

## Question 1 – February 2015 – Selected Answer 1

1. Diane's action to enforce the provisions of the 2009 divorce decree is timely.

Under the Family Code, a Court may award a just and right division of a couple's community property upon divorce. Generally, courts have continuing jurisdiction to enforce the terms of a divorce award for two years. However, in a case where a party fails to comply with the terms of a divorce decree, a party can bring a claim for enforcement within two years of the spouse's failure to comply.

In this case, as a part of its just and right division, the court awarded the App shares to John, but provided that he must sell the stock on or before March 1, 2012 and deliver 50% of the proceeds to Diane. John failed to comply with the order and did not sell the shares until June 1, 2014. However, the timing for Diane's suit should be measured from the date that John failed to deliver half of the proceeds to her. Thus, Diane's claim for her percentage of the shares did not ripen until John sold the stock and failed to deliver half of its proceeds to her. She timely filed the suit on July 10, 2014, well within the two years of John's failure to comply with the requirement that he split the App stock proceeds with her.

For these reasons, Diane's suit to enforce the provisions of the divorce decree is timely, and the court can order that John deliver her \$10 billion of the proceeds from sale of the App stock.

2. The Court cannot revise its divorce decree, but it can make a division of the vacation home outside of the 2009 decree.

- (a) Revision of the 2009 Divorce Decree

Under The Texas Family Code, a divorce decree should generally make a just and right division of all community property, such that all issues are resolved during the course of the divorce proceeding. However, if additional community property is "found" within one year after a decree is entered, a court may revise the divorce decree to appropriately divide the newly found community property asset.

In this case, John and Diane failed to include the vacation house in their inventories and appraisals, so it was not divided upon divorce. Though they realized the mistake shortly after the divorce became final, they did not notify the court of the issue. Only now, five years later, is Diane bringing the vacation home to the attention of the court. Thus, the one-year window for revising the divorce decree has passed and the court is not authorized to revise it to divide the vacation home.

- (b) The Court can make a division of the vacation home outside of the 2009 decree.

In Texas, when two parties jointly own property outside of marriage, they do so as co-tenants. When property is owned as tenants in common or joint tenants, the owners have an equal and undivided interest in the property. There is no right of survivorship to such property. A co-tenant can request a court to partition property that it jointly owns with another, either in kind or by sale. Thus, a co-tenant can either ask that the court end the co-tenancy by giving each owner one half of the property, or by requiring that the property be sold and giving each co-tenant one half of the proceeds.

As of July 2014, John and Diane still jointly own the vacation home. While they had orally agreed to sell it and split the proceeds, they never did so. Moreover, such an oral agreement to sell real property is unenforceable under the Statute of Frauds.

Since they are no longer married, John and Diane currently own the property as joint tenants with an equal and undivided interest in the home. Though the court cannot include the home in its past divorce decree, it may partition the home under the general rules of property in Texas. Thus, if John and Diane are co-tenants and Diane requests that the court partition the property, then the court can order that the property be divided such that each of the two own 50% of it. Alternatively, Diane can request that the court can order the home to be sold, such that John and Diane are each entitled to 50% of the proceeds from the sale.

Thus, the court can make a division of the vacation home outside of the 2009 divorce decree.

### **Question 1 – February 2015 – Selected Answer 2**

1. Under the Family Code, Diane has timely brought her suit to enforce the provisions of the 2009 divorce decree related to the App shares. The issue here is whether or not, by waiting until over two years after the March 1, 2012 deadline set forth by the Court for the sale of the stock, Diane waived her ability to bring an action to enforce her right to receive 50% of the proceeds. Parties are given a two year statute of limitations to bring an action of this nature from the time that the ex-spouse unequivocally disputes that the party is entitled to any portion of it. In this case, while it is true that John did not sell the stock in a timely fashion pursuant to the divorce decree, he did not unequivocally dispute that Diane was entitled to 50% of the proceeds until June of 2014. At this time, when Diane requested her share of the proceeds, John for the first time clearly disputed her claim when he refused to deliver the rightful share to Diane. Therefore, the two year statute of limitations did not begin to run until June of 2014. Accordingly, by filing suit only one month later, Diane's claim is timely.

2. The Court should not revise the 2009 divorce decree but should make a division of the vacation home outside of the 2009 divorce decree. A divorce decree is final as far as disposition of property and is not subject to modification. Therefore, the Court should not revise the divorce decree pursuant to Diane's request. However, Diane is not without recourse. When a piece of community property, such as the vacation home, is inadvertently excluded from the divorce proceeding, the ex-spouses become tenants in common with respect to the property. So, Diane and John are tenants in common and each have an undivided 1/2 interest in the vacation home. If one of the spouses denies that the other spouse has an interest in the property, the spouse who is being refused rights has two years from the time that their claim is disputed to file suit. John initially agreed to sell the vacation home and split the proceeds. So, at that time, he did not dispute Diane's interest. As of the time that the suit was filed in July of 2014, John had yet to unequivocally dispute Diane's interest in the vacation home. As mentioned above, the statute of limitations for bringing suit does not begin to run in these scenarios until one ex-spouse conveys his or her belief that the other ex-spouse has no interest in the property. As John has yet to do so, the statute of limitations has not begin to run and Diane is timely in filing suit. As such, the court should make a just and right division of the vacation home outside of the 2009 divorce decree, as "just and right" is the standard that guides courts in the division of marital property.