

Who Gets the House?

(and the Property Tax Bill)

Issues with Inheritance

By Peter Squier

The passing of a family member is one of life's most difficult experiences. The survivors are not only dealing with a terrible loss; they might also have to handle some very stressful financial decisions, too. Some family members are fortunate enough to inherit some of their loved one's property, but often they also inherit a huge property tax bill or title issues that go along with it.

When a deceased has left a written Will (and it is properly probated through a probate court), the information of who gets the house is clearly spelled out and can be passed onto the heirs relatively quickly. However, many Texans die without a written Will. This is called dying "intestate" because the deceased did not leave a "testament" of how his or



her possessions should be distributed. When there are no clear instructions, things can get very murky and contentious between likely heirs. It's amazing how relatives can become easily convinced that they are due a share of the deceased's estate. My advice is that if you love your heirs, and you have not already done so, create a Will now. If you don't so much care for them, rip up your Will, or never create one in the first place because they'll go through all sorts of grief straightening out the mess you've left behind.

The Craziest Inheritance Story Ever

To illustrate the points above, let me tell you a crazy, funny, and very true story about a \$200,000 house that I bought from the estate of "Mr. S". After you finish reading the facts, think about who you think should get the house.

Mr. S liked the ladies, and the ladies liked him. He was single, good looking, and had a high paying job. Though he was not yet married, Mr. S bought a big house hoping to have a family some day. Mr. S eventually married three times, but he never had any children. Two of Mr. S's wives had children, but he never formally adopted either of them. He

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

divorced his first wife, and his second wife died. When he married his third (and last) wife, she and her daughter moved into his house, and they lived there for 6 months before things went badly between them. Even though the third wife had moved out, had stopped using Mr. S's last name, and had moved into another house (that she claimed as a homestead), they never finalized their divorce.

Mr. S had two brothers and two sisters, but one brother, one sister, and both of his parents had already died. After wife #3 and her daughter moved out of his house, Mr. S's surviving brother and sister (and her family) moved in. While living there, they helped take care of Mr. S while he was ailing, before he died. Unfortunately, Mr. S never did get around to making a Will. After he died, his brother, sister, and her family never moved out. They just continued paying the mortgage for six years after his death, and all appeared to be fine.

So, who "gets" the house?

Well, it's actually pretty complicated. The third wife received 50% of the house. Why didn't his third wife get 100% of the house? Because Mr. S owned the house before they were married, and he never added her name to the deed. In Texas, this is known as "separate property."

Real property is classified as "separate property" when a person in a marriage either owned the real property before the marriage or inherited it during the marriage. In a case where there is no Will and there are no children, a surviving spouse is only entitled to half of the real property. If there are children, the surviving spouse receives even less of an interest in the real property. In this case, Mr. S owned the house before his marriage to wife #3 and had no children, which is why wife #3 receives only 50% of the house. But what happens to the other half of the property? It goes to deceased's descendants.

So, who are Mr. S's descendants? According to Texas law, descendants are first defined as the deceased's biological children (regardless of whom the mother or father is) and any other children that the deceased

may have formally adopted. In this case, Mr. S did not have any biological or adopted children. Texas inheritance laws state that if there are no children, the next descendants are the deceased's parents. Since both of Mr. S's parents had expired, and he had no children, Texas law stipulates that his siblings would be his next descendants. By this standard, his four brothers and sisters would get the other 50%. Since two of his siblings had already died, the remaining two assumed that they were to split the 50%. Their assumptions were incorrect, and they were sorely disappointed, as a result. Texas law states that the children of a deceased parent get their parent's share. This means that when an heir with a rightful claim to a portion of a deceased's estate dies before the deceased (in this case, one of the two deceased siblings who died before Mr. S), his or her portion of rightful inheritance would pass on to his or her heirs rather than extinguishing and going to the living heirs. Therefore, the children of Mr. S's deceased brother and sister would receive their parent's portion (1/4 of 50%, or 12.5%) of Mr. S's house.

Now, I never buy real estate without a title insurance policy (which protects me from any possible future claims against my ownership.) The title company looked at this mess and stated that in the absence of a probated Will or probate judgment, they would require two disinterested people to sign notarized Affidavit of Heirships, which stated that they knew these heirship facts to be true. Luckily, we were able to find a neighbor and another friend of the third wife who knew Mr. S's situation and would sign these Affidavits. That was good enough for the title company to issue the title policy so that I could proceed. Many people in such a situation have to hire an attorney to help cure the title defects and handle such things as the drafting and executing Affidavits of Heirship.

So now, as they say, the plot thickened. In the process of their investigations, the title company found that one of Mr. S's nephews (his deceased sister's son), who would inherit 12.5% of the property, had been convicted of a crime and served jail time. Unfortunately, this nephew had never paid his court fees, so he had an outstanding judgment lien against him. The title company refused to issue the title policy until that lien was removed. At first, the nephew refused to cooperate, but he quickly dispensed of his

pride and fear of family discovery of his jail time once he realized that he would end up with thousands of dollars after his lien was released.



An additional complication was that the estate had a past due amount owed on the mortgage, which was the mortgage that Mr. S took out when he bought the house. The brother and sister that had been living in the house had been pitching in and paying the mortgage, but when the sister's husband and the brother both lost their jobs, they could no longer afford the mortgage payment. By the time I met them, they had not paid their mortgage for over 18 months, and the house was in extreme disrepair, with a big hole in the roof, mold in the closets, and several families of raccoons living in the attic.

The bank was sending increasingly threatening letters for non-payment, and that prompted the siblings to call me about buying the house. I wondered why the bank did not foreclose on Mr. S's family, and ultimately realized that it was because they had no idea who the actual heirs really were. If the bank could not serve proper notice to all the heirs, any foreclosure they might try could be overturned for insufficient notice.

Because the siblings had paid the mortgage (until they became unemployed), they mistakenly believed that they were entitled to own Mr. S's house after his death, and they voraciously fought against the "gold-digger" third wife having any interest. They also never disclosed to her that Mr. S had a \$60,000 bank account. Texas's intestate laws define heirship one way for real property (houses, land, etc.), but the rules for personal property are different. For personal property (in this case, money), the wife gets everything. Mr. S's siblings felt their brother hated

this woman and would not want her to have a penny. And they felt they were entitled to it all because he loved them and they took care of him while he was sick. So what about the \$60,000? I arranged a deal that had them all split it just like the house. The wife was ecstatic to get any money at all because she had no idea the \$60,000 even existed.

It was a crazy ordeal that took almost a year to clear up. What amazed me was how each person came to believe that the result that would put the most money into their pockets was indeed the right solution, regardless of the law. They would argue that the laws were just plain wrong and not what Mr. S wanted. The good news is that Texas law spells things out very clearly, and in the absence of a Will, Texas law governs how things are done. So, remember, if you love your heirs, get a Will. If you don't, you may be responsible for a crazy story like mine!

When There is No Will

Texas law dictates how property is distributed when someone dies intestate (without a Will). There is a formal process that must be gone through before property can be distributed, which takes quite some time. An attorney can help you navigate these unfamiliar waters. First, someone must submit an application for "Proceedings to Declare Heirship" to the probate court. Then, the court hears the evidence, inventories the assets of the estate, and reviews all claims against it. The court decides who gets what in the form of a judgment. Next, someone must submit a "Letter of Administration" with the court. The court will then select an "Administrator" whose job it will be to pay all the estate's bills and taxes, and to distribute the remaining money as dictated by the court. Once everything is distributed and taken care of, the Administrator closes the estate.

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Inheriting Property AND a Property Tax Bill

Perhaps you've inherited the house where you grew up or some land that's been in the family for years. That would be wonderful, unless, you also inherited the unpaid property tax bill on that property.

Most people that owe delinquent property taxes only owe a few year's worth, which might add up to 5-10% of the value of the home. But there are instances where the property taxes have not been paid for 20 years, and the resulting property tax bill, after years of penalties and interest, can add up to be close to the full value of the property. Children inheriting their parents' property have gone from joy, at the thought of getting a windfall of money, to despair after realizing that their parents' paid-off home owes as much in taxes as it's worth. Many Texans don't realize that people who are disabled or over 65 years of age can get a property tax deferral for the rest of their life and remain living in their homestead. But, while no penalties or foreclosure can happen during this deferral period, the outstanding balance collects interest at 8% per year. If you have recently inherited or are close to inheriting a property, you may want to check to see if there is an outstanding property tax bill and plan accordingly.

When someone inherits a property with a property tax bill, the new heirs have six months after the property title passes from the deceased to the heirs to pay the outstanding delinquent tax balance before penalties start back up and a lawsuit can be filed. For many children, it takes at least six months to get things straightened out. Ideally, the estate has enough money to pay the property tax bill immediately. But

for many, there's not enough money and the kids not only get the property, but a big property tax bill. If this has happened to you, try talking to the county and getting on a payment plan with them. Such plans usually require 20-25% to be paid immediately, with the remaining balance to be paid over one to three years. Another option is to get a property tax loan from a licensed Texas property tax lender. These companies offer longer payment terms, frequently up to 10 years in length, which can result in far lower monthly payments and can be paid off in full at any time with no penalty.

Yes, we are all subject to the realities of death and taxes. Hopefully, you and your loved ones are proactive in creating written Wills that dictate how the real property will be distributed, and if property taxes have been deferred, how they will be paid for. The alternative of having no Will may make for an interesting story, but trust me; no one wants to live through a crazy story like that!



About the Author: Peter Squier is a landlord, developer and real estate investor who has bought and sold over 50 properties, many under unusual circumstances. Mr. Squier also serves as the President of Hunter-Kelsey of Texas, LLC, a property tax lender. Feel free to direct questions to him at peter@hunterkelsey.com.