

NO. PR-10-1517-3

IN RE: ESTATE OF  
MAX D. HOPPER,  
DECEASED

§ IN THE PROBATE COURT  
§  
§ NO. 3  
§  
§ DALLAS COUNTY, TEXAS  
§

FILED  
2012 APR 17 PM 1:45  
JOHN F. WARREN  
COUNTY CLERK  
DALLAS COUNTY

**INDEPENDENT ADMINISTRATOR'S PETITION REQUESTING INSTRUCTION**

JPMorgan Chase Bank, N.A. ("JPMorgan"), in its capacity as the Independent Administrator (the "Administrator") of the Estate of Max D. Hopper (the "Estate"), files this Petition Requesting Instruction under TEX. CIV. PRAC. & REM. CODE § 37.005(2), as follows:

**Parties**

1. The Administrator brings this request for instruction.
2. Defendant Jo N. Hopper ("Mrs. Hopper") is Decedent's widow and an individual resident of Dallas County, Texas. Mrs. Hopper has entered an appearance through counsel in this proceeding, and will be served through her attorneys of record.
3. Defendant Laura Wassmer ("Ms. Wassmer") is one of Decedent's children and an individual resident of Prairie Village, Kansas. Ms. Wassmer has entered an appearance through counsel in this proceeding, and will be served through her attorney of record.
4. Defendant Stephen Hopper ("Dr. Hopper") is the Decedent's other child and an individual resident of Oklahoma City, Oklahoma. Dr. Hopper has entered an appearance through counsel in this proceeding, and will be served through his attorney of record.

### Jurisdiction and Venue

5. This Court has jurisdiction over this controversy pursuant to Texas Probate Code sections 4A and 4B (the "Code"), and the Uniform Declaratory Judgments Act, Texas Civil Practice & Remedies Code section 37.005(2).

6. Venue is proper in this Court under Texas Probate Code section 6A, as this Court is "the statutory probate court in which the decedent's estate is pending."

### Background

7. The Court has ruled in No. PR-11-3238-3 that the Administrator has the authority to distribute the Robledo Property (the fee interest in the property located at 9 Robledo Drive, Dallas, Texas 75230) in undivided interests, subject to the Homestead Right and the existing mortgage indebtedness, or that it has the authority to seek a partition of the community property estate, including the Robledo Property.

8. Ms. Wassmer and Dr. Hopper (collectively, "the Children") have contended that the action of the Administrator in making a distribution of the Robledo Property in undivided interests will result in a breach of fiduciary duties owed to the Children by the Administrator, for which a damage remedy will be pursued by the Children.

9. Conversely, if the Administrator were to pursue a partition action with respect to the Robledo Property, Mrs. Hopper will allege (and has alleged) that by doing so the Administrator will be breaching its fiduciary obligations owed to her.

### Request for Instruction

10. The declaratory judgment statute, Texas Civil Practice and Remedies Code § 37.001 *et seq.*, provides the appropriate vehicle for the Administrator to obtain the instruction needed under these circumstances. In relevant part, it provides:

**SEC. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE.** A person interested as or through an executor or administrator, including an independent executor or administrator . . . in the administration of a trust or of the estate of a decedent . . . may have a declaration of rights or legal relations in respect to the trust or estate:

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity;

TEX. CIV. PRAC. & REM. CODE § 37.005.

11. The Administrator has determined to distribute the Robledo Property to Mrs. Hopper and the Children in undivided interests, subject to the existing mortgage indebtedness and to Mrs. Hopper's Homestead Right. Such a distribution will avoid placing some of the parties in a better position than they would have been in had there been no administrator appointed. Further, it will allow the Estate to avoid the potentially significant expense and delay of a partition proceeding. On the other hand, the Children contend that if the Administrator makes a distribution in undivided interests, the Children will suffer economic harm that they would not suffer if there were a partition. Faced with such conflicting assertions and the threat of adverse claims by both the Children and Mrs. Hopper, before it acts to make a distribution in undivided interests, the Administrator seeks a declaration from this Court pursuant to section 37.005(2) of the Texas Civil Practice and Remedies Code directing the Administrator, in its fiduciary capacity, to distribute ownership in the Robledo Property in undivided interests of 50% to Jo Hopper, 25% to Stephen Hopper and 25% to Laura Wassmer, subject to the existing mortgage indebtedness and to Mrs. Hopper's Homestead Right. In the alternative, if this Court were to conclude that a distribution of the Robledo Property in undivided interests is not the proper path for the Administrator to pursue, then the Administrator seeks a declaration pursuant to section 37.005(2) directing the

Administrator, in its fiduciary capacity, to file a petition under Texas Probate Code section 150 as to the community estate subject to administration including the Robledo Property.

WHEREFORE, the Administrator respectfully requests an instruction from this Court under TEX. CIV. PRAC. & REM. CODE § 37.005(2), directing the Administrator, in its fiduciary capacity, to distribute the Robledo Property in undivided interests, or to seek a court supervised partition including the Robledo Property.

Respectfully submitted,

**HUNTON & WILLIAMS LLP.**

By: 

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IN ITS CAPACITY AS INDEPENDENT  
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OF MAX D. HOPPER, DECEASED**

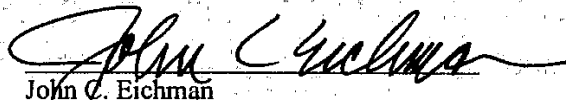
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served by hand delivery on the following counsel of record on the 17th day of April, 2012:

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