JANUARY FIELD LANDMAN QUESTION OF THE MONTH

DAPL Field Landman Question of the Month

DAPL Member Pat Trauk has asked:

Joe Springfield is the last owner of record with respect to 100% of the mineral interest in a tract of land. In 2013, Joe Springfield dies intestate, survived by his only wife, Bertha, and their two children. Joe’s wife and children have not probated his estate, and the state in which Joe resided at the time of his death has adopted the Uniform Probate Code (“UPC”). After Joe’s death, who owns the mineral interests in the subject tract?

In order to properly address this month’s Field Landman Question of the Month, a brief discussion of the majority rules found in Rocky Mountain states regarding intestate succession is first necessary.

Intestate Succession Generally

An individual is said to have died intestate when that person has not disposed of his or her property by will. When an individual dies intestate, the probate laws of the state in which that person died generally control both the designation of individuals as heirs of the decedent, and how the decedent’s real and personal assets will be distributed. Colorado, Montana, North Dakota and Utah have all adopted some form of the UPC, while Wyoming has not adopted the UPC and instead applies its own probate code.

The version of a given state’s probate laws in effect at the time of the decedent’s death will control intestate succession, which is significant, as the probate laws in all Rocky Mountain states have undergone significant revisions at some point in time; for example, the UPC underwent substantial revisions in 1990 and in 2008.

Intestate Succession in UPC States

Colorado, Montana, North Dakota and Utah all follow the same general rules regarding intestate succession. In these states, a surviving spouse takes all of the intestate estate in two circumstances: (i) if no child or parent of the decedent survives the decedent or (ii) if all of the decedent’s surviving children are also children of the surviving spouse and there is no other child of the surviving spouse who survives the decedent. Different intestate succession rules apply when the decedent has no surviving spouse, and also when the decedent or his surviving spouse have children outside of their marriage. The UPC also follows the 120-hour rule, which states that an individual is only deemed to have survived the decedent if that person survives the decedent by 120 hours.

Intestate Succession in Wyoming

In Wyoming, if an intestate decedent leaves a spouse and children, or the descendants of any children, surviving, one-half of the estate descends to the surviving spouse, and the residue passes to the decedent’s children (or the descendants of those children) in equal shares. Wyoming also has some unique inheritance rules worth noting. First, a valid marriage settlement agreement can alter the laws of descent and intestate succession. Additionally, alien status can also affect a person’s right to inherit real property if the subject heir is a citizen of a county that does not allow US citizens to inherit by intestate succession or testamentary disposition. Finally, different inheritance rules can apply to an “illegitimate person” (one born outside of marriage).
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Definition of a Child

When determining heirs for purposes of intestate succession, an issue frequently encountered is whether or not a person fits the definition of a child for purposes of inheritance. Biological children born to married parents are always considered children of a decedent, including children conceived before the decedent’s death but born afterwards. Moreover, in all Rocky Mountain states, adopted children can inherit from their adoptive parents. However, Wyoming probate statutes specifically exclude step-children and foster children from the definition of a child for purposes of inheritance. Additionally, the UPC has intricate guidelines regarding intestate succession in circumstances involving surrogacy and assisted reproduction.

Response to the Field Landman Question of the Month

In the instant case, because Joe Springfield died in 2013 in a UPC state, the UPC rules regarding intestacy in effect in 2013 should be applied. The UPC dictates that all of a decedent’s intestate estate passes to the surviving spouse if all of the decedent’s surviving children are also children of the surviving spouse, and if there is no other child of the surviving spouse who survives the decedent. Therefore, in this case, Joe’s wife Bertha would own 100% of the mineral interest in the subject tract, assuming she survived Joe by 120 hours. Had Joe Springfield died in Wyoming, Bertha would own 50% of the mineral interest in the subject tract, and each of Joe’s two surviving children would own 25% of the minerals.

Notwithstanding the foregoing, the proper methods for determining the heirs of an intestate decedent are always directly tied to the facts and statutes in each separate case. For example, in the instant case, the answer would change if Bertha or Joe had any children outside of their marriage; or if Joe had no surviving children, but instead a surviving parent. Accordingly, care should always be taken to analyze each such intestate succession situation independently, in order to properly identify heirs and the disposition of the decedent’s estate.

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Do you have a land issue you would like discussed? Do you need supporting documentation to win a gentleman’s bet with a colleague? Is there a question you are too embarrassed to ask your boss? If so, the DAPL would like to hear from you. Please submit your questions to me at Joe.Martin@highwestresources.com. Each month, we will publish a question chosen from those submitted, along with a Burleson attorney’s legal analysis/discussion of the issue. We look forward to your submissions for next month’s Field Landman Question of the Month.

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