

**EXAMINERS' ANALYSIS OF QUESTION NO. 10**

**1. The December 2006 will has no effect on the distribution of the estate.**

Estates in Michigan are statutorily governed by the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 et seq.

MCL 700.2807(1) provides in part that:

(1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

MCL 700.2806 defines certain terms in MCL 700.2807(1)(a)(i) as follows:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

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(d) "Governing instrument" means a governing instrument executed by a divorced individual before the divorce from, or annulment of his or her marriage to, his or her former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption,

or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

Further, MCL 700.1104 provides that a "governing instrument" includes a will.

Accordingly, in the absence of express terms to the contrary in the governing instrument, when a testator who has executed a will later divorces his or her spouse, the divorce revokes any disposition or appointment of property to either the former spouse or the former spouse's relatives.

Thus, under MCL 700.2807, Mary and Joe's divorce revoked all revocable provisions of the will that transferred property or another benefit to Mary, as the former spouse, and to Jane and Jack, as Mary's children. The divorce, therefore, revoked the provisions of Joe's will that left real property to Mary and the remaining estate to Jane and Jack.

## **2. Jane, Jack and Bobby will receive the insurance proceeds.**

Life insurance policies are non-probate property and are governed by contract law. See *Hilliker v. Dowell*, 54 Mich App 249 (1974); *Starbuck v. City Bank & Trust Co*, 384 Mich 295 (1970). Since the facts do not provide that there are any other provisions in the policy requiring a different result, the named beneficiaries will be entitled to the proceeds of the policy, as set forth in the agreement.

Thus, Jane, Jack and Bobby would receive the life insurance proceeds because they are the individually named beneficiaries under the policy and the proceeds are not considered part of Joe's estate to be disposed of by will or that can be distributed through intestate succession.

## **3. Joe's estranged brother will likely take the entire probate estate.**

Because the divorce revoked Joe's will, Joe died without a testamentary document, and as such, Joe's estate will be distributed according to the EPIC rules governing intestate succession, MCL 700.2101 et seq.

Where a decedent dies without a surviving spouse, as is the case here since Joe was divorced, the decedent's estate passes first to the decedent's descendants by representation. MCL 700.2103(a). Thus, if Jane, Jack and Bobby are Joe's descendants, they will take the entire estate equally by representation. The statutory definition of descendant contemplates "the relationship of parent and child," MCL 700.1103(k). The statutory definition of "child" specifically excludes "a stepchild" and "a foster child." MCL 700.1103(f). As a result, even though Joe thought of Jane, Jack and Bobby as "his children," they are not statutorily considered his children and therefore cannot take his estate.

Michigan, however, recognizes the doctrine of adoption by estoppel. See *Perry v. Boyce*, 323 Mich 95 (1948). Under this equitable doctrine, a child is entitled to inherit as if he were adopted where a parent promises to adopt the child but does not. In the instant case, Joe was merely considering adoption as an option. In fact, Joe merely said that he "should try" to adopt Bobby, and not that he *would* adopt Bobby. Additionally, Joe only discussed the adoption process with his attorney, but made no further attempts to move forward with the process. Because the facts do not indicate that Joe ever actually promised to adopt Bobby, nor made a real concerted effort to adopt Bobby, adoption by estoppel will likely not prevail as a basis to award Joe's estate to Bobby.

If the decedent has no surviving descendant or parent, then the decedent's estate passes to "the descendants of the decedent's parents or of either of them by representation." MCL 700.2103(c). Because Jane, Jack and Bobby do not qualify as a descendant and Joe is not survived by his parents, Joe's estranged brother will take Joe's entire estate.