

Information & Instructions: ~~Community property administration~~

PREVIEW

1. Section 155 of the Texas Probate Code provides that when a husband and wife die intestate and the community property passes to the survivor, no administration is required.

2. The rationale is that the community property is subject to the control, management and disposition of the decedent during the marriage, but remains subject to the liabilities of that spouse upon death.

3. Furthermore, any interest that the decedent had in nonexempt community property would pass to his or her heirs subject to the enforceable debts against the property.

4. Accordingly, if a personal representative or executor has not been appointed, the surviving spouse may manage the community property.

PLEASE DO NOT COPY

5. The surviving spouse would therefore have the power to manage and dispose of the community property, pay the community property debts and collect the sums due to the community Estate.

6. If an executor or personal representative is appointed, he or she may administer the separate and community property of the deceased. He or she is also qualified to administer the community property that was under joint control of the spouses during the term of the marriage.

7. Texas Probate Code Section 156 provides that the community property subject to the sole or joint management, control and disposition of the spouse during marriage continues to be subject to the liabilities of that spouse upon death.

THIS DOCUMENT

8. The interest that the deceased spouse owned and any other nonexempt community property passed to his or her heirs is charged with the debts that were enforceable against the interest prior to the death.

9. In the administration of the community Estate, the survivor or personal representative is required to keep a separate and distinct account of all community debts allowed or paid in the administration and settlement of the Estate.

10. Texas Probate Code Section 160 provides that when no one has qualified as an executor or administrator of the Estate of a deceased spouse, the surviving spouse has the power to sue or be sued for the recovery of community property, to sell, mortgage, lease or otherwise dispose of community property for the purpose of paying community debts and to collect claims due to the community Estate and other powers which are necessary to preserve the community property, discharge community obligations and wind up community affairs.

THANK YOU

11. Texas Probate Code Section 161 provides that whenever an interest in community property passes to someone other than the surviving spouse, the surviving spouse may qualify as the community administrator, if the deceased spouse failed to name an executor in his or her will or the executor named in the will for the deceased spouse is unable or unwilling to qualify or if

LegalFormsForTexas.Com

the deceased spouse died intestate. The surviving spouse may use the community property administration to therefore wind up the decedent's affairs.

PREVIEW

12. Texas Probate Code Section 162 provides for an application for community administration.

13. The surviving spouse who desires to qualify as a community administrator shall within four years after the date of the death of the decedent file a written application in the court having proper venue over the deceased spouse.

14. The application must state:

a. that the spouse is dead;

b. the time and place of the death;

c. the name and residence of each person to whom an interest in community property has passed by the will of the decedent or by intestacy;

d. that there is a community Estate between the deceased spouse and the applicant;

e. the facts that authorize the applicant to be appointed as community administrator;

f. that by virtue of the facts set forth in the application, the court has venue over the Estate and the deceased spouse; and

g. if the applicant desires appraisers to be appointed. If so, not less than one nor more than three appraisers should be appointed to appraise the Estate.

15. Texas Probate Code Section 163 provides for the appointment of appraisers, if requested by the applicant or by any interested person.

16. Texas Probate Code Section 164 requires the community property administrator to make a complete inventory, appraisal and list of claims of the community Estate and attach a list of all indebtedness owing by the community Estate to other parties, giving the amount of the debt and the name and address of the creditor.

17. The inventory must be submitted within ninety days after the order appointing the appraisers or within ninety days after the date the application for community administration is granted.

18. The inventory must be sworn to by the surviving spouse and appraisers, if any.

19. Texas Probate Code Section 165 requires the community administrator to file a bond at the time the inventory, appraisal and list of claims is returned.

LegalFormsForTexas.Com

PLEASE DO NOT COPY

THIS DOCUMENT

THANK YOU

20. The condition of the bond is that the surviving spouse will faithfully administer the community Estate and will, after the payment of debts in which the property is chargeable, deliver to the persons entitled to receive the portion of community Estate devised or bequeathed to them under the terms of the will or which passed under the laws of descent distribution.

21. Texas Probate Code Section 166 provides that when the inventory, appraisal, list of claims and bond are returned to the judge, the judge shall examine them and approve or disapprove them and if approved, issue an order authorizing the surviving spouse, as community administrator, to control, manage and dispose of the community property in accordance with the provisions of the probate code.

22. Texas Probate Code Section 167 details the powers of the community administrator. The administrator may take, without court approval or further action of the court, the following powers:

a. to control, manage and dispose of community property as if he or she were the owner thereof; and

b. to sue or be sued with regard to the same.

23. A certified copy of the order is evidence of his or her qualification and rights.

24. After the payment of community property debts, the administrator may carry on as statutory trustee for the owners of the community Estate, investing and reinvesting the funds of the Estate and continuing the operation of the community enterprises until termination of the trust as provided for in the probate code.

25. The administrator is not entitled to mortgage community property to secure debts incurred for his individual benefit, or otherwise to appropriate community Estate to his or her individual benefit. He or she may, however, transfer or encumber his or her individual interest in the community Estate.

26. Texas Probate Code Section 168 provides the survivor, whether qualified as community administrator or not, shall keep a fair and full account and statement of all community debts and expenses and disposition of the community property.

27. Upon final partition of the Estate, the administrator shall deliver to the heirs, devisees or legatees of the deceased spouse their interest in the Estate and any increase in Estate profits after deducting the portion of community debts chargeable to the Estate. Unavoidable losses, necessary and reasonable expenses and reasonable commissions for management of the Estate may also be deducted.

28. Neither the survivor nor bondsman is liable for losses sustained by the Estate, unless the survivor is guilty of gross negligence or bad faith.

LegalFormsForTexas.Com

29. Texas Probate Code Section 169 provides the community administrator shall pay all just and legal community debts within the time and according to the classification and in the order prescribed for the payment of debts as in other administrations.

30. When there is a deficiency of assets to pay the claims, the claims shall be paid pro rata.

31. Texas Probate Code Section 170 provides any interested person within the community Estate may cause a new appraisal to make or request a new bond be required of the survivor as in other administrations.

32. Texas Probate Code Section 171 allows a creditor of the community Estate, whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisal, list of claims and bond to submit a written application to the court to request the survivor be cited by personal service to appear and show cause under oath the following:

- a. the debts that have been presented to him or her against the community Estate and their class;
- b. the debts that have been paid and those that remain unpaid and the class of each;
- c. the property that has been disposed of by him or her and the amount received; and
- d. the property remaining on hand and account of losses, expenses and commissions.

33. Texas Probate Code Section 172 provides that after the exhibit has been returned to the court, the court shall examine it, hear objections, exceptions and evidence in support of the exhibit and in the event that it appears to the court that the community property has been improperly administered or that assets of the Estate are liable for the payment of the applicant's debt, the court may enter an order requiring the survivor to pay the debt to the applying creditor.

34. In the event the administrator fails to pay the debt within thirty days of the order the following proceedings may be had:

a. if the debt is less than \$1,000, the court shall order a citation to issue for the sureties on the bond of the survivor citing them by personal service to appear and show cause why judgment should not be rendered against them on the debt and costs; or

b. if the amount exceeds \$1,000, the creditor may have his or her action against the survivor and sureties on the bond in the district court of the county where the survivor's bond is filed.

35. Texas Probate Code Section 173 provides that after examining the exhibits and receiving the evidence, if the court approves the exhibits and there remains no further property of the Estate for payment of debts, the court shall enter an order approving the exhibit and directing it to be recorded and shall reclaim the community administrator's fee.

LegalFormsForTexas.Com

36. Texas Probate Code Section 174 provides that if the administrator fails to file an exhibit as required, the court shall proceed as if the creditor's right to the payment of his or her claim had been fully established.

37. Texas Probate Code Section 175 provides that after one year from the filing of the bond, the administration may be terminated whenever it is desired by either the administrator or persons entitled to share in any portion of the deceased spouse's Estate.

38. Partition and distribution of the community Estate may be had and administration closed either by proceedings, as in other independent administrations, or by proceedings in the appropriate district court.

39. When the community administration is closed, the community administrator shall be discharged and bondman released from further liability.

40. Texas Probate Code Section 176 provides the remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community property administrator.

41. Texas Probate Code Section 177 provides the qualified community administrator is entitled to administer the entire community Estate, including the part which was by law under management of the deceased spouse during the continuance of the marriage. (This occurs when the community administrator has qualified.)

a. Section B states that when no community administrator has been qualified and when an executor of the Estate of the deceased spouse has duly qualified, the executor is authorized to administer not only the separate property of the deceased spouse, but also the community property which was, by law, under the management of the deceased spouse during the continuance of the marriage and all of the community property that was, by law, under joint control of the spouses during the continuance of the marriage.

b. The surviving spouse, as a surviving partner of the marital partnership, is entitled to retain possession and control of all the community property which was legally under the sole management of the surviving spouse during the marriage and to exercise over that property all powers granted in the probate code to be exercised by the surviving spouse when there is no administration pending on the Estate of the deceased spouse.

42. The surviving spouse may, by written instrument, waive any right to exercise powers as community survivor. In that event, the executor or administrator is authorized to administer the entire community Estate.