



# THE PROBATE PLUMBER:

HOW TO UNCLOG THE FLOW  
OF ASSETS WITHOUT A WILL

COLLIN COUNTY BAR ASSOCIATION – ESTATE PLANNING & PROBATE SECTION

MARCH 12, 2021

I TRIED, MICK TRIED, HECK, THE WHOLE MAINTENANCE DEPARTMENT TRIED. NOBODY CAN PULL IT OUTTA THERE. BUT GO AHEAD AND GIVE IT A SHOT, I GUESS.

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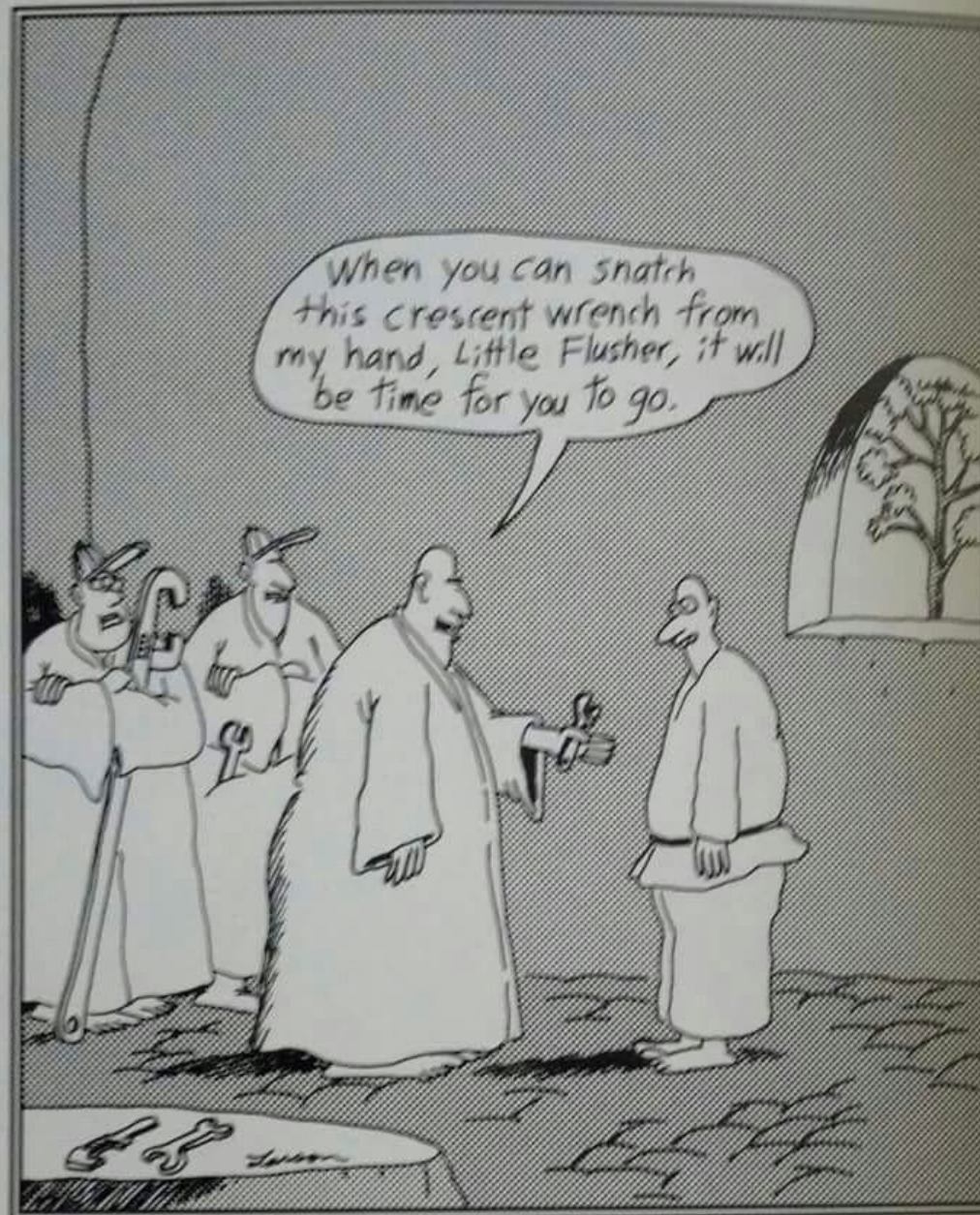


THE BLOODLINE OF KING ARTHUR RISES ONCE AGAIN.

2/9  
Scott Hilburn



5/17/93





Early plumbers

# HOW OFTEN DOES THIS HAPPEN?

- SOME REPORTS SHOW THAT AS MANY AS 70% OF AMERICANS DIE WITHOUT A WILL.



# SO, NOW WHAT?

- **TALK TO YOUR CLIENT**
- **ASK QUESTIONS ABOUT THE ASSETS OF THE DECEDENT AND HOW THEY ARE HELD**
- **IT IS POSSIBLE THAT ALL ASSETS ARE NON-PROBATE ASSETS AND THERE IS NO NECESSITY FOR PROBATE**
- **TRUST ASSETS ARE NON-PROBATE**
- **BANK ACCOUNTS**
  - **JOINT TENANTS WITH RIGHT OF SURVIVORSHIP**
  - **PAYABLE ON DEATH**
  - **BENEFICIARY DESIGNATION**
- **RETIREMENT ACCOUNTS/IRAS**
  - **BENEFICIARY DESIGNATION**
  - **TERMS OF THE CONTRACT**
- **VEHICLES**
  - **TRANSFER ON DEATH**
  - **AFFIDAVIT OF HEIRSHIP**

# WHAT TOOLS ARE IN YOUR TOOL BOX?

## **TECHNIQUES FOR HANDLING INTESTACY**

- **DETERMINATION OF HEIRSHIP – TEC CHAPTER 202**
- **COURT CREATED INDEPENDENT ADMINISTRATION – TEC 401.003**
- **DEPENDENT ADMINISTRATION – TEC 306.002(1)**
- **AFFIDAVIT OF HEIRSHIP – TEC 201.053**
- **SMALL ESTATE AFFIDAVIT – TEC 205**
- **DETERMINATION OF HEIRSHIP AND ORDER OF NO ADMINISTRATION – TEC 451**
- **APPLICATION FOR FAMILY ALLOWANCE AND ORDER OF NO ADMINISTRATION – TEC 451**
- **ADMINISTRATION OF COMMUNITY PROPERTY – TEC 453**
- **ACCESS TO INTESTATE’S ACCOUNT WITH FINANCIAL INSTITUTION - TEC 153**

# **DETERMINATION OF HEIRSHIP – TEC**

## **CHAPTER 202**

- JUDICIAL DETERMINATION OF THE HEIRS OF THE ESTATE
- REQUIRES THE APPOINTMENT OF AN ATTORNEY AD LITEM TO REPRESENT THE UNKNOWN HEIRS (\$500 DEPOSIT REQUIRED WITH THE CLERK)
- REQUIRES THE TESTIMONY OF TWO DISINTERESTED WITNESSES
- REQUIRES PROOF OF CITATION OF ALL ALLEGED HEIRS OR WAIVERS OF CITATION EXECUTED BY EACH ALLEGED HEIR



# **COURT CREATED INDEPENDENT ADMINISTRATION – TEC 401.003**

- REQUIRES THE AGREEMENT OF ALL ALLEGED HEIRS
- DESIGNATION, CONSENT AND WAIVER FROM ALL ALLEGED HEIRS
- MOST COURTS REQUIRE A SIMULTANEOUS DETERMINATION OF HEIRSHIP PROCEEDING
- HEIRS CAN WAIVE THE REQUIREMENT OF A BOND
- MOST COURTS WILL NOT CREATE AN INDEPENDENT ADMINISTRATION WHEN AN HEIR IS A MINOR
- DOES NOT PROVIDE PROTECTION TO THE HEIRS
- COST EFFECTIVE

# DEPENDENT ADMINISTRATION – TEC 306.002(1)

- DOES NOT REQUIRE THE AGREEMENT OF THE HEIRS
- COURTS MAY REQUIRE A SIMULTANEOUS DETERMINATION OF HEIRSHIP
- BOND IS REQUIRED
- ANNUAL ACCOUNT REQUIRED
- FINAL ACCOUNT REQUIRED
- PROVIDES THE MOST PROTECTION TO THE HEIRS
- CAN BE EXPENSIVE

# AFFIDAVIT OF HEIRSHIP – TEC 203

- NOT A COURT PROCEEDING
- FILED IN THE DEED RECORDS
- REQUIRES TWO DISINTERESTED WITNESSES
- 203 (A)(2) THE AFFIDAVIT OR INSTRUMENT CONTAINING THE STATEMENT HAS BEEN OF RECORD FOR FIVE YEARS OR MORE IN THE DEED RECORDS OF A COUNTY IN THIS STATE IN WHICH THE PROPERTY IS LOCATED AT THE TIME THE SUIT INVOLVING TITLE TO PROPERTY IS COMMENCED, OR IN THE DEED RECORDS OF A COUNTY IN THIS STATE IN WHICH THE DECEDENT WAS DOMICILED OR HAD A FIXED PLACE OF RESIDENCE AT THE TIME OF THE DECEDENT'S DEATH.

# SMALL ESTATE AFFIDAVIT – TEC 205

- FILED WITH THE COURT
- NOT EXEMPT ASSETS CANNOT EXCEED \$75,000
- REQUIRES TWO DISINTERESTED WITNESSES
- DOES NOT CREATE AN ADMINISTRATION
- SOME COURTS WILL ONLY APPROVE SEA WHEN NO REAL ESTATE IS INVOLVED



# **DETERMINATION OF HEIRSHIP AND ORDER OF NO ADMINISTRATION – TEC 451**

COMPLETELY DISCRETIONARY

MERELY FORMALIZES WHAT A DETERMINATION OF HEIRSHIP ONLY ACCOMPLISHES

# APPLICATION FOR FAMILY ALLOWANCE AND ORDER OF NO ADMINISTRATION – TEC 451

- CHAPTER 451 PROVIDES A PROCEDURE FOR A COURT TO DISPENSE WITH ADMINISTRATION IF (1) THE DECEDENT IS SURVIVED BY A SPOUSE, MINOR CHILD, OR ADULT INCAPACITATED CHILD, **AND** (2) THE VALUE OF THE ESTATE, NOT INCLUDING HOMESTEAD AND EXEMPT PROPERTY, DOES NOT EXCEED THE FAMILY ALLOWANCE. ADMINISTRATION IS NOT NECESSARY BECAUSE THERE WOULD BE NO PROPERTY FOR THE DECEDENT'S CREDITORS OR WILL BENEFICIARIES TO REACH.
- **2019 TEXAS ESTATES & TRUST CODES WITH COMMENTARY BY GERRY W. BEYER**

# ADMINISTRATION OF COMMUNITY PROPERTY – TEC 453

- SECTIONS 453.003–453.004 PERMIT THE SURVIVING SPOUSE TO ADMINISTER THE COMMUNITY PROPERTY IN BOTH TESTATE AND INTESTATE SITUATIONS PROVIDED NO PERSONAL REPRESENTATIVE HAS YET BEEN APPOINTED. THIS PROCEDURE IS OFTEN CALLED AN UNQUALIFIED COMMUNITY ADMINISTRATION.
- **2019 TEXAS ESTATES & TRUST CODES WITH COMMENTARY BY GERRY W. BEYER**

# ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION - TEC 153

- IF AN INTESTATE DIES OWNING A BANK ACCOUNT THAT HAS FUNDS WHICH DO NOT PASS TO ANOTHER PERSON UNDER THE TERMS OF THE ACCOUNT, AN INTERESTED PERSON MAY APPLY TO THE COURT FOR AN ORDER REQUIRING THE FINANCIAL INSTITUTION TO REVEAL THE BALANCE IN THE ACCOUNT IF 90 DAYS HAVE PASSED SINCE THE INTESTATE DIED, NO LETTERS HAVE BEEN ISSUED, AND NO PETITION FOR THE APPOINTMENT OF A PERSONAL REPRESENTATIVE IS PENDING. THIS PROCEDURE, ADDED BY THE 2015 LEGISLATURE, WILL HELP HEIRS DETERMINE THE APPROPRIATE ADMINISTRATION METHOD FOR THE DECEDENT'S ESTATE.
- **2019 TEXAS ESTATES & TRUST CODES WITH COMMENTARY BY GERRY W. BEYER**



# WHO GETS WHAT?

- **INTESTATE SUCCESSION**
- **IF SOMEONE DOES NOT HAVE A WILL, THE STATE OF TEXAS HAS ONE FOR THEM. THE LAWS OF INTESTACY DICTATE WHAT HEIRS WILL RECEIVE SPECIFIC TYPES OF PROPERTY OWNED BY THE DECEDENT**
- **TEXAS ESTATES CODE CHAPTER 201**

**DON'T LOSE THIS CHART...IT WILL BE YOUR BEST  
FRIEND!**

[HTTPS://WWW.COLLINCOUNTYTX.GOV/PROBATE/DOCUMENTS/TX %20DESCENT DISTRIBUTION.PDF](https://www.collincountytx.gov/probate/documents/tx_%20DESCENT_DISTRIBUTION.PDF)

# TEXAS DESCENT AND DISTRIBUTION

(THE LEGAL EFFECTS OF NOT HAVING A WILL)

PROVIDED BY  
**STACEY KEMP, COUNTY CLERK**  
COLLIN COUNTY TEXAS

## MARRIED WITH CHILDREN

### SEPARATE PROPERTY REAL ESTATE



ALL REALTY IS  
OWNED BY  
DECEDENT'S  
CHILD(REN) WHEN  
SURVIVING  
SPOUSE DIES

### ALL OTHER PROPERTY



### COMMUNITY PROPERTY REAL ESTATE



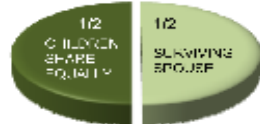
#### ONLY APPLIES IF

ALL SURVIVING  
CHILD(REN) AND  
DESCENDANTS OF  
DECEDENT ARE ALSO  
CHILD(REN) OR  
DESCENDANTS OF  
SURVIVING SPOUSE

### ALL OTHER PROPERTY



### COMMUNITY PROPERTY REAL ESTATE

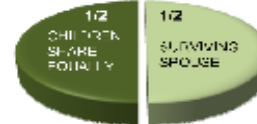


#### ONLY APPLIES IF

THERE ARE CHILDREN FROM  
OUTSIDE THE EXISTING  
MARRIAGE ON THE DATE OF  
DEATH OF DECEDENT

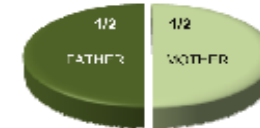
CHILDREN OF DECEASED  
CHILD(REN) INHERIT THEIR  
PARENTS SHARE SUBJECT TO  
ADVANCEMENTS

### ALL OTHER PROPERTY



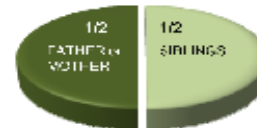
## SINGLE OR WIDOWED WITH NO CHILDREN

### SURVIVED BY MOTHER AND FATHER ONLY



ENTIRE ESTATE  
GOES TO PARENT  
IF NO SIBLINGS OR  
THEIR  
DESCENDANTS  
SURVIVE  
DECEDENT

### SURVIVED BY ONE PARENT AND SIBLING(S)



## WIDOW (ER) WITH CHILDREN

### REAL ESTATE

CHILDREN OR THEIR  
DESCENDANTS  
SHARE EQUALLY

ANY CHILDREN  
TAKE THEIR SHARE  
(SUBJECT TO  
ADVANCEMENTS)

### ALL OTHER PROPERTY

CHILDREN OR THEIR  
DESCENDANTS  
SHARE EQUALLY

## MARRIED WITH NO CHILDREN

### A. SEPARATE PROPERTY

#### BOTH PARENTS SURVIVE



#### ONE PARENT SURVIVES



#### NO SURVIVING SIBLINGS OR SIBLINGS DESCENDANTS



#### NO SURVIVING PARENT



#### NO SURVIVING PARENTS OR SIBLINGS DESCENDANTS



### B. COMMUNITY PROPERTY

ALL REAL AND  
PERSONAL PROPERTY  
TAKEN BY SURVIVING  
SPOUSE

Caveat: See Texas Probate Code §42 Inheritance Rights of Illegitimate Children and §47(a) Heirs Required Survival by 120 Hours



MOITY? DID  
YOU SAY  
MOITY?  
TEC  
201.001

(f) If no spouse, kids, siblings or parents survive the person, the person's estate shall be divided into two moieties, with:

(1) one moiety passing to the person's paternal kindred; and

(2) one moiety passing to the person's maternal kindred.

(g) The moiety passing to the person's paternal kindred passes in the following order:

(1) if both paternal grandparents survive the person, equal portions pass to the person's paternal grandfather and grandmother;

(2) if only the person's paternal grandfather or grandmother survives the person, the person's estate shall:

(A) be divided into two equal portions, with:

(i) one portion passing to the surviving grandparent; and

(ii) one portion passing to the descendants of the deceased grandparent; or

(B) pass entirely to the surviving grandparent if no descendant of the deceased grandparent survives the person; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

Proof I am actually  
a probate plumber!

