

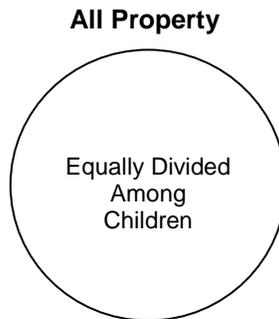
**WILL YOU LEAVE LAUGHING HEIRS?
-- YOUR TEXAS HEIRS AT-LAW**

Germans have the phrase “the laughing heir” (*der lachende erbe*): a person too distant a relative to grieve and overcome the joy of inheriting. Will you leave laughing heirs?

Your *heirs-at-law* are the persons who will receive your property under the Texas laws of descent and distribution (sometimes also called the “laws of intestacy”). The Texas law of descent and distribution provides who receives a decedent’s estate when the decedent dies without a will or the decedent’s will does not completely designate to whom the decedent’s property passes. Sometimes a trust will provide that the property goes to the grantor’s heirs-at-law if the named family members do not survive to receive the property. Determining your heirs-at-law depends upon your family situation and the nature of your property (community vs. separate, personal vs. real) at the time the determination is made.

Who your heirs-at-law are also depends upon whether Texas law applies or the laws of another state. Usually, Texas law will apply to the personal property and the real property located in Texas of a Texas resident. Texas law will also apply to Texas real property owned by a Texas non-resident. The laws of other states, which can be drastically different from the Texas rules, will apply to non-Texas real property of a Texas resident, and to everything except Texas real property of the Texas non-resident. This article will discuss the Texas rules, but you may want to examine the rules of another state if you own real property outside Texas or you now or in the future may become a Texas non-resident.¹

Single Person with Child Or Children



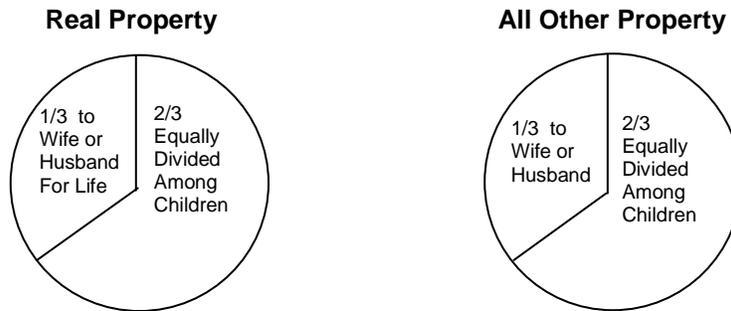
All property of a single person with children will be divided equally among the children. Single persons include the never married (including persons with annulled marriages), widows, widowers, and divorced persons. Children of deceased children take their parent’s share. Advancements (lifetime gifts made with the intent that they be used in determining and equalizing future inheritance rights) to children must be accounted for in making the division.

¹ Even though non-Texas real property may be at issue or the rules applicable to a Texas non-resident are at issue, a will or trust agreement can specifically provide that the Texas rules apply.

Married Person with Child or Children

Here the differences between community and separate and between real and personal property become important. Community property is all property acquired during marriage, except for separate property. Separate property includes gifts and inheritances, property purchased with separate property, damages for pain and suffering, property acquired prior to the marriage, and community property partitioned into separate property.

Separate Property



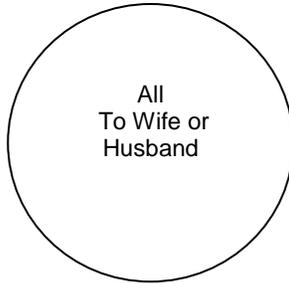
Two-thirds of separate real property and other property is divided equally among the children. (Real property includes land, homes, buildings, condominiums, and mineral interests held in an individual's name and not through a corporation, limited liability company, or partnership.) Again, children of deceased children take the parent's share, and advancements to children must be accounted for in making the division. The surviving spouse receives a life estate in one-third of the separate real property. A life estate is the right to use the property and receive the income from the property for the person's natural life. Upon death of the spouse, the property then gets divided among the children similar to the division of the original two-thirds. The surviving spouse receives outright the remaining one-third of the separate personal property. Because what the surviving spouse receives depends upon whether real property or personal property is involved, it is important whether real property is owned outright and passes under the rules applicable to real property or is owned through a partnership or corporation and passes under the rules applicable to other property. (A slightly different rule applies to the homestead, which gives the surviving spouse an interest similar to a life estate with the remainder interest passing to the children.)

As for community property, the rule used to be that the decedent's one-half was divided among the children and the surviving spouse gets his or her one-half. Most Texans found this to be a surprising result, incorrectly believing that the surviving spouse received all of the community property even when there are children. The surviving spouse had the right to use and occupy the homestead, even though the decedent's community property interest in the residence passes to the children.

In 1993, the legislature changed this rule when all of the decedent's children are also the children of the surviving spouse. If that is the case, then all of the community property goes to the surviving spouse and the children receive nothing.

Community Property

Real and Personal

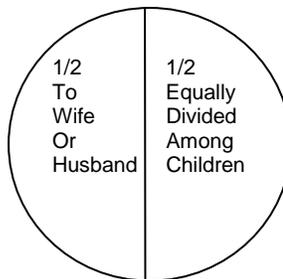


Note: This rule only applies if all the decedent's children are also the children of the surviving spouse.

If there is one child of the decedent that is not also the child of the surviving spouse, then the old rule still applies: The decedent's one-half of the community is divided among the children and the surviving spouse gets his or her one-half.

Community Property

Real and Personal Property

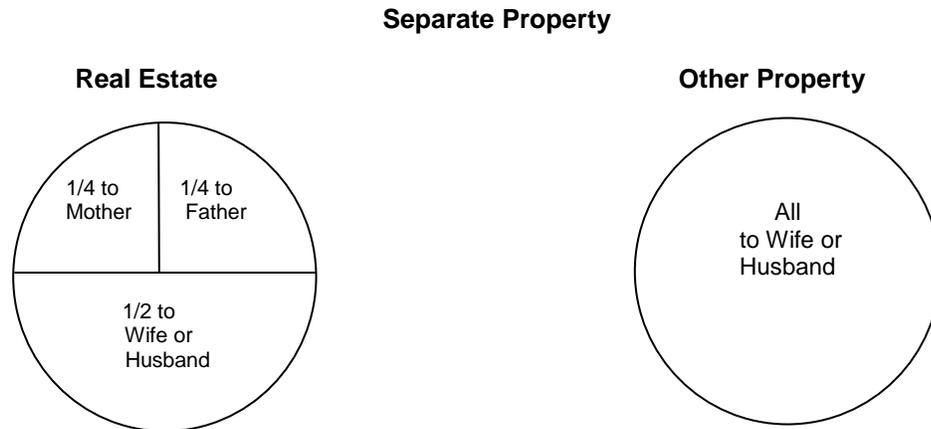


Note: This rule only applies if at least one child of the decedent is not also the child of the surviving spouse.

Children of deceased children take the parent's share, and advancements (certain lifetime gifts) to children must be accounted for in making the division.

Married Person with No Child or Children, but Mother and Father Surviving

Again, the distinctions between separate real property and community real property can be important for dividing the property of a married person with no children, but with parents surviving.

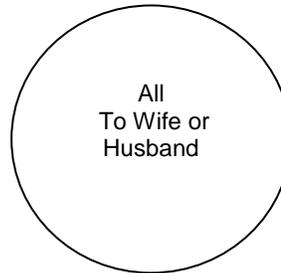


The surviving spouse receives outright one-half of the separate real property and all the separate property other than real property. Also, all community property goes to the spouse, whether real or personal. Because partnership interests and corporate stock are personal property, a vastly different result can occur depending on whether real property is owned in a partnership or a corporation, or whether the decedent held the property in his or her own name. Of the separate real property, the mother receives one-fourth and the father receives the other one-fourth. If only one parent survives he or she takes 1/4 of the real estate in the separate property, and 1/4 is equally divided between brothers and sisters of the deceased, and their descendants (nieces and nephews of the deceased). If there are no brothers and sisters or their descendants, then the surviving parent takes 1/2 of the separate real estate.

If neither parent survives, then 1/2 of the real property is equally divided among brothers and sisters of the deceased and their descendants; if none of them survive, all property goes to the surviving husband or wife.

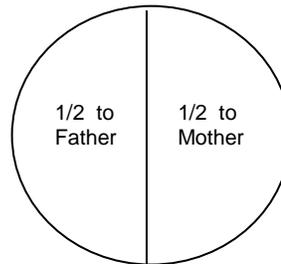
Community Property

All Property



Single Person with no Children, but With Mother and/or Father Surviving.

All Property

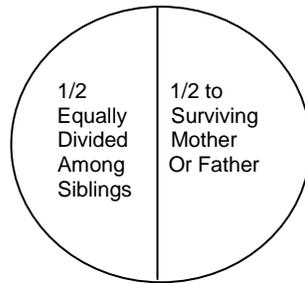


For a single person with no children, one-half of all property goes to the father and one-half goes to the mother. If either the father or mother does not survive, then his or her share is equally divided among brothers and sisters that the decedent has through the deceased parent. Thus, a half-brother or half-sister through the living parent would not receive anything. Children of a deceased brother or sister take his or her share. Interestingly, if there are surviving nieces and nephews and one parent, the surviving parent takes only half. Nieces and nephews can take before one parent is able to take all, even though parents are of a closer degree of relationship than nieces and nephews.

What happens if there is a surviving mother or father and no brothers or sisters or their issue? Then the surviving parent receives everything.

If both parents are deceased, the property passes one-half to the brothers and sisters on the father's side and one-half to the brothers and sisters on the mother's side. This results in a half-brother or half-sister only taking a half-share compared to a brother or sister of whole blood.

All Property



Single Person, No Children, No Parents, No Brothers and Sisters

For a single person with no children, no parents and no brothers and sisters nor their children, one-half of the property goes to the decedent's relatives on the father's side of the family and one half goes to the relatives on the mother's side. This is where aunts, uncles, and cousins can come into an inheritance. The estate will pass to the State of Texas (the estate is said to "escheat" to the state), only if no relative, regardless of how distant, can be found. Some states have a system where heirs depend upon who is the closest relative in degree. This is not the Texas system. Texas law looks to who is the closest living ancestor or who are the living issue of the closest ancestor with living issue. The "Table of Potential Heirs-At-Law" attached, helps illustrate this.

A grandparent will inherit property from a deceased grandchild only if the grandchild dies without any of the following relatives surviving: spouse, children, grandchildren, mother, father, sister, brother, niece or nephew. The way in which grandparents inherit is somewhat complicated. The estate is divided into two shares: one share for the paternal kindred and one share for the maternal kindred. If both grandparents on one side are living, the property is equally divided between the grandfather and grandmother. If only one grandparent on that side is living, the living grandparent takes one-half of the paternal or maternal share and the other half goes to the descendants of the deceased grandparent on that side, and only if there are no descendants of the deceased grandparent does the surviving grandparent inherit all of the paternal or maternal share.

If there are no grandparents or issue, then the property for the grandparents is divided into shares for the great-grandparents, one fourth for the maternal and paternal great-grandparents on each side of the family. Division is made similar to the way division is made for grandparents. The search for heirs is carried out independently on the maternal and paternal side of the family. However, if no relatives can be located on one side, that side's share will be added to the share for the other side before property will escheat to the state.

Unusual Family Situations

How are adopted children treated? An adopted child and the child's descendants inherit from and through the adoptive parents and their relatives the same as a natural child. Also, the adoptive child has the right to inherit from and through his or her natural parents. The adoptive parents inherit by and through the adopted child, but the natural parents do not.

Step-children, who are not adopted, do not receive an inheritance, except in those situations where there was an unfulfilled promise to adopt. Step-parents, step-brothers and step-sisters are not included. “Step” relatives are not true relatives and they are not heirs-at-law.

How are illegitimate children treated? An illegitimate child inherits from his or her biological mother the same as any other child. An illegitimate child can inherit by and through the biological father if the father acknowledges the child, the child is found to be the child of the father in a paternity suit, or the child, after the father’s death, proves that he or she is the child of the decedent.

How are in-laws treated. There is no direct inheritance from or to an in-law. A person can inherit from an in-law through a blood heir if the in-law predeceases the blood relative. Say there is an elderly couple with no children or decedents, no parents, and they had no brothers and sisters, except the wife has one sister who is still living. If the wife passes away first, then her property passes to the husband and upon his death, none of the property goes to the wife’s sister by intestacy. It will escheat to the state before the sister would have an inheritance right. But if the husband dies first, all of his property goes to the wife by intestacy and upon the wife’s death her property, which now includes the husband’s, will pass by intestacy to the sister.

Excluding Relatives

Why make a gift to collateral and distant relatives? Why make a gift to a laughing heir? Provide for named relatives, friends, or charities. Look at the “Table of Potential Heirs-at-Law.” If you are not comfortable with the thought that these relatives may inherit your property, then you should provide sufficient named beneficiaries under your will or trust so your property will not pass to your distant heirs-at-law.

If there is a member of your family that you do not want to inherit any of your estate under any circumstances, you may specifically exclude that person from inheriting by including a statement to that effect in your will or in your trust agreement. Let your attorney know if you want to exclude a specific family member.

Conclusion

To avoid the complications of determining who are your heirs, sign a will that designates the beneficiaries of your estate by name. You should name sufficient contingent beneficiaries under a will or trust, so it is likely that one will inherit, and resort will not be made to determining your collateral heirs-at-law.

This article is provided for informational purposes only. While every effort has been made to ensure accuracy, this article cannot be relied upon as legal advice. Applicability of the legal principles may differ substantially in individual situations. If you have any questions, please call us at (210) 736.2222.

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Table of Potential Heirs-at-Law Under Texas Law

