Texas Descent and Distribution
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))

- 1/3 to surviving spouse
- Children take 2/3 equally

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

- Surviving spouse gets 1/3 life estate
- Children take all equally, subject to surviving spouse’s 1/3 life estate

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))

- All to surviving spouse

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))

- All to children, who take equally

Surviving spouse takes none, but retains own share

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1 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 stripes); § 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).

Compliments of Judge Guy Herman, Travis County Probate Court No. 1
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))

- All to surviving spouse

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

- If decedent is survived by **both** mother and father.
  - EC § 201.001(c) & 201.002 (c)(2) & (3).
  - 1/4 to father
  - 1/4 to mother
  - 1/2 to surviving spouse

- 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).
  - 1/4 to surviving parent
  - 1/4 to siblings, etc.
  - 1/2 to surviving spouse

- 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).
  - 1/2 to surviving parent
  - 1/2 to surviving spouse

- 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).
  - 1/2 to siblings, etc.
  - 1/2 to surviving spouse

- If decedent is survived by no parent, no sibling, and no descendant of a sibling.
  - EC § 201.002(d).
  - All to surviving spouse

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

- All to surviving spouse

Compliments of Judge Guy Herman, Travis County Probate Court No. 1
3. Unmarried Person with Child[ren] or Other Descendants

(EC § 201.001(b))

- All to children, who take equally

4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

EC § 201.001(c). If decedent is survived by both mother and father.
- 1/2 of all property to father
- 1/2 of all property to mother

EC § 201.001(d)(1). If decedent is survived (1) by mother or father and (2) by sibling(s) or their descendants.
- 1/2 to siblings or to descendants of deceased siblings
- 1/2 to surviving parent

EC § 201.001(d)(2). If decedent is survived by mother or father, but is not survived by any sibling(s) or their descendants.
- All to surviving parent

EC § 201.001(e). If decedent is survived by neither parent, but is survived by sibling(s) or their descendants.
- All to siblings or to descendants of deceased siblings

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