

JUDGE DANA D. MANOUSHAGIAN

Wise County Court at Law No. 2

Wise County Annex Building
1007 13th Street, Ste 115
Bridgeport, Texas 76426



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When a Decedent Dies Without a Will

Counselors:

Welcome to Wise County Court at Law No. 2. As you know, representing a client who is handling the estate of a loved one is an important responsibility. The families who come through this Court are going through a difficult time. That is why the staff of this Court is committed to ensuring that the probate process is as smooth as possible. This guide is designed to help you understand how the uncontested docket works in Wise County when your client dies without a will (intestate). The first part is a brief overview of some administrative procedures that you might want to share with your staff. The remaining parts highlight some basic requirements of the Texas Estates Code (EC) that pertain to the two most common probate proceedings for decedents who die without a will – determination of heirship and letters of administration – and show how you can avoid the most common mistakes made by lawyers. The final part addresses the options you have when a witness is unable to appear in court.

I hope you will find this guide useful, but it comes with two important caveats. First, the guide is not intended as a substitute for your legal expertise. For example, although the guide includes selected pleading tips for different probate proceedings, it does not address which proceeding is appropriate given your client's situation. Although the most common proceedings involving intestacy are addressed in this guide, other possibilities are not included (e.g., Small Estate Affidavits under EC Chapter 205, which could be the most cost-effective proceeding for an intestate decedent *if the statutory requirements are met*). Second, this guide is not a substitute for the Estates Code. Everything in this guide is consistent with the Estates Code, but this basic guide makes no pretense about being comprehensive.

Sincerely,

Dana D. Manoushagian, Judge Presiding

I. Administrative

A. Document checklist. Every heirship proceeding requires the following documents:

- an application (combined with an application for administration, if applicable)
- service of citation on – or waiver from – all non-applicant heirs and any additional persons requiring notice under EC 202.008
- the affidavit of service of citation (or attorney's certificate) required by EC 202.057
- an affidavit of publication
- a proof of death and other facts
- testimony from two disinterested witnesses concerning the identity of heirs, with sworn Affidavits to be signed after the hearing (one affidavit for each disinterested witnesses)
- an original death certificate to be submitted at the hearing for the Judge's review
- a judgment declaring heirs (combined with an order for administration, if applicable).

You may need to submit documents other than the above, depending on the circumstances. For example, if seeking administration, you also will always need an oath for each administrator plus the necessary consents from the heirs.

B. Attorney Ad Litem. In every determination of heirship, upon you filing a proper motion and submitting a proposed Order, the Court will appoint an attorney ad litem to represent the decedent's unknown heirs (and, if any, known heirs whose whereabouts are unknown and known heirs suffering legal disability). See EC 202.009. The Applicant must deposit funds toward the services of the attorney ad litem as required by Administrative Order. You are responsible for providing a copy of the application and order to the attorney ad litem. ***The attorney ad litem's presence is required at the hearing.***

C. Hearing Schedule. Probate matters are usually scheduled on Mondays or Fridays. The Court strongly prefers that all heirship hearings be heard prior to the application for administration. ***Please do not call to schedule an heirship hearing until the following have been taken care of:***

1. An ad litem has been appointed, and you have talked with the ad litem about the hearing date;
2. You already have arranged for notice by publication, and the return date will be before the hearing. See EC 202.052 and EC51.054. See also "Notice" below.
3. You know that, before the hearing, you will have service on or waivers from **ALL** of the intestate heirs and others requiring notice. See "Notice" below.
4. You have filed the affidavit of service of citation (or attorney's certificate) required by EC 202.057.

In addition, you will need to contact the Court to get available dates for a hearing. Pick a date you know will work for everyone who needs to testify, including the disinterested witnesses and the ad litem and confirm this date with the Court. ***Once the hearing is set, make sure everyone receives sufficient notice with a copy of the confirmation letter being sent to the Court.***

II. Applications

A. Heirships & Administrations

1. If an administration is needed, the Court **strongly** prefers that an application for the determination of heirship also contain an application for administration, either independent or dependent. Under EC 401.003(b), a hearing for an independent administration cannot be held *before* an heirship hearing. If it is necessary to begin administration before a determination of heirship proceeding can be held, the only option given under EC 401.003(b) is a dependent administration. In that case, the Court requires that the heirship proceeding take place no more than 60 days after the dependent administration is opened.

2. If any heirs are minors, the Court **will not** grant an independent administration. A dependent administration is the only option when minor heirs are involved and an administration is needed.

3. If the decedent died more than four years before the application will be filed, the applicant cannot request an administration (except in rare cases). See EC 202.006 & 301.002.

4. For a determination of heirship plus administration, file one application titled "Application for Determination of Heirship and Letters of [Independent, if applicable] Administration." ***The requirements for an application for letters of administration are found in EC 301.052. Combine the requirements in EC 301.052 with the requirements for the heirship application in EC 202.005.*** If applicable in an independent administration, the application should also request that bond be waived. See "Required consents" below.

Required consents: If the applicant requests an independent administration, the consent of all the distributees is required. EC 401.003. **The distributees must also consent to any waiver of bond.** EC 401.005.

The Court encourages lawyers to incorporate the consents of non-applicant distributees into the waivers of service, thereby reducing the number of documents that must be executed and filed. Each consent MUST:

- specifically consent to an independent administration, requesting that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, etc.,
- designate "x" as independent administrator (and waive own right to serve),
- waive bond, if that's what the application requests, and
- if combined with the waiver of service, include that language as well.

B. Application for Determination of Heirship

1. Statutory Requirements. Estates Code 202.004 outlines who may institute an heirship proceeding and the information that is required in an heirship application. The Court does check to see that all of the required information is included and will require an amended application if required information is missing and cannot be corrected by adding information in the proof of death or the judgment.

- the name of the decedent (sufficiently similar to the death certificate that the Court nows it is the same person);
- the time and place of death (obviously should match the death certificate);
- (1) the names and residences of the decedent's heirs, (2) the relationship of each heir to the decedent, and (3) the true interest of the applicant and each of the heirs in the estate of the decedent (see further instructions below);
- if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant, all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs;
- a statement that all children born to or adopted by the decedent have been listed;
- a statement that each marriage of the decedent has been listed with (1) the date of the marriage, (2) the name of the spouse, and (3) if the marriage was terminated, the date and place of termination, plus (4) any other facts that show whether a spouse has an interest in the property of the decedent (including any common-law spouse);
- whether the decedent died testate and if so, what disposition has been made of the will;
- a general description of all the real and personal property belonging to the estate of the decedent; and
- an explanation for the omission of any of the foregoing information that is not included in the application.

2. Affidavit. Estates Code 202.007 requires that the application be supported by each applicant's affidavit verifying the application.

3. Chart with Beneficiaries' Shares. The Court prefers that applications set out in chart form the required information about the heirs:

- Name of each of the decedent's heirs;
- Residence of each of the decedent's heirs. Please note that "residence" means an actual address, not just the county or city of residence;
- Relationship of each heir to the decedent. **If there is a surviving spouse, the relationship information for each child or descendant of the deceased spouse must also indicate who the other parent is.** For decedents dying on or after 9/1/1993, the distribution of community property differs depending on whether all surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse. See EC 201.003;
- True interest of each heir, including the applicant, in the estate of the decedent. See EC Chapter 201 and the charts on pages 10-11 of this handout. When the decedent leaves a surviving spouse, interests should be indicated for separate personal property, separate real property, and community property (except in those situations where the interests are identical). Fractional interests should be indicated by fractions rather than percentages. Please finish-out the fractions as well. For example, **DO NOT** put "1/3 of 2/3 of the separate personal property." Rather, the Court prefers that you use the fraction "2/9";
- **Where there are minor heirs: Heirship applications after new TRCP Rule 21c.** Before the Texas Supreme Court adopted new TRCP Rule 21c, "Privacy Protection for filed Documents", the Court's instructions noted that it was helpful to include the birth date of minor heirs in heirship charts because including this information made it easy for others to know when a minor heir would become old enough to sell property. Post Rule 21c, however, you CANNOT include birth dates of minor heirs because that information is sensitive data that is not required by statute. Note, however, that you still must include the names and residence addresses of any minor heirs because that information is required by EC 202.005(2). We will collect the birth dates of minor heirs as part of the dependent administrator's general information form that is kept with the Court and not filed.

See sample charts on pages 10-11 of this handout.

Some **common mistakes** found on heirship applications are:

- **Characterization of property when the decedent leaves a surviving spouse.** Absent a declaratory action, the Court will not decide what types of property an heir owned. Consequently, the Court's judgment will indicate each heir's interest in *every possible type* of property. For separate property, statutory shares can differ for personal property and real property. EC 201.002. For community property, statutory shares are identical for personal property and real property. EC 201.003. Therefore, when a decedent leaves a surviving spouse, an heirship application **MUST** indicate each heir's interest in each type of property for which the shares are different: separate personal property, separate real property, and community property.
- **Community Property Issues.** Estates Code 201.003(c) – which dictates the distribution of the community estate when a decedent had children from a prior marriage – can be misunderstood if read too quickly. That section specifies that "one-half of the community estate is retained by the surviving spouse and the other one-half passes to the deceased spouses children or descendants". This language does *not* mean that the

surviving spouse is entitled to one-half of the *decedent's share* of the community estate. Remember that each spouse owns a one-half interest in the community estate and that a judgment declaring heirs distributes only the *decedent's share* of the community estate, not the entire community estate. Therefore, in a cell indicating the surviving spouse's share of decedent's community property, the only correct entries are "*all*" or "*none, but retains [his or her] 1/2 interest in the community estate.*"

III. Notice/Citation

- A. Citation by publication.** The Estates Code requires citation by publication in all heirship proceedings. See the last sentence of EC 202.052, not the section description. See also EC 51.054. **Although the Wise County Clerk prepares the citation, it is *the attorney's responsibility* to secure publication in the local paper and to obtain an affidavit of publication executed by the publisher.** The original publisher's affidavit – with the newspaper clipping – must be filed BEFORE the hearing.

NOTE: If the decedent lived in another county for a substantial part of his or her life, then citation by publication in that county may be necessary depending on the individual facts of the case.

- B. Service of citation on or waiver of notice from all non-applicant heirs.** Estates Code 202.051-202.056 requires service of citation on or waiver of citation from all non-applicant heirs. See below for requirements. Also see EC 202.008 regarding others who may require notice.

- 1. Adult non-applicant heirs.** All adult non-applicant heirs must be served with citation *unless* they have executed valid waivers of citation. You do not need to take the same approach with all heirs. **Note that the Estates Code does not permit the use of private process servers for service on heirs within the State of Texas.**

- **Waivers of Citation.** Adult heirs may waive citation.

<p><i>Waivers may be combined with EC Chapter 401 consents for an independent administration:</i> As noted above, the Court encourages lawyers to incorporate the consents of non-applicant distributees into their waivers of service, thereby reducing the number of documents that must be executed and filed.</p>

- **Personal Citation.** When an heir does not waive citation, the Court strongly recommends personal citation instead of citation by certified mail. The cost for citation is the same, and there is less risk that the citation will need to be redone; see below. **Note that the Estates Code does not permit the use of private process servers for citation on heirs within the State of Texas.**
 - **Citation by certified mail.** The Estates Code allows citation by certified mail under § 202.051 – prepared and sent by the clerk's office. **Note that the citation is not valid unless the signature on the green card is the signature of the person being served. If it is not, citation must be redone.**
- 2. Minor heirs younger than 12 years of age.** For heirs younger than 12 years of age, citation can be served on the parent, managing conservator, or guardian. See EC 202.051 and discussion above. A natural parent or a guardian of a minor younger than 12 years of age may waive citation on behalf of the minor in that parent's or guardian's capacity as parent or guardian. EC 202.056.

3. **Minor heirs aged 12 through 18.** The Court requires that minors aged 12 through 18 must either (1) be personally served with citation or (2) attend the heirship hearing. The Court does not allow them to be served by certified mail. No one may waive citation on behalf of a minor who is 12 years or older, and a minor is not competent to sign a waiver. See EC 202.054, 202.056 and 51.201.
4. **NEW REQUIREMENT:** Estates Code 202.057 requires that the applicant file:
 - Copies of all required citations along with proof of service, and
 - A sworn affidavit from the applicant – or a certificate signed by the applicant’s attorney – stating that all required citation was serviced, including names of persons who were served or who waived citation.

See EC 202.057(a)(2) for specifics.

IV. Documents that Reduce the Expected Testimony to Writing

Under Estates Code 202.151, this Court requires all oral evidence admitted in a heirship proceeding to be reduced to writing and subscribed and sworn to by the witnesses *following* the hearing. Therefore, you should prepare written testimony in advance, as described below. The witnesses will sign their testimony before a deputy clerk *after* the hearing. Section 202.151 presupposes live testimony, and the Court strongly prefers live testimony. However, if a necessary witness cannot attend the hearing, you may follow the procedures outlined in section VI below, entitled “When Witnesses are Unable to Appear in Court.”

For testimony that witnesses will sign after the hearing, you will streamline the process if your signature block for the deputy clerk includes all of the needed information. The Clerk’s signature block should be as follows:

BLANCA TUMA
County Clerk, Wise County, Texas

By: _____
Deputy

A. Proof of Death and Other Facts (POD). The POD should prove-up the allegations in the application that will not be proved by the disinterested witnesses who will testify as to the identity of the heirs. This information is usually provided by the applicant, but it can be presented by anyone with *personal knowledge* of the facts presented.

1. The following information is required for the heirship:

- State the name of the decedent, and indicate where the decedent died.
- State the underlying *facts* that show why the Court has jurisdiction and venue. Usually this requirement is fulfilled because the decedent was domiciled and had a fixed place of residence in Wise County. EC 33.001. (A statutory probate court has exclusive jurisdiction over probate and administrations in counties where there is such a court. EC 32.005. Having venue under EC 33.001 grants the court jurisdiction.)
- State whether the decedent had a lawful will and, if so, what disposition has been made of the will.
- Give a general description of the property belonging to the estate of the decedent.

- State whether a necessity exists for administration.
 - ✓ If the application requests letters of administration, then the POD should state a need for administration sufficient to “prove to the Court’s satisfaction that a necessity for an administration of the estate exists.” EC 301.153(a).
 - ✓ If you are applying for a determination of heirship, only, then the POD should indicate why there is no need for administration **and** why there is no Medicaid claim against the estate. See the Court’s handout regarding MERP requirements at www.wisewcountytexas.gov/183.

2. Add the following information if also requesting administration. The proof required for the granting of letters of administration is found in EC 301.151 and 301.153.

- The application was filed within four years after decedent’s death.
- The proposed administrator is entitled to letters and is not disqualified.
- **DO NOT** include in the POD any language regarding citation. Seldom does a witness have knowledge about whether citation has been properly served. The Court will decide on its own whether citation is proper.

B. Statement of facts concerning the identify of heirs, for each of two disinterested witnesses.

The Court requires the testimony of two disinterested witnesses regarding the identity of decedent’s heirs. Written testimony should be prepared in advance either in question and answer form or in the form of a statement. *Although the testimony must be prepared and submitted to the Court, the witnesses will not sign the written testimony until immediately after the hearing, when the witnesses sign the testimony before a deputy clerk.* Parts of Section 203.002 of the Texas Estates Code provide a useful format for the testimony necessary for establishing a testator’s heirs – see numbers 1-5. *Depending on the facts*, numbers 6-8 may also be needed. Instead of the notary’s signature block, use a signature block for the deputy clerk as described above. Include a statement that the witnesses are disinterested.

Preparing a comprehensive statement in advance will also help you fully develop the heirship facts, such as information about previous marriages (including possible common-law marriages), information about predeceased children or siblings and their descendants, and information about parents. You may also discover that a potential heirship witness does not know enough about the decedent to serve as a witness.

V. Judgment Declaring Heirs (Combined with Order for Administration, if applicable)

A. Judgment Declaring Heirship. The judgment should conform to the requirements set forth in EC 202.201. The information about the heirs and their interests should be set out in chart form, as described above in the section on applications. See the sample charts on pages 10-11 of this handout.

The **common mistakes** in heirship applications that are discussed above are also found in heirship judgments. Please see comments on page 4 about characterization of property and community property issues. In addition, watch out for these other common mistakes that often show up in heirship judgment:

- **Declaratory-Judgment Information.** Unless you have applied for a declaratory judgment and have met the posting and evidentiary requirements, **do not include** in an heirship order any information that requires the Court to make a declaratory judgment. Such information

that cannot be in a routine heirship order includes descriptions of specific items of property, whether the decedent owned separate real property, etc.

- **Ad Litem.** The order should include a provision *discharging the attorney ad litem and taxing his or her “reasonable and necessary” fees as costs*, unless there will be a dependent administration with continuing responsibilities for the ad litem.

B. Ordering issuance of Letters of Administration. If an administration is sought in conjunction with the declaration of heirs, an attorney should submit one order that incorporates the issuance of letters of administration and the judgment declaring heirs.

VI. **REVISED:** When Witnesses are not Available to Appear in Court.

Estates Code 202.151 presupposes live testimony for all proceedings. Because an attorney ad litem has been appointed, you have more options if a witness is not able to provide live testimony in an heirship proceeding than you have in a probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories. If a witness is not available in an heirship proceeding, EC 202.151(b) provides that depositions may be taken in accordance with EC 51.203 **or** in accordance with the Texas Rules of Civil Procedure. **Affidavits and other statements that do not comport with all requirements of the Estates Code or all requirements of the Rules of Civil Procedure constitute inadmissible evidence.**

A. For all depositions in heirship proceedings:

1. **Consider your questions carefully.** Be sure you ask the right questions so you will have all the necessary proof once you get the responses. Too frequently, attorneys need to redo depositions because key questions are not asked, with the added costs and delay of reposting. Get the attorney ad litem’s input about the necessary questions in advance, and add all questions the ad litem wants to ask the deponent.
2. **Depositions for a Proof of Death and Other Facts when you are requesting administration.** If you are taking testimony for a Proof of Death and Other Facts by deposition and you are requesting an administration, note that a deposition can be used for POD testimony **ONLY IF** it is “proved under oath to the satisfaction of the court that the witness is unavailable” Estates Code 301.155. Therefore, include in your POD deposition questions that, when answered, will show the underlying facts to make that required proof. Simply stating that the witness is unavailable would not be sufficient. This is not a new requirement, but the greater clarity of the Estates Code made it more obvious.
3. **Q&A, Q&A, Q&A.** The Court *strongly* prefers that the deposition officer record each answer immediately following the questions asked, rather than having answers refer to questions that are on some previous page.
4. **NEW.** **The person whose deposition is being taken needs to actually answer the questions, NOT simply sign typed answers provided by the attorney.** Although witnesses who testify during uncontested probate hearings do sign testimony that was prepared in advance, depositions are different. When an attorney is leading a live witness through previously prepared testimony, it is not uncommon for the witness to add to or correct the testimony prepared by the attorney. When a witness is simply signing a prepared document, additions and corrections are less likely to be made.
5. **Affidavits are not depositions.** It is never sufficient to file written affidavits in place of testimony in open court.

- B Depositions taken in accordance with the Texas Estates Code.** As noted above, EC 202.151(b) provides the testimony in an heirship proceeding may be taken in accordance with EC 51.203:

§51.203. Service of Notice of Intention to Take Depositions in Certain Matters.

- (a) If a will is to be probated, or in another probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 51.053 governing a posting of notice.
- (b) When notice by posting under Subsection (a) is filed with the county clerk, a copy of the interrogatories must also be filed.
- (c) At the expiration of the 10-day period prescribed by Subsection (a):
 1. The deposition for which the notice was posted may be taken; and
 2. The judge may file cross-interrogatories if no person appears.

1. **Notice required.** If you are proceeding under EC 51.203, you can't skip the posted notice.
2. **No commissions – but still a posting period of 10-days plus a Monday.** Although commissions are no longer required, notice of the intention to take depositions must still be posted for the statutory period. Pay attention to the return date; an untimely deposition will need to be redone.
3. **File the interrogatories with the notice.** A copy of the interrogatories must be filed with the notice.
4. **Cross-interrogatories from the judge?** Under EC 51.203, the judge may file cross-interrogatories.
5. **Deposition procedures.** Although the Estates Code specifies the required notice, the Code does not specify the deposition procedures. For the deposition itself, use the procedures set out in the Texas Rules of Civil Procedure. As an example, here's an outline of a process for a written deposition in a typical uncontested probate with no other parties:
 - After the posting period has run, the deposition officer takes the deposition and records the testimony of the witness under oath.
 - The deposition officer prepares, certifies, and delivers the completed deposition to the attorney who requested it.
 - The attorney files the completed deposition before requesting a hearing.

- C. Depositions taken in accordance with the Texas Rules of Civil Procedure.** Carefully look at all related TRCP rules. *This handout flags only a few of the requirements and procedures.*

1. **Depositions on Written Question are governed by TRCP, Rule 200.1 et seq.** Also see Rule 203 on Signing, Certification, and Use of Oral and Written Depositions. The notice of intent to take the deposition by written questions, along with the attached questions, must be served on the witness and all other parties, including the ad litem, at least 20 days before the deposition is taken. Prior to requesting a hearing, you must file the notice, along with proof of its service 20 days **before** the taking of the deposition. The deposition officer must “take the deposition on written questions at the time and place designated, record the testimony of the witness under oath in response to the questions, and prepare, certify and deliver the deposition transcript in accordance with Rule 203”.
2. **Oral Depositions, including Oral Depositions by Telephone or Other Remote Electronic Means, are governed by TRCP Rule 199.1.** Again, also see Rule 203 on signing, Certification, and Use of Oral and Written Depositions. Note that the “oral

deposition must be conducted in the same manner as if the testimony were being obtained in court during trial.” TRCP 199.5(d). Among other things, that means the attorney ad litem must participate in the oral deposition.

VII. Sample Charts for Applications and Judgments

The following samples illustrate the chart form the Court prefers for heirship applications and judgments. *Obviously, the actual chart you use in an application and in the judgment should vary given the circumstances.* These charts are examples only and do not illustrate all (or even most) of the possibilities. See Estates Code chapter 201 and the illustrations on pages 12-14 of this handout.

Sample 1. Decedent is survived by spouse and by one minor child from a prior marriage.

Distributee's Name, Address and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
Jill Doe Surviving Spouse 1234 Fake Street Decatur, Texas 76234	1/3	Life estate in 1/3 of all separate real property	NONE but retains her 1/2 interest in the community estate
Jane Doe Minor Child (b. 2001) Daughter from previous marriage 5678 Fake Street Decatur, Texas 76234	2/3	ALL, subject to the surviving spouse's 1/3 life estate	ALL

Sample 2. Decedent is survived by spouse and by two adult children from that marriage.

Distributee's Name, Address and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
John Doe Surviving Spouse Complete Address	1/3	Life estate in 1/3 of all separate real property	ALL
Donna Doe Jones Born: 1948 Daughter of deceased & John Doe Complete Address	1/3	1/2, subject to the surviving spouse's 1/3 life estate	NONE
John Doe, Jr. Born: 1952 Son of deceased & John Doe Complete Address	1/3	1/2, subject to the surviving spouse's 1/3 life estate	NONE

Sample 3. Decedent is survived by spouse and both parents, but is not survived by any child or other descendant.

Distributee's Name, Address and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
John Doe Surviving Spouse Complete Address	ALL	1/2	ALL
Elizabeth Jones Mother of deceased Complete Address	NONE	1/4	NONE
Joseph Jones. Father of deceased Complete Address	NONE	1/4	NONE

Sample 4. Unmarried decedent is survived by one child. Decedent was predeceased by a second child, whose two children are still living. One is a minor.

Distributee's Name, Address and Relationship to Deceased	Share of All Property
Donna Doe Jones Born: 1948 Daughter of deceased Complete Address	1/2
Jane Doe Born: 1981 Granddaughter (child of John Doe) City, State Zip	1/4
George Doe Minor: DOB= 04/16/1995 Grandson (child of John Doe) Complete Address	1/4

Additional information about John Doe, the predeceased child will be set out elsewhere in the Application and Judgment.

Sample 5. Unmarried decedent is survived by no child or descendant and by no parent, but is survived by two siblings.

Distributee's Name, Address and Relationship to Deceased	Share of All Property
Donna Doe Born: 1948 Sister Complete Address	1/2
David Doe Born: 1949 Brother Complete Address	1/2

Sample 6. Unmarried decedent is survived by no child or descendant, and by only one parent and three siblings.

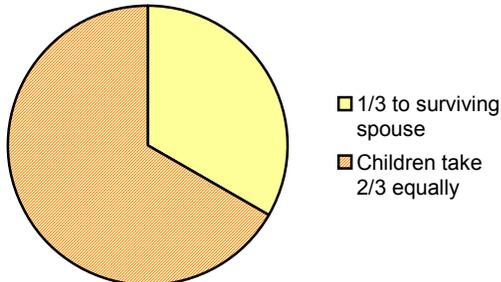
Distributee's Name, Address and Relationship to Deceased	Share of All Property
George Doe Father Complete Address	1/2
David Doe Born: 1948 Brother Complete Address	1/6
Debbie Doe Born: 1950 Sister Complete Address	1/6
Damien Doe Born: 1954 Brother Complete Address	1/6

Texas Descent and Distribution¹

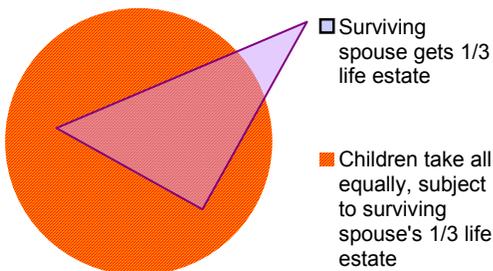
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

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

A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))

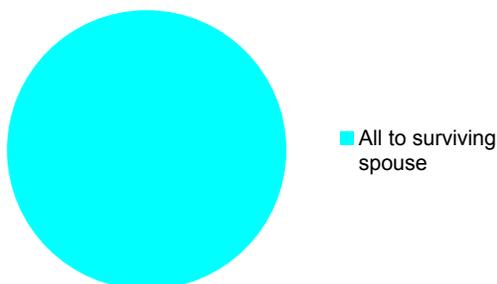


B. Decedent's separate real property (TPC § 38(b)(1))

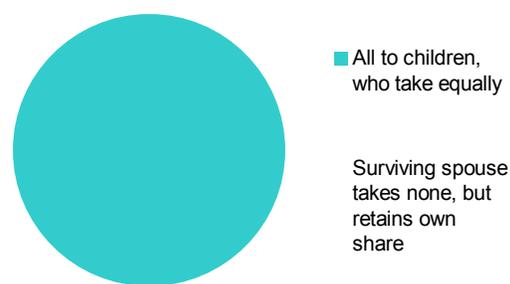


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (TPC § 45(a)(2))



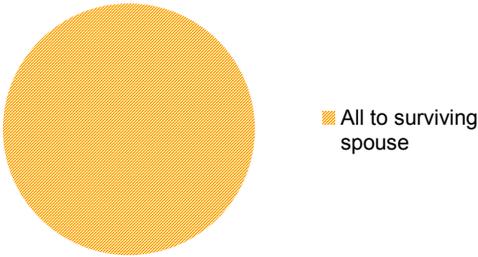
C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (TPC § 45(b))



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 § 43 of the Texas Probate Code, Determination of Per Capita and Per Stirpes Distribution, as well as the following sections: § 40, Inheritance By and From an Adopted Child; § 41, Matters Affecting and Not Affecting the Right to Inherit; § 42, Inheritance Rights of Children; § 44, Advancements; and § 47, Requirement of Survival by 120 Hours.

2. Married Person with No Child or Descendant

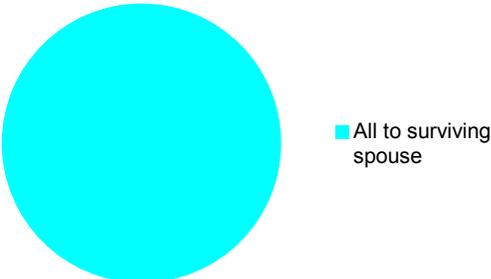
A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))



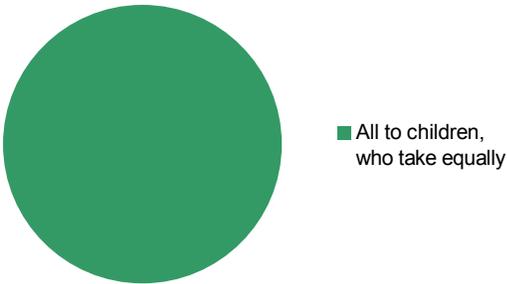
B. Decedent's separate real property (TPC § 38(b)(2))

<p>If decedent is survived by both mother and father. TPC § 38(b)(2) & (a)(2).</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. TPC § 38(b)(2) & (a)(2).</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. TPC § 38(b)(2) & (a)(2).</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. TPC § 38(b)(2) & (a)(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. TPC § 38(b)(2).</p> <ul style="list-style-type: none"> ■ All to surviving spouse 	

C. Decedent's share of community property (TPC § 45(a)(1))



3. Unmarried Person with Child[ren] or Other Descendants (TPC § 38(a)(1))



4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

<p>TPC § 38(a)(2). If decedent is survived by both mother and father.</p> <p>■ 1/2 of all property to father ■ 1/2 of all property to mother</p>	<p>TPC § 38(a)(2). If decedent is survived (1) by mother or father and (2) by sibling(s) or their descendants.</p> <p>■ 1/2 to siblings or to descendants of deceased siblings ■ 1/2 to surviving parent</p>
<p>TPC § 38(a)(2). If decedent is survived by mother or father, but is not survived by any sibling(s) or their descendants.</p> <p>■ All to surviving parent</p>	<p>TPC § 38(a)(3). If decedent is survived by neither parent, but is survived by sibling(s) or their descendants.</p> <p>■ All to siblings or to descendants of deceased siblings</p>

¹ If none of the four situations above applies, see TPC § 38(a)(4).