

## STANDARD NO. 702

### PROBLEM:

Should ancillary proceedings be required in order for non-resident testamentary trustees, executors, administrators or personal representatives of a non-resident decedent effectively to convey, mortgage, or foreclose a mortgage of Maine real estate?

### RECOMMENDATION:

- A. Yes, for instruments dated prior to January 1, 1981.
- B. No, for instruments dated on or after September 1, 2019, provided that there is compliance with 18-C M.R.S. §4-204; and for instruments between January 1, 1981 and August 31, 2019, provided that there is compliance with 18-A M.R.S. §4-204, repealed September 1, 2019.

### DISCUSSION:

- A. Prior to December 31, 1980, foreign testamentary trustees or personal representatives had no power with respect to Maine real estate to convey, mortgage or foreclose without appropriate ancillary proceedings.
- B. Upon the adoption of the Uniform Probate Code, a foreign executor, administrator or personal representative may act upon Maine real estate after complying with the requirements of 18-C M.R.S. §4-204, effective September 1, 2019, or the former 18-A M.R.S. §4-204, which was repealed and replaced effective September 1, 2019. A non-resident testamentary trustee (unless a foreign corporation otherwise doing business in this state) is not required to qualify in Maine in order to permit the trustee to act upon Maine real estate. See 18-C M.R.S. §7-103, effective September 1, 2019, and the former 18-A M.R.S. §7-105 (§§7-101 through 7-105, with §§7-101 through §§7-104 repealed effective July 1, 2005).