

Q2 – July 2016 – Selected Answer 1

1. The most efficient way would be for Jill to initiate a small estate administration. The issue is whether Steve's estate qualifies for small estate administration.

In Texas, an estate may qualify for small estate administration if the non-exempt assets (homestead, personal exempt assets, non-probate assets) are \$50,000 or less, or the only piece of real property owned by the estate is the homestead and the estate only has one creditor. Under small estate administration, the representative would just file an affidavit with the probate court, in order to give notice to creditors and disposing of the estate to heirs in a just way, taking into account the homestead, exempt personal property, and family allowance if necessary. It saves court costs and estate administration expenses, and is one of the quickest ways to administer an estate. In this case, Steve's estate would qualify for small estate administration because his homestead is his only piece of real property. Additionally, his non-exempt probate estate is under \$50k. The retirement plan is a non-probate asset, the house is his homestead, the household effects, heirlooms, and automobiles all qualify as exempt personal property, and they are under the \$100k limit for families (\$60k), with the jewelry account for only 25% (\$15k), leaving the checking account as the only non-exempt probate asset, which is under the \$50k limit for small estates (\$45k). The \$5k debt would be paid out of the residuary estate, because it is not one of the magic eight ways in which a debt can be paid out of a homestead. When Jill initiates a small estate proceeding, the creditor will be given notice and will be paid out of the checking account because every other asset is either a homestead, an exempt personal property asset, or a non-probate asset.

2. a. Jill will take entire interest in the home. Under Texas law, when a decedent dies intestate, and is survived by a spouse and marital children, the entire community property estate passes to the surviving spouse. Property purchased during the marriage is presumed to be community property unless it is proved to be separate property by clear and convincing evidence. In this case, the home was purchased shortly after the marriage and was lived in throughout the marriage and therefore is community property, and will pass solely to Jill. Even if it were separate property, Jill would still have a 1/3 life estate and exclusive right of occupancy since it is a homestead.

b. The retirement plan is a non-probate asset and will pass to the intended beneficiary, which in this case is Jill. Non-probate assets are not considered in intestate proceedings and are distributed according to their terms, so in this case Jill would take the retirement account.

c. The household effects, automobiles, and checking account will pass to Jill. As mentioned before, these are community property assets and the entire community property estate passes to Jill.

d. The heirlooms will pass one third to Jill and one third to each of the children. The heirlooms are Steve's separate property since they were acquired by gift, and under intestacy law, separate property is divided 1/3 to the surviving spouse and 2/3 to decedents, which in this case are his sons. The sons will also take by representation according to TX law, so each will get a 1/3 interest in the heirlooms.

1. A Small estate affidavit should be used to transfer title to the assets. At issue is is there alternative options to probate when a testator dies intestate and does not have more than two outstanding debts.

In Texas, the legislature has recognized that not all deaths create property disputes between family members and at times there is a need for an easier way for assets to be distributed out of the estate. One method that is available to family's after the death of a loved one is a Small Estate Affidavit. Using a small estate affidavit if a person at their death owns only a homestead and no other property and the estate is valued at less than \$50,000 then the property can be distributed using this proceeding. This is simplified proceeding and is done through filing affidavits with the court.

The limitations with the method are that the deceased may not have any debts other than a debt on the homestead and the property must be able to pass without needing to have the court transfer title to property. Here, the only real property Steve owned on his death was the Travis County House which in Texas will most likely be considered their homestead since they lived there during their marriage which shows an intent to establish the home as their homestead. In addition to a homestead in Texas the law provides that each person is allowed to have \$50,000 of personal property that will be considered exempt personal property. Here, the Household Effects, Heirlooms and an Automobile will all be considered to fall within this personal property exemption. It is possible that only one of automobiles will be allowed to pass under as exempt personal property since there are limits in quantity to certain items.

This leaves the Retirement Plan and the Checking Account and the other Car to be considered. A Retirement Plan that has a named beneficiary is a non-probate asset that transfers outside of the estate in accordance with the retirement plan contract and thus is not counted into the total estate's worth. The Joint checking account will be considered community property and part of the estate if there has not been a signed right of survivorship agreement that both spouses signed with language that the account has a right of survivorship. Since that is not apparent in these facts we will assume it must count under the estate's worth as a probate asset. The \$5,000 outstanding debt will need to be paid before using the small estate affidavit. By paying off the debt with money from the joint checking account it could help lower the amount that is included in the estate's worth.

2. Jill should be distributed the house, household effects, heirlooms, the two automobiles, the joint checking account and the retirement plan as a non-probate asset. At issue is who inherits in Texas when a person dies intestate.

(a) House, (c) Household Effects (e) Automobiles (f) Checking Account: Under Texas law all property acquired during a marriage is considered to be community property and when one of the spouse dies the surviving spouse will receive all of the community property unless the deceased spouse has children that are not the children of the surviving spouse. Since Mark and John are both Steve and Jill's children Jill will keep her 1/2 community property interest in these assets and Steve's 1/2 will be devised to Jill.

(d) Heirlooms: The community property presumption in 2a does not apply to any property that is received by a spouse during marriage by gift, bequest or devise. Since the heirlooms were inherited by Steve from his grandfather these will be considered to be separate property. Under Texas intestate law separate personal property is devised to surviving spouse 1/3 and the children Mark and John 1/6 each in equal shares.

(b) Retirement Account: A Retirement Plan that has a named beneficiary is a non-probate asset that transfers outside of the estate in accordance with the retirement plan contract and thus here Hull as the sole beneficiary will have rights to the account.

1. Jill wants to pursue small estate administration, a streamlined process for disposing of estates with non-exempt property of less than \$50,000 and no real property besides a homestead. At issue is the formalities required for disposing of a small estate. Texas favors informal estate dispositions, and allows the appointment of an independent administrator to see that an estate is divided. As the surviving spouse, Jill is the first choice for the independent administrator, and since all the property will pass to her or the surviving minor children, there is unlikely to be a contest to the disposition. Small estate administration is a particularly streamlined way of disposing of assets in small estates with no real property besides a homestead in which the administrator simply files an affidavit with the clerk attesting to the property to be disposed of and receives a court order affirming the disposition. Although the total value of the estate is over \$50,000, the amount considered for small estate administration does not include the retirement plan, which is a non-probate transfer governed by contract, and does not include exempt property, which includes the heirlooms and may be argued to include the automobiles and home furnishings, leaving only the checking account worth \$45,000. Small estate administration will quiet title to the house in Jill. If Jill cannot qualify for small estate administration she will simply distribute the estate as an ordinary independent administrator, file an inventory with the court, and apply for a muniment of title to change the title of the house from joint ownership to her sole property.

It is not clear that the loan for the vacation is due on death rather than according to the terms set out in the original loan, as if Jill signed too she is still alive to collect from. If she did not sign and the loan is due out of the estate, the simplest method would be for Jill to pay the loan out of the checking account and in lieu of a full statement of estate assets and liabilities filed with the court, file an affidavit stating that she has ensured that all estate debts are paid, a simple option allowed in Texas to preserve the privacy of the deceased since probate filings are public record.

2. Disposition of Assets

House: All to Jill. The house is presumed community property as it was acquired during the marriage. The intestate division of property when a decedent is survived by a spouse and children born of the surviving spouse is that the surviving spouse takes all community property. Here Mark and John are also Jill's natural children, so she takes the house entirely.

Retirement Plan: All to Jill. The retirement plan is a non-probate instrument governed by the terms of the contract. It specifies Jill as the beneficiary and therefore she is the beneficiary. The court could not change this even if Steve had left a will directing the Retirement Plan be given to someone else.

Household effects: All to Jill. These are presumed community property unless proved otherwise by clear and convincing evidence. Since they are community property they are divided as outlined above, all to Jill.

Family heirlooms - 1/3 to Jill, 2/3 to Mark and John. Property acquired by gift, bequest, or devise is separate property, and since Steve inherited the heirlooms from his grandfather they qualify. The intestate division of separate property for a decedent survived by a spouse and children is 1/3 to the surviving spouse, 2/3 divided among the surviving children.

Two automobiles - All to Jill. Presumed community property unless proved otherwise by clear and convincing evidence, and therefore divided by the intestacy rules described above. The fact that John is a licensed driver does not give him a property interest in the cars, although he may attempt to show they are not property of the marital estate at all, such as if John purchased one with his own money or the cars were received as a gift.

Joint checking account - All to Jill. Community property, disposed of as described above.