

### **EXAMINERS' ANALYSIS OF QUESTION NO. 11**

(1) Estates in Michigan are statutorily governed by the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 et al. Pursuant to EPIC, the July 10, 2014 document that Mary signed constituted a valid will. All valid wills require that the testator be at least 18 years old and have "sufficient mental capacity." MCL 700.2501(1). The facts state that at the time the document was created Mary was 65 years of age and her mental health was strong. Therefore those requirements are met. In addition, generally a will must be (a) in writing, (b) signed by the testator, and (c) signed by at least two persons who witnessed either the signing of the will by the testator or the testator's acknowledgment of the signature or of the will. MCL 700.2502(1) (a) (b) (c). Although Mary's document does not constitute a valid will under the above provisions because it was not witnessed, it does qualify as a valid holographic will under MCL 700.2502(2) that requires no witnesses "if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting." Here, the document was completely in Mary's own handwriting, including her signature, and dated. Accordingly, Mary's sister Amanda would be entitled to Mary's house under the will.

(2) Since the will had no residuary clause, Mary's remaining asset, namely the 3 million dollars, would not be disposed of through the will but statutorily through intestate succession apart from the will. Pursuant to 700.2101(1), "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will." As Mary has no surviving spouse "the entire intestate estate . . . passes in the following order to the following individuals who survive the decedent: (a) the decedent's descendants by representation." MCL 700.2103. Under EPIC, an individual's descendant is defined as "all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act." MCL 700.1103(k).

Under EPIC's intestate succession provisions, Mary's natural born child would be entitled to take money as a

descendant of Mary. MCL 700.2114(1). Mary's adopted child would have also been entitled to a share of the money since "[a]n adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents . MCL 700.2114(2). However, pursuant to MCL 700.2104 "[a]n individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of . . . intestate succession, and the decedent's heirs are determined accordingly." Therefore, Mary's adopted child would take nothing because she is considered to have predeceased Mary since that child did not survive Mary by 120 hours, having passed away just 3 days after Mary.

Finally, Mary's stepchild is not considered a descendant of Mary and would therefore take nothing. Under EPIC, a child does not include "an individual who is only a stepchild, a foster child or a grandchild or more remote descendant." 700.1103(f). Accordingly, all of the intestate estate of 3 million dollars would pass to Mary's natural child.