

## STANDARD NO. 703

### PROBLEM:

- A. Absent a pre-1981 probate court license to sell for the payment of debts, when, after the qualification of a pre-1981 executor or administrator of the deceased owner, may the examiner certify the title as free from claims of creditors of the decedent?
- B. When after the qualification of the personal representative of a post-1980 decedent may the personal representative convey the real estate of the deceased owner free from the claims of creditors?
- C. When after the qualification of the post-1980 personal representative of a pre-1981 decedent may the personal representative convey the real estate of the deceased owner free from the claims of creditors?

### RECOMMENDATION:

- A.
  - 1. As a general rule, six months after the qualification of the pre-1981 executor or administrator, if no claims have been filed with the probate court and the examiner secures an affidavit of the executor or administrator, or other evidence satisfactory to the examiner, that no claims were received by the executor or administrator, during said six months or that all claims were paid.
  - 2. One year after the qualification of the pre-1981 executor or administrator, even though a claim has been duly filed, if there is no record of any suit in the state courts having jurisdiction where the land is located and the examiner secures an affidavit from the executor or administrator, or other evidence satisfactory to the examiner, that he has not been served with process in a suit by a creditor.
  - 3. Six years after the qualification of the executor or administrator.
- B. Immediately on appointment.
- C. Immediately on appointment.

### DISCUSSION:

- A.
  - 1. Under 18 M.R.S. §2402, it is possible that there were claims filed with the executor or administrator but not with the probate court. Hence the suggestion of an affidavit from the executor or administrator or other evidence satisfactory to the examiner.
  - 2. Creditors may bring suit within the one-year limitation period without a recorded real estate attachment and thereby impair the title; and such suit could be brought in the courts of any county where the creditor happened to reside or have its place of business.

**STANDARD NO. 703 (continued).**

3. Any search of court records or requirement of an affidavit or other evidence after the lapse of six years would seem unreasonable.
- B. Except for mortgages, liens or pledges, levies against the property of the estate are prohibited by 18-C M.R.S. §3-812 (formerly, 18-A M.R.S. §3-812, repealed September 1, 2019).
- C. Paragraph (2) of 18-C M.R.S. §8-301 (formerly, paragraph (b) of 18-A M.R.S. §8-401, repealed September 1, 2019) provides that:

“Except as provided elsewhere in this Code, on the effective date of this Code:...

- B. The Code applies to any proceedings in Court then pending on the effective date or commenced after the effective date regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;”

The effect of this provision is that 18-C M.R.S. §3-182 (formerly, 18-A M.R.S. §3-812, repealed September 1, 2019) applies to claims of creditors.

*First adopted August 25, 1964; amended June 19, 1975, December 7, 1983, and January 30, 2020.  
Formerly Title Standard No. 55.*