

# Estate Planning Newsletter



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## Intestate Succession

### What Happens When a Person Dies Without a Will?

Have you ever heard the State will take your property if you die without a will? While that seems to be a common perception, most of the time it is not accurate. When a person dies without a will, the state does not “take” your property, but your estate will pass as provided by the laws of descent and distribution found in Texas Probate Code, Sections 38 and 45. When one dies without a will, he or she is said to have died “intestate”. The purpose of a will is to give people, rather than the state, the power to determine what happens to their property when they die.

The first step to determine who inherits when there is no will, is to determine whether the property is community property or personal property. In general, separate property is property owned by a spouse before marriage; property acquired during the marriage by gift, will or inheritance; and a spouse's tort recovery for personal injury. In Texas, there is a presumption that all property on hand when a marriage ends, whether by divorce or death, is community property. During marriage, each spouse owns a one-half undivided interest in community property. An undivided interest means there is no specific divisible portion or claim to the property. For example, a husband and wife own a ranch as community property. Each spouse owns an undivided interest in the ranch and neither can claim independent rights to any particular acreage within the ranch. Upon death of a spouse, community property is divided between the spouses equally with each spouse retaining their one-half interest.

The second step is to determine (a) whether the Decedent was married and (b) whether the Decedent had children or descendants at the time of death.

Intestate: dying without a will

Separate Property: Property owned before marriage, or acquired during marriage by gift, will or inheritance, or purchased with separate funds while married

Community Property: All property that is not separate property

Real Property: Land and all things attached to it, i.e. house

Personal Property: Anything that is not real property

### What's Inside: Intestate Distribution of Community & Separate Property

In this edition, we will take a closer look at the intestate distribution of community & separate property and discuss examples of each.

# Intestate Distribution

# Community Property

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To simplify the process of distributing community property, we will look at three different situations:

Decedent Not Survived By Descendants

Decedent Survived By Descendants, All of Whom Are the Surviving Spouse's Descendants

Decedent Survived By Descendants, Some of Whom Are Not the Surviving Spouse's  
Descendants

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### *Decedent Not Survived By Descendants*

When a spouse dies intestate without descendants, the surviving spouse takes all of the community property. Descendants are your children, your children's children and so forth.

#### *Example*

Sam and Sandy were married in 2004 and never had children. Sandy unexpectedly dies without leaving a will. Sam and Sandy invested in the stock market during their marriage and as a result had 200 shares of Soda Pop stock and \$60,000 in mutual funds. They also had \$100,000 in a joint checking account. How will Sandy's estate be distributed?

Sam retains his one-half interest in the community estate and receives Sandy's one-half interest in the community through intestate succession. Sam takes all the community property: 200 shares of Soda Pop stock, \$60,000 in mutual funds and the \$100,000 in checking account.

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### *Decedent Survived By Descendants, All of Whom Are the Surviving Spouse's Descendants*

This is the very common situation where a spouse dies leaving his spouse and a child or children from that marriage. When a decedent is survived by descendants, all of whom are descendants of the surviving spouse, the surviving spouse takes all of the community property.

#### *Example*

Same facts as the example above, except that Sam and Sandy had one daughter during their marriage, Sasha. How would Sandy's estate be distributed after her death?

Here, Sasha, Sandy's only child is a descendant of both Sam and Sandy. Again, Sam retains his one-half interest in the community estate and Sandy's one-half interest in the community estate: 200 shares of Soda Pop stock, \$60,000 in mutual funds and the \$100,000 in the checking account. In this example, Sasha takes nothing.

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## Intestate Distribution

### Community Property (Cont.)

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#### *Decedent Survived By Descendants, Some of Whom Are Not the Surviving Spouse's Descendants*

While this may sound like a foreign language, it's actually a very common situation. In this situation we have a spouse who is survived by children, at least one of whom is not the child of the surviving spouse. The decedent's one half community interest passes to his descendants, who take per capita with representation. The surviving spouse retains the one half community interest she had throughout the marriage.

#### *Example*

Sam married Sandy in 1980, they had a son named Sydney. Sam and Sandy divorced in 1985. Sam then married Alice in 1990. Sam and Alice never had children. In 2005 Sam died suddenly without leaving a will. When Sam died, they had a joint checking account containing \$50,000 and 200 shares of Toy Shop stock. How will Sam's estate be distributed after his death?

Since Sydney is Sam's son but not Alice's, Sydney takes Sam's one-half interest in the community estate: \$25,000 of the joint checking account, and 100 shares of the Toy Shop stock. Alice as Sam's surviving spouse, retains her one-half community interest upon Sam's death, \$25,000 of the joint checking account, and 100 shares of the Toy Shop stock.

#### *Example*

Sam and Sandy marry in 2004. This is the second marriage for both of them. Sam has three boys from his first marriage, Jack, John and Jim. Sandy has three girls from her prior marriage, Molly, Maggie and Mindy. In 2006, Sam and Sandy have a baby girl named Sasha. In 2008, Sandy has a heart attack and dies unexpectedly without leaving a will. Sam and Sandy invested heavily in the stock market during their marriage and as a result had 200 shares of Soda Pop stock and \$60,000 in mutual funds. They also had \$100,000 in a joint checking account. How will Sandy's estate be distributed after her death?

Here, Sandy our decedent has three children from a prior marriage and one child, Sasha from her current marriage. Sandy's estate would pass as follows:

- Sam retains his one-half interest in the community estate comprised of 100 shares of Soda Pop stock, \$30,000 in mutual funds and \$50,000 from the checking account.
- Since Molly, Maggie, Mindy and Sasha are all descendants of Sandy, each receives an equal share of Sandy's one half community interest, i.e., 25 shares of Soda Pop stock, \$7500 in mutual funds and \$12,500 from the checking account.

# Intestate Distribution

# Separate Property

## UNMARRIED DECEDENT

### What happens when a parent dies without a will?

When an unmarried parent dies intestate, his entire estate passes to his descendants (children, grandchildren and great grand children).

### What happens when a person without children dies intestate?

If his parents survive him, one half passes to each parent. If only one parent survives him, one half goes to the surviving parent and the other half goes to his brothers and sisters or their children.

### What about a person who is not survived by children or parents?

If there are no descendants or parents, his estate passes to his brothers or sisters or their children.

### What about a person who is not survived by children, parents, siblings, nieces or nephews?

If there are no parents or descendants of parents (brothers and sisters of decedent), half of the estate passes to the maternal grandparents or their descendants and half passes to the paternal grandparents or their descendants.

**\*\*No matter how remotely related to the descendant, a person can qualify as an heir. If no heirs are found, all property goes to the state.\*\***

**Q:** Sam, a young entrepreneur, and his only brother died after their boat sank suddenly in the Caribbean. Sam was survived by his mother, sister in law and nephew. At his death he owned a condo, a Porsche and had \$150,000 in his bank account. Sam died without leaving a will, how will his estate be distributed?

**A:** Sam estate will pass one-half to his only surviving parent and one-half to his nephew.

## MARRIED DECEDENT

### What happens when a married person without children dies without a will?

When a person dies who is not survived by descendants but is survived by a spouse, all of the separate personal property passes to the surviving spouse. Separate real property passes equally to the surviving spouse and to parents or descendants of parents.

### What about a married parent who dies intestate?

When a decedent is survived by a spouse and descendants, one-third of the separate personal property passes to the surviving spouse, and two-thirds passes to the children or their descendants. A life estate in one-third of the separate real property passes to the surviving spouse; a remainder in that one-third and outright ownership of the other two-thirds passes to the children (or their descendants).

**\*\*Note: for separate property, it is irrelevant whether the surviving descendants are also descendants of the surviving spouse.\*\***

**Q:** Sam and Sandy were married in January 2005 and in October 2005 they had twins, Sasha and Sydney. In 2006, Sam and Sandy purchased their first home and in 2008 Sam inherited \$200,000 and a baseball card collection worth \$50,000. In March 2010, Sam died suddenly after suffering a heart attack. Sam died without leaving a will, how will his estate be distributed?

**A:** The house is community property, so it goes to Sandy. The \$200,000 and the baseball card collection were Sam's separate personal property. So, Sandy also receives 1/3 of the baseball card collection and the \$200,000. Sasha and Sydney will split the remaining 2/3, each receiving 1/3 of Sam's separate personal property.



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### **Do you need a will to accomplish your desired results?**

As you can see from the limited examples provided, dying intestate can have significant and often unintended consequences. The purpose of a will is to give you the power to determine what happens to your property when you die. It may also allow you to streamline the probate process and allow your family to avoid the hassle of a lengthy estate administration.

If you have any questions regarding your estate planning needs and concerns, please contact us and we will happy to visit with you.

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