

THE BASICS OF TEXAS INTESTATE SUCCESSION LAW

by

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The ability to specify the new owners of property upon death is an important and powerful privilege that each state grants to its citizens. The odds are, however, that you have not executed a will and if so, you would be in good company. Many famous and wealthy people have died intestate including President Abraham Lincoln and Texas billionaire Howard Hughes. Surveys reveal that between 60-75% of Americans die intestate. Intestacy causes the decedent's property to pass to those individuals whom the state government believes the decedent would have wanted to receive the decedent's probate estate upon death. None of the decedent's family members or friends are allowed to present evidence to show that the decedent actually wanted his or her property to pass to them or to a charity. This article provides an introduction into the operation of Texas intestacy law.

I. Reasons Most Texans Die Intestate

Why do so many Texans fail to take advantage of their ability to write a will and control how their property is distributed upon death?

A. Lack of Property

One of the most commonly cited reasons people do not have wills is that they own very little property. There are, however, very important reasons for everyone, even persons with limited estates, to have a valid will. For example, the surviving parent of a minor child has the ability to nominate a guardian for the child's person and property in the parent's will. This is better than forcing the court to make the selection because the court may choose a person the parent would not have wanted to control the child's personal or financial affairs. Another reason to have a will is that just because the estate is small now, does not mean it will not be large at the time of death. A person could win the lottery or a mail order sweepstakes, inherit a hefty sum of money under intestacy, be a significant will beneficiary, or land a high-paying job. Additionally, the person could die in a manner which gives the person's estate a winnable survival action against the individual or business that contributed to the death, such as a drunk driver or the manufacturer of a defective vehicle.

B. Unaware of Importance