

From the desk of

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Intestate Succession (Who Gets What When There is No Will)

I am often asked to explain how property passes when someone dies without a will. To answer, you must first know if the decedent was married. If so, then everything acquired during the marriage is *presumed* to be community property. Everything owned prior to marriage, or received as a gift during marriage, is separate property. (Also, if you can prove that separate property was used to acquire something during marriage, you can rebut the community presumption and claim the new property as separate property.) The distinction is important because different rules apply to each type of property. Next, determine the decedent's surviving family members and apply the following rules. Note that "real" property means all forms of real estate, including mineral interests. "Personal" property is everything that is not real property, such as cash, bank accounts, cars, jewelry, furniture, notes receivable, etc.

COMMUNITY PROPERTY (Texas Probate Code §45):

Facts	Disposition
Married with no kids	All to surviving spouse
Married with kids who are also the kids of Decedent's spouse	All to surviving spouse
Married with kids, but at least one of the kids is not a child of Decedent's surviving spouse	All of Decedent's 1/2 interest in any community property passes to kids, spouse simply retains his/her 1/2

SEPARATE PROPERTY (Texas Probate Code §38):

Facts	Disposition
Unmarried with kids	All to kids
Unmarried, no descendants, parents surviving	All to father and mother equally
Unmarried, no descendants, one parent deceased, at least one sibling	1/2 of all separate property to surviving parent and the other 1/2 to surviving sibling(s) or their descendants
Unmarried, no descendants, one parent deceased, no siblings	All to surviving parent
Unmarried, no descendants, no parents, at least one sibling	All to surviving sibling(s)
Unmarried, no descendants, no parents, no siblings	1/2 to paternal grandparents (or their descendants) and 1/2 to maternal grandparents (or their descendants)
Married with kids	1/3 of separate personal property to spouse, 2/3 to kids. All separate real property to kids, subject to spouse's life estate in an undivided 1/3 of it.
Married, no descendants, no parents, no siblings or their descendants	All to spouse
Married, no descendants, a parent or sibling or niece or nephew	One-half to spouse, other half to parents or siblings as if decedent was unmarried

Sound complicated? It certainly can be. I had one case with close to 70 heirs, some of them found by tracing ancestors through old Czechoslovakian census records. Want to avoid ever having to deal with these rules? Tell everyone in your family to get a will!