

STANDARD NO. 707

PROBLEM:

The record owner of real estate who is deceased is known to have been domiciled outside of Maine. No local administration or application or petition is pending in Maine, and there is no recorded compliance with the provisions of 18-C M.R.S. §4-204ⁱ. What proceedings are necessary in order to permit the personal representative of the estate to convey marketable title to a purchaser, or permit the personal representative of the estate to give a deed of distribution which will vest marketable title in the heirs or devisees of the decedent, or permit a title examiner to certify that title has vested in the heirs at law or devisees of a decedent?

RECOMMENDATION:

- A. If a will has been previously probated in the decedent's domicile, compliance with 18-C M.R.S. §4-204 should be sought, followed by a deed from the personal representative. If the estate is closed or compliance with 18-C M.R.S. §4-204 is otherwise not possible, the will should be offered for probate in Maine pursuant to 18-C M.R.S. §3-303(4) or §3-303(5)ⁱⁱ. Appointment of a personal representative is not required. Upon an administrative finding by the register of probate allowing probate of the will and notice to interested parties identified in the application for informal probate, title rests in the devisees identified in the will. A deed should be obtained from the devisees.
- B. If a will exists that has not been admitted for probate in the decedent's domicile:
 - 1. **For Decedents Dying Prior to September 1, 2016:** The decedent should be deemed to have died intestate. Title rests in the heirs pursuant to the intestacy laws of Maine. The identity of such heirs should be proven by recorded affidavit or equivalent record evidence and a deed should be obtained from the heirs. See also Standard No. 701. However, if it appears that a devisee named in a duly executed and unrevoked will which has not been offered for probate may have a valid claim of title pursuant to the provisions of the former 18-A M.R.S. §3-102, repealed September 1, 2019, a deed should be obtained from the devisee or his successors and assigns, or a civil proceeding should be initiated resulting in a final judgment that resolves the title claims of the devisee or his successors and assigns.
 - 2. **For Decedents Dying On or After September 1, 2016:** The will should be admitted for probate in Maine, followed by a deed from the personal representative.
- C. If the decedent died intestate, and the estate has been offered for administration in the decedent's domicile, compliance with 18-C M.R.S. §4-204 should be sought, followed by a deed from the personal representative. If the estate is closed or compliance with 18-C M.R.S. §4-204 is otherwise not possible, administration should be initiated in Maine, followed by a deed from the personal representative. However, if three years have passed since the death of the decedent, then title rests in the heirs pursuant to the intestacy laws of Maine. The identity of such heirs and the intestacy status should be proven by recorded affidavit or equivalent record evidence, and a deed should be obtained from the heirs. See 18-C M.R.S. §§2-102 and 2-103ⁱⁱⁱ. See also Standard No. 701.
- D. If the decedent died intestate and the estate has not been offered for administration in the decedent's domicile, administration should be initiated in Maine, followed by a deed from the personal representative. However, if three years have passed since the death of the decedent, then title rests in the heirs pursuant to the intestacy laws of Maine. The identity of such heirs and the intestacy status should be proven by recorded affidavit or equivalent record

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evidence, and a deed should be obtained from the heirs. See 18-C M.R.S. §§2-102 and 2-103^{iv}. See also Standard No. 701.

DISCUSSION:

Compliance with the recommendations of Standard No. 708 with respect to Maine inheritance and Maine and Federal estate taxes should be met.

Note that the laws applicable to probate, including the laws of intestacy were modified by the adoption of the Maine Uniform Probate Code, effective September 1, 2019. Prior law should be consulted to determine the title vesting for real estate passing through intestacy where the owner died prior to September 1, 2019 without probate or the appointment of a personal representative.

B. Maine law provides that venue for the first informal or formal testacy or appointment proceedings after a decedent's death is either the county where the decedent was domiciled at the time of death or, if the decedent was not domiciled in Maine, any county where property of the decedent was located at the time of the decedent's death. 18-C M.R.S. §3-201(1)^v. See also 18-C M.R.S. §3-105 relating to the concurrent subject matter jurisdiction of the Maine Probate Court.

The former 18-A M.R.S. §3-102, repealed September 1, 2019, read as follows:

“Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registers or an adjudication of probate by the judge, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.”

C. & D. If it is unknown whether or not a will exists and, after reasonable inquiry, no evidence of a will is located, the decedent should be deemed to have died intestate.

ⁱ Formerly 18-A M.R.S. §4-204, repealed September 1, 2019.

ⁱⁱ Formerly 18-A M.R.S. §3-303(d) or §3-303(e), repealed September 1, 2019.

ⁱⁱⁱ Formerly 18-A M.R.S. §§2-102 and 2-103, repealed September 1, 2019.

^{iv} Formerly 18-A M.R.S. §§2-102 and 2-103, repealed September 1, 2019.

^v Formerly 18-A M.R.S. §3-201(a), repealed September 1, 2019.