Lilliputian Estates: The Transfer Of Minuscule Assets

By Larry D. Lahman

Many articles have been written about how best to handle estates of substantial size. Few, if any, articles appear in the literature regarding Lilliputian[1] estates — extremely small estates or at least decedents with assets of limited value. All of us occasionally have a friend, relative or even a pro bono client come to our office concerned about a decedent with minimal assets. All of them want to avoid the time and expense of a formal probate or administration proceeding.

Additionally, with the popularity of revocable or grantor trusts, we will increasingly see trusts formed by nonlawyers[2] into which substantially all of the settlor's assets have been conveyed but with items of value overlooked or omitted. These assets may not have value that justifies an extended probate proceeding. This article will address such problems.[3]

A. Affidavit To Terminate Joint Tenancy Or Life Estate

In the last couple of decades the Legislature has progressively loosened the requirements to judicially determine the death of a joint or life tenant.

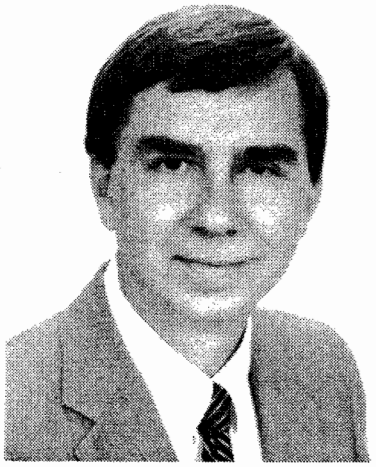
Initially, the Legislature permitted only husband and wife to terminate a joint tenancy on the homestead via affidavit with a certified copy of a death certificate appended. Subsequently the law was modified to allow termination of joint tenancy by a surviving spouse with an affidavit on any property owned with the deceased spouse and ultimately now to cover any joint tenancy property held by anyone. Most recently, the Legislature has expanded this procedure to authorize the termination of a life estate by a remainderman or certain other interested persons. The procedures found at 58 O.S. §912 required to terminate joint tenancies and life estates are quite simple. In fact, in many counties the county clerk maintains preprinted forms for that very purpose requiring only a certified copy of a death certificate and a release for estate taxes in appropriate instances.

If the subject real property is owned other than by husband and wife, a waiver or release of the estate tax lien issued by the Oklahoma Tax Commission as to the deceased joint or life tenant must be filed with the affidavit unless the estate tax lien has otherwise been released by operation of law, 58 O.S. §912 (C)(3).

B. Affidavit Of Small Estates

In this same vein in the last few years the Legislature authorized financial institutions to accept an affidavit of small estates, the authority for which is found at 6 O.S. §906:

> "A. When a deposit has been made in a bank in the name of a sole individual without designation of a payable-on-death beneficiary, upon the death of the sole owner of the account if the amount of the aggregate deposits held in single ownership accounts in the name of the deceased individual is Two Thousand Dollars ($2,000) or less, the bank may transfer the funds to the known heirs of the deceased upon receipt of an affidavit sworn to by the known heirs of the deceased which establishes jurisdiction and relationship and states that the owner of the account left no will. Said affidavit shall be sworn to and signed by the known heirs of the deceased



LARRY D. LAHMAN
is a Partner in the Enid law firm of Mitchell and DeClerck. He holds a Bachelor of Science Degree in Chemistry, Mathematics and Physics from Northwestern Oklahoma State University and a Juris Doctor Degree from the University of Oklahoma College of Law. Mr. Lahman is the current President of the Garfield County Bar Association, has served as a Municipal Judge and an Associate Bar Examiner and has frequently lectured at Bar Association seminars. This is his eighth article for *The Oklahoma Bar Journal.*

and the same shall swear that the facts set forth in the affidavit establishing jurisdiction, heirship and intestacy are true and correct." **[Emphasis added.]**

By executing this affidavit the person(s) who are heirs of a decedent certify heirship to a banking institution. This should be sufficient to extricate up to $2,000 held in the name of a single individual.[4] And while the statute is not clear, this could suffice at multiple banks each having less than $2,000 with aggregate deposits in excess of $2,000.

The statute does not suggest a particular form for the affidavit but one is attached as "Exhibit A" which the author has used and found acceptable by the banks involved. The statute does not address estate taxes but probably the best procedure is to attach to the affidavit an estate tax release, especially where it appears there could be taxes due.

It should also be emphasized that acceptance of the affidavit and release of the funds appears to be discretionary with the bank.

C. Affidavit Regarding Automobiles

There is also statutory authority for the transfer of title where a married person dies owning an automobile only in the decedent's name. Under 84 O.S. §232 tag agents will often accept an affidavit and transfer title to a vehicle out of a deceased spouse's name into the surviving spouse's name. The author's experience is that many tag agents have their own forms much like the county clerk's termination of joint tenancy form. If not, the affidavit of small estates appropriately modified should work.

And the parsimonious practitioner should remember that 68 O.S. §2103(C) provides that there is no excise tax imposed on ".... transfers made without consideration between ... [h]usband and wife...."

D. Payment Of Money To Funeral Home

Likewise, there is statutory authority concerning the payment of a decedent's money on deposit at a financial institution to a funeral home. Many accommodating banks will issue a check from the account(s) of the decedent payable to the funeral home to pay the decedent's funeral bill pursuant to the mandatory order of payment for debts found at 58 O.S. §591.

The rationale for this procedure is that the funeral home is entitled to the first money discovered belonging to the decedent and has the absolute right to those funds (except for costs of administration). Accordingly, this procedure can be used with reasonable banking institutions to deal with limited funds in excess of the $2,000 small estate limit noted at 6 O.S. §906 above.

E. Affidavit Regarding Unclaimed Property

In 1994 the Legislature enacted 60 O.S. §674.2 regarding the disposition of unclaimed property belonging to deceased persons. As one would expect, a certified copy of letters of administration, letters testamentary or the decree of distribution from the estate of the deceased will suffice to obtain the funds for the authorized person(s).

More importantly within the context of this article, if the value of the property is $400 or less 60 O.S. §674.2 states that:

> "... a signed affidavit executed by the claimant stating that the claimant is entitled to receive such property, the reason the claimant is entitled to receive such property, that there has been no probate of the estate of the deceased owner, that no such probate is contemplated and that claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property[,]"

is sufficient authority for the Oklahoma Tax Commission to pay over or deliver the property to the claimant.

F. Affidavit Of Heirship

In still other instances, where the sum is not great, an affidavit executed by the heirs of the decedent frequently can facilitate payment of money to those heirs. This seems to be most useful where there are small, fractional mineral interests that generate money in the $100 a month or so range. Most oil companies are quite helpful in this regard and will rely upon affidavits to pay out such money.

The author has also found that most small co-ops in rural areas such as telephone cooperatives or farmer's cooperative associations will rely upon an affidavit of heirship together with indemnification provisions to support the payment of relatively modest amounts of stock and stock credits, say less than $1,000, to the rightful heirs of the decedent.

Most all entities that follow this procedure have their own form of affidavit of heirship with appropriate indemnification language that they will want to use.

G. Action To Determine Heirs

The statutory provisions authorizing a quiet title combined with an action to determine heirs at 84 O.S. §257 may negate having to conduct a probate or administration proceeding where the decedent "climbed the golden stairs" more than a year ago. While 58 O.S. §240 authorizes the determination of heirs at the outset of an administration or probate proceeding, this will normally require the petitioner and prospective personal representative to appear in court to testify and be appointed. This can be burdensome.

To illustrate, consider an estate in which the most logical (or only feasible) personal representative is the sole child of the decedent and this child is stationed overseas in the military. Here, a quiet title combined with an action to determine heirs may well be the quickest and least expensive method to clear title to real estate and preclude the expense and delay in having the child return to Oklahoma.

Significantly, where this procedure is done to clear title to **real estate,** it may likewise be useful in clearing ownership to **personal property** as well, using the final court order legally determining the decedent's heirs to justify transfer of title to personalty.

H. Guardian's Authority Upon Death Of Adult Ward

Oklahoma law also authorizes a very simple process to distribute assets in a small guardianship for an adult ward who dies intestate. Section 4-805 of Title 30 authorizes the guardian of an adult ward who dies intestate leaving only personal property and the ward's total estate does not exceed $10,000 to "probate" and distribute the ward's estate in the same manner as if the guardian had been appointed personal representative of such estate.

I. Teacher's And Oklahoma Public Employee's Retirement Benefits

The Legislature has simplified transfer of two additional modest items of property effective November 1, 1995. The Executive Director of the Teacher's Retirement System of Oklahoma (the "System") is authorized to grant a "probate waiver" under certain circumstances where the death benefits or unpaid contributions being held by the System are less than $5,000.[5]

This procedure parallels the affidavit of small estates discussed above and requires an affidavit with (a) names of all claiming heirs, their addresses and current telephone numbers; (b) statement(s) by the claiming heirs that no probate or administration proceeding is pending; (c) the net value of the decedent's estate does not exceed $5,000 including the System benefits; (d) description of the System benefits; and (e) the heir(s) statement that they consent to the claims of all other claimants.

Additionally the procedure directs that the System be furnished (i) the decedent's will, (ii) an agreement to indemnify from all heirs, (iii) a corroborating affidavit from one familiar with the deceased's affairs but not a claiming heir, and (iv) proof that all of the decedent's debts have been paid.

The Legislature similarly authorized the Oklahoma Public Employees Retirement System to grant probate waivers using substantially identical procedures where the death benefits or unpaid contributions being held by the Oklahoma Public Employees Retirement System are likewise less than $5,000.[6]

J. United States Savings Bonds And Like Instruments

The Bureau of Public Debt of the Department of Treasury has developed Form PD F5336 — "Application for Disposition" to facilitate redemption of United States Bonds, Notes and related checks "owned by decedent[s] whose estate is being settled without administration." The form is used to request payment or reissue of savings bonds or checks of a deceased owner, not survived by a co-owner or beneficiary, if no legal representative of the decedent's estate has been or is to be appointed.

The requirements vary greatly depending on whether there was a will, whether there are creditors, the amount in question and other issues. While detailed, the instructions do not seem burdensome and the forms can be obtained from most any bank.

K. Use Of Decedent's Existing Bank Accounts

Where the decedent has bank account(s) owned: (i) solely in the decedent's name, (ii) in joint tenancy or (iii) with a payable-on-death provision, these account(s) can often be used to handle small checks without resorting to administration.

For example, if the heirs receive a check payable to the decedent for a refund of insurance premiums from the decedent's health insurance company or other small checks of little consequence, those checks can be deposited in this bank account of the decedent endorsed "for deposit only." Then so long as the ultimate balance does not exceed $2,000 by using the affidavit of small estates contemplated under 6 O.S. §906, the money can be paid by the banking institution directly to the heirs without the need to go back to the insurance company with some type of an affidavit of heirship for those modest sums. Moreover, if the decedent has accounts at more than one bank, it may be that as much as $4,000 or even more can be legally transferred using this procedure.

Further, if the account is owned as a joint tenancy or "payable-on-death" account, even greater sums can be transferred to the surviving joint tenant(s) or remaindermen.

L. Invent Something

When in doubt, be creative. Invent something. For a procedure to be acceptable, one does not always have to find specific statutory authority in the "green books."[7] Often, a creative lawyer can develop a procedure in the probate court to solve a problem especially where all of the interested parties agree what should be accomplished.

To illustrate, the author recently represented the grandson, who together with his two siblings, was designated in his grandmother's will to receive all of her assets. The decedent's son (my client's father) had been the executor of the estate. The executor died after the final decree had been entered but before all of the estate assets — cash in the estate checking account — had been distributed by the executor. Only the deceased executor had signature authority over the estate checking account.

To preclude the delay and expense necessary to appoint a successor personal representative with authority to sign checks on the estate checking account, after consulting with the heirs and the depository bank an acceptable alternative was "invented." Authority was obtained from the probate court after appropriate notice and hearing for the bank to simply issue cashier's checks to distribute those funds to their rightful owners. The probate court was satisfied with the procedure as was the depository bank and the heirs. See "Exhibit B" for a sample application.

M. Obvious Need For Caution

Obviously, the attorney must exercise care with most of these expedited procedures to ensure that he/she knows exactly whom he/she is working with and that the heirs are all known and agree with the contemplated process.Consider, when there are two children of the decedent and only one of them is named on a joint tenancy bank account: even though small sums of money are involved, real conflict can arise from the sibling whose name does not appear on the account. Common sense should be the counselor's principal guide.

Finally, the ability to negotiate and convince the stakeholder of the good faith of the heirs is extremely important because, in some instances, the stakeholder may not have an absolute obligation to comply with the request suggested above. As noted, 6 O.S. §906 states the bank "may." It does not read "the bank must." If the financial institution is convinced of the good faith of the parties involved, if all the heirs have been identified and if no one is attempting to take advantage of any creditor or person, then most reasonable stakeholders will be cooperative where the amount in question is not substantial.

The bottom line is that there are a number of tools available to eliminate the need for a probate or administration costing $2,000 to recover $1,000 in assets. Such tools will aid the resourceful lawyer in providing a valuable service to the family of a decedent quickly and inexpensively.

Gulliver would be pleased.

1. With apologies to Gulliver.

2. Or, perhaps even some lawyers.

3. The article is not intended to cover the more obvious actions such as basic probate or administration or the mere ministerial act of taking a death certificate to the decedent's bank to clear a joint tenancy account. Its purpose is to discuss slightly more esoteric actions to handle minuscule estates and it is certainly not exhaustive.

4. Of course there always exists the possibility of conducting a summary administration where the value of the estate is under $60,000 pursuant to the provisions of 58 O.S. §241.

5. Act effective Nov. 1, 1995, ch. 93, 1995 Okla. Sess. Laws 574 amending Okla. Stat. tit. 70, §17-105 (1991)

6. Act effective Nov. 1, 1995, ch. 94, 1995 Okla. Sess. Laws 583 amending Okla. Stat. tit. 74, §916.1 (1991)

7. Or in this technological age, the "little silver disks".

See Exhibits A & B on following page.