

## Impact of Bankruptcy Filing by Beneficiary of Decedent's Estate

March 2011

Ann Marie MacCarone  
Deborah DiNardo, Esq.

As we have previously reported, litigation related to decedents' estates continues to be generated due to the increase in bankruptcy filings by beneficiaries. A recent Rhode Island Supreme Court case, *In Re Edwin H. Tetreault*, Rhode Island Supreme Court C.A. # 2009-166, answered questions certified by the United States Bankruptcy Court, District of Rhode Island. The questions arose out of a bankruptcy filed by a debtor who was a beneficiary under the residuary clause of a will.

The debtor inherited real property with his sister as tenants in common. He had been living alone at the property. His sister was also executrix under the will and wanted to evict her brother and sell the property in order to pay debts of the estate. The debtor filed personal bankruptcy and claimed a homestead exemption in the property. The bankruptcy trustee objected to the claim of homestead asserting the debtor lacked sufficient ownership interest to claim the exemption.

The Court found that the interest taken under the will qualified

the debtor as an “owner” under the homestead statute. The Court also found that the debtor qualified as “family” under the statute as a tenant in common living alone. The Court came to this conclusion by reading the statute in its entirety and comparing the debtor’s status to that of a sole owner. However, in spite of this conclusion about the protection afforded by the homestead, the Court found that because the interest in the property was subject to defeasance, the debtor had no right to occupy the property for purposes of claiming a homestead exemption. The executrix was allowed to proceed with the eviction and sale of the property to satisfy the debts of the decedent’s estate.

The Court’s findings did not require it to answer the question of whether homestead rights would prevent the sale of the property for payment of legacies (as opposed to payment of debts). Therefore, it is important to consider potential heirs and the impact their financial status could have on the eventual administration of an estate when preparing an estate plan. The findings may have been different if the debtor had inherited under a specific bequest instead of under the residuary clause.