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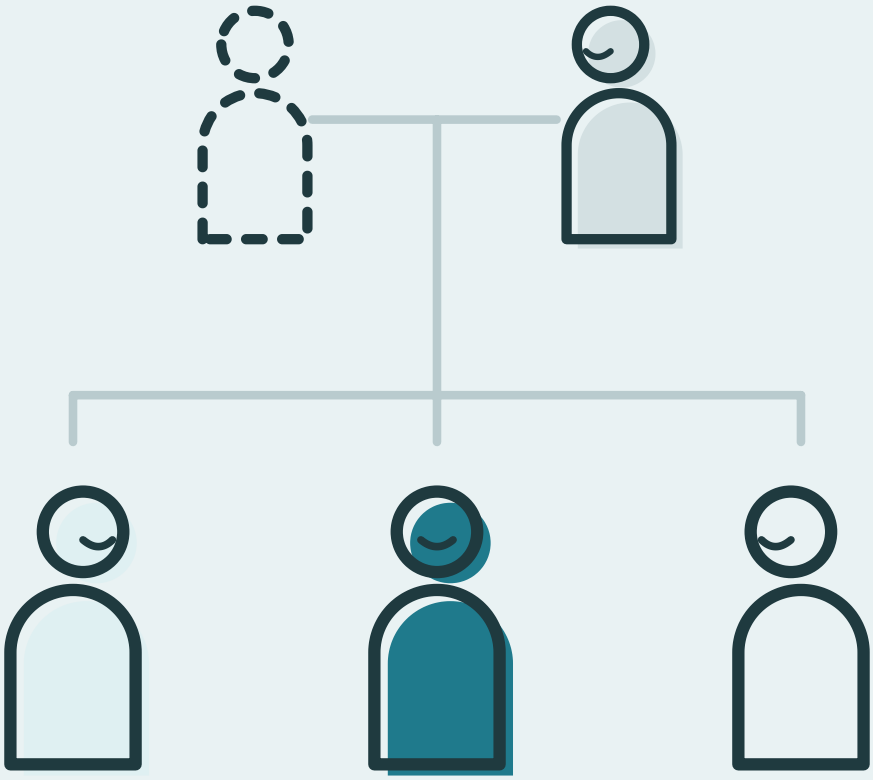
Who Inherits the House?

How Texas law divides a home when the owner dies without a will, shown in sixteen families



A free companion to the Texas Intestate Succession Chart

How to use this book

When someone dies without a will, Texas intestate succession law decides who inherits their real estate. The answer depends on the family: whether the person was married, whether they had children, and which relatives were alive when they died.

Each page of this book is one family. Find the family that looks most like yours. Its page shows who inherits the house and how much each person gets.

Find your family in two questions

Was the person married when they died?

No → **Part 1, page 4**

Yes → Next question ↓

Did the person have children?

No → **Part 2, page 10**

Yes → **Part 3, page 16**

How to read the pictures



A dashed outline is the person who died, or a relative who died before them.



A colored figure inherits. Their share is printed under them.

A pale figure is a relative who inherits nothing.



The bar under each family shows who owns the house now, and how much.

Two things to know first

1. These rules are for real estate: land, and anything built on it, such as a house.

2. If the house is still in the names of a couple who have both died, use this book once for each death, starting with the one who died first.

Underlined words are explained in the Glossary on page 20. Each rule names the Texas statute it comes from; the Sources are on page 21.

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PART 1 Not married

The children inherit all, in equal shares Has children. 4

Both parents inherit, half each No children. Both parents alive. 5

One parent inherits half; the brothers and sisters share half No children. One parent alive, and a brother or sister. 6

The one living parent inherits all No children. One parent alive, no brothers or sisters. 7

The brothers and sisters inherit all No children or parents. A brother or sister alive. 8

The two sides of the family split it No children, parents, brothers or sisters. 9

PART 2 Married, no children

The spouse inherits all of it The house is community property. 10

Half to the spouse, half to the parents Separate property. Both parents alive. 11

Half to the spouse; the parent and the brother share the rest Separate property. One parent alive, and a brother or sister. 12

Half to the spouse, half to the one living parent Separate property. One parent alive, no brothers or sisters. 13

Half to the spouse, half to the brothers and sisters Separate property. No parents; a brother or sister alive. 14

The spouse inherits all of it Separate property. No parents, brothers or sisters. 15

PART 3 Married, with children

The children own it all. The spouse may use 1/3 for life. The house is separate property. 16

The spouse keeps her half; the children inherit his half Community property. Died before September 1, 1993. 17

The spouse keeps her half; all the children share his half Community property. A child with someone else. 18

The spouse inherits all of it Community property. Children only with the spouse. 19

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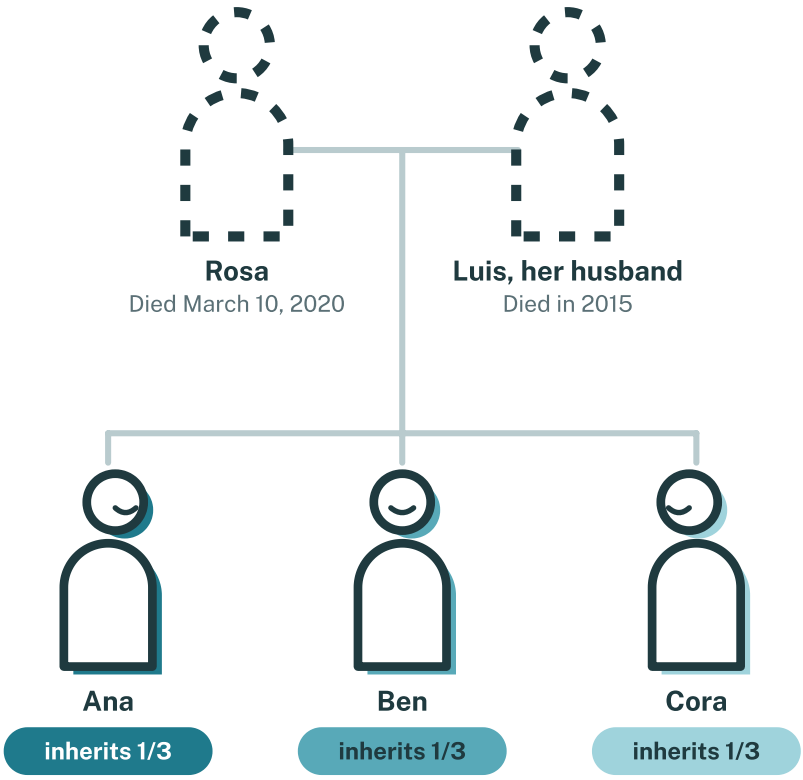
Part 1: Not married Married? No → Children? Yes

The children inherit all, in equal shares

Rosa died without a will on March 10, 2020. She was a widow: her husband, Luis, died in 2015. Her three children, Ana, Ben and Cora, are alive.



Who inherits Rosa's house

Her three children own it together, a third each.

Ana 1/3	Ben 1/3	Cora 1/3

The rule

When the person was not married and had children, the children inherit all of it, in equal shares.

Texas Estates Code §201.001(b)

Not quite your family?

- A child died before Rosa? That child's own children share the child's part. See who counts as a child.
- Rosa was still married when she died? **Go to Part 3, page 16**.

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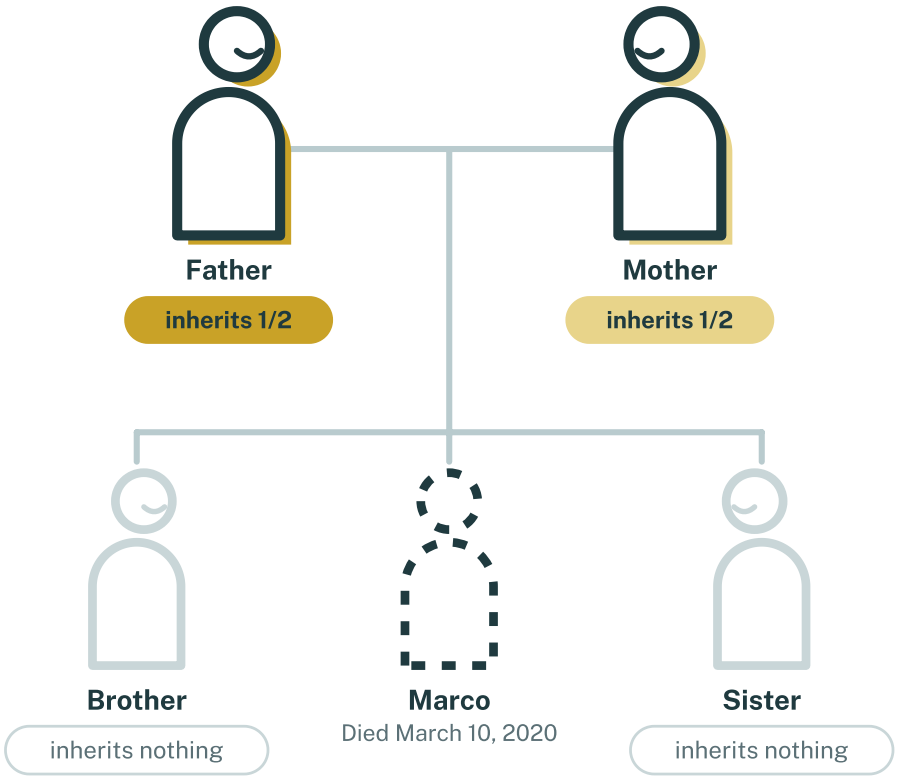
Part 1: Not married Married? No → Children? No → Both parents alive? Yes

Both parents inherit, half each

Marco died without a will on March 10, 2020. He never married and had no children. His mother and father are both alive. He also has a brother and a sister.



Who inherits Marco's house

His parents own it together, half each.

Father 1/2	Mother 1/2

The rule

When the person had no spouse and no children, and both parents are alive, the parents inherit the real estate in equal shares. Brothers and sisters inherit only when a parent has died.

Texas Estates Code §201.001(c)

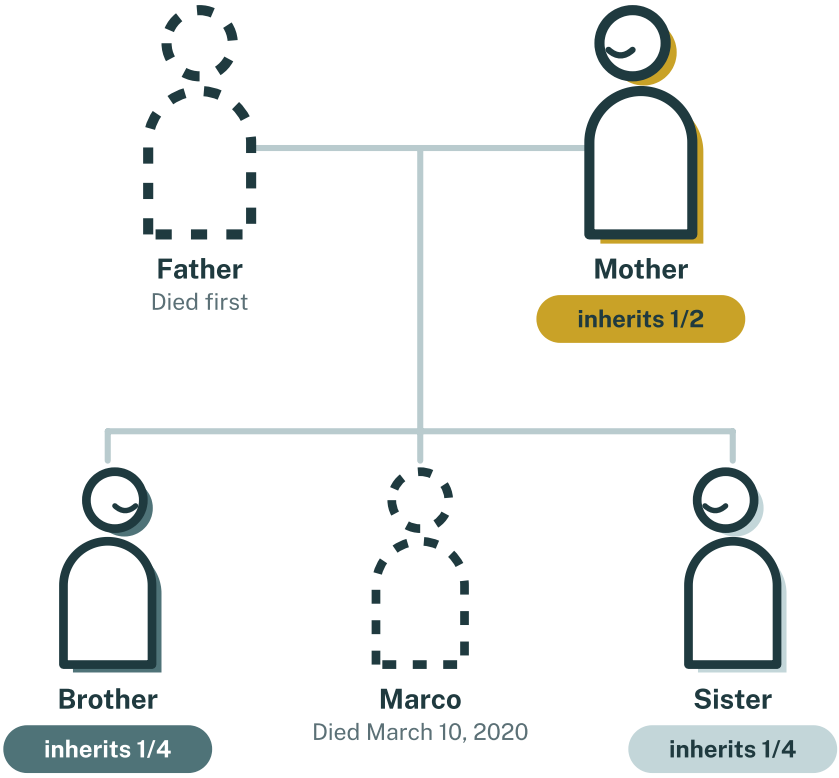
Not quite your family?

- Only one parent is alive, with a brother or sister? **Go to page 6**.
- Only one parent is alive, with no brother or sister? **Go to page 7**.
- A parent died within 5 days after Marco? That parent counts as having died first. See what "alive" means.

Part 1: Not married Married? No → Children? No → Both parents alive? No → One parent, and a brother or sister? Yes

One parent inherits half; the brothers and sisters share half

Marco died without a will on March 10, 2020. He never married and had no children. His father died before him. His mother, his brother and his sister are alive.



Who inherits Marco's house

His mother owns half. His brother and sister own a quarter each.

Mother 1/2	Brother 1/4	Sister 1/4

The rule

When only one parent is alive, that parent inherits half. The brothers and sisters share the other half equally.

Texas Estates Code §201.001(d)(1)

Not quite your family?

- No brother or sister? **Go to page 7**.
- A brother or sister died first and left children? Those children share their parent's part. See who counts as a brother or sister.

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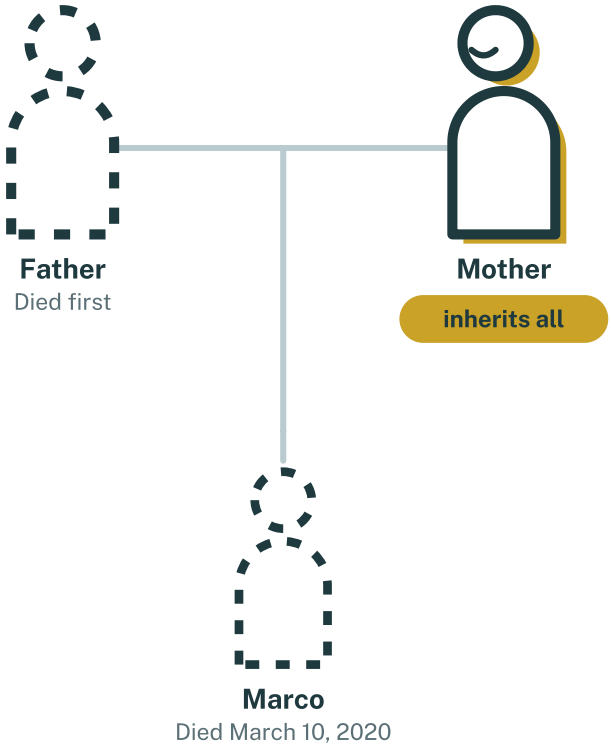
Part 1: Not married Married? No → Children? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? Yes

The one living parent inherits all

Marco died without a will on March 10, 2020. He never married and had no children. His father died before him. His mother is alive. He has no brothers or sisters.



Who inherits Marco's house

His mother owns all of it.

Mother, all

The rule

When only one parent is alive and there are no brothers or sisters (and no children of a brother or sister who died first), that parent inherits all of it.

Texas Estates Code §201.001(d)(2)

Not quite your family?

- A brother or sister is alive? **Go to page 6**.
- Both parents are alive? **Go to page 5**.

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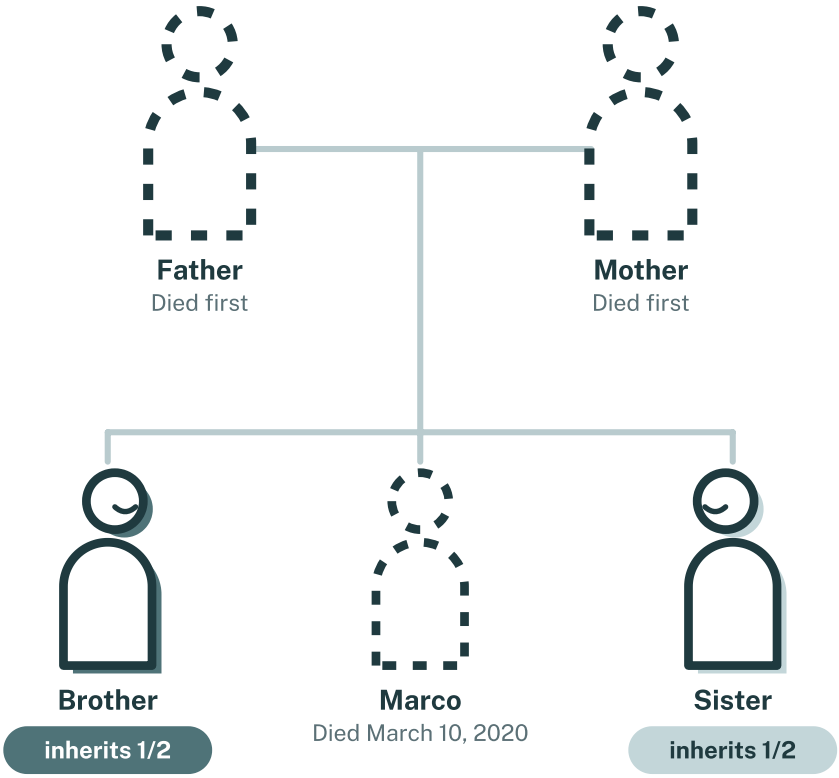
Part 1: Not married Married? No → Children? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? No → A brother or sister? Yes

The brothers and sisters inherit all

Marco died without a will on March 10, 2020. He never married and had no children. Both his parents died before him. His brother and his sister are alive.



Who inherits Marco's house

His brother and sister own it together, half each.

Brother 1/2	Sister 1/2

The rule

When there is no spouse, no child and no living parent, the brothers and sisters inherit all of it, in equal shares.

Texas Estates Code §201.001(e)

Not quite your family?

- A brother or sister died first and left children? Those children share their parent's part. See who counts as a brother or sister.
- No brothers or sisters at all? **Go to page 9**.

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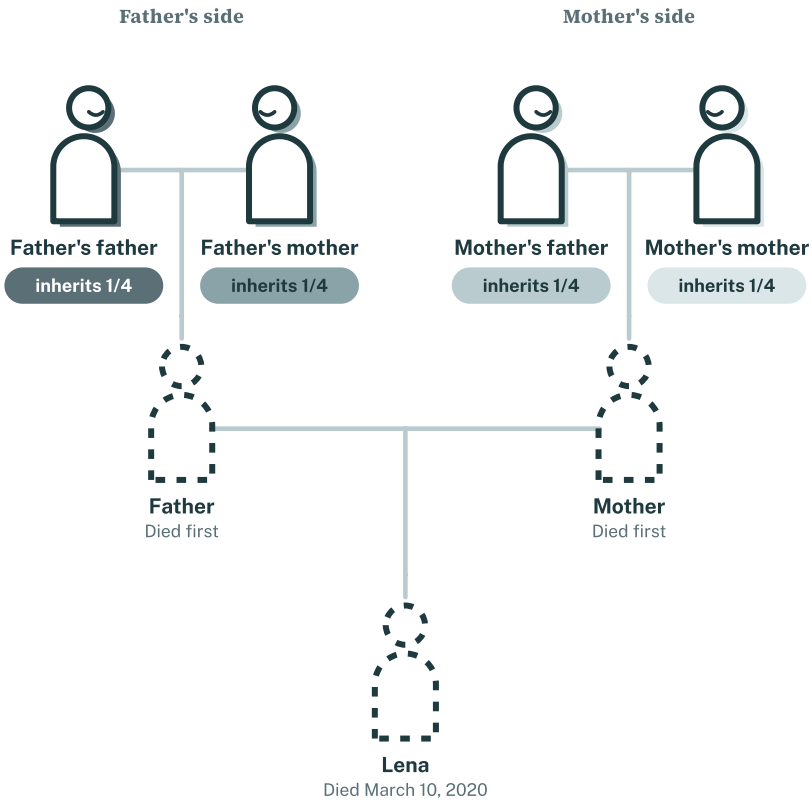
Part 1: Not married Married? No → Children? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? No → A brother or sister? No

The two sides of the family split it

Lena died without a will on March 10, 2020. She never married and had no children. Her parents died before her, and she had no brothers or sisters. All four of her grandparents are alive.



Who inherits Lena's house

Half goes to each side. On each side, the two grandparents share it.

Father's father 1/4	Father's mother 1/4	Mother's father 1/4	Mother's mother 1/4

The rule

When there is no spouse, child, parent, brother or sister, half goes to the father's side and half to the mother's side. On each side, the two grandparents share their half.

Texas Estates Code §201.001(f) to (h)

Not quite your family?

- A grandparent died first? Their part goes to their children, such as an aunt or uncle. If there are none, it goes to the other grandparent on that side. See how the father's side and the mother's side work.
- Nobody is left on one side? The other side inherits all. See how the father's side and the mother's side work.

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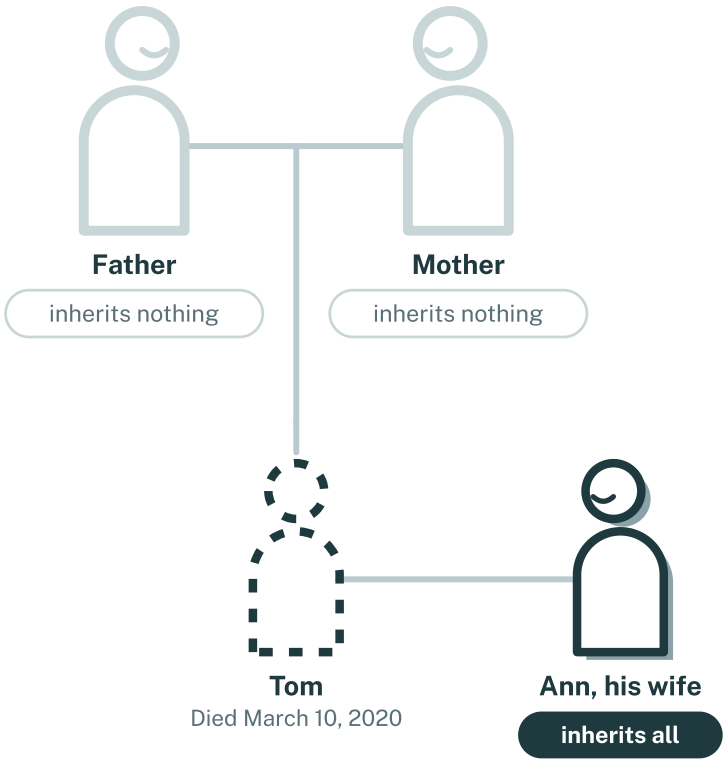
Part 2: Married, no children Married? Yes → Children? No → Community property? Yes

The spouse inherits all of it

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. His mother and father are both alive. The house was bought during the marriage, so it is community property.



Who owns the house

Ann already owned half. She inherits Tom's half.

BEFORE TOM DIED

Tom 1/2	Ann 1/2

NOW

Ann, all

The rule

Community property belongs half to each spouse. When there are no children, the spouse keeps their own half and inherits the other half. Parents, brothers and sisters inherit none of it.

Texas Estates Code §201.003(b)(1)

Not quite your family?

- Tom owned the house before the marriage? It is separate property. **Go to page 11**.
- Tom had a child? **Go to Part 3, page 16**.

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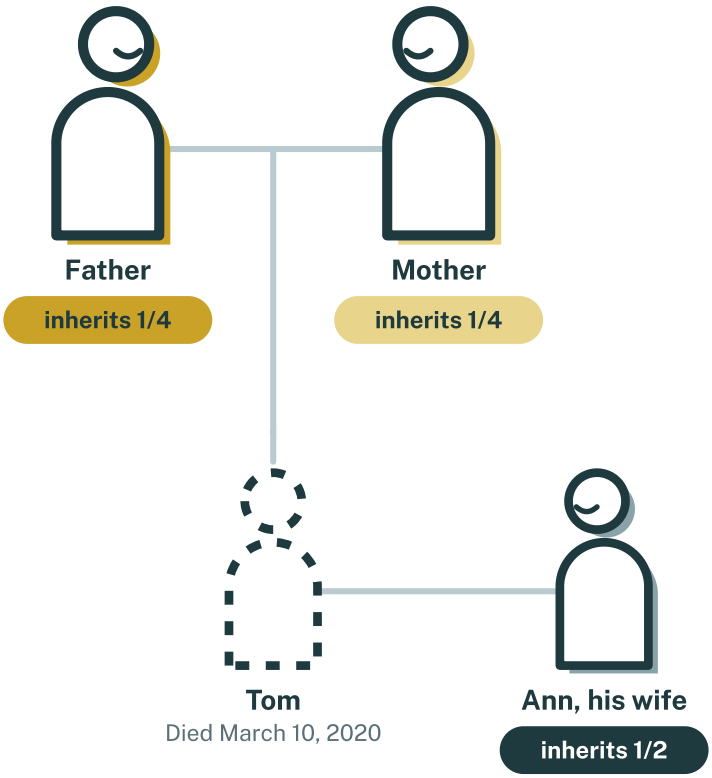
Part 2: Married, no children Married? Yes → Children? No → Community property? No → Both parents alive? Yes

Half to the spouse, half to the parents

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. His mother and father are both alive. Tom owned the house before he married Ann, so it is his separate property.



Who inherits Tom's house

Ann owns half. Tom's parents own a quarter each.

Father 1/4	Mother 1/4	Ann 1/2

The rule

When the property is separate property and there are no children, the spouse inherits half. The other half goes to the parents, equally, when both are alive.

Texas Estates Code §201.002(c) and §201.001(c)

Not quite your family?

- Only one parent is alive, with a brother or sister? **Go to page 12**.
- Only one parent is alive, with no brother or sister? **Go to page 13**.
- A parent died within 5 days after Tom? That parent counts as having died first. See what "alive" means.

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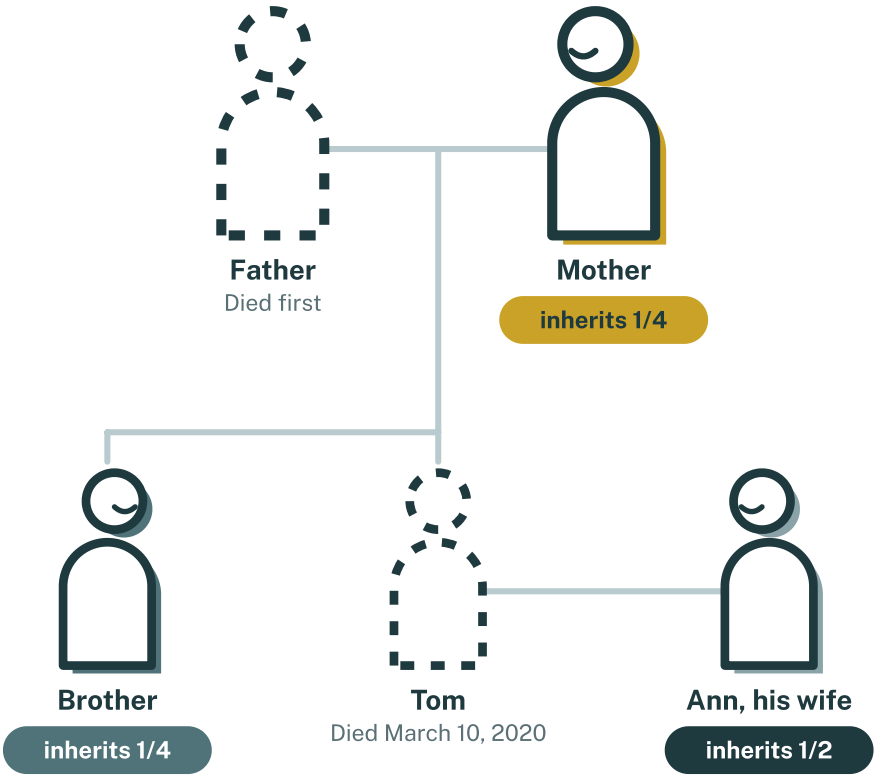
Part 2: Married, no children Married? Yes → Children? No → Community property? No → Both parents alive? No → One parent, and a brother or sister? Yes

Half to the spouse; the parent and the brother share the rest

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. His father died before him. His mother and his brother are alive. Tom owned the house before he married Ann.



Who inherits Tom's house

Ann owns half. Tom's mother and brother own a quarter each.

Brother 1/4	Mother 1/4	Ann 1/2

The rule

The spouse inherits half of separate property. Of the other half, the living parent inherits half, and the brothers and sisters share the rest.

Texas Estates Code §201.002(c) and §201.001(d)(1)

Not quite your family?

- No brother or sister? **Go to page 13.**
- Both parents died first? **Go to page 14.**

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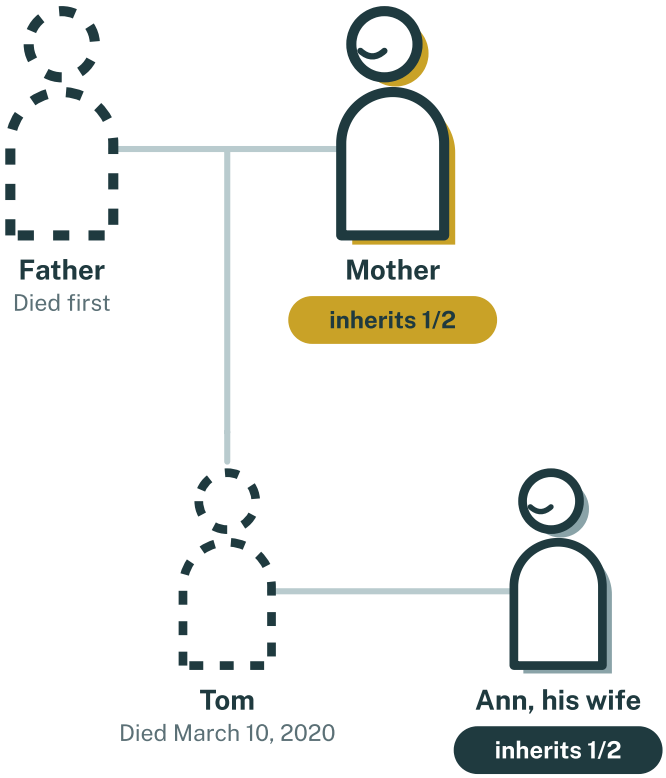
Part 2: Married, no children Married? Yes → Children? No → Community property? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? Yes

Half to the spouse, half to the one living parent

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. His father died before him. His mother is alive. He had no brothers or sisters. Tom owned the house before he married Ann.



Who inherits Tom's house

Ann and Tom's mother own it together, half each.

Mother 1/2	Ann 1/2

The rule

The spouse inherits half of separate property. When only one parent is alive and there are no brothers or sisters, that parent inherits the other half.

Texas Estates Code §201.002(c) and §201.001(d)(2)

Not quite your family?

- A brother or sister is alive too? **Go to page 12.**
- Both parents are alive? **Go to page 11.**

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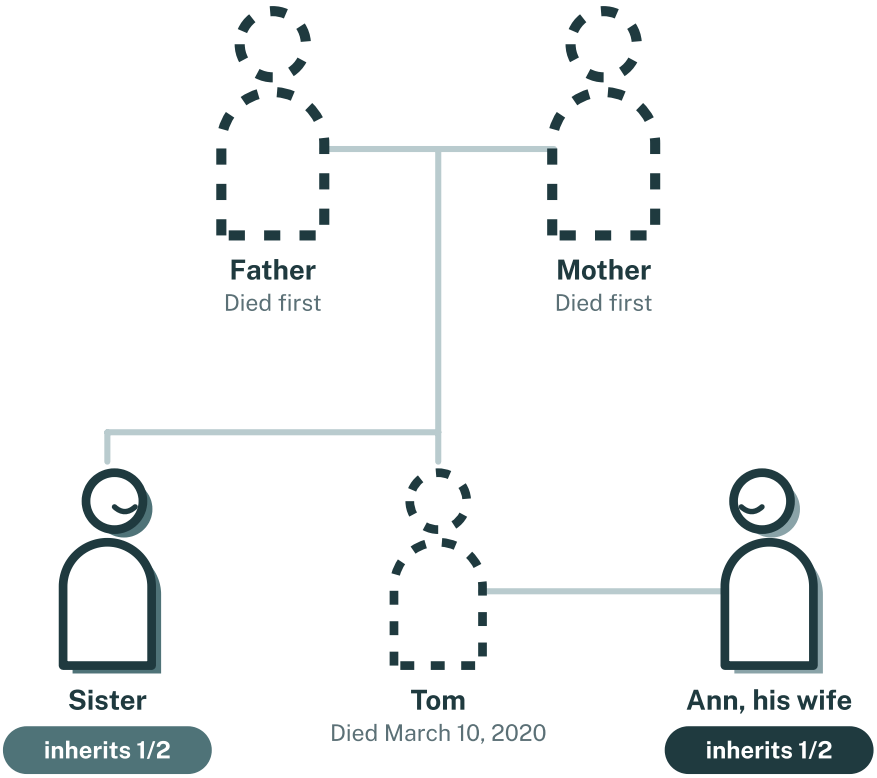
Part 2: Married, no children Married? Yes → Children? No → Community property? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? No → A brother or sister? Yes

Half to the spouse, half to the brothers and sisters

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. Both his parents died before him. His sister is alive. Tom owned the house before he married Ann.



Who inherits Tom's house

Ann and Tom's sister own it together, half each.

Sister 1/2 | Ann 1/2

The rule

The spouse inherits half of separate property. When neither parent is alive, the brothers and sisters share the other half.

Texas Estates Code §201.002(c) and §201.001(e)

Not quite your family?

- No brothers or sisters either? **Go to page 15**.
- A brother or sister died first and left children? Those children share their parent's part. See who counts as a brother or sister.

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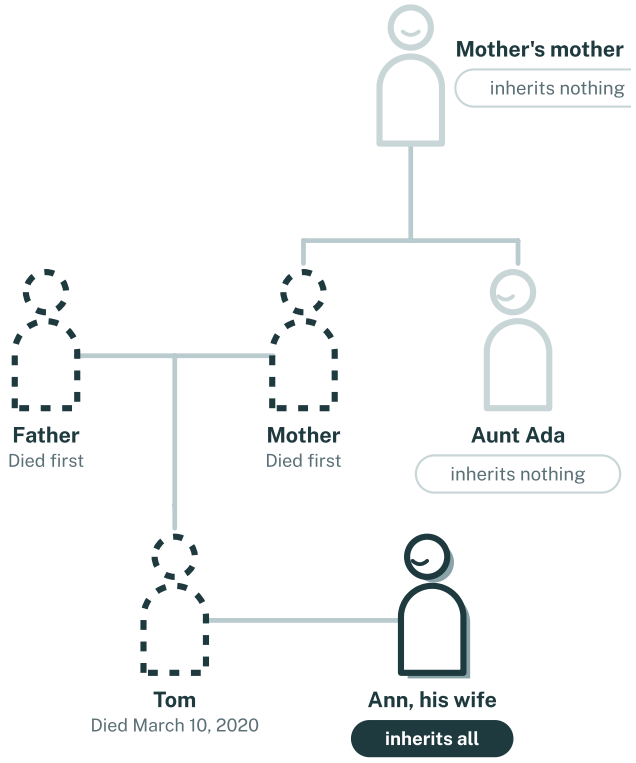
Part 2: Married, no children Married? Yes → Children? No → Community property? No → Both parents alive? No → One parent, and a brother or sister? No → Only one parent? No → A brother or sister? No

The spouse inherits all of it

Tom died without a will on March 10, 2020. His wife, Ann, is alive. They had no children. His parents died before him, and he had no brothers or sisters. His mother's mother and his Aunt Ada are alive. Tom owned the house before he married Ann.



Who inherits Tom's house

Ann owns all of it.

Ann, all

The rule

With separate property and no children, the spouse shares only with the parents, brothers and sisters, or the children of a brother or sister. When none of them is left, the spouse inherits all of it. Grandparents, aunts and uncles inherit nothing.

Texas Estates Code §201.002(d)

Not quite your family?

- A brother or sister died first and left children? Those children share half with the spouse. **Go to page 14**.
- The house was bought during the marriage? It is community property. **Go to page 10**.

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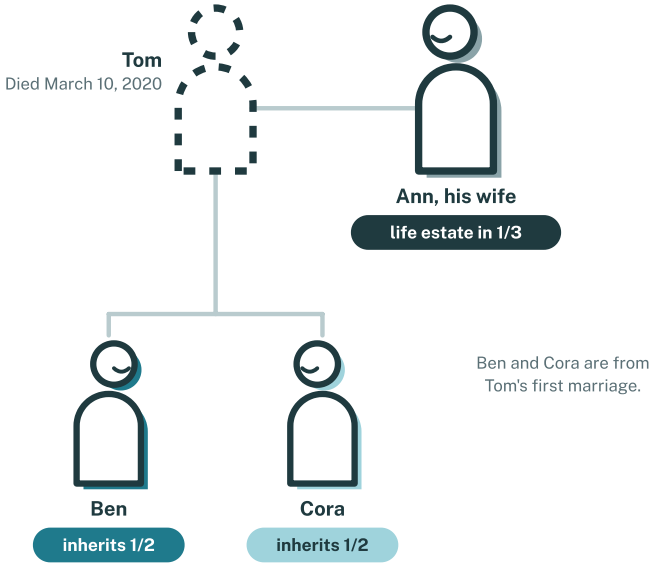
Part 3: Married, with children Married? Yes → Children? Yes → Separate property? Yes

The children own it all. The spouse may use 1/3 for life.

Tom died without a will on March 10, 2020. His wife, Ann, is alive. His children, Ben and Cora, are from his first marriage. Tom owned the house before he married Ann, so it is his separate property.



While Ann is alive

Ann has a 1/3 share in the use of the whole property, or of its rent. It is not a separate piece.

OWNS

Ben 1/2	Cora 1/2

USES

Ann 1/3	Ben and Cora 2/3

→

After Ann dies

The life estate ends. Ben and Cora own and use all of it.

OWNS

Ben 1/2	Cora 1/2

USES

Ben 1/2	Cora 1/2

The rule

When the property is separate property, the children inherit all of it. The spouse gets a life estate in 1/3. It makes no difference who the children's other parent is, or what year the person died.

Texas Estates Code §201.002(b)(3)

Not quite your family?

- The house was bought during the marriage, and Tom had children only with Ann? It is community property. **Go to page 19**.
- The house was bought during the marriage, and Tom had a child with someone else? **Go to page 18**.
- A child died before Tom? That child's own children take the child's place. See who counts as a child.

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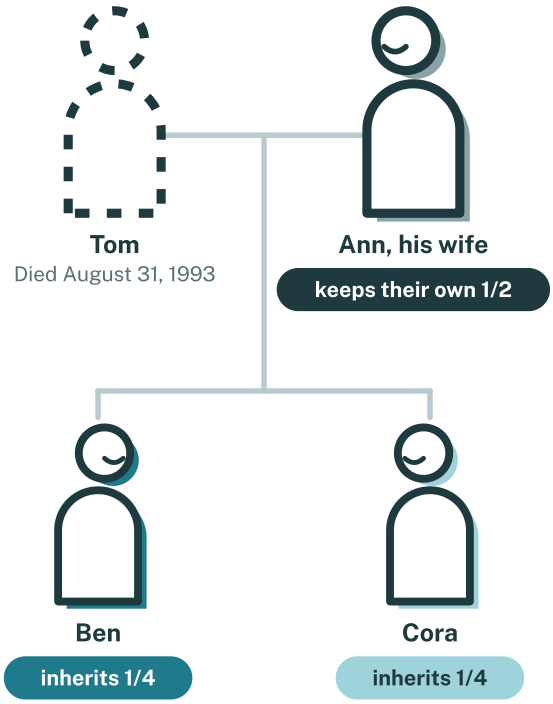
Part 3: Married, with children Married? Yes → Children? Yes → Separate property? No → Died before Sept. 1, 1993? Yes

The spouse keeps her half; the children inherit his half

Tom died without a will on August 31, 1993. His wife, Ann, survived him. Their children, Ben and Cora, are alive. The house was bought during the marriage, so it is community property.



Who owns the house

Ann keeps the half that was already hers. The children inherit Tom's half.

BEFORE TOM DIED

Tom 1/2	Ann 1/2

NOW

Ben 1/4	Cora 1/4	Ann 1/2

The rule

For a death before September 1, 1993, the spouse keeps their own half of the community property, and the children inherit the half that belonged to the person who died. This is so even when the person had children only with the spouse.

Former Texas Probate Code §45, before its 1993 amendment

Not quite your family?

- Tom died on or after September 1, 1993? **Go to page 19**.
- A child died before Tom and left children? Those children share the child's part. See who counts as a child.

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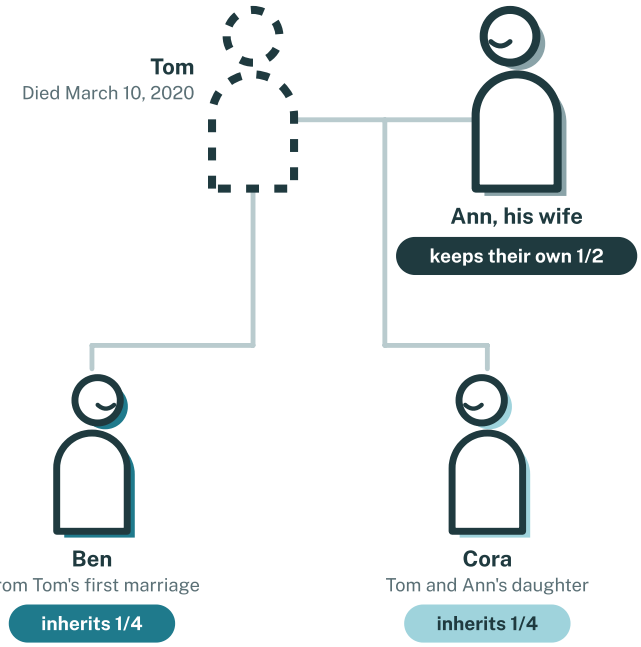
Part 3: Married, with children Married? Yes → Children? Yes → Separate property? No → Died before Sept. 1, 1993? No → A child with someone else? Yes

The spouse keeps her half; all the children share his half

Tom died without a will on March 10, 2020. Ann, his second wife, is alive. Ben is Tom's son from his first marriage. Cora is Tom and Ann's daughter. The house was bought during Tom and Ann's marriage, so it is community property.



Who owns the house

Ann keeps the half that was already hers. Ben and Cora inherit Tom's half.

BEFORE TOM DIED

Tom 1/2	Ann 1/2

NOW

Ben 1/4	Cora 1/4	Ann 1/2

The rule

When the person who died had a child with someone other than their spouse at the time of death, the spouse keeps their own half of the community property. All the person's children share the other half.

Texas Estates Code §201.003(c)

Not quite your family?

- Tom died before September 1, 1993? **Go to page 17**. The shares are the same.
- A child died before Tom and left children? Those children share the child's part. See who counts as a child.

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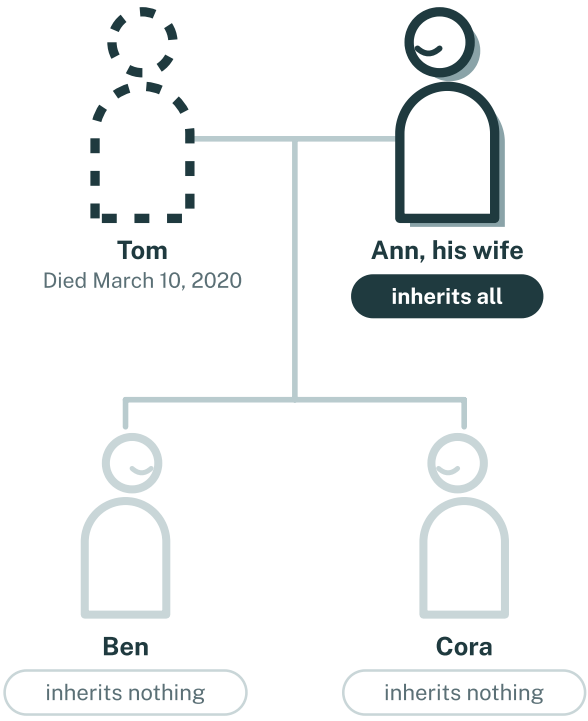
Part 3: Married, with children Married? Yes → Children? Yes → Separate property? No → Died before Sept. 1, 1993? No → A child with someone else? No

The spouse inherits all of it

Tom died without a will on March 10, 2020. His wife, Ann, is alive. Their children, Ben and Cora, are alive, and Tom had no other children. The house was bought during the marriage, so it is community property.



Who owns the house

Ann already owned half. She inherits Tom's half.

BEFORE TOM DIED

Tom 1/2	Ann 1/2

NOW

Ann, all

The rule

When the person who died had children only with their spouse, the spouse keeps their own half of the community property and inherits the other half.

Texas Estates Code §201.003(b)(2)

Not quite your family?

- Tom had a child with someone else? **Go to page 18**.
- A stepchild Tom never adopted does not count as his child. See who counts as a child.

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Glossary

What does “intestate” mean?

Intestate means without a will. The intestate succession laws are the rules Texas uses to decide who inherits when someone dies without a will.

What is real estate?

Land, and anything built on it, such as a house. The law calls it real property.

What does “married” mean?

For Texas intestate succession laws, “married” means a couple who married with a marriage license. It also includes a **common-law marriage**: the couple agreed to be married, lived together in Texas as a married couple, and told others they were married. A divorced ex-spouse is not married to the person.

What does “children” mean?

For Texas intestate succession laws, “children” means the person's children by birth (for a father, children the law treats as his). It also includes adopted children, and a child the person agreed to adopt and raised as their own. A child who died first counts only if that child left children; they take their parent's place. A stepchild who was never adopted does not count.

What does “alive” mean?

For Texas intestate succession laws, a relative is alive only if they lived at least 5 days (120 hours) after the person died. A relative who died sooner counts as having died first.

Who counts as a brother or sister?

Brothers and sisters who share both parents with the person, and half-brothers and half-sisters who share one. A brother or sister who died first counts only if they left children; those children take their parent's place.

What are the father's side and the mother's side?

The father's side is his family: first his parents, then their other descendants, such as the person's aunts, uncles and cousins. The mother's side works the same way. If one side has no one, the other side inherits all.

What are separate property and community property?

Separate property was owned before the marriage, or was a gift or an inheritance. Anything else bought during the marriage is **community property**, even if only one name is on the deed.

What does a spouse's life estate in 1/3 mean?

The spouse holds a life estate in an undivided one-third: a one-third share, not a separate piece, in the use of the whole property or its rent, for the rest of the spouse's life. The children own the property in **fee simple**, meaning full ownership, subject to that life estate. For that third they are also the **remaindermen**: the owners who get full use of it when the spouse dies and the life estate ends.

What if both owners have died?

If the house is still in the names of a couple who have both died, use this book once for each death, starting with the one who died first.

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Sources

1	Who inherits when there is no surviving spouse, including the father's side and the mother's side	Estates Code §201.001
2	Who inherits separate property when there is a spouse, including the life estate	Estates Code §201.002
3	Who inherits community property when there is a spouse	Estates Code §201.003
4	The rule for a death before September 1, 1993	former Probate Code §45 (repealed; the text is in the session laws at the Texas Legislative Reference Library)
5	Children by birth, and fathers	Estates Code §201.051, §201.052
6	Adopted children, and children raised as one's own	Estates Code §201.054
7	Half-brothers and half-sisters	Estates Code §201.057
8	A child or a brother or sister who died first: their children take their place	Estates Code §201.101
9	Alive: the 5-day (120-hour) rule	Estates Code §121.052
10	Common-law marriage	Family Code §2.401
11	Separate property and community property	Family Code §3.001, §3.002, §3.003

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Need help preparing an Affidavit of Heirship for your family?

Heirsy will build one for you. All you have to do is answer questions about your family, and our Affidavit Builder will take care of the rest.

1. **Tell us about your family and the property.**
2. **The Affidavit Builder creates the document for you.**
3. **Sign your affidavit before a notary.**
4. **Send your affidavit to the county to record.**

Let's get started → Heirsy.com

OUR GUARANTEE TO YOU

Recorded or Refunded.

If the county won't record your affidavit, you get your money back.

The Heirsy Kit

- ✓ The Affidavit Builder fills in the form for you.
- ✓ It determines who inherits what from your answers.
- ✓ We help you decide who should sign your document.
- ✓ And we share the exact steps for recording the affidavit in your county.

Learn more → Heirsy.com