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ATTORNEY DAVID A. ZIPP IS LICENSED TO PRACTICE LAW IN THE STATES OF ILLINOIS AND TEXAS

Please note: this document has direct links to the actual Texas laws. If you want to read the actual law, just put your cursor on the links in **BLUE and click the link with your mouse.**

This document is presented for INFORMATIONAL PURPOSES ONLY. NO ATTORNEY-CLIENT RELATIONSHIP IS FORMED FROM READING OR DOWNLOADING THIS INFORMATION. YOUR SITUATION, JUST LIKE YOU ARE UNIQUE AND THIS LAW FIRM STRONGLY URGES ANY AND ALL TO ALWAYS SEEK CONSULATATION WITH A TEXAS LICENSED ATTORNEY.

Dying Intestate (meaning without a Will) in Texas

If a person in Texas dies without having made a will, they are deemed to have died what is called “intestate.” Intestate simply means that a person died without having made a Will. The Great State of Texas has already written a pseudo-Will for those folks for their estate. How the estate will be distributed will fall under Texas’ [succession laws](#). These laws are very strict with a dedicated inheritance hierarchy. No provisions for non-family members are in the succession laws.

If you die in Texas without a valid Will, the state of Texas determines who inherits on the basis of familial proximity. This means that a deceased’s spouse, children, parents, and siblings may all be eligible for certain percentages of the estate, depending on what familial configuration existed

at the time of the estate holder's death. Oftentimes the most immediate beneficiary will be the surviving spouse, followed by any adult children.

The probate court will also name an administrator to oversee the settlement of the estate. Probate Court is in every Texas County. An administrator is basically the same thing as an estate executor, but simply for estates without a will.

Dying intestate may not seem too bad at first; but realize that none of your specific wishes will be taken into consideration. Close friends and anyone not considered an immediate relative will have no claim to your estate: no matter what was promised to them during your lifetime! That means that you have no control over how your assets will be distributed once you're gone.

Can I Settle a Small Estate Under \$75K Without a Will?

Yes! The Texas intestacy laws dictate that the estate of a deceased without a will has to be distributed to their closest family. Depending on the size and type of assets, the estate may have to go through the intestacy probate process.

A small estate with assets under \$75,000.00 DOES NOT have to go through the probate process, and an inheritor can proceed by filing a small estate affidavit to state their entitlement to a specific asset.

You can download a FREE PDF of a Texas Small Estates Affidavit here:

<https://tinyurl.com/TexasSmallEstatesAff>

Texas Intestate Succession Laws Situational Summary

The Texas Intestate Succession Laws uses a statutory formula to determine how an estate will be distributed. Depending on the familial configuration at the time of the deceased's death, it implies that the next of kin, i.e., spouse, children, parents, and siblings, are all eligible for a certain percentage of the deceased's estate.

Here follows a brief overview of intestate situations. I also found several helpful graphic charts, one from the Holiday Energy Law Group, and the other from the Travis County Probate Court that also might be helpful.

A few terms should also be defined for you. Real property is real estate, meaning property with a physical address, conveyed by a deed, and almost always has a PIN – a property identification number. Personal property is all other property (the stuff in your home). Community property is property that is jointly owned by the spouses (such as a car, a boat, etc.). Real estate is owned by a Deed which is filed in the county in which that real property is in. Many people own real estate in other counties and even other states and they may be married, but the surviving spouse may not automatically inherit that real property if a person dies in Texas without a will.

If the deceased leaves behind:

- A spouse, no children, and no parents: Spouse inherits the entire estate;
- A spouse and your mutual children: The spouse will inherit all of the community property, which refers to property that was owned jointly by spouses, as well as $\frac{1}{3}$ of the deceased's personal property and the right to their real estate. The children inherit everything that remains;
- A spouse and your children from someone else: The spouse will inherit half of the community property as well as $\frac{1}{3}$ of the deceased's personal property and the right to their real estate. The children inherit everything else, including the remaining half of the community property that belonged to the deceased;
- A spouse and parents: The spouse will inherit all of the community property as well as all of the personal property. They also inherit $\frac{1}{2}$ of any real estate independently owned by the deceased. The deceased's parents inherit the rest;

- A spouse and siblings: The deceased's spouse will inherit all of the community property as well as your personal property. They inherit ½ of any independently-owned real estate, while the siblings inherit the rest;
- Children, no spouse: The children inherit the entire estate equally among themselves;
- Parents, no spouse, no children: The parents inherit the entire estate;
- Siblings, no parents, spouse, nor children: The siblings inherit the entire estate equally among themselves;

Note: Grandchildren are usually eligible only if their parents (the deceased's children) are deceased at the time of the testator's death, but would have otherwise been eligible as heirs.

What Happens If There Is No Blood Family?

If the deceased person leaves behind no spouse, parents, children, or siblings, then the state of Texas will continue going down the family tree. That means that, if a suitable heir cannot be found than nieces and nephews, grandparents, or aunts and uncles will be next in line. In the unlikely event that no living relative can be found, the deceased's estate will "escheat" to the state of Texas, meaning that the state takes the assets.

THE LAW FIRM OF DAVID A. ZIPP, P.C. HOPES THIS INFORMATION IS HELPFUL AND INFORMATIVE. CALL OR EMAIL FOR MORE INFORMATION.

Regards,

A handwritten signature in blue ink that reads "David A. Zipp". The signature is written in a cursive, flowing style.

David A. Zipp, JD, MA
Attorney at Law

TEXAS INTESTACY CHART

(REAL PROPERTY ONLY)

Texas intestate succession laws determine who inherits property of a deceased person that did not leave a will.

MARRIED PERSON WITH CHILDREN* AND DEATH PRIOR TO SEPTEMBER 1, 1993:

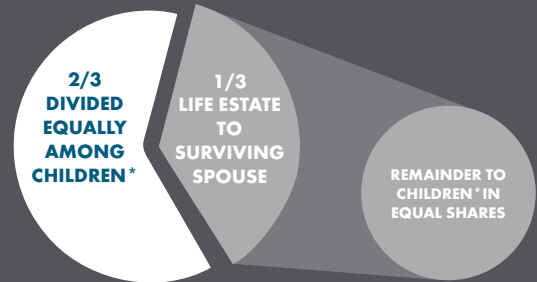
COMMUNITY PROPERTY

Tex. Probate Code §45



SEPARATE PROPERTY

Tex. Probate Code §38(b)(1)



MARRIED PERSON WITH CHILDREN* THAT ARE ALL FROM CURRENT MARRIAGE AND DEATH AFTER SEPTEMBER 1, 1993:

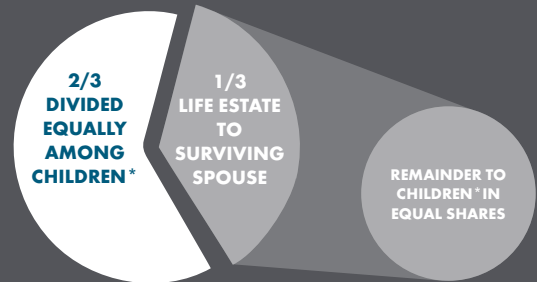
COMMUNITY PROPERTY

Tex. Estates Code §201.003(b)(2)



SEPARATE PROPERTY

Tex. Estates Code §201.002(b)



MARRIED PERSON WITH CHILDREN* OUTSIDE OF CURRENT MARRIAGE AND DEATH AFTER SEPTEMBER 1, 1993:

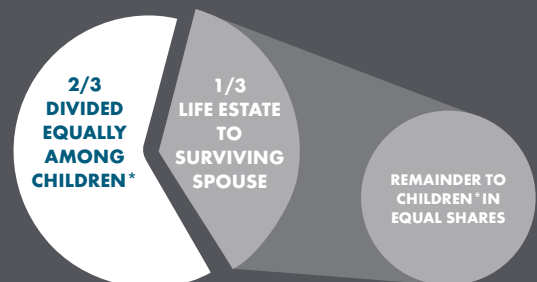
COMMUNITY PROPERTY

Tex. Estates Code §201.003(c)



SEPARATE PROPERTY

Tex. Estates Code §201.002(b)



*** NOTE: DESCENDANTS OF A PREDECEASED PERSON THAT WOULD OTHERWISE BE AN HEIR TAKE THEIR PARENT'S SHARE.**

TEXAS INTESTACY CHART

(REAL PROPERTY ONLY)

MARRIED PERSON WITH NO CHILDREN* :

<p>COMMUNITY PROPERTY</p> <p>Tex. Estates Code §201.003(b)(1)</p> <p>ALL TO SURVIVING SPOUSE</p>	<p>SEPARATE PROPERTY</p> <p>Tex. Estates Code §201.001(c) & §201.002(c)(2)&(3)</p> <p>Survived by Both Parents</p> <p>1/4 TO FATHER 1/4 TO MOTHER 1/2 TO SPOUSE</p>	<p>SEPARATE PROPERTY</p> <p>Tex. Estates Code §201.001(d)(1) & §201.002(c)(2)&(3)</p> <p>Survived by One Parent & Siblings*</p> <p>1/4 TO SURVIVING PARENT 1/4 TO SIBLINGS* EQUALLY 1/2 TO SPOUSE</p>
<p>SEPARATE PROPERTY</p> <p>Tex. Estates Code §201.002(d)</p> <p>No Surviving Children*, Parents or Siblings*</p> <p>ALL TO SURVIVING SPOUSE</p>	<p>SEPARATE PROPERTY</p> <p>Tex. Estates Code §201.001(d)(2) & §201.002(c)(2)&(3)</p> <p>Survived by One Parent & No Siblings*</p> <p>1/2 TO SURVIVING PARENT 1/2 TO SPOUSE</p>	<p>SEPARATE PROPERTY</p> <p>Tex. Estates Code §201.001(e) & §201.002(c)(2)&(3)</p> <p>Survived by Siblings* Only</p> <p>1/2 TO SIBLINGS* EQUALLY 1/2 TO SPOUSE</p>

A SINGLE OR WIDOWED PERSON:

<p>Survived by Children*</p> <p>Tex. Estates Code §201.001(b)</p> <p>DIVIDED EQUALLY AMONG CHILDREN*</p>	<p>No Children*, Survived by Both Parents</p> <p>Tex. Estates Code §201.001(c)</p> <p>1/2 TO FATHER 1/2 TO MOTHER</p>	<p>No Children*, Survived by One Parent & Siblings*</p> <p>Tex. Estates Code §201.001(d)(1)</p> <p>1/2 TO SURVIVING PARENT 1/2 TO SIBLINGS* EQUALLY</p>
<p>No Children & Siblings*, Survived by One Parent</p> <p>Tex. Estates Code §201.001(d)(2)</p> <p>ALL TO SURVIVING PARENT</p>	<p>No Children* & Parents, Survived by Siblings* Only</p> <p>Tex. Estates Code §201.001(e)</p> <p>DIVIDED EQUALLY AMONG SIBLINGS*</p>	<p>No Surviving Children*, Parents or Siblings*</p> <p>Tex. Estates Code §201.001(f)</p> <p>1/2 TO PATERNAL KINDRED 1/2 TO MATERNAL KINDRED</p>

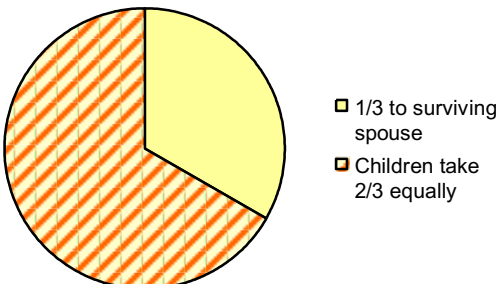
*** NOTE: DESCENDANTS OF A PREDECEASED PERSON THAT WOULD OTHERWISE BE AN HEIR TAKE THEIR PARENT'S SHARE.**

Texas Descent and Distribution¹

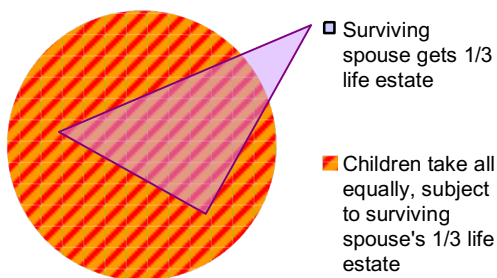
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

1. Married Person with Child[ren] or Other Descendants

A. Decedent's separate personal property (all that is not real property) (EC § 201.002(b))

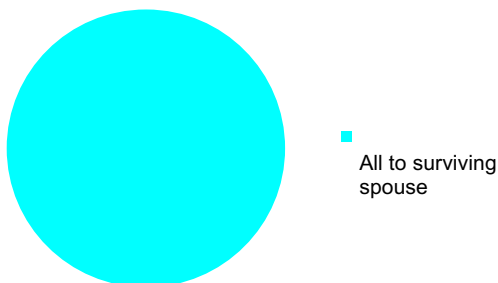


B. Decedent's separate real property (EC § 201.002(b))

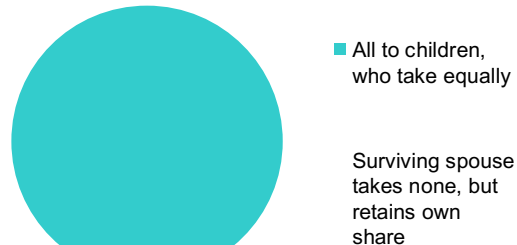


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (EC § 201.003(b)(2))



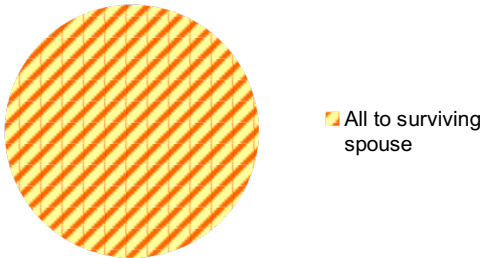
C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))



¹ The charts in this handout illustrate the general rules of descent and distribution under Texas law. In addition to the statutory references noted throughout, see the following Texas Estates Code (EC) provisions, among others: § 201.101, Determination of Per Capita with Representation Distribution (fka per stirpes); § 201.051 et seq., Matters Affecting Inheritance (including Adoption [§ 201.054] and Collateral Kindred of Whole and Half Blood [§ 201.057]); Advancements, §§ 201.151 & 201.152; and Requirement of Survival by 120 Hours, §§ 121.052 & 121.053 (see also §§ 121.151-121.153).

2. Married Person with No Child or Descendant

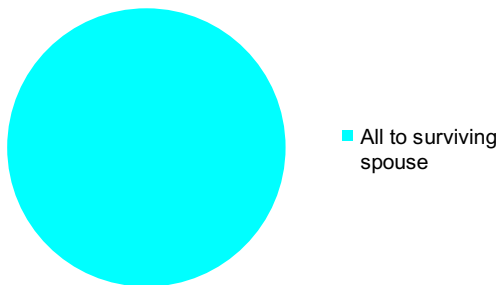
A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))



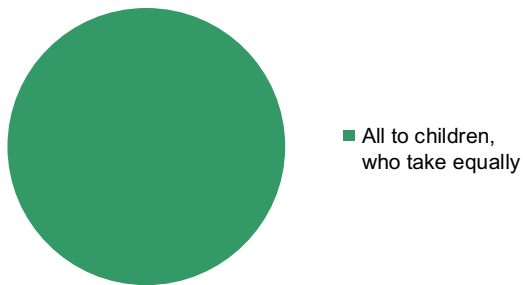
B. Decedent's separate real property (EC § 201.002)

<p>If decedent is survived by both mother and father. EC §§ 201.001(c) & 201.002(c)(2) & (3).</p> <ul style="list-style-type: none"> □ 1/4 to father ■ 1/4 to mother ■ 1/2 to surviving spouse 	<p>If decedent is survived (1) by mother or father and (2) by sibling(s) or their descendants. EC §§ 201.001(d)(1) & 201.002(c)(2) & (3).</p> <ul style="list-style-type: none"> ■ 1/4 to surviving parent ■ 1/4 to siblings, etc. ■ 1/2 to surviving spouse 	<p>If decedent is survived by mother or father, but is not survived by any sibling(s) or their descendants. EC §§ 201.001(d)(2) & 201.002(c)(2) & (3).</p> <ul style="list-style-type: none"> ■ 1/2 to surviving parent ■ 1/2 to surviving spouse
<p>If decedent is survived by neither parent, but is survived by sibling(s) or their descendants. EC §§ 201.001(e) & 201.002(c)(2) & (3).</p> <ul style="list-style-type: none"> ■ 1/2 to siblings, etc. ■ 1/2 to surviving spouse 	<p>If decedent is survived by no parent, no sibling, and no descendant of a sibling. EC § 201.002(d).</p> <ul style="list-style-type: none"> ■ All to surviving spouse 	

C. Decedent's share of community property (EC § 201.003(b)(1))



3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))



4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

<p>If decedent is survived by both mother and father. EC § 201.001(c).</p> <ul style="list-style-type: none"> ■ 1/2 of all property to father ■ 1/2 of all property to mother 	<p>If decedent is survived (1) by mother or father and (2) by sibling(s) or their descendants. EC § 201.001(d)(1).</p> <ul style="list-style-type: none"> ■ 1/2 to siblings or to descendants of deceased siblings ■ 1/2 to surviving parent
<p>If decedent is survived by mother or father, but is not survived by any sibling(s) or their descendants. EC § 201.001(d)(2).</p> <ul style="list-style-type: none"> ■ All to surviving parent 	<p>If decedent is survived by neither parent, but is survived by sibling(s) or their descendants. EC § 201.001(e).</p> <ul style="list-style-type: none"> ■ All to siblings or to descendants of deceased siblings

¹ If none of the four situations above applies, see EC § 201.001(f)-(h).