

ADMINISTERING AN ESTATE WITH A SURVIVING SPOUSE AND CREDITORS

DBA Probate Section Meeting

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FIDUCIARY DUTIES

- Administrators have fiduciary duties to the surviving spouse and other beneficiaries/heirs
- Administrator holds Estate property “in trust” for the beneficiaries/heirs.
 - Tex. Estates Code § 101.003

FIDUCIARY DUTIES

- An Administrator is held to the same statutory standards as Trustees.
 - *Humane Soc. of Austin & Travis County v. Austin Nat'l Bank*, 531 S.W.2d 574 (Tex. 1975).
- NO fiduciary duties to *creditors* of the Estate

REQUIRED NOTICES

- Notice to Creditors (§308.051 and §403.051)
 - Within 1 month of receipt of letters, must provide notice to anyone who has a claim against the Estate to present it within the “period prescribed by law”
 - Notice must contain date letters issued, address to present claims, and to whom claims are addressed

REQUIRED NOTICES

- Notice to Texas Comptroller (§308.051)
(403.051)
 - Notice within 1 month of letters to Comptroller by certified or registered mail if the Decedent remitted or should have remitted taxes administered by Comptroller
 - Same content as Notice to Creditors
 - Applies when Decedent owned or operated a business at time of death

REQUIRED NOTICES

- Notice to Secured Creditors (§308.053 and §403.051)
 - Within 2 months of receiving letters, must give notice to anyone who may have a claim against the Estate which is secured by Estate property
 - Common Examples include real estate which is secured by a mortgage / vehicles with outstanding loans

REQUIRED NOTICES

- Notice to Secured Creditors
 - After obtaining actual knowledge of secured creditor, must give notice within a reasonable amount of time
 - Notice must be sent by certified or registered mail, return receipt requested, to claimant's last known address
 - File copies of notices and return receipts, along with affidavit of personal representative regarding mailing of such notices with the Court

REQUIRED NOTICES

- Notice to Unsecured Creditors (§308.054 / §403.051(a)(2))
 - **MAY** give notice by certified or registered mail, return receipt requested, to any unsecured creditor who has a “claim for money” against the Estate
 - Creditor must present claim before 121st day after date of receipt of notice or claim is barred, unless already barred by general statutes of limitation

LIABILITY: REQUIRED NOTICES

- Failure to give required notices can result in liability for personal representative and sureties on the bond for any damages suffered by person due to failure to provide notice
 - Tex. Estates Code § 308.056

PRIORITY OF CLAIMS

- Texas Estate Code §355.102
- Class 1—Funeral expenses and expenses of last illness not to exceed \$15,000
- Class 2—Expenses of Administration / Unpaid Expenses of Guardianship
 - Includes attorneys' fees and expenses incurred by PR in connection with the administration of the Estate and in connection with defending a contested will

PRIORITY OF CLAIMS

- Class 3—Matured Secured Claims for Money, including tax liens, to the extent it can be paid out of the proceeds of the property subject to the lien
- Class 4—Child Support
- Class 5—Taxes, Penalties and Interest related to franchise taxes, coin operated machines, sales and use taxes

PRIORITY OF CLAIMS

- Class 6—Claims for Cost of Confinement
- Class 7—Claims for Repayment of Medical Assistance Payments by the State
- Class 8—All other claims (unsecured creditor claims)

PRIORITY OF PAYMENTS

- Allowances made to the surviving spouse and children are paid after Class 1 claims
 - Tex. Estates Code § 355.103

PRIORITY OF PAYMENTS

- US Government Claims
 - Not discussed in Texas Estates Code
 - Claims of US Government must be paid before all other debts of a Decedent (31 U.S.C.A §3713(a))
 - PR personally liable for failure to give priority to these claims

PRIORITY OF PAYMENTS

- US Government Claims
 - Government claims do not take priority over funeral expenses and expenses of administration as these are not “debts” of the Decedent
 - *United States v. Weisburn*, 48 F. Supp. 393 (E.D. Pa. 1943)
 - Family Allowance takes priority over Government claims
 - *Schwartz v. Commissioner*, 560 F.2d 311 (8th Cir. 1977)

UNSECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Texas Estates Code §403.051(a)(2)
- Unsecured Claim—Claim barred if creditor receives a notice under §308.054 and does not provide PR with notice of nature and amount of claim before 121st day after notice received.
 - Tex. Estates Code §403.055

UNSECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Creditor's Options (Tex. Estates Code § 403.056)
 - Send document in compliance with §355.004 to PR or PR's attorney by hand delivery or certified mail
 - File pleading in a lawsuit
 - File document in compliance with §355.004 or file other pleading in the Court where the administration is pending

UNSECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- §355.004 / §355.005
 - Affidavit states:
 - Claim is just
 - All legal offsets, payments and credits known to the affiant have been allowed
 - If not founded on a written instrument or account, the facts on which the claim is founded

UNSECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Action on Claims
 - Duty to classify and pay claims
 - Done free of Court control in an independent administration.

PRACTICE POINTS

- Creditors usually do not comply with statutory requirements.
- Using 403.055 and 403.056 may be effective way to bar claims in an independent administration
- Do not waste time talking to unsecured creditors on the phone
- Advise client to try to negotiate with creditors
- Use Inventory to show unsecured creditors who are last in line that nothing is left for them

SECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Secured Claims (§ 403.052)
 - 6 months after letters are granted or 4 months after notice is received, whichever is later, a secured creditor must elect if he chooses a “matured secured claim” to be paid in the due course of administration
 - If no election made, claim shall be a “preferred debt and lien”

SECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Preferred debt and lien status means a creditor can only take his collateral, and cannot take a deficiency from the Estate
- Preferred debt and lien holders in an independent administration can exercise judicial or extrajudicial foreclosure rights
- Cannot conduct a nonjudicial foreclosure within 6 months after letters are granted

SECURED CLAIMS IN INDEPENDENT ADMINISTRATIONS

- Matured Secured Claims (§403.053)
 - Creditor has security interest in property, but subordinated to claims that are higher in priority
 - Creditor cannot prevent payment of higher priority claims and allowances
 - Creditor cannot exercise contractual collection rights without approval of PR
 - Creditor can seek judicial relief and execute a judgment against PR

CLAIMS IN DEPENDENT ADMINISTRATIONS

- Unsecured Claims
 - Must present claim before 121st day after notice is given under Section 308.054 or barred (§355.060)
 - Certain requirements for affidavit to support a claim (§355.004 and § 355.005)
 - Administrator cannot approve a claim if requirements not met (§355.059)
 - Sending a monthly statement or a bill to the Administrator is NOT a claim

PRESENTMENT OF CLAIMS IN DEPENDENT ADMINISTRATIONS

- Present to the Administrator (§355.001)
- Deposit with Clerk of Court (§355.002)
 - Clerk is required to notify Administrator

SECURED CLAIMS IN DEPENDENT ADMINISTRATIONS

- Claimant shall elect “matured secured claim” or “preferred debt and lien (§355.151)
- Time period to elect status (§355.152)
- Default is to preferred debt and lien if no election is made

PREFERRED DEBT AND LIEN CLAIM

- Creditor takes payment solely from the collateral, and no further claim for deficiency can be made

MATURED SECURED CLAIM

- Claim paid in the due course of administration as a Class 3 claim
- Can make a claim to recover deficiency as a Class 8 claim
- Most creditors seem to elect preferred debt and lien, possibly due to preferential payments (Class 1 and 2 Claims/Allowances) that come before payment of matured secured claims

APPROVAL/REJECTION OF CLAIMS

- Must allow or reject within 30 days after date presented (§355.051)
- Presumed rejected if no action in 30 days
 - If later established by suit, costs shall be taxed against PR, individually (§ 355.052)
 - Can be removed on the written complaint of any person interested in the claim
 - Very important to timely approve or reject!

SUIT ON A REJECTED CLAIM

- When claim is rejected or deemed rejected, claimant must file suit no later than 90 days after rejection, or the claim is barred (§355.064)

AMENDED CLAIMS

- Nothing in Estates Code that allows a creditor to amend a claim or discusses how to handle them
- After rejection, creditor likely must file suit within 90 days, and cannot amend rejected claim
- Still good practice to reject amended claims

CLAIMS IN DEPENDENT V. INDEPENDENT ADMINISTRATIONS

- Unless specifically provided in Estates Code, provisions governing claims in dependent administrations DO NOT apply to independent administrations (§403.058)
- Tex. Estates Code §355.064 does not apply (barring rejected claims within 90 days if no lawsuit filed)

SHIELDING ESTATE PROPERTY FROM CREDITORS

- Homestead
 - Defined by the Texas Constitution, Article 16, Section 51
 - Only one homestead
 - No formal designation required
 - Note: Yacht used as primary residence did not qualify for homestead because it was not attached to land .
Norris v. Thomas, 215 S.W.3d 851 (Tex. 2007).

HOMESTEAD PROTECTION

- Homestead is not liable for payment of unsecured Estate debts as long as there is a surviving spouse or minor child
- Cannot be sold to pay expenses of administration when being used as homestead by surviving spouse/minor children
- Exceptions:
 - Purchase money liens, mechanic's or materialmen's liens, ad valorem taxes, federal tax liens

HOMESTEAD PROTECTION

- Homestead rights of surviving spouse are the same whether homestead is separate or community property of the Decedent (§102.002)
- Surviving spouse has a life estate in the entire homestead, not in just the portion he/she owns.

HOMESTEAD PROTECTION

- If the homestead is sold, the exemption from creditors still extends to the sales proceeds.
Butler v. Summers, 253 S.W.2d 418 (Tex. 1952)
- Arguably, once homestead is set aside, surviving spouse does not have to reinvest proceeds in another homestead to protect them from general creditors of the Estate.

SETTING ASIDE THE HOMESTEAD

- Dependent Administration
 - After approval of Inventory, Court shall set aside the homestead for the use and benefit of the surviving spouse and minor children (§353.051)
 - May set aside earlier
- Independent Administration
 - PR may want to file an informal notice setting aside the homestead

ALLOWANCE IN LIEU OF HOMESTEAD

- Court shall make a reasonable allowance to be paid to the Decedent's surviving spouse and children (§353.053)
- May not exceed \$45,000 (§353.054)
- Allowance can be permitted even if there is a homestead, if minimal equity and substantial mortgage debt
 - *Ward v. Brown*, 417 S.W.2d 888 (Tex. Civ. App.— Corpus Christi 1967)

OTHER EXEMPT PROPERTY

- Property described in Section 42.002(a) of the Texas Property Code shall be set aside for the use and benefit of the surviving spouse and minor children, unmarried adult children remaining with the Decedent's family, and any other adult who is incapacitated.
 - Tex. Estates Code § 353.051(a)(2)

OTHER EXEMPT PROPERTY

- Family limited to \$100,000 (up from \$60K), exclusive of liens and security interests in the property
- Single adult limited to \$50,000 (up from \$30,000)
- Still potentially liable for payment of Class I claims (§353.155) but not liable for any other Estate debts

OTHER EXEMPT PROPERTY

- Dependent Administration (§353.051(a))
 - After approval of Inventory, Court shall set aside the exempt property for the use and benefit of those entitled to it
 - May be done earlier
 - Spouse's ownership of separate property irrelevant
 - *Ward v. Brown*, 417 S.W.2d 888 (Tex. Civ. App. – Corpus Christi 1967)
- Independent Administration
 - PR may want to file an informal notice setting aside the exempt property

ALLOWANCE IN LIEU OF EXEMPT PROPERTY

- If all or any exempt property not among Decedent's effects, an allowance, not to exceed \$30,000, shall be made to the surviving spouse or minor children. (§353.053)
 - *Estate of Rhea*, 257 S.W.3d 787
 - Exempt property set aside and allowance in lieu of exempt property NOT alternative remedies
 - Can award allowance based on items not on hand as well

FAMILY ALLOWANCE

- For support of surviving spouse, minor children, and adult incapacitated children during first year after Decedent's death (§353.101)
- No family allowance if surviving spouse has sufficient separate property
- Satisfied in part out of surviving spouse's half of community property

FAMILY ALLOWANCE

- Dependent Administration:
 - Fixed by the Court after Inventory is approved
- Independent Administration
 - File a Notice in the Estate setting amount of family allowance
 - Paid right after Class 1 claims, so use Notice to show creditors nothing is left for them

AMOUNT OF FAMILY ALLOWANCE

- Section 353.105
 - Amount sufficient to maintain surviving spouse, minor children, and adult incapacitated children for year after Decedent's death
 - Court considers facts/circumstances that exist during first year after death
 - In a Dependent Administration, file for Family Allowance within first year

PAYMENT OF FAMILY ALLOWANCE

- Section 353.105
 - Paid to surviving spouse if no minor children or incapacitated children, or if all children are also children of the surviving spouse
 - If minors or adult incapacitated children who are not children of surviving spouse, pay to guardian
 - If no surviving spouse, pay to guardian