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GUIDE TO TEXAS INTESTACY

Understanding Your Options When Someone Dies Without a Will

This guide has been prepared to help families understand the legal procedures available when a person dies without a Last Will and Testament. Every estate is different, and the appropriate procedure depends upon the nature and value of the assets owned by the Decedent, the Decedent's family circumstances, and the legal issues involved. This guide has been prepared for educational purposes only and should not be construed as legal advice.

Introduction

When a person dies without leaving a valid Last Will and Testament, they are said to have died "intestate." In that situation, Texas law - not the Decedent - determines who inherits the Decedent's property.

One of the first questions family members often ask is, "What do we need to do now?"

The answer depends upon the type of property owned by the Decedent and what must be accomplished. In some cases, no court proceeding is necessary. In other cases, a formal probate proceeding is required.

The three most common procedures used in Texas are:

- **Affidavit of Heirship;**
- **Small Estate Affidavit; and**
- **Application to Determine Heirship and Appoint an Independent Administrator.**

Each serves a different purpose.

Affidavit of Heirship

An Affidavit of Heirship is the simplest and least expensive method of documenting a Decedent's family history and heirs.

Rather than opening a probate proceeding, two disinterested witnesses who were familiar with the Decedent's family history sign sworn affidavits describing the Decedent's marital history, children, and other heirs. The Affidavit is then recorded in the real property records of the county where the Decedent owned real estate.

An Affidavit of Heirship does not appoint an executor or administrator, does not transfer title by court order, and does not authorize anyone to act on behalf of the estate. Instead, it creates evidence of the identity of the Decedent's heirs.

Affidavits of Heirship are most commonly used when:

- The estate has no need for a formal probate proceeding;
- There are few or no debts;
- The family agrees regarding the identity of the heirs;
- The primary asset is real estate; and
- A title company is willing to rely upon the recorded Affidavit.

Because an Affidavit of Heirship is not a judicial determination of heirship, some financial institutions and title companies may require a more formal probate proceeding before recognizing ownership of estate assets.

Small Estate Affidavit

A Small Estate Affidavit is a simplified probate procedure authorized by the Texas Estates Code for certain small estates. Unlike an Affidavit of Heirship, a Small Estate Affidavit must be approved by the Probate Court before it becomes effective.

Generally, this procedure is available only when:

- The Decedent died without a Will;
- The value of the estate, excluding the homestead and exempt property, does not exceed \$75,000, which is the current statutory limit established by Texas law;
- The estate is solvent;
- The heirs are known; and
- The statutory requirements have otherwise been satisfied.

If approved by the Court, a Small Estate Affidavit may be used to collect certain estate assets without the appointment of an administrator.

Although this procedure is often less expensive than a formal administration, it is not available in every case. The nature of the assets and the existence of creditors frequently determine whether a Small Estate Affidavit is appropriate.

Application to Determine Heirship and Appoint an Independent Administrator

When a more formal probate proceeding is necessary, the appropriate procedure is often an Application to Determine Heirship and Appoint an Independent Administrator.

This proceeding asks the Probate Court to:

- Determine the Decedent's legal heirs;
- Appoint an Independent Administrator to administer the estate; and
- Authorize the issuance of Letters of Independent Administration.

Unlike an Affidavit of Heirship or Small Estate Affidavit, this is a formal probate proceeding conducted under the supervision of the Probate Court.

The Heirship Proceeding

After the Application has been filed, the Court appoints an Attorney Ad Litem to represent the interests of any unknown or missing heirs.

The Attorney Ad Litem conducts an independent investigation of the Decedent's family history, interviews the proposed administrator, meets with two disinterested heirship witnesses, and files a written report with the Court identifying the Decedent's legal heirs.

Once the investigation has been completed, the Court conducts a probate hearing. During the hearing, testimony is presented regarding the Decedent's family history, and the Court enters a Judgment Declaring Heirship identifying the persons entitled to inherit under Texas law.

Appointment of an Independent Administrator

If requested, the Court may also appoint an Independent Administrator to administer the estate.

After qualifying by taking the required oath and filing any required bond, the Independent Administrator receives Letters of Independent Administration, which authorize the administrator to act on behalf of the estate.

The Independent Administrator is then responsible for collecting estate assets, publishing the required Notice to Creditors, obtaining an Employer Identification Number (EIN) for the estate, opening an estate bank account when appropriate, preparing the Inventory or Affidavit in Lieu of Inventory, paying valid debts and expenses, and ultimately distributing the remaining estate assets to the heirs determined by the Court.

Which Procedure Is Right for My Family?

There is no single probate procedure that is appropriate for every estate.

In general:

An **Affidavit of Heirship** is often appropriate when no formal administration is necessary and the family simply needs evidence of the Decedent's heirs for purposes of transferring real property.

A **Small Estate Affidavit** may be appropriate when the estate qualifies under the Texas Estates Code and the statutory requirements have been satisfied.

A **Determination of Heirship and Independent Administration** is generally appropriate when a formal probate proceeding is necessary to administer estate assets, resolve creditor issues, transfer title, or otherwise settle the Decedent's affairs.

During your consultation, we will review the assets, debts, and family circumstances to determine which procedure is most appropriate for your particular situation.

How Estes Law Office Can Help

Every intestate estate presents its own unique circumstances. Our office will review your family's situation, explain the available options, and recommend the procedure that best accomplishes your goals while complying with the Texas Estates Code.

If a formal probate proceeding is necessary, we will guide you through each stage of the administration—from preparing the initial application through the final distribution of estate assets. If a less formal procedure is appropriate, we will explain its advantages and limitations so that you can make an informed decision.

Final Thoughts

The loss of a loved one is difficult enough without having to navigate unfamiliar legal procedures. Fortunately, Texas law provides several methods for handling an intestate estate, and choosing the appropriate procedure at the outset can often save significant time and expense.

If your loved one died without a Will and you are uncertain which procedure is appropriate, we encourage you to schedule a consultation with our office. We will review the circumstances of the estate, answer your questions, and recommend the probate procedure that best fits your family's needs.