

STANDARD NO. 706

PROBLEM:

The record owner of real estate (the decedent) is known to have died on or after January 1, 1981 domiciled in Maine, and there is no recorded deed of sale or distribution from a personal representative of the decedent. When may the title to the real estate be certified to rest in either the decedent's heirs by intestacy or in the devisees named in the decedent's will?

RECOMMENDATION:

- A. When a decree discharging the personal representative in formal proceedings has become final, title rests in the heirs or devisees as the case may be. 18-C M.R.S. §3-1001; §3-1002 (formerly 18-A M.R.S. §3-1001; §3-1002, repealed September 1, 2019).
- B. One year after the closing of the estate by sworn statement if there are no pending proceedings involving the personal representative, title rests in the heirs or devisees as the case may be. 18-C M.R.S. §3-1003 (formerly 18-A M.R.S. §3-1003, repealed September 1, 2019).
- C. Three years after the death of the decedent if there is a record that the will was filed with the probate court and proved but no personal representative was appointed, title rests in the devisees. 18-C M.R.S. §3-101; §3-901; §3-108 (formerly 18-A M.R.S. §3-101; §3-901; §3-108, repealed September 1, 2019).
- D. Three years after the death of the decedent if there is no record of any probate proceeding for the decedent:
 - 1. For a decedent dying prior to September 1, 2016, title rests in the heirs. 18-C M.R.S. §8-301(2)(D).
 - 2. For a decedent dying on or after September 1, 2016, which decedent died without a will as evidenced by a recorded affidavit or equivalent record evidence, title rests in the heirs.

DISCUSSION:

Whether a decedent was domiciled in Maine involves factors other than location at the time of death. See *Estate of Turf*, 435 A.2d 1087 (Me. 1981). In cases where the decedent was traveling or had recently changed residence, due inquiry should be made to establish the decedent's domicile.

A & B. Termination by sworn statement or discharge in formal proceedings should be considered to be a release by the personal representative of any further rights to deal with the real estate. See the Uniform Probate Code Comments to 18-C M.R.S. §3-1003 and to §3-711.

- D. The Maine Uniform Probate Code, effective September 1, 2019, modified the exceptions to the 3-year limitation period applicable to the commencement of a proceeding to probate a will. See, 18-C M.R.S. §3-108(1)(D) and 18-C M.R.S. §3-108(1)(E). Title 18-C applies “to any wills of decedents who die on or after the effective date” and “to any proceedings in court pending on the effective date or commenced on or after the effective date regardless of the time of the death of the

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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.” 18-C M.R.S. §8-301(2)(A) and (2)(B). However, 18-C M.R.S. §8-301(2)(D) provides that “An act done before September 1, 2019 in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before September 1, 2019, the provisions remain in force with respect to that right.” Therefore, it is reasonable to conclude that it was not the intent of the legislature to impact title vesting or invalidate a conveyance of title which occurred prior to September 1, 2016.

First adopted, but not issued, January 10, 1989 with "domiciled in Maine" deleted from the second line of the problem; first adopted with deletion restored April 25, 1989; amended July 14, 1998, amended September 18, 2012, and amended June 15, 2022.