

## STANDARD NO. 701

### PROBLEM:

When the record discloses that a record party-in-interest died without probate proceedings, under what circumstances, if any, should the examiner rely upon a recital in a subsequent conveyance or other evidence of record as to the identity of the decedent's surviving spouse and only heirs or of all the decedent's heirs?

### RECOMMENDATION:

A recitation in a conveyance or other evidence of record as to the identity of the surviving spouse, if any, and heirs should be deemed sufficient, unless the examiner has reason to question the accuracy of such evidence or to require further investigation. Such reasons might include knowledge of other heirs or inconsistency with recitals in other instruments. If the death occurred within three years of the subsequent conveyance, see also Standard No. 706. For inheritance and estate tax lines see Standard No. 708.

### DISCUSSION:

Effective July 30, 2004, the Domestic Partnership Act (Public Law 672) amended the Probate Code (1) to define "registered domestic partners," (2) to include a "surviving registered domestic partner" in the definition of "heirs," and (3) to provide that a "surviving registered domestic partner" shall be treated in the same manner as a "surviving spouse" for purposes of determining the intestate share. See, 18-A M.R.S. §1-201(17) and (36-A) and §2-102. The Act also created a Domestic Partnership Registry for the State of Maine as set forth in 22 M.R.S. §2710.

Effective September 1, 2019, the Domestic Partnership Act remains applicable for registered domestic partners, because "registered domestic partner" is included within the definition of spouse in 18-C M.R.S. §1-201(54) as "an individual who is lawfully married and includes registered domestic partners and individuals who are in a legal union that was validly formed in any state or jurisdiction and that provides substantially the same rights, benefits and responsibilities as a marriage." See 18-C M.R.S. §§2-102 and 2-103 for share of surviving spouse and share of heirs other than surviving spouse. Note that domestic partners is defined in 18-C M.R.S. §1-201(14). Registered domestic partner is defined in 18-C M.R.S. §1-201(49). Neither domestic partner nor registered domestic partner is defined as a spouse or as an heir, other than within the definition of spouse in 18-C M.R.S. §18-C M.R.S. §1-201(54). A spouse takes under 18-C M.R.S. §2-102, and heirs other than surviving spouse take under 18-C M.R.S. §2-103. See also definition of heirs, in 18-C M.R.S. §1-201(23), and interest in heirs and like, in 18-C M.R.S. §2-711.

Certain exceptions to the three-year limitation period on commencing a probate are set forth in 18-C M.R.S., §3-108 (formerly, 18-A M.R.S. §3-108, repealed September 1, 2019). The exceptions in 18-C M.R.S. §3-108 are substantially identical to those in the former 18-A M.R.S. §3-108; however, there are some differences in 18-C M.R.S. §3-108(1)(D) and (E), which are not likely to occur frequently.