



## TEXAS INTESTACY Rules of Descent and Distribution

### 1. Refresher on Community Property

Because inheritance rights largely depend on the character (separate or community) of the real property, the following refresher on what is community property and what is separate Property may be helpful.

Separate Property is property:	Community Property is property:
<ul style="list-style-type: none"><li>• Acquired before marriage;</li><li>• Acquired during marriage by gift, inheritance, or devise via a will; or</li><li>• Partitioned and agreed to be separate property after marriage</li></ul>	<ul style="list-style-type: none"><li>• (Other than separate property) Acquired by either spouse during marriage</li></ul>

And don't forget about these additional rules affecting the character of real property:

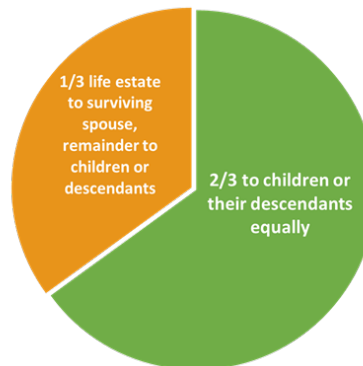
- **The Inception of Title Rule**
  - The character of property (as separate or community property) is determined at the time the owner first claims an ownership interest in the property
  - Example: Bob is single and purchases 123 Main Street on May 1, 2024. Bob marries Sue on July 1, 2024. 123 Main Street is Bob's separate property because he acquired it before he was married.
- **The Community Property Presumption**
  - Texas Family Code § 3.003(a) requires us to presume that property acquired and possessed by either spouse during marriage is community property.
  - This presumption can be overcome by "clear and convincing" evidence that it is separate property – but that's a fact issue we do not get into.
  - Example: Bob is married to Sue on July 1, 2024. On September 1, 2024, Bob purchases 456 First Avenue and is the sole grantee on the deed. 456 First Avenue is presumed to be Bob and Sue's community property because it was acquired during their marriage.
- **Homestead Rights and Community Property are not the same thing**
  - I can have homestead rights in my spouse's separate property.
  - Even if a couple's homestead property is one spouse's separate property, both spouses must sign the deed or deed of trust.

## 2. Decedent is Married at time of death and Property is Decedent's **SEPARATE** Property

### a. Decedent is Survived by a Child or Children

If decedent survived by spouse and a child or children

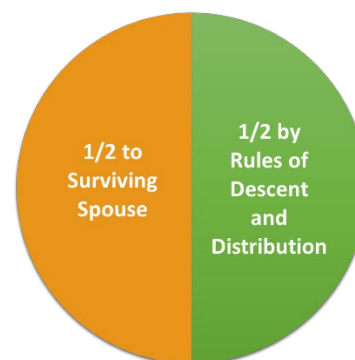
- Life estate in 1/3 of property goes to Surviving Spouse
- Remainder (after life estate in 1/3 terminates) goes to Decedent's children or their descendants
- Outright ownership of other 2/3 goes to Decedent's children or their descendants



### b. Decedent is NOT Survived by Any Children

If Decedent survived by spouse and no children or children's descendants

- $\frac{1}{2}$  goes to Surviving Spouse
- $\frac{1}{2}$  passes by Rules of Descent and Distribution (see page 4)




### c. Decedent is NOT Survived by Children, Parents, Siblings, or Siblings' Descendants

All to Surviving Spouse




### 3. Decedent is Married at time of death and Property is **COMMUNITY** Property

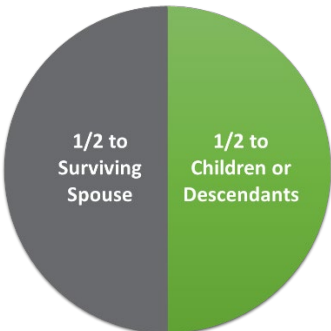
#### a. Decedent is Survived by a Child or Children(s)

<p>Where Decedent died <b><u>BEFORE September 1, 1993</u></b>:</p> <ul style="list-style-type: none"><li>• ½ of community estate goes to Surviving Spouse (the ½ half Surviving Spouse already owned)</li><li>• ½ to Decedent's children or their descendants</li></ul>	 <p>A pie chart divided into two equal halves. The left half is grey and labeled '1/2 to Surviving Spouse'. The right half is green and labeled '1/2 to Children or Descendants'.</p>
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#### b. Decedent is Survived by a Child or Children from Surviving Spouse

<p>Where Decedent died <b><u>ON OR AFTER September 1, 1993</u></b>:</p> <ul style="list-style-type: none"><li>• If all Decedent's children are also children of Surviving Spouse, then all goes to Surviving Spouse<ul style="list-style-type: none"><li>• <u>Note</u>: Surviving Spouse may have other children not by Decedent, but that does not affect inheritance rights here</li></ul></li></ul>	 <p>A pie chart that is entirely grey and labeled 'All to Surviving Spouse'.</p>
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#### c. Decedent is Survived by a Child or Children and at least one Child is **NOT** from Surviving Spouse

<p>Where Decedent died <b><u>ON OR AFTER September 1, 1993</u></b> and Decedent's children are NOT also children of Surviving Spouse:</p> <ul style="list-style-type: none"><li>• ½ of community estate goes to Surviving Spouse (the ½ half Surviving Spouse already owned)</li><li>• ½ to Decedent's children or their descendants<ul style="list-style-type: none"><li>• <u>Note</u>: Same result as before September 1, 1993</li></ul></li></ul>	 <p>A pie chart divided into two equal halves. The left half is grey and labeled '1/2 to Surviving Spouse'. The right half is green and labeled '1/2 to Children or Descendants'.</p>
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**d. Decedent is NOT Survived by a Child or Children or other Descendants of Decedent**

All to Surviving Spouse	
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**4. Unmarried Intestate Succession – “Rules of Descent and Distribution”**

- a. Goes first to Decedent’s **children or their descendants** (grandchildren, great grandchildren, etc.)
- b. If no children or their descendants, then goes to Decedent’s **father** and **mother** in equal shares
- c. If only 1 parent survives Decedent, then:
  - ½ goes to Decedent’s surviving parent, and
  - ½ goes to Decedent’s siblings and their descendants (i.e., Decedent’s nieces and nephews)
    - If there are no surviving siblings or siblings descendants, then all goes to Decedent’s surviving parent
- d. If parents did not survive Decedent, then all goes to Decedent’s siblings and their descendants
- e. If there are no surviving parents, no surviving siblings, and no surviving descendants of Decedent’s siblings, then the property is divided into halves – 1 half for Decedent’s maternal kindred and 1 half for Decedent’s paternal kindred – with each half distributed as follows:
  - If both Decedent’s grandparents are alive, then goes to grandmother and grandfather in equal shares
  - If only one grandparent is alive, then ½ goes to the surviving grandparent and the other ½ goes to the deceased grandparent’s descendants (i.e., Decedent’s uncles, aunts, cousins, etc.)
    - If there are no living descendants of the deceased grandparent, then all goes to the surviving grandparent
  - If both grandparents are deceased, then the share goes to the descendants of each grandparent

- f. If Decedent had no children, and Decedent's parents are both deceased, Decedent had no siblings, all of Decedent's grandparents are deceased, and none of Decedent's grandparents had any other children besides Decedent's parents, then Decedent's estate is escheated to the State of Texas

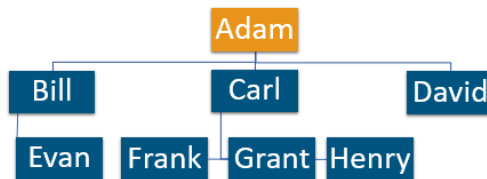
- This is VERY RARE. If you think you have this situation, contact Underwriting Counsel.

## 5. Multiple Heirs – Who Gets How Much?

a. Texas uses the **Per Capita with Representation** model – Texas Estates Code § 201.101

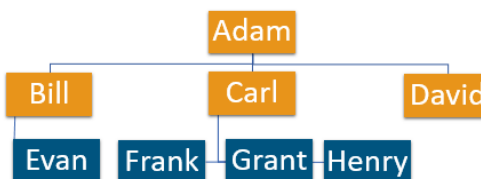
- If Decedent's heirs are all in the same degree of relationship to Decedent (*e.g.*, all children of Decedent) then each receives an equal share
- If all heirs are not in the same generation (*e.g.*, a child predeceased Decedent and now Decedent's remaining children and some grandchildren inherit), then the younger generation receives only the share that the older generation would have received

### Example 1:



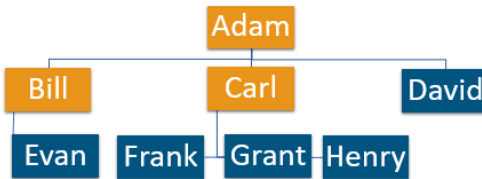
- Adam is deceased; everyone else survives
- Bill, Carl and David each receive 1/3

### Example 2:



- Adam is deceased; Bill, Carl and David predeceased Adam
- Evan, Frank, Grant and Henry each receive  $\frac{1}{4}$
- **Note:** Even if Bill and/or Carl left behind a spouse, spouse does not take their share – spouse is not related to decedent

### Example 3:



- Adam is deceased; Bill and Carl predeceased Adam
- David and Evan each receive 1/3
- Frank, Grant and Henry each receive 1/9

## 6. Frequently Asked Questions

Question	Answer
How do you handle <b>adopted children</b> ?	<ul style="list-style-type: none"><li>• An adopted child is considered to be the natural child of the adoptive parents<ul style="list-style-type: none"><li>○ The adopted child and his/her descendants inherit from and through the adoptive parent(s) and their family like a natural child</li><li>○ The adoptive parent(s) and their family inherit from and through the adopted child as if the adopted child were a natural child of the adoptive parent(s)</li></ul></li><li>• The adopted child also inherits from and through the child's <b>biological parent(s)</b></li><li>• <b>BUT</b> the biological parent(s) of the adopted child do not inherit from the adopted child</li></ul>
What is an <b>informal adoption</b> and how do you handle that?	<ul style="list-style-type: none"><li>• The theory of informal adoption (a.k.a. equitable adoption or adoption by estoppel) prevents someone claiming an inheritance under a deceased parent from denying that the informally adopted child was not legally adopted and entitled to inheritance rights.</li><li>• To establish informal adoption, the child must prove: (1) an agreement by the adoptive parent to adopt the child and (2) performance by the child (<i>i.e.</i>, live together like parent and child)</li><li>• If there is evidence that a child may have been informally adopted by a deceased parent, contact Underwriting Counsel to determine next steps.</li></ul>