

Death, Debt and the Surviving Spouse

Frequently the most expensive time in a person's life is the last few months of life. Few of us stop to consider the high cost of medical care, including nursing care, that often piles tens of thousands of dollars of debt on a family. These debts combined with the high cost of a funeral, pre-existing debts and the emotional devastation of a prolonged illness or sudden death can overwhelm family members.

The emotional devastation is hard enough to handle without having to deal with creditors who may have little, if any, consideration of the family financial and emotional situation. Fortunately, in Texas, the Probate statutes provide substantial protections to a surviving spouse and minor children.

It is critical that the spouse consider his or her budget and allocate funds to the most necessary expenses. This may seem obvious, but the surviving spouse may also be suffering from health issues that prevent him or her from thinking clearly. Often, the spouse who dies first is the spouse who took care of the family finances and the survivor may not have complete knowledge of the assets, debts and finances.

Creditors may demand that a surviving spouse pay for a debt without consideration of whether the spouse has any legal duty to pay the debt. Debts are a contractual matter and the survivor may have no contractual responsibility to pay many of the dead spouse's debts. The only responsibility may be to pay from assets within the estate that are not "exempt". Exempt assets are those assets that may not be taken to satisfy a judgment by an unsecured creditor. The list of "exempt" assets may be found in the Texas Property Code Sections 41 and 42. You will normally see the sections written as Tex. Prop. Code §41.001 et seq. (Meaning each of the following sections in Subchapter 41 concern homestead law).

A creditor is secured if the contract provides that an asset may be taken if the loan is not paid. Usually a secured lender will have provided the original funds to purchase the asset. An oversimplified list of exempt assets includes the home, one car for each person in the family who can drive, most items within the home such as furniture, furnishings, clothing, dishes, food and lawn care equipment. Pensions, life insurance, social security checks and IRA accounts are also protected to one extent or another. The exempt property law for Texas differ from those of other states and the Federal Bankruptcy exemptions. You need to consult with an experience attorney if these type of issues arise.

Sometimes a creditor or it's agent will demand payment in a manner that is harassing, abusive or by making statements as to what it can legally do that are false. Creditors do not have the right to call you multiple times a day, to make statements about the debt to anyone who is not on the contract (except for authorized agents) to threaten imprisonment or arrest, to threaten to take assets that are not actually security for the debt, to threaten to garnish your paycheck, social security check or other sources of income. If the creditor or it's agent did any of these actions please contact me or an experienced consumer attorney.

There are many options on how to proceed in probate. One option functions to an extent like a bankruptcy. In a dependent administration creditors are required, when provided proper notice, to

file claims with the administrator. The administrator can require proper proof that the debt is valid. Often creditors fail to file a claim or to present the claim correctly.

The Texas Property Code and Texas Probate Code work together to permit the surviving spouse to choose to live in the family homestead for life or minor children until adults. This is subject to the duty to pay the property taxes, maintain the property and pay any mortgage on the property. If other persons own an interest in the home they may have a duty to pay a proportionate part of the principal on the mortgage. The spouse can also set aside certain exempt assets including a car and the household furnishings. The survivor and/or minor children may be to set aside a fund of cash equivalent to one years support depending on the resources otherwise available to the survivor. These exempt assets can be set aside to the surviving spouse or minor children even if the Will provides for a different distribution.

As in bankruptcy, debts are classified as to which debts must be paid according to a set statutory priority. In addition, many assets are not required to be available to pay debts as explained above. Secured creditors such as mortgage lenders and car lenders can be required to choose between taking the asset or accepting payment of the debt if the survivor is not able to pay the debt. Creditors may also be required to wait for at least six months once the estate is in administration before requiring possession of the property. This is a very complex area of law. Some of the above rights are available only in a probate proceeding, other rights attach even outside probate. For an understanding of how the law might affect you please call for additional information.

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