there is a dispute.

The informal process is a great option to consider, but may not be the best for all situations. If you have to probate a Will, you should consult with your attorney to determine which process would be best for you.

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## II. INTESTACY

Another significant change involves what happens if a person dies intestate (without a Will). In that case, the law determines how to distribute the estate. Essentially, the changes in the law attempt to recognize “blended” families, which may include children from previous relationships. If the decedent (person who has died) leaves behind a surviving spouse and no parents or children, the entire estate passes to the spouse. If the decedent leaves behind a surviving spouse and children who are not the surviving spouse’s children, the surviving spouse will inherit a portion of the estate and the decedent’s children will also inherit a portion of the estate. Simply put, the order of inheritance under the MUPC is: (1) spouse, (2) decedent’s children, (3) decedent’s parents, (4) decedent’s siblings, and (5) other blood relatives.

As before, these rules attempt to anticipate the intent of the deceased. Since that intent depends on a number of factors, the rules may often fall short and it is always better to have a Will to ensure that everyone and everything is taken care of according to your specific wishes.

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## III. MARRIAGE AND DIVORCE

Marriage no longer automatically revokes a Will. If the testator has a Will and then later gets married, the spouse is entitled to whatever share he/she would have been allotted under the intestacy rules described above. However, this share is limited to the remainder of the estate, if any, after the testator’s children recover their shares under the terms of the Will. Take, for example, a testator who

signed a Will leaving her entire estate to her children and later marries but does not make a new will. The entire estate will pass to the testator's children and, since there is no remainder, the spouse will receive nothing. Thus, while a testator no longer needs to worry that marriage will void his/her will, the testator still needs to take steps to ensure that the new spouse is provided for.

As before, divorce still revokes the transfers in a Will, and the MUPC also applies to non-testamentary transfers like life insurance, retirement plans, and living trusts (for which a beneficiary can be designated). Divorce does not include legal separations, which do not terminate the status of spouses. In the event of marriage or divorce, it is best to update your Will to ensure your wishes are carried out.

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#### IV. DISINHERITING CHILD

The MUPC makes it more difficult to disinherit a child. Under the new rules, a child is entitled to a share of the estate whether or not they are mentioned in the Will. If a testator wants to ensure that a child does not receive an inheritance, he/she must have specific language in the Will expressly stating the testator's intent not to provide for a particular child and to exclude that child from the intestate provisions outlined above. Otherwise, despite the wishes of the testator, the child could still receive a share.

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#### V. TESTAMENTARY TRUSTS

The new rules make testamentary trusts more attractive. A testamentary trust is an estate planning tool that establishes a trust through a testator's Will, which comes into effect when the testator dies. Previously, these trusts were often avoided because of the cost and inconvenience of court involvement such as the requirement that the trustee provide the court with annual accounts. The MUPC eliminates this requirement and only requires the trustee to report to the trust's beneficiaries as set forth in the terms of the trust. It is important to note that testamentary trusts are a part of the testator's Will and, therefore, will become a public record if there are formal proceedings. Testamentary trust practice may further change with the implementation of the Massachusetts Uniform Trust Code, which has just been passed. This new law corrects some technical inaccuracies in the MUPC and may provide further protections for less traditional trusts, such as those for pets. Whether a testamentary trust is appropriate for you will depend on your particular needs and desires and the advice of your attorney.

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#### VI. SUMMARY

Since the MUPC brings about significant changes in the estate planning area, it is critical to keep your Will current. Wills should be updated to reflect any changes such as divorce, marriage, additional children or to disinherit children. Otherwise there is a risk that your estate will not be distributed according to your wishes.

If you would like to review/update your estate planning documents or to know more about how the MUPC will affect your estate planning, feel free to contact one of the attorneys at [\*\*Petruccelly, Nadler & Norris, P.C.\*\*](#) at (617) 720-1717.

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