Texas Intestate Succession

Descent and Distribution Reference · Texas Estates Code Chapter 201

Community and separate property

Texas is a community property state, so intestate succession starts with characterizing each asset. Property acquired by either spouse during the marriage, other than by gift or inheritance, is presumed community. Property owned before marriage or received during marriage by gift, devise, or descent is separate. The community estate and the separate estate pass under different rules, and separate real property passes differently from separate personal property. Chapter 201 of the Texas Estates Code governs. One date matters throughout: September 1, 1993, when the rule for community property passing to children changed.

Married person · community property

Situation	Community property (both halves)
No surviving children or descendants	The surviving spouse takes the entire community estate. (§ 201.003(b)(1))
Surviving children or descendants, all of whom are also the surviving spouse's	The surviving spouse takes the entire community estate. (§ 201.003(b)(2))
A surviving child or descendant who is not also the surviving spouse's	The decedent's one-half of the community passes to the decedent's children and descendants, per capita with representation. The surviving spouse keeps their own one-half. (§ 201.003(c))
Death before September 1, 1993, with children	Historical rule for old chains of title: the decedent's one-half of the community passed to the children even when all children were of the marriage, and the spouse kept their one-half. (former Probate Code § 45)

Married person · separate property

Situation	Separate personal property	Separate real property (land and minerals)
Survived by children or their descendants	One-third to the surviving spouse; two-thirds to the children and their descendants.	The children and descendants take the land, subject to a life estate in one-third for the surviving spouse. The spouse holds a one-third life estate only; the children hold the remainder and the other two-thirds outright. (§ 201.002(b))
No children or descendants; survived by a parent, sibling, or their descendants	All to the surviving spouse.	One-half to the surviving spouse outright. The other one-half passes under § 201.001: if both parents survive, each parent takes one-fourth; if one parent plus siblings survive, that parent takes one-fourth and the siblings share one-fourth; if one parent and no siblings, that parent takes the full one-half; if only siblings survive, they share that one-half. (§ 201.002(c))

Situation	Separate personal property	Separate real property (land and minerals)
No children or descendants, parents, or siblings or their descendants	All to the surviving spouse.	All to the surviving spouse. (§ 201.002(d))

Single, widowed, or divorced person · no surviving spouse

These rules govern the whole estate when there is no surviving spouse. They also control the shares of separate real property that do not pass to a surviving spouse under the tables above.

Survivors	Distribution of the entire estate
Children or their descendants	Entire estate to the children and their descendants, in equal shares, with a deceased child's share passing to that child's descendants. (§ 201.001(b))
No descendants; both parents living	One-half to the father, one-half to the mother. (§ 201.001(c))
No descendants; one parent living, plus siblings or their descendants	One-half to the surviving parent; one-half to the siblings and their descendants. (§ 201.001(d)(1))
No descendants; one parent living, no siblings	Entire estate to the surviving parent. (§ 201.001(d)(2))
No descendants or parents; siblings or their descendants	Entire estate to the siblings and their descendants. (§ 201.001(e))
No descendants, parents, or siblings	The estate splits into two equal halves, one-half to the paternal kindred and one-half to the maternal kindred, passing to the nearest lineal ancestors and their descendants. (§ 201.001(f) through (h))

Key definitions

Term	Meaning
Community property	Property acquired by either spouse during the marriage, other than by gift, devise, or descent. Anything acquired during the marriage is presumed community, and minerals bought or leased during the marriage are presumptively community.
Separate property	Property owned before marriage, or acquired during marriage by gift, devise, or descent, along with certain personal-injury recoveries.
Per capita with representation	The estate is divided into equal shares at the first generation that has a living member. A deceased member's share drops to that member's descendants. (§ 201.101)
Life estate	The right to use property and take its income for life. On the life tenant's death the property belongs to the remainder holders. The surviving spouse's one-third in separate land is a life estate, not ownership.
Moiety	One of the two equal halves the estate is divided into when it passes to paternal and maternal kindred.

Term	Meaning
Descendant / issue	A person's lineal descendants: children, grandchildren, and so on down the line.

Texas mineral title & probate notes

Topic	Note for title work
Characterize the interest first	Before any chart applies, determine whether the mineral interest is community or separate. The two distribute very differently, and the community presumption is strong for anything acquired during the marriage.
Affidavit of heirship	A recorded affidavit of heirship (Estates Code § 203.001) is the common way to show heirs in a mineral chain. It becomes prima facie evidence of the facts stated once it has been on file in the deed records for five years.
Determination of heirship	A court proceeding under Chapter 202 produces a judgment declaring the heirs and their shares. It is stronger than an affidavit and is often required by title examiners on larger interests.
The spouse's one-third life estate	In separate real property with children, the surviving spouse holds only a life estate in one-third. Both that life estate and the children's remainder have to be shown, and on the spouse's death the life estate ends and title consolidates in the remaindermen.
Small estate affidavit	A small estate affidavit (Chapter 205) cannot transfer real property other than the homestead, so it rarely clears mineral title.
The September 1, 1993 line	For deaths before September 1, 1993, community property with children followed the older rule. Old chains of title turn on the exact date of death.