Intestate succession is the legal scheme that determines what happens to a person's property if they die without a will or other estate plans. You should worry if you don't like how the scheme works and haven't taken steps to avoid it.

When a loved one passes away without a will, Texas intestate succession laws determine who handles their final affairs and who gets most of their property. If you don't have plans in place when you die, it doesn't matter what you tell people you want to happen—intestate laws will override your wishes unless you've taken legal steps to make your preferences enforceable.

Here, we review what happens when someone dies without an estate plan and simple ways to bypass the effects of intestate succession laws.

# How Does Intestate Succession Work in Texas?

When someone is "intestate" at the time they die, that means they didn't have a will. A will is a legal document, or testament, that explains what you want to happen when you pass away.

In your will, you can name someone to manage your estate, nominate a guardian for your minor children, and specify who should receive your property. Technically, a will distributes only property in your legal estate. You can take steps to keep property out of your estate, and that is one way to avoid the impact of intestate succession laws that we will explore shortly.

## How Probate Works When There is a Will

It is easier to understand intestate succession by contrasting it with the situation when someone has a will. In that situation, the person named to manage the deceased person's final affairs—known as the executor—takes the will to the probate court. The court approves the will and gives the executor authority to use the deceased person's assets to pay debts; then the remaining estate assets are distributed to the people named in the will.

### What Happens When There is No Will?

When someone dies without a will—in other words, intestate—Texas laws of intestate succession dictate who will manage the estate. That person asks the probate court for authority to serve as the estate's administrator. Then they pay bills just as they would if there was a will. The property left after debts are satisfied is then distributed to family members according to the hierarchy established by law, regardless of the deceased person's intentions.

## Who Inherits Property Under Texas Intestate Succession Laws?

Texas intestate inheritance laws lead to different outcomes depending on whether the deceased person has a living spouse or children. The type of property also affects distribution.

### If the Person Was Not Married

If someone dies intestate and they don't leave a widow or widower behind, then their property is divided among any children they have or the descendants of those children. If there are no living children, grandchildren, or great-grandchildren, then the property is divided equally between the deceased person's parents if they are still alive.

If only one parent is alive, then that parent gets half of the property, and the other half is divided among the deceased person's brothers and sisters and their descendants. If there are no living parents, the siblings get everything. If there are no siblings, nieces, nephews, or other descendants, then the property is divided into two halves referred to as "moieties." Half goes to distant relatives on the mother's side of the family and half goes to distant relatives on the father's side of the family.

### If the Person Was Married

Texas is a community property state, so property owned jointly by a married couple is treated differently from property considered one spouse's separate property. Generally speaking, community property includes all property acquired during the marriage, and separate property consists of property owned before the deceased person got married. Exceptions exist, so an attorney can explain how your property would be classified.

So, if the deceased person left a spouse behind, the husband or wife gets 1/3 of the deceased person's separate property, and the rest goes to the deceased person's children. The spouse also gets a lifetime interest in 1/3 of the deceased person's real estate. Jointly owned community property might all go to the spouse, but if there are children from another relationship, then those children or their descendants have a claim on some of the community property.

### Problems with Intestate Property Succession

Saying the rules of property distribution are complicated is a massive understatement. However, a probate attorney can apply the rules to your particular situation and describe the outcome.

The real problem with intestate succession rules is that they have no way to take your personal situation into account. You might want to provide for a grandchild you're close to rather than a son or daughter you're estranged from, but the law gives priority to the son or daughter. You can tell someone you want them to have your property when you pass away, but unless you memorialize your wishes in a will or other legal document, the law will ignore them.

## What Property is Not Part of the Estate?

Property is not part of a deceased person's estate if it fits a legal exception. Intestate succession laws only apply to property that is part of a deceased person's estate. In this case, the word "estate" is a legal team that refers to all property left behind that does not fit into an exception.

Property does not become part of a deceased person's estate if:

- It is jointly owned by someone who has the right of survivorship
- It has a beneficiary clause that passes ownership to a beneficiary
- It is a life insurance policy that goes directly to a beneficiary
- It has a payable on death clause
- It is held in a trust

Someone might own quite a bit of property but make arrangements so that none of it becomes part of an estate.

For instance, the deed to their house might list a co-owner with a right of survivorship who takes outright ownership of the house immediately upon death. They might have beneficiary designations on their retirement accounts so the assets go directly to the named person. Or they might have transferred property to a revocable living trust. The goal of many estate plans is to ensure all property transfers outside the probate process, so there is no estate to distribute through intestate succession or a will.

# FAQs About Intestate Succession in Texas

## If you don't have a will, does your family still have to deal with probate?

Yes, Texas probate requirements apply regardless of whether there was a will.

## If you don't have a will, does your spouse automatically inherit everything?

The spouse will not inherit everything unless the deceased person had no children or other descendants. These family members are entitled to a share of the deceased person's separate property and possibly also some of the marital community property as well. If you want your spouse to have everything, you need to plan ahead.

### Can intestate succession be avoided?

Absolutely! The quickest way to avoid intestate succession is to work with an estate planning attorney to prepare a will that meets all Texas legal requirements so it cannot be challenged. You can also avoid intestate succession by arranging asset ownership so all property passes directly to others and doesn't become part of an estate.

### What should you do if a family member dies without a will in Collin County?

If a family member passes away and you don't know whether they have prepared a will, it is a good idea to:

- Search through papers to be certain there is no will
- Get the death certificate of the deceased person
- Make a list of the deceased person's assets and debts. If there is a co-owner or shared debt, make a note of it
- Make a list of all potential heirs (spouse, children, grandchildren, etc.)
- Collect information about accounts such as account numbers and beneficiaries
- Prevent anyone from taking property and avoid selling any property unless the court gives you authority to do so

Contact a probate attorney as soon as possible for advice. If the value of property in the estate is low, you might be able to use a small estate process to settle matters. However, if full probate is required and there is more than one heir, Texas courts require an attorney to handle the estate to ensure everyone's rights are protected.

## The Nordhaus Firm Can Help with Planning and Probate in Texas

Texas law sets complex requirements for handling property when someone passes away, and there is no way to avoid the consequences. You can either do the work ahead of time to plan so your property is managed the way you want, or you can do

nothing and let Texas intestate succession laws dictate how it’s managed and distributed.

The Nordhaus Firm provides compassionate, knowledgeable assistance whether you are planning for the future or dealing with probate now. We offer free consultations so you can talk with us and learn about your next steps at no cost and with no obligation. To schedule your free consultation, just call us at 214-726-1450 or contact us online now.