

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court
SJC-12881

ESTATE OF JACQUELINE ANN KENDALL,
PETITIONER-APPELLANT,

v.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
RESPONDENT-APPELLEE

ON REPORT FROM ESSEX PROBATE AND FAMILY COURT

**BRIEF FOR AMICI CURIAE,
MASSACHUSETTS CHAPTER OF THE
NATIONAL ACADEMY OF ELDER LAW ATTORNEYS,
THE REAL ESTATE BAR ASSOCIATION FOR
MASSACHUSETTS, INC., AND THE ABSTRACT CLUB
IN SUPPORT OF APPELLANT
THE ESTATE OF JACQUELINE ANN KENDALL**

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IDENTITY AND INTEREST OF AMICI CURIAE

Amicus curiae the Massachusetts Chapter of the National Academy of Elder Law Attorneys (“MassNAELA”) is a non-profit organization that was incorporated in 1992 to serve the legal profession and the public with the following mission:

- To provide information, education, networking, and assistance to Massachusetts attorneys, bar organizations, and other individuals or groups advising elderly clients, clients with special needs and their families;
- To promote high standards of technical expertise and ethical awareness among attorneys, bar organizations and other individuals or groups engaged in the practice of advising elderly clients, clients with special needs and their families;
- To develop public awareness and advocate for the benefit of the elderly, those with special needs and their families, by promoting public policies that support our mission; and
- To encourage involvement and enhance membership in, and to promote networking among members of the National Academy of Elder Law Attorneys.

MassNAELA is a voluntary association whose members consist of a dedicated group of elder law and special needs attorneys across the Commonwealth of Massachusetts.

Also submitting this brief as amici curiae are the Real Estate Bar Association for Massachusetts, Inc. (“REBA”), formerly known as the

Massachusetts Conveyancers Association, and the Abstract Club. REBA is the largest specialty bar in the Commonwealth, a non-profit corporation that has been in existence for nearly 150 years. It has almost 2,000 members practicing throughout the Commonwealth.

Through its meetings, educational programs, publications and committees, REBA assists its members in remaining current with developments in the field of real estate law and practice and sharing in the effort to improve that practice. REBA also promulgates title standards, practice standards, ethical standards and real estate forms, providing authoritative guidance to its members and the real estate bar generally as to the application of statutes, cases and established legal principles to a wide variety of circumstances practitioners face in evaluating titles and handling real estate transactions.

The Abstract Club is a voluntary association of experienced lawyers who practice real estate law. It has been in existence for over 100 years and is limited by its by-laws to 100 members.

The Amicus Committee is a joint committee of the two organizations comprised of real estate lawyers with many years of experience. The Amicus Committee, from time to time, files amicus briefs on important questions of

law. On several occasions it has been requested to do so by this Court or the Appeals Court. All Committee members serve without compensation.

RULE 17(C)(5) DECLARATION

Amici curiae and their counsel declare that they are independent from the parties and have no economic interest in the outcome of this case.

None of the conduct described in Mass. R. App. P. 17(c)(5) has occurred:

- (A) No party or party's counsel authored this brief in whole or in part;
- (B) No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief;
- (C) No person or entity—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief; and
- (D) No amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues; no amicus curiae or its counsel was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

ISSUES ADDRESSED BY AMICI CURIAE

The Court's Request for Amicus Input

The Court's request for Amicus Briefs identified the following question:

Whether MassHealth is entitled to recover benefits from a decedent's estate claimed more than three years after the decedent's death; including, whether the Uniform Probate Code, G. L. c. 190B, § 3-108, precludes such recovery; or whether G. L. c. 190B, § 3-803(f), creates an exception to the limitation on presentation of claims set forth in G. L. c. 190B, § 3-108.

Response of Amici Curiae the Massachusetts Chapter of the National Academy of Elder Law Attorneys, the Real Estate Bar Association for Massachusetts, Inc., and the Abstract Club

G. L. c. 190B, § 3-803(f) does not create any exception to the limitation on presentation of claims set forth in G. L. c. 190B, § 3-108. If a personal representative ("PR") is appointed more than three years after the decedent's death, the PR's right to possess estate assets and satisfy claims is expressly and without exception extinguished by Section 3-108. Nothing in the language of either statute creates such an exception, and there is no indication that any such

exception was intended by the Legislature.¹

¹ As an initial matter, amici curiae believe that the Court need not consider whether a PR appointed before the “ultimate time limit” of G. L. c. 190B, § 3-108 can never satisfy creditor claims brought more than three years after a decedent’s death. The narrower issue before the Court appears to be whether G. L. c. 190B, § 3-108 precludes a PR who is appointed more than three years after death from possessing estate assets and satisfying claims.

SUMMARY OF THE ARGUMENT

This case is about the authority of a personal representative under the Massachusetts Uniform Probate Code (“MUPC”) to possess estate assets and satisfy claims. That authority is expressly created by the MUPC in G.L. c. 190B, Section 3-709, and is eventually expressly extinguished by G.L. c. 190B, Section 3-108 (“Section 3-108”), which creates, as its caption states, an “ultimate time limit” upon the authority of a PR to take certain actions. Section 3-108(4) provides that a PR appointed more than three years after a decedent’s death “*shall have no right* to possess estate assets as provided in section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration *shall not* be presented against the estate.” (Emphasis supplied.) *Pages 17 through 21.*

Appellee the Executive Office of Health and Human Services (“MassHealth”) claims that this case is governed by G. L. c. 190B, § 3-803(f) (“Section 3-803(f)”) and bases its argument upon a supposed conflict between that section and Section 3-108. It is true that Section 3-803(f) contains the statutes of limitations for creditor claims under the MUPC, and includes MassHealth-specific provisions. By contrast, however, Section 3-108 is not a statute of limitations at all, but is a statute of repose or non-claim statute. It

creates a condition precedent to recovery by a creditor: specifically, the appointment of a PR within three years of a decedent's death. Section 3-108 and Section 3-803(f) stand on their own and operate independently, and there is no conflict between them for this Court to resolve. *Pages 22 through 27.*

The Legislature did indeed create special statutes of limitations, along with other advantages, for MassHealth. But it did so explicitly, making the absence of any such advantage in Section 3-108 glaring. The MUPC is replete with cross-references among its sections, but there are no connections whatsoever between Sections 3-108 and 3-803(f). Nothing in the latter statute expressly reinvests a PR with the authority that Section 3-108 extinguished. If there is to be an exception in Section 3-108 for MassHealth, it must be judicially implied, something this Court has historically been hesitant to do and which is unwarranted in this matter. *Pages 27 through 31.*

Adopting the interpretation proposed by amici curiae would not disturb the advantages that the Legislature created for MassHealth in Section 3-803(f). By contrast, a ruling for MassHealth would profoundly change Section 3-108 by judicially adding a MassHealth-specific exception to that statute. *Pages 31 through 34.*

Many other states have enacted their own versions of Section 3-108 based on the Uniform Probate Code. And various courts from other

jurisdictions have treated those provisions exactly as advocated by amici curiae – as statutes of repose, non-claim statutes, or restrictions on the authority of a PR to possess assets and satisfy claims. *Pages 34 through 37.*

MassHealth argues that this Court should weigh policy considerations in adjudicating this appeal. The Court has consistently held, however, that such debates are for the Legislature, and it is also unclear that such considerations would weigh in favor of MassHealth here. *Pages 37 through 38.*

Finally, MassHealth contends that a ruling for Appellant the Estate of Jacqueline Anne Kendall (“the Estate”) would violate federal Medicaid law. Essentially, MassHealth asserts that any time limitation whatsoever on MassHealth’s ability to engage in estate recovery would violate federal law. There is no remote basis for this assertion. *Pages 38 through 41.*

ARGUMENT

I. **MassHealth is Not Entitled to Recover Benefits Where a Personal Representative was Appointed More Than Three Years After a Decedent’s Death, Because the PR’s Right to Possess Estate Assets and Satisfy Claims is Expressly and Without Exception Extinguished by MUPC Section 3-108.**

A. **The Legislature Structured the MUPC Around the Authority of a PR to Possess Estate Assets and Satisfy Claims, First Creating and Eventually Extinguishing That Authority Through Mandatory, Unambiguous Language.**

This appeal is governed by the plain language of the two statutes at issue, G.L. c. 190B, § 3-108 (“Section 3-108”) and G. L. c. 190B, § 3-803(f) (“Section 3-803(f)”), which are part of the Massachusetts Uniform Probate Code (“MUPC”).² That plain meaning should govern. *See, e.g., eVineyard Retail Sales–Mass., Inc. v. Alcoholic Beverages Control Comm’n*, 450 Mass. 825, 831 (2008) (“a statute is to be construed as written, in keeping with its plain meaning”) (internal quotation marks omitted).

The dispositive language, found in Section 3-108(4), provides that a personal representative (“PR”) appointed more than three years after a decedent’s death “*shall have no right* to possess estate assets as provided in section 3-709 beyond that necessary to confirm title thereto in the successors to

² Section 3-803(f) incorporates portions of G.L. c. 118E, § 32, the plain meaning of which is also unambiguous.

the estate and claims other than expenses of administration *shall not* be presented against the estate.” (Emphases supplied.).

Construing the MUPC as a whole, and giving full effect to all relevant provisions, it is clear that the power and obligation of a PR to possess estate assets and satisfy claims is the axial feature of the entire code. *See generally Wolfe v. Gormally*, 440 Mass. 699, 704 (2004) (statutes “must be construed so that effect is given to all of its provisions [and] must be viewed ‘as a whole’”) (internal citations and quotation marks omitted).

The Legislature defined the authority of a PR clearly and meticulously in the MUPC. First, it broadly defined the term personal representative in Section 1-201(37) of the MUPC as follows:

“Personal representative”, includes executor, administrator, successor personal representative, special administrator, special personal representative, and persons who perform substantially the same function under the law governing their status....

Next, the Legislature gave the PR the right to possess estate assets via Section 3-709(a):

Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property

The Legislature also gave the PR the power, as well as the obligation, to satisfy claims, via Section 3-807(a):

Upon the expiration of the time limitation provided in section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed

Underscoring the importance of the PR's authority, creditors cannot even present claims until after a PR is appointed, as provided in Section 3-104:

No proceeding to enforce a claim against the estate of a decedent or a decedent's successors may be revived or commenced before the appointment of a personal representative.

The limitations periods for the presentment of claims to the PR are set forth in Section 3-803. In relevant part to this appeal, this section states that:

(a) Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death of the deceased

(f) If a deceased received [assistance from MassHealth] when such deceased was 55 years of age or older or while an inpatient in a nursing facility or other medical institution, section 32 of chapter 118E shall govern³

Separate from the limitations periods established by Section 3-803(f), the Legislature created Section 3-108, which is captioned "Probate, testacy and appointment proceedings; ultimate time limit." Subsection (4) provides that a late-appointed PR "*shall have no right* to possess estate assets as provided in

³ The language of G.L. c. 118E, § 32 is discussed further below.

section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration *shall not* be presented against the estate.” (Emphasis supplied). When a PR is appointed more than three years from death, the result is a “late and limited” probate proceeding in which the PR’s authority is limited to simply affirming who is entitled to inherit.

Thus, the Legislature set up a simple and clear sequence:

- Section 1-201(37) defines a PR;
- Section 3-709(a) allows the PR to take possession of estate assets;
- Section 3-807(a) allows claims to be satisfied;
- Section 3-803 places time limits on the presentation of claims; and
- Section 3-108 extinguishes the authority of a PR to possess estate assets and satisfy claims.

In sum, Section 3-709(a) and Section 3-108 are bookends: the former empowers a PR to possess estate assets, and the latter extinguishes that power. The sections use the word “right” in the manner of a mirror image: Section 3-709(a) provides that the PR “*has a right*” to possess estate assets, and Section 3-108 provides that the PR “*shall have no right* to possess estate assets as provided in section 3-709” (Emphasis supplied.) Thus, Section 3-108 is more than a time limitation: it creates a condition precedent to the recovery of

estate funds by a creditor. *See Dept. of Public Welfare v. Anderson*, 377 Mass. 23, 35 (1979) (construing pre-MUPC statute that barred estate recovery by Department of Public Welfare as creating a “condition precedent” to such recovery that “cannot be waived”).

The Legislature twice used the word “shall” in Section 3-108(4), adding emphasis and clarity to the restrictions on the PR’s authority and creditor’s rights. This Court has consistently held that “[t]he word ‘shall’ is ordinarily interpreted as having a mandatory or imperative obligation” when used in statutes. *Galenski v. Town of Erving*, 471 Mass. 305, 309 (2015) (internal citation omitted). Had the Legislature wished to engraft any MassHealth-specific exception onto Section 3-108, it is reasonable to expect it would have done so explicitly. *See Boston Water & Sewer Comm’n v. Metropolitan Dist. Comm’n*, 408 Mass. 572, 578 (1990) (“the Legislature is presumed to understand and intend all consequences of its acts”) (internal citation and quotation marks omitted).

B. Section 3-108 is a Statute of Repose or Non-Claim Statute, Establishing an “Ultimate Time Limit” On a PR’s “Right” to Possess Estate Assets and Satisfy Claims.

MassHealth’s argument turns on a flawed premise: that the Legislature created two conflicting statutes of limitations within the MUPC. It contends that Section 3-108 and Section 3-803(f) are *both* statutes of limitation, and clash with one another. The very core of MassHealth’s argument is found on page 45 of its Brief, where it states:

And, especially germane here, in *interpreting two statutory provisions that appear to conflict*, the specific statutory requirement should be read to govern the more general statute.

In truth, there is nothing this Court needs to do to reconcile or harmonize the statutes. While Section 3-803(f) is indeed a statute of limitations, Section 3-108, by contrast, is a statute of repose or non-claim statute, one that extinguishes the PR’s right to possess estate assets and satisfy claims.

The captions of the statutes at issue here are relevant: Section 3-803 is captioned “Limitations on presentment of claims,” and Section 3-108 is captioned “Probate, testacy, and appointment proceedings: ultimate time limit.” The caption of Section 3-108 is taken directly from the most recent version of

the Uniform Probate Code, and appears in the codes of multiple states.⁴ It is reasonable to assume that the Legislature understood its acts when it enacted this statute based on a widely used template, and that it did not simply blunder into creating a duplicative statute of limitations, as MassHealth contends. *See Rambert v. Commonwealth*, 389 Mass. 771, 773 (1983) (“[t]he language of a statute is not to be enlarged or limited by construction unless its object and plain meaning require it”).

Often arising in the tort context, “[a] statute of repose eliminates a cause of action at a specified time, regardless of whether an injury has occurred or a cause of action has accrued as of that date.” *Bridgwood v. A.J. Wood Constr.*,

⁴ Uniform Probate Code § 3-108 (ALI 2010) (Probate, Testacy and Appointment Proceedings; Ultimate Time Limit); *See, e.g., Alaska:* AS § 13.16.040 (Probate, testacy, and appointment proceedings; ultimate time limit); **Arizona:** A.R.S. § 14-3108 (Probate, testacy and appointment proceedings; ultimate time limit); **Hawaii:** HRS § 560:3-108 (Probate, testacy and appointment proceedings; ultimate time limit); **Maine:** 18-C M.R.S.A. § 3-108 (Probate, testacy and appointment proceedings; ultimate time limit); **Minnesota:** M.S.A. § 524.3-108 (Probate, testacy and appointment proceedings; ultimate time limit); **New Mexico:** N. M. S. A. 1978, § 45-3-108 (Probate, testacy and appointment proceedings; ultimate time limit); **Nebraska:** Neb.Rev.St. § 30-2408 (Probate, testacy, and appointment proceedings; ultimate time limit); **South Carolina:** S.C. Code Ann. § 62-3-108 (Probate, testacy, and appointment proceedings; ultimate time limit); **Utah:** U.C.A. 1953 § 75-3-107 (Probate, testacy, and appointment proceedings; ultimate time limit).

Inc., 480 Mass. 349, 352 (2018); *see also Stearns v. Metropolitan Life Ins. Co.*, 481 Mass. 529, 532 (2019) (“[t]he only way to satisfy the absolute time limit of a statute of repose is to commence the action prior to the expiration of that time limit”). Statutes of limitations have been described as a procedural defense to a legal claim, whereas statutes of repose have been described as providing a “substantive right to be free from liability after a given period of time has elapsed from [a] defined event.” *Stearns*, 481 Mass. at 532 (internal citations omitted).

Notably, the phrase used by this Court in *Stearns* to characterize a statute of repose – “*absolute time limit*” – is virtually identical to the “*ultimate time limit*” language used in the caption of Section 3-108. And in *Stearns*, as here, the question for the Court was whether an “exception” should be read into the statute of repose at issue. This was the Court’s answer in *Stearns*: “The plaintiffs are requesting that we imply exceptions to § 2B where there are none. We decline to do so.” *Stearns*, 481 Mass. at 535.

A non-claim statute is functionally equivalent to a statute of repose, as both erect absolute bars on claims. *51 Am. Juris. 2d Limitation of Actions § 87* (2020 update) (discussing statutes of repose and non-claim statutes). As this Court explained in *Anderson*, 377 Mass. at 35:

Statutes of limitations generally are viewed as pertaining to remedies, not the creation of rights. They constitute affirmative

defenses which if not pleaded are deemed waived. *On the other hand, nonclaim statutes impose a condition precedent to the right of recovery.*

(Emphasis supplied).

In *Anderson*, the Department of Public Welfare sought to recover from a decedent's estate the cost of medical assistance provided to her during the last five and one-half years of her life. The Court found that the claim was barred by G.L. c. 197, § 9, which provided that “an executor or administrator *shall not be held to answer* to an action by a creditor of the deceased which is not commenced within nine months from the time of his giving bond for the performance of his trust. . . .” *Id.*, at 27-28. (Emphasis supplied). In short, the Court treated the statute in question as one of repose and framed the issue as turning on the authority of the administrator.⁵

The Massachusetts Superior Court has also construed Section 3-108 as a restriction on the right of a PR to take certain actions, rather than as a statute of limitations. *See Bennett v. R.J. Reynolds Tobacco Company*, 34 Mass.L.Rptr. 547 (Suffolk County BLS, 2018). In *Bennett*, the court found that a late-appointed PR lacked authority to possess estate assets, and thus could not bring tort claims. The PR was “deprived . . . of the power to sue” by the operation of the statute:

⁵ *Anderson* is a pre-MUPC case, but for purposes of this appeal is clearly grounded in similar considerations.

To summarize, a personal representative appointed more than three years after the death of the deceased pursuant to a “Late and Limited” petition *only has authority* to confirm title to assets in the name of the successors. Such a representative cannot pay claims and cannot file claims on behalf of the estate *because she does not possess them*.

34 Mass.L.Rptr. 547, *4 (emphasis supplied; internal citation omitted). While the case did not involve MassHealth nor the operation of Section 3-803(f), *Bennett* is extremely instructive in that it treated Section 3-108 not as a statute of limitations, but as a limitation on power, just as is argued for in this Brief. *Bennett* is also consistent with multiple decisions from other states which have treated their versions of Section 3-108 as statutes of repose and/or restrictions on a PR’s right to possess estate assets, as discussed further below.

Again, Section 3-108 states that a PR appointed three years from the decedent’s death “*shall have no right to possess estate assets . . . and claims other than expenses of administration shall not be presented against the estate.*” (Emphasis supplied). That sentence is not followed by an exception such as, “*except as to claims by MassHealth, for which a personal representative shall possess estate assets and satisfy claims regardless of when such appointment proceeding is commenced.*” Such a provision would indeed reinvest the PR with authority that Section 3-108 expressly extinguishes. But such language does not exist, and nothing in the MUPC indicates that the Legislature intended to have it implied. *See Commissioner of Correction v. Superior Court*

Department, 446 Mass. 123, 126 (2006) (“[w]e do not read into [a] statute a provision which the Legislature did not see fit to put there, nor add words that the Legislature had an option to, but chose not to include”).

C. The Legislature Expressly Created Special Limitations Periods for MassHealth to Bring Claims Against Estates, but These Provisions Do Not Expand the Authority of a Late-Appointed PR.

When the Legislature wanted to advantage MassHealth in the probate process, it did so with clarity. For example, Section 3-803(f) expressly gives MassHealth substantial advantages over other creditors by incorporating another statute, G.L. c. 118E, Section 32: “[i]f a deceased received [assistance from MassHealth] . . . section 32 of chapter 118E shall govern....”

First, Section 32(b) of chapter 118E provides that: [MassHealth] may present claims against a decedent’s estate as follows: (1) within four months after approval of the official bond of the personal representative....” This is on its face a MassHealth-specific limitations period, and indeed creates a special advantage. For creditors other than MassHealth, Section 3-803(a) provides that “a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death of the deceased.” The clock begins ticking immediately on death. But for MassHealth, it starts at a later date, namely upon approval of a PR’s bond.

G.L. c. 118E, § 32(b).

Equally notably, Section 32(a) requires *actual notice* to MassHealth of the filing of a probate petition: “[a] petition for admission to probate of a decedent’s will or for administration of a decedent’s estate shall include a sworn statement that copies of said petition and death certificate have been sent to [MassHealth] by certified mail” *G.L. c. 118E, § 32(a)*. Thus, while other creditors need only receive constructive notice of a decedent’s death (see *G.L. c. 190B, sections 3-306(b) and 3-403(b)*), MassHealth by contrast must receive actual notice of the death and probate filing.

Another advantage is created by *G.L. c. 118E, § 32(h)(3)*, which allows MassHealth, if no PR has been appointed more than one year after the decedent’s death, to designate a public administrator to be appointed, who can then satisfy claims by MassHealth. Thus, for all other creditors, the passage of a year since death bars claims. *G.L. c. 190B, § 3-803(a)*. But for MassHealth, even if a year goes by without any PR being appointed, it can seek appointment of a public administrator, lodge its claim with that person and

receive payment from the estate.⁶

These provisions demonstrate a point of critical importance to this appeal: When the Legislature wanted to specially advantage MassHealth, it did so explicitly. The absence of any such special provision in Section 3-108 – or anything in Section 3-803(f) expressly modifying Section 3-108 – is therefore glaring.

Indeed, had it wished to, the Legislature could have used Section 3-803(f) to change Section 3-108 to expressly benefit MassHealth. For example, the Legislature could have written into Section 3-803(f) that MassHealth’s claims “*shall not be subject to any restriction on the right of a personal representative to possess estate assets and satisfy claims as provided in Section 3-108.*” This language would have expressly created the very exception that MassHealth now asks this Court to judicially imply. But the Legislature did not employ such language, and there is nothing to indicate that omission was accidental. *See Boston Water & Sewer Comm’n*, 408 Mass. at 578

⁶ A “public administrator,” once appointed, is simply another species of personal representative. Section 3-201(37) of the MUPC defines PR as including an “executor, administrator, successor personal representative, special administrator, special personal representative, *and persons who perform substantially the same function under the law governing their status...*” (Emphasis supplied.) See also *G.L. c. 194, § 4* (it is the duty of a public administrator to “faithfully administer” estates of persons without heirs “and when so designated by the division of medical assistance pursuant to subsection (e) of chapter one hundred eighteen E”).

(“the Legislature is presumed to understand and intend all consequences of its acts”) (internal quotation marks omitted).

There are other provisions of the MUPC that specially advantage MassHealth, such as Section 3-805, which addresses the priority for the payment of creditors and specifically places MassHealth sixth in line of preference, after medical expenses and state taxes but above certain ordinary creditors of insolvent estates. *G.L. c. 190B, § 3-805(6)*. This further demonstrates that when the Legislature wanted to specially advantage MassHealth in the MUPC, it did so unambiguously and purposefully.

The absence of any reference in Section 3-108 to 3-803(f) – or vice versa – is not a small matter, given how often the Legislature chose to cross-reference provisions in the MUPC. The MUPC is replete with explicit connections between its sections. For example, Section 3-108, which bars the right of a late-appointed PR to possess estate assets, refers to Section 3-709(a), which created that right in the first place. And Section 3-807(a), which governs the priority of creditor payments, provides that “[u]pon the expiration of the *time limitation provided in section 3-803* for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate” (Emphasis supplied). This reference demonstrates that when the Legislature

intended to make a specific connection between Section 3-803 and another section of the MUPC, it did so explicitly.

Between Section 3-108 and Section 3-803, there is no such direct connective tissue whatsoever. Both have an impact on creditor rights, but in an entirely different manner: Section 3-803 creates deadlines for the presentation of claims, whereas Section 3-108 establishes a limitation on the power of a PR to possess assets and satisfy claims. MassHealth posits that these provisions are colliding statutes of limitations; in fact, they are much closer to ships passing in the night.

D. Adopting the Position of Amici Curiae Would Not Vitiolate Section 3-803(f) In Any Respect, Whereas a Ruling for MassHealth Would Fundamentally Alter Section 3-108.

MassHealth claims that a ruling for Appellant the Estate of Jacqueline Ann Kendall (“the Estate”) would “contravene the more specific provisions relating to MassHealth’s right to present claims.” *MassHealth Brief*, page 48. More darkly, MassHealth contends that such a ruling would “render meaningless” the statute allowing presentment of a claim by MassHealth within four months of approval of the PR’s bond. Both claims are unfounded.

This Court follows the “well-accepted canon of statutory construction ‘that every word of a legislative enactment is to be given force and effect.’” *The U.S. Jaycees v. MCAD*, 391 Mass. 594, 602 (1984) (internal

citation omitted). So the question is fairly asked: If this Court rules that the Estate's late-appointed PR lacks authority to satisfy MassHealth's claims, will this compromise the vitality of Section 3-803(f), and perhaps even render it "meaningless" as MassHealth contends? The answer is no: All of the MassHealth-specific provisions in Section 3-803 will retain their full flower. MassHealth will also retain all of its advantages for the satisfaction of its claims over the interests of other creditors.

As discussed above, the advantage of the four-month provision of G.L. c. 118E, § 32(b) means that MassHealth is not hindered by the requirement – common to other creditors of a decedent – that claims must be presented within a year of the decedent's death to be honored. MassHealth may present claims after the one-year window, as long as it does so within four months of approval of the PR's bond. That provision will in no sense be rendered "meaningless" by a ruling in favor of the Estate. Stated another way, should this Court adopt the position advanced by amici, MassHealth would retain the unique ability to present timely claims from one year after death through the date when the "ultimate time limit" of Section 3-108 kicks in. Indeed, MassHealth could present an otherwise timely claim even *after* three years, providing that the proceedings to request appointment of the PR were *commenced prior* to the expiration of the "ultimate time limit" of Section 3-108. That cannot be said of

any other creditor governed by Section 3-108. While it is true that MassHealth would not have the infinite amount of time for presentment of claims that it argues for in this appeal, G.L. c. 118E, § 32(b) will retain its vitality, apparently in the exact measure the Legislature intended.

Accepting MassHealth’s proffered interpretation will, by comparison, significantly denude the meaning of Section 3-108, and create a massive exception in the statute for MassHealth. Such a ruling would not simply extend a deadline; it would permanently and infinitely reinvest the PR with the power to possess estate assets and satisfy claims, but with respect to one claimant only – MassHealth. Once again, there is nothing in Section 3-108 or in Section 3-803(f) that expressly does this. In this appeal, the only method for the creation of such an exception is for it to be judicially implied.

Section 3-803 and its predecessors were enacted to “expedite the settlement of estates” and to prevent prolonged estate administrations. *See Abrahamson v. Estate of LeBold*, 89 Mass. App. Ct. 223, 226 (2016) (creditor’s claim filed more than one year after death was time-barred by Section 3-803 and the court declined to apply G.L. c. 260, § 32 to extend the creditor’s limitation period). Adopting MassHealth’s logic would invariably lead to scenarios in which an estate administration would have no endpoint. Such a result would be plainly inconsistent with the relevant provisions of the MUPC,

and the Legislature’s intent. *See Id.* at 226-227 (discussing Legislative intent behind shortened limitations periods for creditors).

E. Relevant Authority From Other Jurisdictions Supports the View that MUPC Section 3-108 Bars a Late-Appointed PR from Possessing Estate Assets and Satisfying Claims.

Multiple courts from other jurisdictions have construed their own versions of Section 3-108 exactly in the manner argued for here – as statutes of repose, non-claim statutes, or bars on the authority of a PR to satisfy claims.

The Supreme Judicial Court of Maine, in *Estate of William Kruzynski*, 744 A.2d 1054 (Me. 2000), confronted one of the exact questions raised here: whether an exception in that state’s version of Section 3-803 should trump Maine’s version of Section 3-108, whose relevant language required that proceedings to appoint a PR be commenced within three years.⁷

In *Kruzynski*, a plaintiff who had been injured by the decedent sought to bring a claim against the estate. However, no personal representative had been appointed within the three-year window created by Maine’s 3-108. The

⁷ The version of 18-A M.R.S.A. § 3-108 in effect at the time provided that:

§ 3-108. Probate, testacy and appointment proceedings; ultimate time limit

(a) For a decedent dying on or after January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent’s death.

plaintiff thus sought to rely on an exception in Maine’s Section 3-803 that allowed claims covered by a decedent’s insurance policy to be brought at any time. But the Maine court decided that the bar in Section 3-108 governed, finding that “[n]othing in the language of the insurance liability exception indicates that it was intended to apply to the three-year time limitation for the appointment of a personal representative.” *Kruzynski*, 744 A.2d at 1057. Notably, as in the present case, the statute of limitations in question would effectively have become infinite had the court not applied the absolute time limitation on the PR’s authority embodied in Section 3-108.

In short, a sister Supreme Judicial Court from a neighboring state adopted the exact statutory analysis advocated for in this Brief – specifically, that an exception to the standard deadline for presentment of claims in Section 3-803 should not override the condition in Section 3-108 that a PR must be appointed within three years of death to have the authority to satisfy claims.

In *Ader v. Estate of Felger*, 375 P.3d 97 (Ct. App. Ariz. 2016), the Court of Appeals of Arizona likewise rejected an interpretation of Arizona’s version of Section 3-803 that would have created an indefinite statute of limitations. Specifically, Ariz.Rev.Stat. § 14–3803 provided that the time limit for claims against an estate was two years from the date of death plus the time remaining on the four-month period that begins to run after the PR provides notice

to creditors. *Ader*, 375 P.3d at 106. The Arizona court found, however, that this section was subject to the “ultimate time limit” established by Ariz.Rev.Stat. § 14–3108, which in relevant part is identical to Massachusetts’ version, other than creating a two-year rather than three-year deadline. *Id.* Because the two-year deadline for appointing a PR had passed, the only actions that could be taken by any PR were to confirm title and pay expenses of administration. *Id.* The court concluded that:

Without applying the two-year time limit to § 14–3803(A), the time for presenting a claim thereunder could continue indefinitely. This would be an “absurd result,” particularly in light of our probate code’s stated purpose of “speedy and efficient” estate administrations....

Id. at 107 (internal citation omitted).

Another similarly instructive case is *In the Matter of the Estate of Strand*, 362 P.3d 739 (Utah Ct. App. 2015), in which the Court of Appeals of Utah construed a statute providing that “no.... testacy proceeding...may be commenced more than three years after the decedent’s death.” *Strand*, 362 P.3d at 743 (citing Utah Code Ann. § 75–3–107(1)). Like the analogous statutes of other states, including Massachusetts, the Utah statute includes the phrase “ultimate time limit” in its caption.

In that case, the petitioner sought to probate his father’s will 25 years after the father’s death, asserting that his brother had fraudulently concealed the will.

Strand, 362 P.3d at 740. The petitioner sought to rely on another statute in Utah’s probate code, Utah Code Ann. § 75-1-106, which allowed actions based on fraud to be initiated “three years after the discovery of the fraud.” Once again, this statute, viewed in isolation, would have functionally created an indefinite statute of limitations with regard to the probate of a will. *Id.* at 741-742.

However, the court declined to apply the discovery rule embodied in § 75-1-106 in the probate context. Instead, it found that requirement of initiating a testacy proceeding within three years was not a statute of limitations but “is actually *a statute of repose* and is not subject to the equitable tolling rules [petitioner] relies upon.” *Id.* at 741. (Emphasis supplied). This is again exactly the approach argued for in this Brief, one that has clearly been followed by other states.

F. The Plain Text of the Statutory Provisions, Not Policy Considerations, Govern This Dispute.

Significantly, MassHealth asks this Court to place considerable weight on policy considerations, rather than statutory analysis. For example, it argues that a ruling for the Estate would “create an enormous incentive” for heirs to wait more than three years before opening estates in order to defeat MassHealth claims. *MassHealth Brief*, pages 50-51. This argument fails to acknowledge that MassHealth has the ability to initiate a formal testacy proceeding in order

to recover on its claim against an estate. *See G.L. c. 190B, § 3-401* (“[a] formal testacy proceeding may be commenced by an interested person . . .”). An “interested person” is defined in *G.L. c. 190B, § 1-201(24)* as “creditors and . . . any others having a property right in or claims against a trust estate or the estate of a decedent,” which certainly includes MassHealth within its ambit.

In any event, a debate grounded in policy considerations is the province of the Legislature. *See Negron v. Gordon, 373 Mass. 199, 207 (1977)* (“[t]he apparent policy considerations on each side of the conflict are very strong, and very compelling. In our view, the Legislature is the appropriate forum for the resolution of this dispute”); *Wakefield Teachers Ass'n v. School Committee of Wakefield, 431 Mass. 792, 802 (2000)* (“[t]he Legislature clearly balanced competing public policy considerations that we shall not second-guess”).

G. A Ruling for the Estate Would Not Run Afoul of Federal Medicaid Law.

Perhaps most ominously, MassHealth contends that a ruling for the Estate would “seriously undermine MassHealth’s ability to comply with state and federal Medicaid laws providing for estate recovery.” *MassHealth Brief*, page 50. And it goes even further, arguing that a ruling for the Estate would “tend to violate Federal Medicaid law.” *Id.* at 52. This rhetoric bears no resemblance to reality. Most significantly for purposes of these proceedings,

federal law contains no mandate that states allow their Medicaid agencies an unlimited time in which to perfect estate recovery claims.

In general, federal Medicaid law only requires that states participating in the Medicaid program implement recovery against the “estate” of a deceased Medicaid recipient for benefits correctly paid on behalf of the individual during his or her lifetime. *See 42 U.S.C. § 1396p(b)(1)(A)*. Federal law defines an “estate” for purposes of the Medicaid estate recovery program as “all real and personal property and other assets included within the individual’s estate, *as defined for purposes of State probate law.*” *See 42 U.S.C. §1396p(b)(4)(A)*. (Emphasis supplied). Thus, federal law explicitly gives the individual states discretion to apply their own laws in determining appropriate recovery procedures for their individual Medicaid programs.

Notably, Congress has given states discretionary tools that the Massachusetts Legislature has decided not to use. For example, under federal Medicaid law states have the option to expand their estate recovery programs to reach non-probate property, such as assets passing via a joint tenancy, life estate

or a living trust.⁸ The Commonwealth has chosen not to adopt this expanded definition of estate recovery, limiting recovery to probate assets owned by the individual Medicaid recipient at death. *See Mass. Gen. Laws. c. 118E, §31(c); Daley v. Executive Office of Health and Human Services*, 477 Mass. 188, 204, n. 15 (2017). Thus, MassHealth is forced to operate its estate recovery program in a less aggressive manner than federal law allows – yet MassHealth has certainly never claimed this Legislative mandate violates federal law.

Federal law provides states with ample flexibility to operate their estate recovery programs. In this context, states only conflict with federal law if they accept money from the Medicaid program and then fail to implement *any* type of estate recovery program. It is amply clear that the Commonwealth’s recovery regime satisfies the baseline federal requirements. *See G.L. c. 118E, § 31, et seq.* Most significantly for purposes of these proceedings, nothing in federal law speaks to a requirement that states establish a limitations period of any particular length for estate recovery programs.

The Legislature’s enactment, *via* Section 3-108, of an “ultimate time limit” for PRs to possess estate assets and satisfy claims does not violate federal

⁸ 42 U.S.C. §1396p(b)(4)(B) allows recovery against “any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.”

law, and an argument to the contrary is simply not viable. Statutes of repose that extinguish the ability to assert claims against an estate are commonplace throughout the country, particularly in jurisdictions based on the Uniform Probate Code. Nothing in federal Medicaid law precludes these states, including Massachusetts, from enacting and applying such standards. The implementation of a time standard applicable to MassHealth estate recovery claims does not in any way run afoul of federal law.

CONCLUSION

Amici Curiae the Massachusetts Chapter of the National Association of Elder Law Attorney, the Real Estate Bar Association for Massachusetts, Inc., and the Abstract Club respectfully request that this Honorable Court enter judgment in favor of the Appellant, the Estate of Jacqueline Ann Kendall.

Respectfully submitted,
Amici Curiae,

By their attorneys,

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M.G.L. c. 118E § 31

Adjustment or recovery of payments

Section 31. (a) This subsection shall apply to estates of individuals dying prior to April first, nineteen hundred and ninety-five. There shall be no adjustment or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when he or she received such assistance. Recovery of such assistance shall be limited to assistance provided on or after March twenty-second, nineteen hundred and ninety-one.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was sixty-five years of age or older when such individual received such assistance. Any recovery may be made only after the death of the surviving spouse, if any, and only at a time when such individual has no surviving child who is under age twenty-one or is blind or permanently and totally disabled. The division shall waive recovery where it would result in undue hardship, as defined by the division in its regulations.

(b) This subsection shall apply to estates of individuals dying on or after April first, nineteen hundred and ninety-five. There shall be no adjustments or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when he or she received such assistance. Recovery of such assistance shall be limited to assistance provided on or after March twenty-second, nineteen hundred and ninety-one.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was sixty-five years of age or older when he or she received such assistance.

(3) Recovery from Persons Age 55 and Over for Post-October 1, 1993 Medicaid: From the estate of an individual who was fifty-five years of age or older when he or she received such assistance, where such assistance was for services provided on or after October first, nineteen hundred and ninety-three.

Any recovery may be made only after the death of the surviving spouse, if any, and only at a time when he or she has no surviving child who is under age twenty-one or is blind or permanently and totally disabled. The division shall waive recovery if such recovery would work an undue hardship, as defined by the division in its regulations.

(c) For purposes of this section, "estate" shall mean all real and personal property and other assets includable in the decedent's probate estate under the General Laws.

(d) The division is also authorized during an individual's lifetime to recover all assistance correctly provided on or after April 1, 1995, if property against which the division has a lien or encumbrance under section 34 is sold. No lien or encumbrance shall be valid against any bona fide purchaser for value or take priority against any subsequent mortgagee for value unless and until it is recorded in the registry of deeds where the property lies.

Repayment shall not be required under this subsection while any of the following relatives lawfully resides in the property: (1) a sibling who had been residing in the property for at least one year immediately prior to the individual being admitted to a nursing facility or other medical institution; or (2) a child who (i) had been residing in the property for at least two years immediately prior to the parent being admitted to a nursing facility or other medical institution; and (ii) establishes to the satisfaction of the division that he provided care which permitted the parent to reside at home during that two year period rather than in an institution; and (iii) has lawfully

resided in the property on a continuous basis while the parent has been in the medical institution.

If repayment is not yet required because a relative specified above is still lawfully residing in the property and the individual wishes to sell the property, the purchaser shall take possession subject to the lien or the division shall release the lien if the individual agrees to (1) either set aside sufficient assets to satisfy the lien or give bond to the division with sufficient sureties and (2) repay the division as soon as the specified relative is no longer lawfully residing in the property. Notwithstanding the foregoing or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien.

This subsection shall not limit the division's ability to recover from the individual's estate under subsection (a) or (b) or as otherwise provided under any general or special law.

M.G.L. c. 118E § 32

Section 32: Provision of death certificate and probate petition to division; liability of estate beneficiaries; claims against estate; sale or transfer of property subject to lien or claim

Section 32. (a) Notwithstanding any provision of law to the contrary, a petition for admission to probate of a decedent's will or for administration of a decedent's estate shall include a sworn statement that copies of said petition and death certificate have been sent to the division by certified mail in accordance with sections 3-306(f) and 3-403(f) of chapter 190B. Within 30 days of a request by the division, a personal representative shall complete and send to the division by certified mail a form prescribed by the division and provide such further information as the division may require.

In the event a petitioner fails to send copies of the petition and death certificate to the division and the decedent received medical assistance for which the division is authorized to recover under section thirty-one, any person receiving a distribution of assets from the decedent's estate shall be liable to the division to the extent of such distribution.

(b) The division may present claims against a decedent's estate as follows: (1) within four months after approval of the official bond of the personal representative, file a written statement of the amount claimed with the registry of probate where the petition was filed and deliver or mail a copy thereof to the personal representative. The claim shall be deemed presented upon the filing of the claim in the registry of probate; or (2) within one year after date of death of the decedent, commence an action under the provisions of section 9 of chapter 197.

(c) When presenting its claim by written statement under subsection (b), the division shall also notify the personal

representative of (1) the circumstances and conditions which must exist for the division to be required to defer recovery under section 31 and (2) the circumstances and conditions which must exist for the division to waive recovery under its regulations for undue hardship.

(d) The personal representative shall have 60 days from the date of presentment to mail notice to the division by certified mail of one or more of the following findings: (1) the claim is disallowed in whole or in part, or (2) circumstances and conditions where the division is required to defer recovery under section 31 exist, or (3) circumstances and conditions where the division will waive recovery for undue hardship under its regulations exist. A notice under clause (2) or (3) shall state the specific circumstances and conditions which exist and provide supporting documentation satisfactory to the division. Failure to mail notice under clause (1) shall be deemed an allowance of the claim. Failure to mail notice under clause (2) shall be deemed an admission that the circumstances or conditions where the division is required to defer recovery under section 31 do not exist. Failure to mail notice under clause (3) shall be deemed an admission that the circumstances and conditions for the division to waive recovery for undue hardship under its regulations do not exist.

(e) If the division at any time within the period for presenting claims under subsection (b) amends the amount due, the personal representative shall have an additional 60 days to mail notice to the division under clause 1 of subsection (d).

(f) If the division receives a disallowance under clause (1) of subsection (d), the division may commence an action to enforce its claim in a court of competent jurisdiction within 60 days after receipt of said notice of disallowance. If the division receives a notice under clause (2) or (3) of said subsection (d), with which it disagrees, the division may commence an action in a court of competent jurisdiction within 60 days after receipt of said notice. If the division fails to commence an action after receiving a notice under clause (2) of said subsection (d), the division shall defer recovery

while the circumstances or conditions specified in said notice continue to exist. If the division fails to commence an action after receiving a notice under clause (3) of said subsection (d), the division shall waive recovery for undue hardship.

(g) Unless otherwise provided in any judgment entered, claims allowed pursuant to this section shall bear interest at the rate provided under section 6B of chapter 231 commencing four months plus 60 days after approval of the official bond of the personal representative.

Notwithstanding the foregoing, if the division fails to commence an action after receipt of a notice under clause (2) of subsection (d), interest at the rate provided under section 6B of chapter 231 shall not commence until the circumstances or conditions specified in the notice received by the division under said clause (2) cease to exist. The personal representative shall notify the division within 30 calendar days of any change in the circumstances or conditions asserted in said clause (2) notice, and upon request by the division, shall provide updated documentation verifying that the circumstances or conditions continue to exist.

If the division's claim has been allowed as provided herein and no circumstances and conditions requiring that the division defer recovery under section 31 exist, it may petition the probate court for an order directing the personal representative to pay the claim to the extent that funds are available or for such further relief as may be required.

(h) Notice of a petition by a personal representative for a license to sell real estate shall be given to the division in any estate where:

(1) the division has filed a written statement of claim with the registry of probate as provided in subsection (b); or

(2) the division has filed with the registry of probate a notice, as prescribed under subsection (a) of section 9 of chapter 197, that an action has been commenced.

(i) In all cases where:—

(1) the division determines it may have a claim against a decedent's estate;

(2) a petition for administration of the decedent's estate or for admission to probate of the decedent's will has not been filed; and

(3) more than one year has passed from the decedent's date of death, the division is hereby authorized to designate a public administrator to be appointed and to serve pursuant to chapter 194. Said designation by the division shall include a statement of the amount claimed. This provision shall apply to all estates in which no petition for administration of the decedent's estate or for admission to probate of the decedent's will has been filed as of the effective date of this section, regardless of the decedent's date of death.

(j) If the personal representative wishes to sell or transfer any real property against which the division has filed a lien or claim not yet enforceable because circumstances or conditions specified in section 31 continue to exist, the division shall release the lien or claim if the personal representative agrees to (1) either set aside sufficient assets to satisfy the lien or claim, or to give bond to the division with sufficient surety or sureties and (2) repay the division as soon as the circumstances or conditions which resulted in the lien or claim not yet being enforceable no longer exist.

Notwithstanding the foregoing provision or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien or claim.

M.G.L. c. 190B, § 3-104

Section 3-104. Claims against decedent; necessity of administration

[Claims Against Decedent; Necessity of Administration.]

No proceeding to enforce a claim against the estate of a decedent or a decedent's successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce a right to the security except as to any deficiency judgment which might be sought therein.

M.G.L. c. 190B, § 3-108

Section 3-108. Probate, testacy and appointment proceedings; ultimate time limit

[Probate, testacy and appointment proceedings; ultimate time limit.]

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except that: (1) if a previous proceeding was dismissed because of doubt relative to the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not unduly delayed initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained relative to the estate of an absent, disappeared or missing person at any time within 3 years after the death of the person may be established; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; (4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, but the personal representative shall have no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be

presented against the estate; and (5) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will. These limitations shall not apply to proceedings to construe probated wills or to determine heirs of an intestate. In cases under clause (1) or (2), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death.

M.G.L. c. 190B, § 1-201

Section 1-201. Definitions and inclusions

[Definitions and Inclusions.]

Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this chapter:

- (1) "Administration", includes both formal and informal testate and intestate proceedings under article III.
- (2) "Agent", includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care in accordance with chapter 201D, and an individual authorized to make decisions for another under a natural death act.
- (3) "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
- (4) "Beneficiary designation", refers to a governing instrument naming a beneficiary of an insurance or annuity

policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child", includes an individual entitled to take as a child under this chapter by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term shall not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Court", the probate and family court department of the trial court and includes the district court and juvenile court departments of the trial court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such district or juvenile court.

(8) "Conservator", a person who is appointed by a court to manage the estate of a protected person.

(9) "Descendant", of an individual means all of such individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this chapter.

(10) "Devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee", a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability", cause for appointment of a conservator under section 5-401.

(13) "Distributee", any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in such trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate", includes the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

(15) "Exempt property", that property of a decedent's estate which is described in section 2-403.

(16) "Fiduciary", includes a personal representative, guardian, conservator, and trustee.

(17) "Foreign personal representative", a personal representative appointed by another jurisdiction.

(18) "Formal proceedings", proceedings conducted before a judge with notice to interested persons.

(19) "Governing instrument", a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or

a donative, appointive, or nominative instrument of any other type.

(20) "Guardian", a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes 1 who is a guardian ad litem.

(21) "Heirs", except as controlled by section 2-711, are persons, including the surviving spouse and the commonwealth, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person", an individual for whom a guardian has been appointed under part 3 of article V.

(23) "Informal proceedings", those conducted without notice to interested persons by an officer of the court acting as a magistrate for probate of a will or appointment of a personal representative.

(24) "Interested person", includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claims against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue", means descendant as defined in subsection (9).

(26) "Joint tenants with the right of survivorship", includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(27) "Lease", includes an oil, gas, or other mineral lease.

- (28) "Letters", includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- (29) "Magistrate", refers to the official of the court designated to perform the function of magistrate as provided in section 1-307.
- (30) "Minor", a person who is under 18 years of age.
- (31) "Mortgage", any conveyance, agreement, or arrangement in which property is encumbered or used as security.
- (32) "Nonresident decedent", a decedent who was domiciled in another jurisdiction at the time of death.
- (33) "Organization", a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.
- (34) "Parent", includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this chapter by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
- (35) "Payor", a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
- (36) "Person", an individual or an organization.
- (37) "Personal representative", includes executor, administrator, successor personal representative, special administrator, special personal representative, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special personal administrator.

(38) "Petition", a written request to the court for an order after notice.

(39) "Proceeding", includes action at law and suit in equity.

(40) "Property", includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(41) "Protected person", a person for whom a conservator has been appointed under part 4 of article V.

(42) "Protective proceedings", a proceeding for appointment of a conservator under part 4 of article V.

(43) "Register", refers to the official designated in section 4 of chapter 217.

(44) "Security", includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Special personal representative", a personal representative as described by sections 3-614 to 3-618, inclusive.

(47) "State", a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(48) "Successor personal representative", a personal representative, other than a special administrator, who is

appointed to succeed a previously appointed personal representative.

(49) "Successors", persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this chapter.

(50) "Supervised administration", refers to the proceedings described in part 5 of article III.

(51) "Survive", except for purposes of part 3 of article VI, means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 2-104 or 2-702. The term includes its derivatives, such as "survives", "survived", "survivor", "surviving".

(52) "Testacy proceeding", a proceeding to establish a will or determine intestacy.

(53) "Testator", includes an individual of either sex.

(54) "Trust", includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI, custodial arrangements pursuant to chapter 201A, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrow for another.

(55) "Trustee", includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(56) "Ward", an individual for whom a guardian has been appointed pursuant to part 2 of article V.

(57) "Will", includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

M.G.L. c. 190B, § 3-401

Section 3-401: Formal testacy proceedings; nature; when commenced

[Formal Testacy Proceedings; Nature; When Commenced.]

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402(a) in which that person requests that the court enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending petition, or a petition in accordance with section 3-402(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the magistrate shall not act upon any petition for informal probate of any will of the decedent or any petition for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, shall refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of office and requesting the appointment of a special

personal representative. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

M.G.L. c. 190B, § 3-709

Section 3-709. Duty of personal representative; possession of estate

[Duty of Personal Representative; Possession of Estate.]

(a) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title thereto.

(b) Whoever injuriously intermeddles with any personal property of a deceased person, without being thereto authorized by law, shall be liable as a personal representative in his own wrong to the person aggrieved.

(c) A personal representative in his own wrong shall be liable to the rightful personal representative for the full value of the personal property of the deceased taken by him and for all damages caused to the estate by his acts; and he or she shall not be allowed to retain or deduct any part of such estate, except for funeral expenses or debts of the deceased or other charges actually paid by him and which the rightful personal representative might have been compelled to pay.

M.G.L. c. 190B, § 3-803

Section 3-803. Limitations on presentation of claims

[Limitation on Presentation of Claims.]

(a) Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death of the deceased and unless, before the expiration of such period, the process in such action has been served by delivery in hand upon such personal representative or service thereof accepted by him or a notice stating the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought has been filed with the register.

(b) A trustee of a trust, the assets of which are subject as a matter of substantive law to being reached by creditors of the deceased shall not be held to answer to an action by a creditor of the deceased unless such action is commenced against such trustee or against the personal representative of the deceased within the time and in the manner provided in subsection (a). Such trustee shall have immunity from personal liability to a creditor or the deceased in the same manner as a personal representative has, pursuant to section 3-807.

(c) A claim described in subsections (a) or (b) which is barred by statute of the decedent's domicile before the limitation in the commonwealth is barred in the commonwealth.

(d) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

[Clause (2) of subsection (d) applicable to actions accruing on or after March 31, 2012. See 2016, 364, Sec. 2.]

(2) an action for personal injury or death, if commenced more than 1 year after the date of death of the decedent, brought against the personal representative; provided further, that the action is commenced not later than 3 years after the cause of action accrues; and provided further, that a judgment recovered in that action shall only be satisfied from the proceeds of a policy of liability bond or liability insurance, if any, and not from the general assets of the estate; and provided further, that if a personal representative has not been appointed, then an action otherwise allowed pursuant to this chapter may be maintained without such appointment, and shall be maintained naming the decedent as the defendant; and provided further, that in that event any service of process that may be necessary shall be made upon the entity providing the insurance or bond.

(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

(e) If the supreme judicial court, upon a complaint in equity filed by a creditor whose claim has not been prosecuted within the time limited by subsections (a) or (b), deems that justice and equity require it and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person, provided forthwith upon the filing of the complaint a notice such as provided in subsection (a) has been filed in the proper registry of probate; but such judgment shall not affect any payment or distribution made before the filing of such complaint and notice.

(f) If a deceased received medical assistance under chapter 118E when such deceased was 55 years of age or older or while an inpatient in a nursing facility or other medical institution, section 32 of chapter 118E shall govern the notice

to be given to the division of medical assistance and such division's claim for recovery under section 31 of said chapter 118E if the division so chooses.

M.G.L. c. 190B, § 3-807

Section 3-807. Payment of Claims

[Payment of Claims.]

(a) Upon the expiration of the time limitation provided in section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for family allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.

(b) If a personal representative finds that the estate of the deceased will probably be insufficient for the payment of his debts the personal representative shall represent the estate to be insolvent to the court, and shall, pursuant to court order, after notice to all persons interested, divide and pay over what remains in the personal representative's hands among the creditors who prove their debts. No action shall be maintained against a personal representative after an estate has been represented insolvent, unless for a claim entitled to a preference which would not be affected by the insolvency of the estate or unless the assets prove more than sufficient to pay all the debts allowed. If the estate is represented insolvent while an action is pending for a claim which is not entitled to such preference, the action may be stayed without costs until it appears whether the estate is

insolvent, and if it is not insolvent, the plaintiff may prosecute the action as if no such representation had been made.

(c) If a personal representative shall not within 6 months after the date of death of the deceased have had notice of demands against the estate of the deceased sufficient to warrant him to represent such estate to be insolvent, he or she may, after the expiration of said 6 months, pay the debts due from the estate and shall not be personally liable to any creditor in consequence for such payments made before notice of such creditor's demand; and if such a personal representative shall be in doubt as to the validity of any debt which, if valid, the personal representative would have a right to pay under this section, the personal representative may, with the approval of the court, after notice to all persons interested, pay such debt or so much thereof as the court may authorize.

(d) If a personal representative pays under subsection (c), before notice of the demand of any other creditor, the whole of the estate and effects of the deceased, the personal representative shall not be required in consequence of such notice to represent the estate insolvent, but in an action against the personal representative shall be discharged upon proving such payments.

(e) If a personal representative pays, under subsection (c), so much of the estate and effects of the deceased that the remainder is insufficient to satisfy a demand of which the personal representative afterward has notice, the personal representative shall be liable on such last mentioned demand for only so much as may then remain. If 2 or more such demands are exhibited, which together exceed the amount of assets remaining in his hands, the personal representative may represent the estate insolvent, and shall, pursuant to court order, after notice to all persons interested, divide and pay over what remains in the personal representative's hands among the creditors who prove their debts; but the creditors of the deceased who have been previously paid shall not be liable to repay any part of the amount received by them.

(f) If it appears, upon the settlement of the account of a personal representative, that the whole estate and effects which have come to the personal representative's hands have been exhausted in paying the charges of administration and debts or claims entitled by law to a preference over the common creditors of the deceased, such settlement shall be a bar to an action brought against the personal representative by a creditor who is not entitled to such preference, although the estate has not been represented insolvent.

(g) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but, except as provided in subsections (c), (d), (e) and (f), is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

(1) payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.

AS § 13.16.040

§ 13.16.040. Probate, testacy, and appointment proceedings;
ultimate time limit

(a) An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may not be commenced more than three years after the decedent's death, except

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time after the dismissal upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death;

(4) an informal appointment or a formal testacy or appointment proceeding may be commenced after the three years if proceedings concerning the succession or estate administration have not occurred within the three-year

period after the decedent's death, but the personal representative may not possess estate assets as provided in AS 13.16.380 beyond that necessary to confirm title to the assets in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(b) The limitations in (a) of this section do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(c) In cases under (a)(1) or (2) of this section, the date on which a testacy or appointment proceeding is properly commenced is considered to be the date of the decedent's death for purposes of other limitations provisions of AS 13.06 - AS 13.36 that relate to the date of death.

A.R.S. § 14-3108

§ 14-3108. Probate, testacy and appointment proceedings;
ultimate time limit

An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, shall not be commenced more than two years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding.
2. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within two years after the conservator becomes able to establish the death of the protected person.
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or two years from the decedent's death.
4. An informal probate or appointment or a formal testacy or appointment proceeding may be commenced thereafter if no court proceeding concerning the succession or administration has occurred within the two year period. If proceedings are brought under this exception, the personal

representative has no right to possess estate assets as provided in § 14-3709 beyond that necessary to confirm title thereto in the rightful successors to the estate. Claims other than expenses of administration shall not be presented against the estate.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under paragraph 1 or 2 of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

HRS § 560:3-108

§ 560:3-108. Probate, testacy and appointment proceedings;
ultimate time limit

(a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than five years after the decedent's death, except:

- (1) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;
- (2) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;
- (3) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment if the contest is successful, may be commenced within:
 - (A) Ninety days after receiving notice of an informal proceeding pursuant to section 560:3-306;
 - (B) Twelve months from the date the will was informally admitted to probate; or

(C) Thirty days from the entry of a formal order approving the accounts and settlement of the estate by an informally appointed personal representative,

whichever time period expires first. If an informal proceeding is closed informally, the court in its discretion may allow a will contest to proceed after the limitations period has expired if it determines that notice of the informal probate proceedings was not provided pursuant to section 560:3-306 and not more than five years has elapsed since the decedent's death;

(4) An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration have occurred within the five year period after decedent's death, but the personal representative has no right to possess estate assets as provided in section 560:3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) A formal testacy proceeding may be commenced at any time after five years from the decedent's death if, in the discretion of the court it would be equitable to do so, for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(b) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(c) In cases under subsection (a)(1) or (2) the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for

purposes of other limitations provisions of this chapter which relate to the date of death.

18-C M.R.S.A. § 3-108

§ 3-108. Probate, testacy and appointment proceedings;
ultimate time limit

1. Limitations period; exceptions. An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may not be commenced more than 3 years after the decedent's death, except:

A. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

B. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

C. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

D. An informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding

concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate;

E. A formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will; and

F. Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance.

2. Limitations period inapplicable. The limitations under subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an intestate.

3. Special provision regarding date of death. In cases under subsection 1, paragraph A or B, the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.

M.S.A. § 524.3-108

524.3-108. Probate, testacy and appointment proceedings;
ultimate time limit

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absentee, or disappeared or missing person, at any time within three years after the death of the absentee or disappeared or missing person is established; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death. These limitations do not apply to proceedings to construe probated wills, determine heirs of an intestate, or proceedings to determine descent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death. Nothing herein contained prohibits the formal appointment of a special administrator at any time for the purposes of reducing assets to possession, administering the same under direction of the court, or making distribution of any residue to

the heirs or distributees determined to be entitled thereto pursuant to a descent proceeding under section 525.31 or an exempt summary proceeding under section 524.3-1203, even though the three-year period above referred to has expired.

N. M. S. A. 1978, § 45-3-108

§ 45-3-108. Probate, testacy and appointment proceedings;
ultimate time limit

A. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile or appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;

(4) an informal appointment in an intestate proceeding or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration has occurred within the three-year period after the decedent's death, but the

personal representative has no right to possess estate assets as provided in Section 45-3-709 NMSA 1978 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

B. The limitations set out in Subsection A of this section do not apply to proceedings to construe probated wills or determine heirs of an intestate.

C. In cases pursuant to the provisions of Paragraph (1) or (2) of Subsection A of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitation provisions of the Uniform Probate Code that relate to the date of death.

Neb.Rev.St. § 30-2408

30-2408. Probate, testacy, and appointment proceedings;
ultimate time limit

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death; and (4) an informal probate or appointment or a formal testacy or appointment proceeding may be commenced thereafter if no formal or informal proceeding for probate or proceeding concerning the succession or administration has occurred within the three-year period, but claims other than expenses of administration may not be presented against the estate. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment

proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

S.C. Code Ann. § 62-3-108

(A)(1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than ten years after the decedent's death.

(2) Notwithstanding any other provision of this section:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding and if that previous proceeding was commenced within the time limits of this section;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later.

(B) If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death, and no proceedings under subsection (A)(2)(b) are commenced within the applicable period of three years, it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In proceedings commenced under subsection (A)(2)(a) or (A)(2)(b), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code which relate to the date of death.

U.C.A. 1953 § 75-3-107

§ 75-3-107. Probate and testacy proceedings--Ultimate time limit--Presumption and order of intestacy

(1) An informal probate proceeding or formal testacy proceeding, other than a proceeding to probate a will previously probated at the testator's domicile, may not be commenced more than three years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; or

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death.

(2) The limitations provided in Subsection (1) do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the date on which a testacy proceeding is properly commenced shall be considered to be the date of the decedent's death for

purposes of other limitations provisions of this title which relate to the date of death.

(3) If no will is probated within three years from death, the presumption of intestacy is final and the court shall upon filing a proper petition enter an order to that effect.

(4) Notwithstanding the time restriction in Subsection (1), the court has continuing jurisdiction to:

(a) determine what property was owned by the decedent at the time of death; and

(b) appoint, formally or informally, a personal representative or special administrator to administer the decedent's estate, except the following may not be presented against the estate:

(i) a homestead allowance;

(ii) exempt property;

(iii) a family allowance;

(iv) a support allowance;

(v) an elective share of the surviving spouse; and

(vi) a claim other than expenses of administration.

CERTIFICATION

I, C. Alex Hahn, Esq., certify that this brief complies with the relevant rules of court pertaining to the preparation and filing of briefs. Those rules include Mass. R. App. P.16 (a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21(redaction).

Compliance with the applicable length limit of Rule 20(a)(2) was ascertained as follows. Times New Roman, a proportionally-spaced font, was used. The portions of this Brief that are required by Rule 16(a)(5)-(11), including headings, footnotes, and quotations, contain fewer than 7,500 words.

Signed under the pains and penalties of perjury,

/s/ C. Alex Hahn, Esq.

C. Alex Hahn, Esq.

Dated: May __, 2020

CERTIFICATE OF SERVICE

I, C. Alex Hahn, Esq. hereby certify that I have this day caused a copy of this pleading to be served on all counsel of record via efilema, the efileing portal for the Massachusetts Appeals Court.

Signed under the pains and penalties of perjury,

/s/ C. Alex Hahn, Esq.

C. Alex Hahn, Esq.

Dated: May ____, 2020