

TRAVIS COUNTY PROBATE COURT NO. 1

Travis County Courthouse, Room 217
1000 Guadalupe Street – P.O. Box 1748
Austin, Texas 78767



Revised May 22, 2016

The Uncontested Docket: When a Client Dies Without a Will

Counselors,

Welcome to Travis County Probate Court No. 1. 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, and the 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 Travis County when your client dies without a will (intestate). After a brief overview of some administrative procedures, this guide highlights some basic requirements of the Texas Estates Code (EC) pertaining to the two most common probate proceedings for decedents who die without a will – determination of heirship and letters of administration – and shows how you can avoid the most common mistakes made by lawyers. The guide then addresses the options you have when a witness is unable to appear in court. Finally, the guide includes pie graphs illustrating Texas laws of descent and distribution – and related examples of heirship charts.

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.

Guy Herman, Probate Judge

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 who have not made an appearance and any additional persons requiring notice under EC §202.008,
- the affidavit of service of citation (or attorney's certificate) always 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, to be signed after the hearing (two documents with proposed testimony – one for each of the two witnesses),
- a death certificate (with social security number redacted), and
- an editable electronic version of the heirship chart that will be included in the judgment declaring heirs. The Court prepares the Judgment, but we use information from you about the heirs – and copying and pasting saves time.

You may need to submit documents other than the above, depending on the circumstances. Two examples: If seeking administration, you also will always need an oath for each administrator. For an independent administration you will need the necessary sworn consents from all of the heirs.

B. Attorney Ad Litem. In every determination of heirship, the Court will automatically 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. You do not need to request the appointment of the attorney ad litem. With mandatory e-filing, you also no longer provide the clerk's office with a copy of the application for the attorney ad litem. (But please do contact the court if no ad litem has been appointed within two weeks after the application is e-filed. Note that an ad litem will not be appointed until the required ad litem deposit is paid.) ***The attorney ad litem's presence is required at the hearing.***

- C. **Hearing Schedule.** For all heirships, the Court requires that you submit a hearing request form to the Court. Hearing request forms for the uncontested and regular dockets are available on the Court's website: <https://www.traviscountytexas.gov/probate/hearings-schedule>. Uncontested heirship proceedings are scheduled Tuesdays at 9:15 a.m., except for the day after a county holiday.
- D. **Submission of Documents.** All documents required for an uncontested probate-docket hearing must be emailed to the Court or e-filed (depending on the document) **no later than 10:00 a.m. on Tuesday the week before the hearing**. This deadline allows Court staff to review the file and contact the attorney should any deficiencies be present. Compliance with the rule also ensures that the attorneys are not embarrassed in front of their clients should they forget any required documents. At its discretion, the Court may postpone or cancel a hearing if an attorney fails to comply with the posted guidelines for uncontested-docket paperwork.

After December 7, 2015, **always email – never e-file – proposed testimony, oaths, or orders that will be signed after an uncontested probate hearing.** With the clerk's new document management system, the Court will not get any *proposed* documents that are e-filed in uncontested probate cases. Note that you *do* still need to e-file documents that have already been executed. For details about when and how to submit documents, see the Court's handout, "***Guidelines for Submitting Uncontested Probate-Docket Paperwork***": https://www.traviscountytexas.gov/images/probate/Docs/guidelines_uncontested.pdf.

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 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 when a decedent dies intestate. 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." ***Remember that there are two sections of the Estates Code that set out what must be included in the application.*** The requirements for an heirship application are set out in §202.005, and the requirements for an application for letters of administration are found in EC §301.052. If applicable in an independent administration, the application should also request that bond be waived. See the box at the top of the next page regarding required consents.

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 citation, thereby reducing the number of documents that must be executed and e-filed. To have an independent administration without bond, each consent must:

- specifically consent to an independent administration, requesting that no other action shall be had in the 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 citation – as preferred – include that language as well.

B. Application for Determination of Heirship

1. **Statutory Requirements.** The Court does check to see that **all** statutorily required information is included in the application, and the Court will require an amended application if required information is missing and the mistake cannot be corrected by adding information in the proof of death or the judgment. See EC §§202.004-202.005 and – if seeking administration – also see EC §§202.006 & 301.052.

Here's the information that must be included in all heirship applications:¹

- the name of the decedent (sufficiently similar to the death certificate that the Court knows it is the same person)
- the date and place of death
 - ✓ if the date or place of death is not definitely known to the applicant, set out all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the date or place of death
 - ✓ if the date or place of death given in the application does not match the death certificate, you must explain any differences
- needed information about decedent's heirs (see #3 below, "Information about decedent's 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
 - ✓ the date of the marriage
 - ✓ the name of the spouse
 - ✓ if the marriage was terminated, the date and place of termination
 - NOTE: if you're seeking administration, the application must also explicitly state whether (or not) the decedent was ever divorced and, if so, when and from whom
 - ✓ 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 property belonging to the estate of the decedent or held in trust for the benefit of the decedent
 - NOTE: if you're seeking administration, the application must also include a statement of the property's probable value
- an explanation for the omission of any of the above information that is not included in the application

¹ "[I]f the date or place of the decedent's death or the name or physical address where service can be had of an heir is not definitely known to the applicant," the application must state "all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date or place of the decedent's death or the physical address where service can be had [on] the heir." EC §202.005(3).

Here's the additional information that must be included if you're seeking an administration:

- the applicant's name and domicile
 - the applicant's relationship to the decedent, if any
 - facts necessary to show that this court has venue
 - a statement that a necessity exists for administration of the decedent's estate ***and an allegation of the facts that show that necessity*** (or, under EC §202.006, you may request that the court determine whether there is a need for administration)
 - a statement that the applicant is not disqualified by law from acting as administrator
2. **Affidavit.** Estates Code §202.007 requires that the application be supported by each applicant's affidavit verifying the application. That section sets out the necessary language.
3. **Information about decedent's heirs, preferably in chart form.** The following information about decedent's heirs must be included. See EC §202.004 (all heirship cases) and §301.052 (if also seeking administration). The Court prefers that the information be set out in chart form; see sample charts on pages 10-11 of this handout.

Here's the information that must be included about the heirs in all heirship applications:

- the name of each of decedent's heirs
 - the physical address where service can be had on each of decedent's heirs
 - the relationship of each heir to the decedent
- If there is a surviving spouse, the relationship information for each child or descendant of the decedent 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 and samples 1 & 2 on page 10.
- whether each heir is an adult or a minor
 - the true interest of the applicant and each of the heirs in the decedent's estate
- See EC chapter 201 and the charts and graphs on pages 10-14 of this handout. ***When the decedent leaves a surviving spouse, interests must be given for all types of property, whether or not you think there is any – that is, give shares for separate personal property, separate real property, and community property.*** 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."

Include the following additional information about the heirs if you're seeking an administration:

- the ***birth date*** and ***place of birth*** of each child that was born to or adopted by the decedent

Birth dates of minor heirs: heirship applications given TRCP Rule 21c.

- ✓ If you are requesting administration and any heir is a child born to or adopted by the decedent, the statute (§301.052(7)) requires that you include the child's birth date in the application. Because inclusion of the birth date is required by statute, TRCP Rule 21c(b) allows the application to be filed with the un-redacted birth date, even if the heir is a minor. But TRCP Rule 21c(d)(1) does require that you designate the document as containing sensitive data.
 - ✓ On the other hand, do not include birth dates of any minor heirs who are *not children born to or adopted by the decedent* (for example, a grandchild of the decedent). Because the statute does not require that you include the birth dates for these heirs, TRCP Rule 21c requires that the information not be given if the heir is a minor. Instead, we will collect the birth dates of those minor heirs as part of the dependent administrator's general information form that is kept with the Court and not filed.
4. **What if some of the information is not definitely known by the applicant?** As noted in the footnote on the previous page, if the date or place of death or the names or residences of all the heirs are not definitely known to the applicant, the application must include all the material facts and

circumstances within the knowledge and information of the applicant that might reasonably tend to show that information. EC §202.005(3). If anything else is not included, add “an explanation for the omission” as required by EC §202.005(8).

Some common mistakes found on heirship applications:

- **Characterization of property when the decedent leaves a surviving spouse.** Absent a declaratory action, the Court will not decide what types of property a decedent owned. Consequently, when a decedent leaves a surviving spouse, 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 spouse’s 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 either “*all*” or “*none, but retains [his or her] 1/2 interest in the community estate.*”

III. Citation

Necessary parties: Estates Code §202.008. Remember that each of the following persons must be made a party to a proceeding to declare heirship: unknown heirs, known heirs, and “each person who is, on the filing date of the application, shown as owning a share or interest in any real property described in the application by the deed records of the county in which the property is located.”

- 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 Clerk prepares the citation, it is the attorney’s responsibility to secure publication in one of the local general-circulation papers and to obtain an affidavit of publication executed by the publisher.* The publisher’s affidavit – with the newspaper clipping – must be e-filed before the hearing is set.

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 also be necessary depending on the individual facts of the case.

- B. **Service of citation on or waiver of citation from all non-applicant heirs who have not made an appearance.** Estates Code §§202.051-202.0560 require service of citation on or waiver of citation from all non-applicant heirs. See below for requirements. Also see §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 or have made an appearance in the case. You do not need to take the same approach with all heirs.

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

*Waivers may be combined with EC chapter 401 consents for an independent administration. As noted above, the Court encourages lawyers to incorporate the consents of non-applicant distributees into their waivers of citation, thereby reducing the number of documents that must be executed and e-filed – but make sure each document includes *everything* necessary.*

- **Personal citation.** When an heir does not waive citation and has not made an appearance in the case, 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.* EC §51.051(b)(1).
 - **Citation by certified mail.** The Estates Code allows citation by certified mail under §202.051, prepared by the clerk’s office and sent by the constable. (Remember that citation by definition begins in the clerk’s office; an attorney cannot produce a citation.) *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 on the previous page. 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 17.** The Court requires that minors aged 12 through 17 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, & 51.201.
 4. 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 served, including names of persons who were served or who waived citation.
 See EC §202.057(a)(2) for specifics. Note that an affidavit or certificate is *always* required, regardless of what citation was done.

IV. Documents that Reduce the Expected Testimony to Writing

Under Estates Code §202.151, the Court requires all oral testimony in a heirship proceeding to be reduced to writing and subscribed and sworn to by the witnesses after 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. But if a necessary witness cannot attend the hearing, you may follow the procedures outlined in the section VI below, entitled “When witnesses are unable to appear in court.”

For the 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 stamp includes the following:

Dana DeBeauvoir
 County Clerk, Travis 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 to be in the POD for the heirship:**
 - State the name of the decedent, and indicate when and 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 Travis 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 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 at <https://www.traviscountytexas.gov/images/probate/Docs/medicaid.pdf>, “*How to Address Medicaid for Muniments and Determination of Heirship with No Administration.*”

2. **Add the following information to the POD if also requesting administration.** The proof required for the granting of letters of administration is found in EC §§301.151 & 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. Statements of facts concerning the identity of heirs, for each of two disinterested witnesses.

The Court requires testimony of two disinterested witnesses regarding the identity of decedent’s heirs. Written testimony should be prepared in advance, either in Q&A form or in the form of a statement. *Although the testimony must be prepared and submitted in advance, 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 §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 shown in the box at the previous page. 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 to serve as a witness.

V. Heirship Charts for the Heirship Judgment

Although the Court prepares all heirship judgments, *the Court requires that attorneys email to the Court an heirship chart to help the Court prepare the judgment.* The chart should include the names of all heirs, their relationship to the decedent, and their interest in the estate. Places of residence are no longer required in the judgment. **By the paperwork deadline**, email an editable electronic version of the heirship chart to the Court at heirships@traviscountytexas.gov.

VI. When Witnesses Are Unable to Appear in Court in an Heirship Proceeding

Estates Code §202.151 presupposes live testimony for all heirship 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 case, 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 – not QQQ & AAA.** The Court **strongly** prefers that the deposition officer record each answer immediately following the question asked, rather than having answers refer to questions that are on some previous page.
- 4. NOTE: 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 aren't depositions.** It is never sufficient to file written affidavits in place of testimony in open court.
- 6. Scheduling an uncontested hearing when there's a deposition.** The Court needs to review the responses, not just the questions, before the hearing. So schedule a hearing date far enough out that you can e-file the *responses* before the paperwork deadline (no later than 10:00 a.m. on the Tuesday the week before the hearing).

- B. Depositions taken in accordance with the Texas Estates Code.** As noted above, EC §202.151(b) provides that 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 depositions 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 §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 §51.203, the judge may file cross-interrogatories. (Currently, the court is not looking at depositions during the posting period.)
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 e-files the completed deposition before the paperwork deadline for the scheduled 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 Questions 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 to be served on the witness and all other parties, including the ad litem, at least 20 days before the deposition is taken. By the paperwork deadline, you must e-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 that makes it easier to verify that all necessary information is included and that the shares are calculated correctly. **Obviously, the actual chart 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 the following pages of this paper. The Estates Code no longer requires that a *judgment* list the places of residence of each heir, but does require that the application include the physical address where service can be had on each of decedent’s heirs.

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 Adult Surviving Spouse [physical address where service can be had]	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, [+ required birth date in the application (<i>not in judgment</i>)] Daughter from previous marriage [physical address where service can be had]	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 Adult Surviving Spouse [physical address where service can be had]	1/3	Life estate in 1/3 of all separate real property	ALL
Debbie Doe Jones Adult Daughter of deceased & John Doe [physical address where service can be had]	1/3	1/2, subject to the surviving spouse’s 1/3 life estate	NONE
John Doe, Jr. Adult Son of deceased & John Doe [physical address where service can be had]	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 Adult Surviving Spouse [physical address where service can be had]	ALL	1/2	ALL
Elizabeth Jones Adult Mother of deceased [physical address where service can be had]	NONE	1/4	NONE
Joseph Jones Father of deceased [physical address where service can be had]	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
Debbie Doe Jones Adult Daughter of deceased [physical address where service can be had]	1/2
Jane Doe Adult Granddaughter (child of John Doe*) [physical address where service can be had]	1/4
George Doe Minor [birth date NOT required in application; not <i>Decedent's</i> minor child] Grandson (child of John Doe*) [physical address where service can be had]	1/4

*Additional information about John Doe, the predeceased child, needs to 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
Debbie Doe Jones Adult Decedent's sister [physical address where service can be had]	1/2
David Doe Adult Decedent's brother [physical address where service can be had]	1/2

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

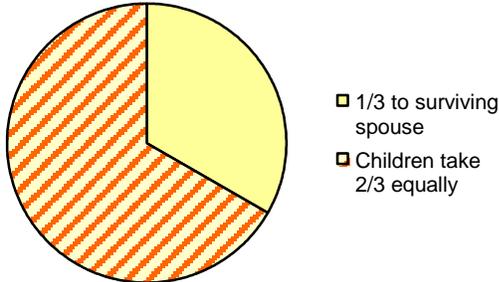
Distributee's Name, Address, and Relationship to Deceased	Share of All Property
George Doe Adult Decedent's father [physical address where service can be had]	1/2
Debbie Doe Jones Adult Decedent's sister [physical address where service can be had]	1/6
David Doe Adult Decedent's brother [physical address where service can be had]	1/6
Damian Doe Adult Decedent's brother [physical address where service can be had]	1/6

Texas Descent and Distribution²

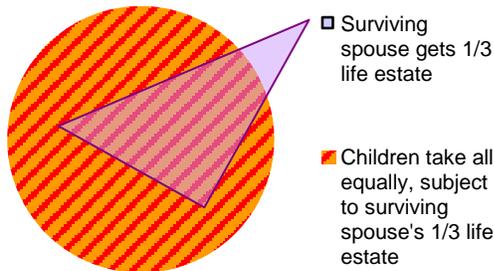
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

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

A. Decedent's separate personal property (all that is not real property) (EC § 201.002(b))

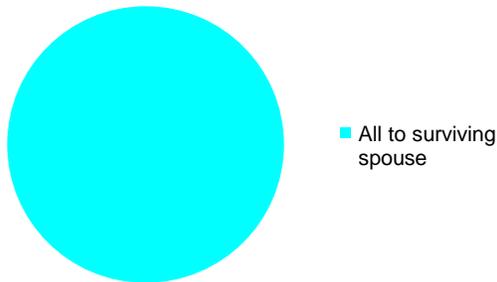


B. Decedent's separate real property (EC § 201.002(b))

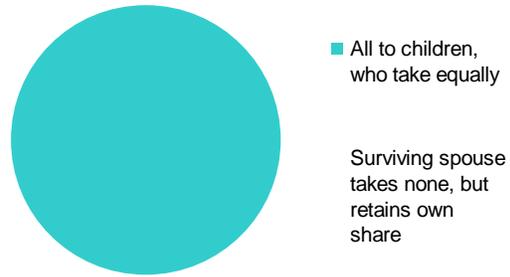


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (EC § 201.003(b)(2))



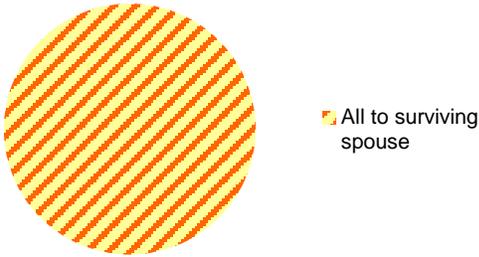
C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))



² 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 the following Texas Estates Code (EC) provisions, among others: § 201.101, Determination of Per Capita with Representation Distribution (fka per stirpes); § 201.051 et seq., Matters Affecting Inheritance (including Adoption [§ 201.054] and Collateral Kindred of Whole and Half Blood [§ 201.057]); Advancements, §§ 201.151 & 201.152; and Requirement of Survival by 120 Hours, §§ 121.052 & 121.053 (see also §§ 121.151-121.153).

2. Married Person with No Child or Descendant

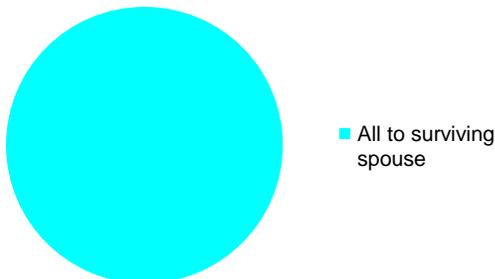
A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))



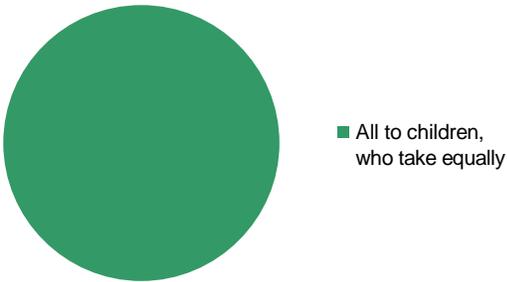
B. Decedent's separate real property (EC § 201.002)

<p>If decedent is survived by both mother and father. EC §§ 201.001(c) & 201.002(c)(2) & (3).</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. EC §§ 201.001(d)(1) & 201.002(c)(2) & (3).</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. EC §§ 201.001(d)(2) & 201.002(c)(2) & (3).</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. EC §§ 201.001(e) & 201.002(c)(2) & (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. EC § 201.002(d).</p> <ul style="list-style-type: none"> All to surviving spouse 	

C. Decedent's share of community property (EC § 201.003(b)(1))



3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))



4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

<p>If decedent is survived by both mother and father. EC § 201.001(c).</p> <ul style="list-style-type: none"> ■ 1/2 of all property to father ■ 1/2 of all property to mother 	<p>If decedent is survived (1) by mother or father and (2) by sibling(s) or their descendants. EC § 201.001(d)(1).</p> <ul style="list-style-type: none"> ■ 1/2 to siblings or to descendants of deceased siblings ■ 1/2 to surviving parent
<p>If decedent is survived by mother or father, but is not survived by any sibling(s) or their descendants. EC § 201.001(d)(2).</p> <ul style="list-style-type: none"> ■ All to surviving parent 	<p>If decedent is survived by neither parent, but is survived by sibling(s) or their descendants. EC § 201.001(e).</p> <ul style="list-style-type: none"> ■ All to siblings or to descendants of deceased siblings

¹ If none of the four situations above applies, see EC § 201.001(f)-(h).