

# INTESTACY IN TEXAS

## COMMONLY ASKED QUESTIONS AND PRACTICAL CONCERNS

*To Help Shed Some More Light on Intestacy in Texas and to Give You Some Idea of the Practical Realities that Will Take Place When You Have to Deal With an Intestate Estate, Let's Take a Look at Some Common Questions*



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Texas Estate Planning Attorneys

In our second white paper on intestacy in the state of Texas, we're going to take a closer look at some commonly asked questions and practical concerns. A lot of what you read about intestacy can seem pretty academic or legalistic. But, when someone in your family dies without leaving behind a will or an estate plan, intestacy becomes all too real. So, to help shed some more light on the topic and to give you some idea of the practical realities that will take place when you have to deal with an intestate estate, let's take a look at some common questions.

### **WHAT WILL I INHERIT AS A SPOUSE?**



When a spouse dies without leaving behind a last will and testament in Texas, the surviving spouse is automatically entitled to receive a portion of the estate regardless of who else survives the decedent. Texas is a

community property state. This means that the property owned by married people is divided into two general categories: community property and separate property.

When a spouse dies, the surviving spouse is automatically entitled to receive the couple's community property. Community property is any

property the couple acquired while they were married. However, community property does not include inheritances given to the deceased spouse, or gifts that spouse acquired during the marriage.

The separate property left behind by a deceased spouse will be divided in accordance with the intestacy rules of the state of Texas. Like the intestate estate distribution laws we discussed in our last white paper, the amount of separate property the spouse inherits will depend on who survives.

For example, if a decedent leaves behind a spouse and children who were also children of that spouse, the spouse will receive all the community property, as well as one-third of any separate property the decedent owned, as well as the right to use any real estate for life. The remaining two-thirds of the separate property will then be divided between the children. (Of course, this is only one example of the many possible scenarios that a surviving spouse might face.)

### **WILL I HAVE TO PAY THE DEBT LEFT BEHIND BY A FAMILY MEMBER?**

Probably not. When a person dies leaving behind unpaid debts, those debts must still be repaid. The inevitable question then becomes; who will have the legal responsibility to repay them?

In general, it falls to the decedent's estate to repay any unpaid obligations or debts. Here's how it works.



After someone dies intestate in the state of Texas, someone will have to go before Texas probate court and ask the court to start a new case. That person will also request that the court appoint him or her to represent the estate. The person or organization the court appoints is known as the administrator. The administrator will receive the legal authority to begin inventorying, managing, and distributing the estate property. This is known as “settling” the estate.

As part of the estate settlement process, the personal representative will have to notify creditors that the decedent has died. The creditors will then have a limited amount of time in which to file a claim if they believe the decedent owed them any debts. The personal representative will then have to review these claims, determine if they are valid, and use estate assets to pay them.

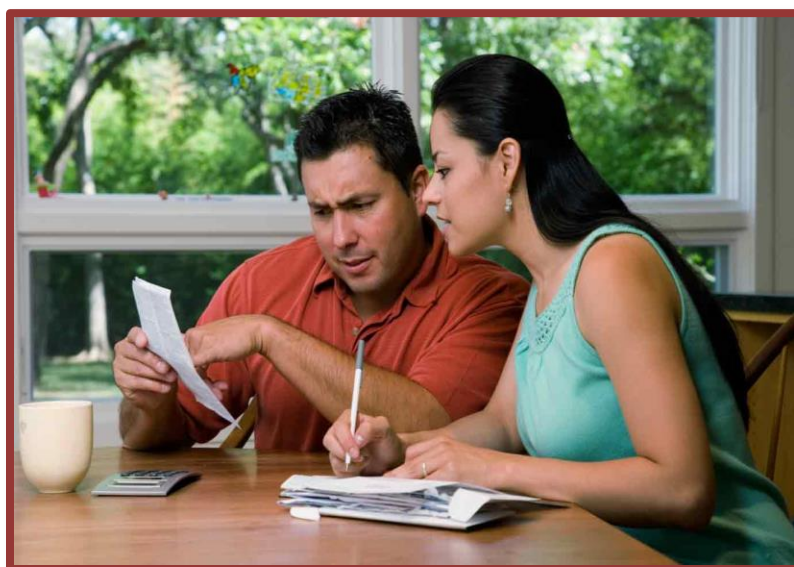
If there isn't enough money to pay all the debts, some of the debts will go unpaid. Additionally, those who would have inherited from the

intestate estate will not receive an inheritance because there is nothing left over to give them.

### **WHAT ABOUT JOINT DEBTS?**

The key exception to the debt question is when someone holds a joint debt with the decedent. For example, let's say your father dies leaving behind an intestate estate.

You and your two siblings stand to inherit his estate, but that estate also includes debts. Neither you nor your siblings will have to pay for those debts unless any of you had a joint debt with your father.



So, if your father left behind a partially unpaid mortgage, you would not be responsible for paying it. However, if you were a cosigner on the mortgage, you would still be responsible for those payments.

### **CAN I CHOOSE MY OWN REPRESENTATIVE OR AVOID PROBATE?**

The unequivocal answer to this question is; yes. Every capable adult in the state of Texas can avoid intestacy and make inheritance choices.



They can also choose who they want to serve as their estate representatives or executors.

By taking the appropriate steps to create an estate plan and avoid intestacy, all the headaches and

predetermined inheritance questions that are addressed by intestacy laws become moot. A good estate plan will give you the ability to make whatever inheritance choices you want, allow you to name the executor of your choosing, and will give your family the knowledge that they are doing what you would have wanted them to do.

In short, choosing to create an estate plan will benefit you, your family, and your estate. Call our offices today for more information on how you can get started.

## About the Author

### John R. Vermillion



John R. Vermillion works as an estate planning and probate attorney and is licensed to practice in Texas, Louisiana, Oklahoma, and Tennessee. A native Texan, he graduated from Texas Christian University in 1974 receiving a Bachelor of Arts Degree in Political Science. In 1977, he received his Juris Doctor degree from the Louisiana State University Law School.

Upon graduation from law school, Mr. Vermillion worked extensively as a corporate attorney in the fields of oil and gas exploration and production, real estate development, finance and estate planning. He served for many years as corporate counsel and Vice President of a private independent oil and gas company.

Mr. Vermillion is a member of the State Bar of Texas, the Dallas Bar Association, the Louisiana State Bar Association, the Oklahoma Bar Association, and the Tennessee Bar Association. He is a member of the American Academy of Estate Planning Attorneys and the National Academy of Elder Law Attorneys.

Also active in his community, he currently serves as a director for the Charles Coody Classic Golf Tournament which benefits Catholic Charities of Fort Worth, Texas. A member of the French-American Chamber of Commerce, Louisiana Chapter, Mr. Vermillion pursues their goal of promoting and developing commercial and financial relations between France and the United States. In addition, he serves on the TCU Dallas Alumni Board and sponsors the Dallas area NAMI Walkathon (National Alliance for Mental Illness).

Coming from a family of entrepreneurs, Mr. Vermillion has owned and operated his own businesses, including an historic inn. His experience has given him a hands-on understanding of the legal and practical issues facing his clients and their estate planning needs.

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