

HOPING FOR THE BEST IS NOT A PLAN!

I hear this over and over again: “When I die, everything I own automatically passes to my spouse and children so why do I need a Will?” The purpose of this article is to answer that very question.

Before I can help you understand the answer to this question, there are a couple of things you need to know:

DYING INTESTATE

When you die without a Will, you are said to have died intestate. If that happens, the State of Texas has a plan made FOR you.

TYPES OF PROPERTY

There are basically two types of property in Texas: separate property and community property.

Separate Property (SP) includes the property you owned prior to marriage or that you inherited or received as a gift during your marriage. Separate property can be personal property or real property (real estate)

Community Property (CP) includes any property (real and personal) acquired during marriage (other than by inheritance or gift).

THE TEXAS PLAN

The plan that Texas uses when you die without a Will.

1. Spouse but no children (or grandchildren, etc.)

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| Separate personal property | All to surviving spouse |
| Separate real property | 1/2 to surviving spouse and 1/2 to parents (if parents not living then to siblings) |
| Community property (personal & real) | All to surviving spouse |

2. Spouse AND children:

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| Separate personal property | 1/3 to surviving spouse 2/3 to divided equally between children |
| Separate real property | Spouse has life estate in 1/3 of property 2/3 of property outright to children |
| Community property (personal & real) | 1. If all the children belong to both the deceased spouse and the surviving spouse, then all community property goes to surviving spouse; OR |
| | 2. If deceased spouse has child(ren) from another relationship, then the deceased spouse's 1/2 interest in community property goes in equal shares to all his children. (The surviving spouse would still own his/her 1/2 interest in community property) |

3. Children but NO spouse

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|----------------------------|--|
| Separate personal property | Equal shares to children |
| Separate real property | Equal shares to children |
| Community property | There is no community property if you do not have a surviving spouse |

4. NO children and NO spouse:

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| Separate property (personal and real) | 1/2 to decedent's mother 1/2 to decedent's father |
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| | If only one parent survives, the 1/2 interest that would have gone to the parent who is not surviving, would be divided equally between the decedent's siblings |
| | If neither parent survives the decedent, the decedent's estate would be divided in equal shares between the decedent's siblings or that sibling's children, grandchildren, etc. |
| | If there are no surviving parents or siblings (or children, etc. of siblings), the decedent's estate would then pass to his or her grandparents, then aunts & uncles, then to cousins, etc. |
| | If there are absolutely no surviving family members of any degree of relationship, then the decedent's estate will go to the State of Texas. |

WHAT YOU NEED TO KNOW ABOUT REAL ESTATE, ETC.

No matter who receives your real estate, a form of probate will be necessary to legally transfer the title of the property – even if it is your surviving spouse who is receiving it!!! I cannot tell you how many times I have heard people say – I thought it would automatically go to my spouse! Even if it does, legal steps must be taken to take the property out of the name of the decedent. Dead people cannot own property!!

THE COST OF DYING INTESTATE

Bottom line: it costs ALOT more money to probate an estate where there is no Will. Probating an estate without a Will requires more time and work for the attorney probating the estate. That means a higher fee. In addition, the law requires the court to appoint an attorney-ad-litem to represent missing or unknown heirs. It does not matter if you can already identify all the heirs of the deceased person. That ad-litem will also charge a fee.

Here are just a couple of examples of what can happen if you die without a Will in Texas:

No. 1

Husband and Wife had been married 28 years when Wife died suddenly. Both had been married previously and had children from those first marriages. After Husband and Wife married, they purchased a beautiful home on the lake together and lived there happily until Wife's death. Wife died without ever having made a Will, so the Texas intestacy laws dictated how her assets would be distributed.

Husband was stunned to learn that Wife's 1/2 interest in the house they shared would not go to him, but rather to her children from her first marriage!

No. 2

Husband and Wife had been married 35 years when Husband died suddenly. Neither of them had a marriage prior to this one and all of their children belonged to both. Many years earlier, Husband's mother had passed away and left him \$25,000. Husband immediately put that money in a bank account and left it there. He never made deposits and never made withdrawals. Husband and Wife had always intended to use that money for travel when they retired. Husband died without a Will so, once again, the intestacy laws dictated how his assets would be distributed.

The \$25,000 in the bank account is classified in Texas as separate property because it was inherited. According to Texas intestacy laws, 1/3 (approximately \$8300) of that separate property goes to Wife and the remaining 2/3 (approximately \$17,000) is divided equally between their 2 children. There is no way to know if that is what Husband would want. But if he had made a Will, he could have left the entire amount to Wife.

Take the next step. Call Paula at Hartsfield Law – 903-533-1651 – or email her at Paula@hartsfieldlawtexas.com.