Chapter 7

Testate and Intestate Estates

Please note that all state rulings in the matter of law are defined by the courts and can change at any time with new court decisions. No portion of this workbook is a substitute for legal advice.

TESTATE ESTATES

Everyone seems to believe that having a valid last will and testament is a great idea. The reasons for doing so can be substantiated in many ways. Those who have a will can direct the disposition of their property. They can name anyone they want as Executor of the Estate. They can decrease the administration costs of their estate. They can save tax dollars if their estate is substantial enough. They can direct the guardian for their children and much more. Yet thousands of landmen, division order analysts, and lease records analysts have seen estates that must be governed by the laws of descent and distribution because a last will and testament did not exist.

In cases where a will does exist and the estate is going through or has gone through the probate process, transfer of ownership is relatively easy. Once the final account or final decree is issued by the probate court, the heirs are named and the mineral estate is distributed according to the final order of the court.

When a person dies with a last will and testament, it is said that the party has died *testate*. In such a case, the last will and testament governs the distribution of the property as long as the will has gone through the proper court proceedings and has been found to be a valid will.

PROPERTY DEEMED PASSED THROUGH A WILL

A will is deemed valid in its ability to pass all property which the testator owned at the time of his death, including property acquired after the execution of the will, unless there was a contrary intention so indicated in the will. The term *property* would include both real and personal property, or any interest that may be subject to ownership.

PROBATE

The legal procedure whereby a will is processed and given a legal stamp of approval is called *probate.* Here the probate court admits the will of record in the courthouse records and oversees the division of property as set out in the will.

FOREIGN WILL

If a deceased person owned property in more than one state (such as Nevada and North Dakota) and only probated the will in one of the states (such as Nevada), the North Dakota statutes would deem the last will and testament as a *foreign will*. This foreign will would not be recognized in the state of North Dakota.

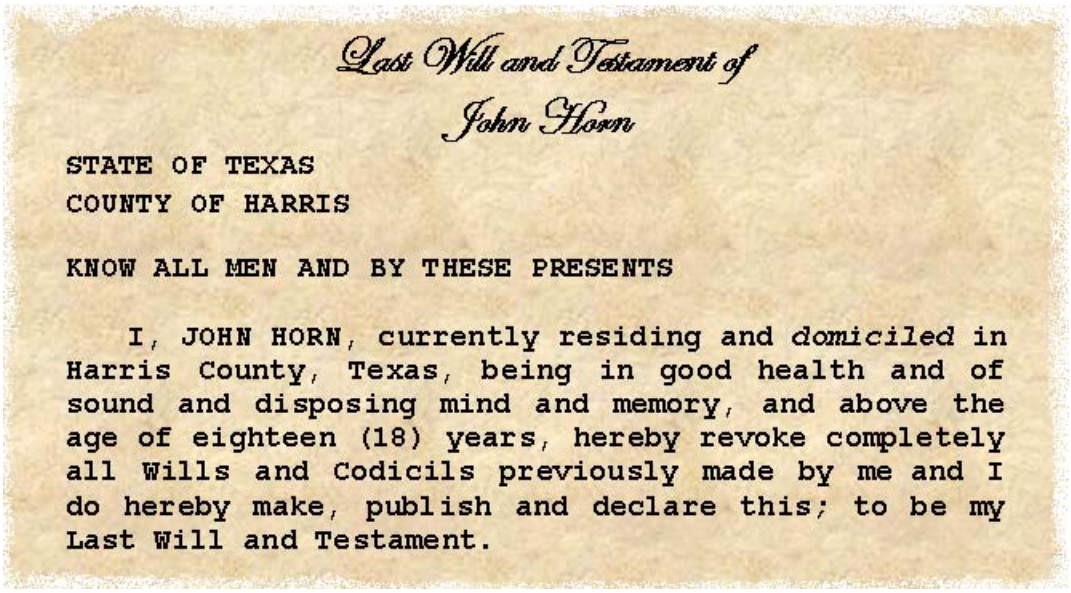
ANCILLARY PROBATE

Because a court's finding in one state has no jurisdiction over matters in another state, when there is a foreign will, an additional probate called an *ancillary probate* is required to legally transfer title to property in the other state.

DOMICILE

A domicile is considered to be the permanent indefinite home of a person. A domicile is the residence that the person intends to return to if they are away from the residence. Law states that although a person can own several homes, only one can be considered the domicile home. There is great importance placed on the domicile residence for purposes of the state's taxation of an estate and for establishing the validity of the execution of the will.

The following is a portion of a last will and testament. Notice that in the first sentence of the will the domicile of John Horn is established.



Last Will and Testament of

John Horn

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN AND BY THESE PRESENTS

I, JOHN HORN, currently residing and *domiciled* in Harris County, Texas, being in good health and of sound and disposing mind and memory, and above the age of eighteen (18) years, hereby revoke completely all Wills and Codicils previously made by me and I do hereby make, publish and declare this; to be my Last Will and Testament.

ESTATE

The term *estate* is generally used when referring to the sum total of all types of assets owned by a person, usually at the time of his death. The term estate can also be used when referring to assets submitted for bankruptcy, assets of a trust or any total asset owned by a person. During the time following death, a person's estate becomes subject to the laws where the assets are located. If the deceased owned property in more than one state, the laws of the individual state govern the distribution of the property located in that state. In situations like this, property located in one state may be transferred to certain heirs based on the laws of that state. Property located in a different state may be transferred to other heirs based on the laws of that state. To avoid this from happening, the last will and testament must be probated in every state where property was located.

TESTATOR

The person who has written a last will and testament is referred to as a *testator*.

DECEDENT

The term *decedent* refers to the deceased party.

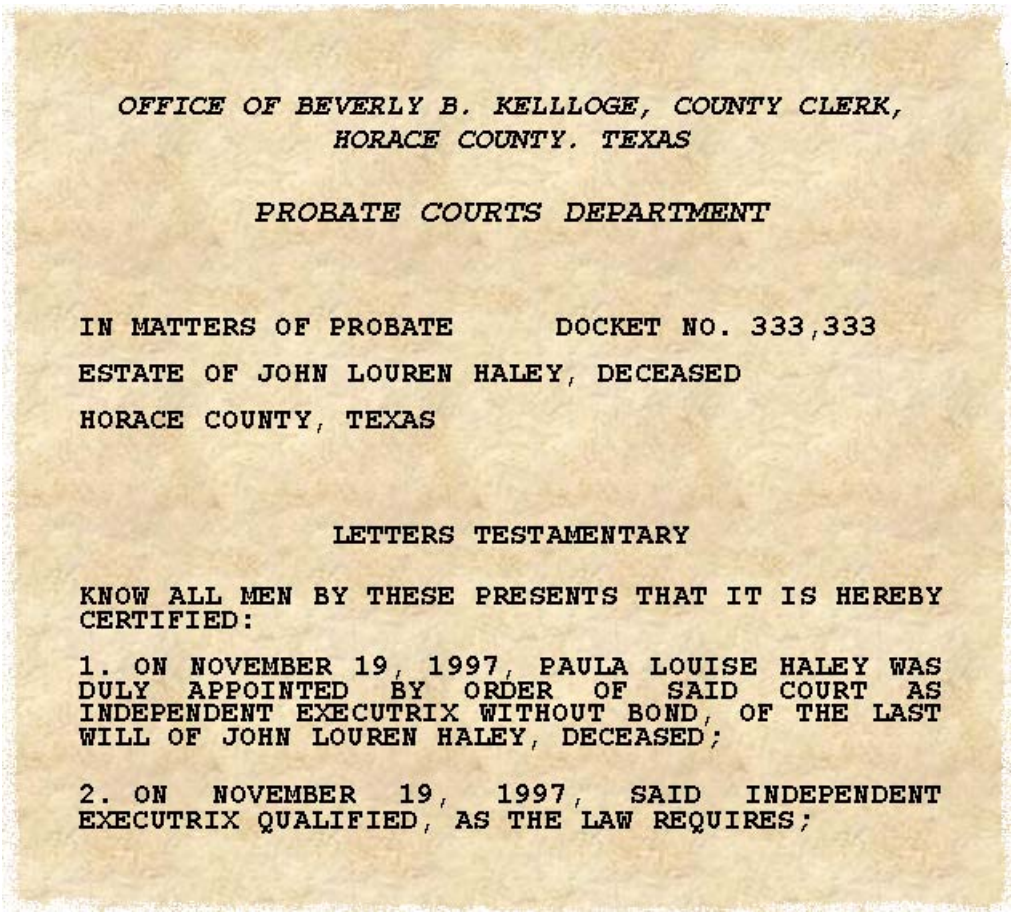
ADMINISTRATOR OF AN ESTATE

Each valid last will and testament will name a person who is to act on the estate's behalf. This person is named as the administrator, executor, executrix or personal representative of the estate. The first procedure necessary in administering the estate is to petition the court for admittance of the last will and testament into probate. At this time the court will issue *Letters Testamentary.*

LETTER TESTAMENTARY

Once a last will and testament has been submitted before the probate court, the court sets out what is called *Letters Testamentary.* This document appoints an administrator, executor or representative to act on behalf of the estate during the time the estate is being probated.

The following is an example of Letters Testamentary for the estate of John Louren Haley. This document gives the Executrix proper authority to act on behalf of the estate.



OFFICE OF BEVERLY B. KELLLOGE, COUNTY CLERK,
HORACE COUNTY. TEXAS

PROBATE COURTS DEPARTMENT

IN MATTERS OF PROBATE DOCKET NO. 333,333

ESTATE OF JOHN LOUREN HALEY, DECEASED

HORACE COUNTY, TEXAS

LETTERS TESTAMENTARY

KNOW ALL MEN BY THESE PRESENTS THAT IT IS HEREBY CERTIFIED:

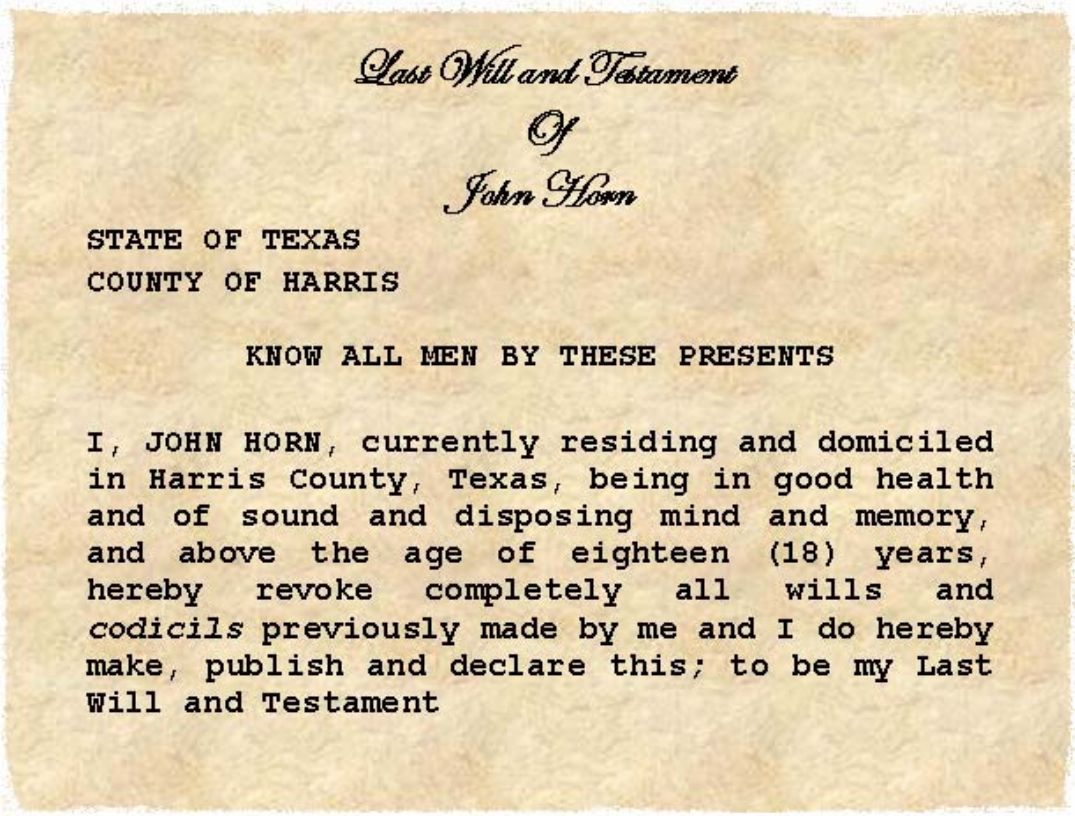
1. ON NOVEMBER 19, 1997, PAULA LOUISE HALEY WAS DULY APPOINTED BY ORDER OF SAID COURT AS INDEPENDENT EXECUTRIX WITHOUT BOND, OF THE LAST WILL OF JOHN LOUREN HALEY, DECEASED;

2. ON NOVEMBER 19, 1997, SAID INDEPENDENT EXECUTRIX QUALIFIED, AS THE LAW REQUIRES;

CODICIL

If the last will and testament has been correctly prepared, this document remains binding unless annulled prior to one's death. The testator can make changes to the existing will or he can revoke the previous will, at any time. Such changes are not uncommon and should occur if there have been changes that affect the body of the will. Changes that might affect the present will would be a new marriage, a divorce, additional children, new assets or a move to another state. The testator can enter into a new will or he can submit a written addition that adds to or explains the changes made to the existing will. This is called a *codicil* and will require the same formalities and proper execution as did the original last will and testament.

The following is a portion of a last will and testament. Notice that the will refers to *Codicils* and specifically states that the testator is of lawful age to make out a will**.**



Last Will and Testament

Of

John Horn

STATE OF TEXAS
COUNTY OF HARRIS

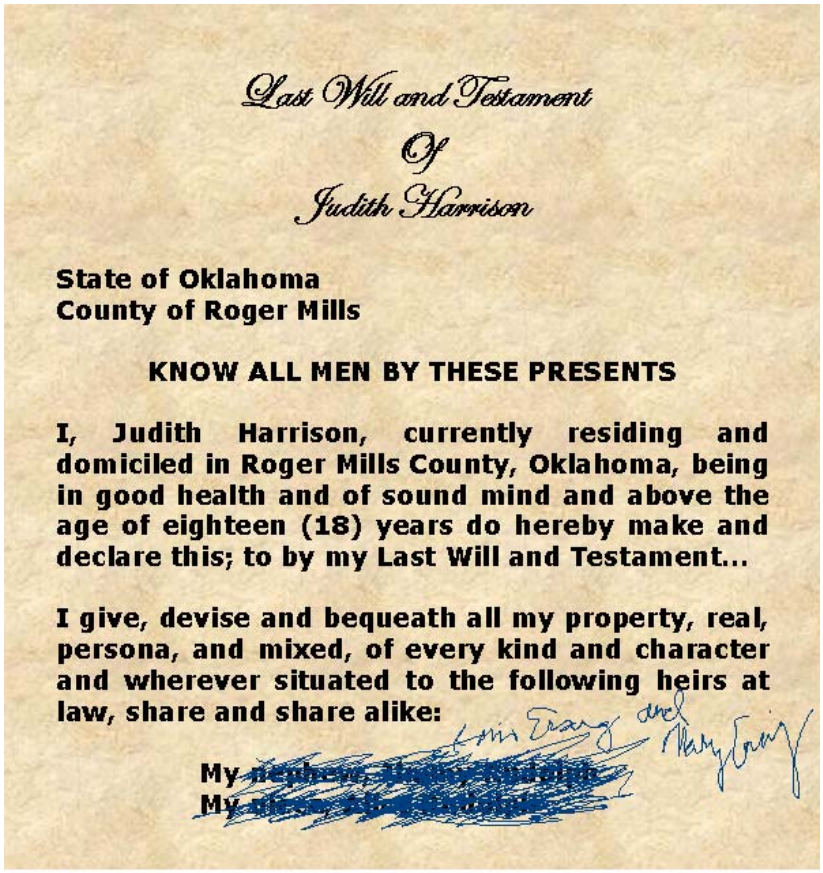
KNOW ALL MEN BY THESE PRESENTS

I, JOHN HORN, currently residing and domiciled in Harris County, Texas, being in good health and of sound and disposing mind and memory, and above the age of eighteen (18) years, hereby revoke completely all wills and *codicils* previously made by me and I do hereby make, publish and declare this; to be my Last Will and Testament

HOLOGRAPHIC WILL

A *holographic will* can be either a will that has been entirely handwritten, or it can reference any handwritten changes made on the original will. State statues differ as to the legality of holographic wills.

This is the Last Will and Testament of Judith Harrison. Sometime after preparing the will she became angry with the heirs as listed in the will. To show her anger she took a pen and crossed out their names so that they were illegible. Other names were added by handwriting.



Last Will and Testament

Of

Judith Harrison

State of Oklahoma
County of Roger Mills

KNOW ALL MEN BY THESE PRESENTS

I, Judith Harrison, currently residing and domiciled in Roger Mills County, Oklahoma, being in good health and of sound mind and above the age of eighteen (18) years do hereby make and declare this; to by my Last Will and Testament...

I give, devise and bequeath all my property, real, persona, and mixed, of every kind and character and wherever situated to the following heirs at law, share and share alike:

My nephew,
My niece,

In cases like this, the Probate Court must determine if the changes to the will have met the criteria for a codicil to the will. These changes must follow the same formalities and execution as was required for the original will.

In this case, the court might very well disallow the changes. If the court were unable to read the names of the new heirs and were unable to read the name of the original heirs, the estate may be divided among the laws of descent and distribution.

PROXY SIGNATURE

Someone other than the testator can sign the will on behalf of the testator as long as the signature is done pursuant to the testator's request and the signing party signs in the presence of the testator.

INHERITANCE AND WRONGFUL DEATH

Most states have statues that prohibit an heir from inheriting if, in fact, the heir were the cause of the death (as defined as *wrongful death*). State laws may differ in their definition of this term but agree that any heir who had caused such wrongful death is disallowed from the benefit of the death. Such disallowance bars the heir from inheritance even though he or she may be named in a Last Will and Testament, or in an insurance policy, or as a direct descendant. This disallowance may extend to the descendants of the one causing the wrongful death.

UNDUE INFLUENCE

Law precludes any heir from exercising undue influence upon a person while they are drafting a last will and testament. Such undue influence can invalidate the will. For instance, undue influence may be established if a party is secured to draft the will of a dying or elderly person and this same party is granted a substantial benefit under the will.

A granddaughter convinced her grandmother that she should update her Last Will and Testament using a computer software package she had bought. The woman's previous will divided her estate equally between her granddaughter and grandson. The new will nullified the previous will and decreased the amount of the estate given to the grandson from one-half to one-third and increased the amount given to the granddaughter to two-thirds. Even though the new will was executed, signed and dated, if undue influence could be shown, the new will would be deemed invalid.

REQUIREMENTS FOR A VALID WILL

In most states, a formal will must follow these guidelines:

(1) be written
(2) be signed by the person making the will
(3) be signed by two or more disinterested witnesses

Some states impose additional requirements, such as requiring that the witnesses sign in each other's presence and/or in the presence of the person writing the will. Please note that requirements for a will vary from state to state.

In the establishment of a valid will one must abide by the laws where the person resides. Just as a warranty deed or a mortgage is a special type of legal document, so is the last will and testament and it must comply with the

appropriate state statute. Most states have established that anyone who makes a will must be at least 18 years of age or older, be of sound mind, and be unencumbered by any outside force or influence.

Upon a man's death bed a last will and testament was written. At the time, the only people who could witness the will were the man's wife and his 14-year old son.

Arkansas requires that any and all witnesses be at least 18 years of age. If this man lived in Arkansas, his final requests as set out in his will would be deemed invalid and the estate would pass through the laws of descent and distribution.

Time Limit for Offering a Last Will and Testament to Probate

In order for a will to be recognized by the probate court, the administrator must submit the valid last will and testament within the appropriate time period. If this time frame has not been met, then the estate is divided according to the descent and distribution laws of the state where the

property is located.

Colorado	Probate must receive the will within three (3) years after the death.
Kansas	Generally, a will must be offered within six (6) months after the death; otherwise the person in possession is deemed liable for damages.
Louisiana	Probate must receive the will within five (5) years after the proceedings of the estate began.
Montana	Probate must receive the will within three (3) years after the death.
Nebraska	Probate must receive the will within three (3) years after the death. Informal probate can receive a will after three (3) years.
New Mexico	Probate must receive the will within three (3) years after the death.
North Dakota	Probate must receive the will within three (3) years after the death.
Oklahoma	The caretaker of the will must provide the last will and testament to a named executor or to probate within 30 days after the notice of the death.
South Dakota	Probate must receive the will within three (3) years after the death or proof of the death.
Texas	Probate must receive the will within four (4) years after the death.
Utah	Probate must receive the will within three (3) years after the death.
Wyoming	There is no designated time limit for offering the will to probate in Wyoming.

LEGAL AGE FOR ESTABLISHING A WILL

Colorado	18 years of age or older
Kansas	18 years of age or a minor who is married and is at least 16 years of age
Louisiana	18 years of age, or a minor who is a married person (A child 16 years or older who is terminally ill and competent can execute a will.)
Montana	18 years of age or older
Nebraska	19 years of age or a minor who is a married person
New Mexico	18 years of age, or a minor who is a married person and is at least 16 years of age, or a minor child who is in the military
North Dakota	18 years of age or older
Oklahoma	18 years of age, or a minor who is a married person
South Dakota	18 years of age, or a minor who is married, or a minor in the armed forces
Texas	18 years of age, or a minor who is a married person, or a minor given permission by court order
Utah	18 years of age, or a minor who is a married person
Wyoming	18 years of age, or a minor who is a married person, or a minor child serving in the military, or a minor child that has been emancipated by court order

Practicing the Rules

In the following example, several conveyances take place. Track the ownership from Lawrence Post to the other grantees and determine the percentage of minerals in the 80-acre tract that each individual owns.

80-acres

Lawrence Post owned, in fee simple, an 80-acre tract of land located in North Dakota.

Lawrence Post

In 1983, Lawrence Post, by mineral deed to Joel Wolff, severed 50% of his interest in the tract of land.

Joel Wolff

In 1999, Lawrence Post, by mineral deed to Gerald Hopkins, severed the additional 50% of his interest in the tract of land.

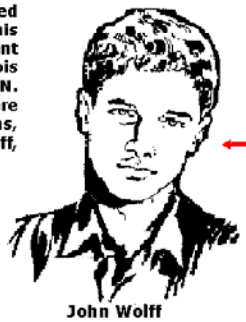
Gerald Hopkins

In 2001, Gerald Hopkins died in North Dakota. According to his will, his estate was to be divided ½ to his eldest son Ben, ¼ to his second son Brad and ¼ to his youngest son Shawn.

Because of costs, the three sons decided not to probate the will.

Shawn Hopkins

In 2003, Joel Wolff died in Illinois. In 2004, his entire estate went through an Illinois probate court and his N. Dakota minerals were divided to his two sons, John and Jack Wolff, share and share alike.



John Wolff

Six months ago an oil company leased each of the three sons.

Brad Hopkins

This was the first entry of the minerals in the county records since the original mineral deed.

Jack Wolff

At the same time, Ben learned about a discovery well near the 80-acre tract of land.

He immediately submitted his father's will for probate.

Ben Hopkins

Who owns what percentage of this 80-acre tract?

Work Area

Lawrence Post _____%

Joel Wolf _____%

John Wolf _____%

Jack Wolf _____%

Gerald Hopkins _____%

Shawn Hopkins _____%

Brad Hopkins _____%

Ben Hopkins _____%

Answer: Lawrence Post—50%; Joel Wolf-0%; John Wolf—0%; Jack Wolf—0% (through the Dormant Mineral laws of N. Dakota 50% of the minerals would revert back to the surface owner); Gerald Hopkins—0%; Shawn Hopkins—16.666%; Brad Hopkins—16.667%; Ben Hopkins—16.667%

OMITTED SPOUSE

Generally, if a will is executed prior to a marriage and the new spouse fails to be added to the will, the surviving spouse may claim an elective share as an *omitted spouse.*

This is Charles with his wife Cindy and son Jason. Charles and Cindy have been married for 15 years.

ELECTIVE SHARE

An heir who has been left out of a will may make a claim for his or her share of the estate through claiming an *elective share* status.

Two years ago Charles separated from Cindy and moved in with a long time friend, Sarah. The separation has been extremely ugly!

FORCED SHARE

If an heir makes an *elective share* claim and it is found to be valid, the court may deem that part of the estate go to the party making the election. The court is said to *force a share* of the estate to the heir.

Sarah convinced Charles to disinherit both Cindy and Jason. Six months later Charles died. According to the new will, the entire estate was left to Sarah.

STATUTORY SHARE FOR A SPOUSE

Some states provide that a spouse has the right to a statutory share of the decedent's estate if the testator failed to provide for the spouse in the will.

NEGATIVE WILL

A *negative will* refers to a will that has disinherited one or more of the heirs. Certain state statutes permit the disinheritance of heirs; however the disinherited heir may make claim against the estate, causing a possible forced share of the estate.

Even though the will disinherited both Cindy and Jason, Cindy has made a claim on Charles' estate as an omitted spouse and Jason through his elective share.

FORCED HEIRSHIP IN THE STATE OF LOUISIANA

The state of Louisiana has a unique law established to protect living parents and offspring who had either fallen out of favor or were never in favor with the deceased. The law has changed several times.

The Law as Prior to December 31, 1981: The deceased party who leaves one (1) *legitimate* child cannot bequeath more than 2/3rds of his estate to other parties. If the deceased person leaves two (2) or more children, he cannot bequeath more than ½ of his estate to other parties. If the deceased leaves three (3) or more children, he cannot bequeath more than 1/3rd of his estate to other parties. If the deceased has no children but does have surviving parents, he cannot bequeath more than 2/3rds of his estate to others.

The Law after December 31, 1981: The deceased party who leaves at least one (1) child cannot bequeath more than 3/4ths of his estate to other parties. If the deceased leaves two (2) or more children, he cannot bequeath more than ½ to other parties.

The Law effective July 1, 1990: The law was altered to affect forced heirship on only those children under the age of 23 or those children having severe corporal or mental insufficiency. If a child is deceased but would have been under the age of 23 at the time of the parent's death, then the heirs of the deceased child can claim forced heirship.

The Law effective after January 1, 1996: The law was altered to affect forced heirship to those children under the age of 23 or those children who have died and left children with severe corporal or mental insufficiency who are unable to care for themselves.

FINAL DECREE

The final stage of the probate proceedings is the issuance of a *final decree* or *final account*. When the probate judge has determined that all of the criteria has been met for final disposition, he will set forth all of the heirs and make a final decree as to who receives what portion of the estate.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

IN THE MATTER OF THE ESTATE
OF EARL WAYNE WHILES, DECEASED

ORDER ALLOWING FINAL ACCOUNT OF EXECUTRIX,
ORDER FOR DISTRIBUTION, DETERMINATION
OF HEIRS-AT-LAW AND DISCHARGE OF EXECUTRIX

This matter coming for hearing this 27th day of July, 1998, on the Final Accounting of CHRISTINE H. WHILES, Executrix of the Estate of EARL WAYNE WHILES, Deceased (hereinafter called "Executrix"), and the Petition For Distribution, Determination of Heirs-at-Law and Discharge ... and this Court having examined the Accounting, Petition For Distribution, Determination of Heirs-at-Law and Discharge ...

THAT THE COURT FINDS, ORDERS, ADJUDGES AND DECREEES as follows:

A. That EARL WAYNE WHILES is hereby determined to have been survived by the following heirs-at-law and no others, to wit:

CHRISSY WHILES	**(legal age) (wife of Decedent)**
MARY WHILES	**(legal age) (half-sister of Decedent)**
EDWIN J. WHILES	**(legal age) (half-brother of Decedent)**
KAREN SALLY	**(legal age) (daughter of deceased)**

B. That Article II of the Last Will and Testament of EARL WAYNE WHILES, Deceased, provides:

"I give, devise and bequeath all my property, real, personal, and mixed, of every kind and character and wherever situated to my *wife* Chrissy and One Dollar to my half brother and half sister.

Example of a Final Decree

The Final Decree is the last document that will come from the probate court. This document will:

A. determine the rightful heirs of the deceased.
B. determine that all estate bills have been satisfied.
C. determine the final disposition of the estate.

INTESTATE ESTATES

Unless property is owned jointly (Joint Tenants with the Rights of Survivorship), owned as a life estate, owned in a trust or direction of the disposition of the property is given through a last will and testament, the laws of the state where the property is located will direct how the estate is dissolved. Each state's laws differ to considerable degrees. For instance, the widow, with children, of a man who dies intestate in the state of Virginia will receive his entire estate. However, the estate will be dissolved in a completely different manner if the man was previously married and had children by this marriage. In this case the widow would receive only 1/3rd of the estate. Each of the children would split the remaining 2/3rds.

When a person dies without a last will and testament, it is said that the party has died *intestate*. In such a case, the laws of descent and distribution of the states where the property is found govern the distribution of the estate.

ISSUE

Commonly refers to the children of a deceased party.

COLLATERAL DESCENDANT

A relative who is not a direct descendant, such as an aunt, uncle or cousin, is a collateral descendant.

HEIR

Each person who, under state statute, has the right to inherit property from a deceased party is considered an heir.

LINEAL DESCENDANT

A person who is a direct descendant, whether a child or the heir of a deceased child, is a *lineal descendant*. The test for being a lineal descendant is whether the person can claim the deceased as a direct ancestor.

REPRESENTATION

Often the term *taking by representation* is used to describe heirs-at-law. This term refers to those parties that have an identical relationship (such as children) with the deceased party. Those *taking by representation* would represent their biological line of descendants and distribute the estate equally. All of the biological children of the deceased would be considered *representation*. Stepchildren, unless adopted, would not. If one of the members of this group of people is also deceased, then that party's heirs would receive his or her portion of the estate.

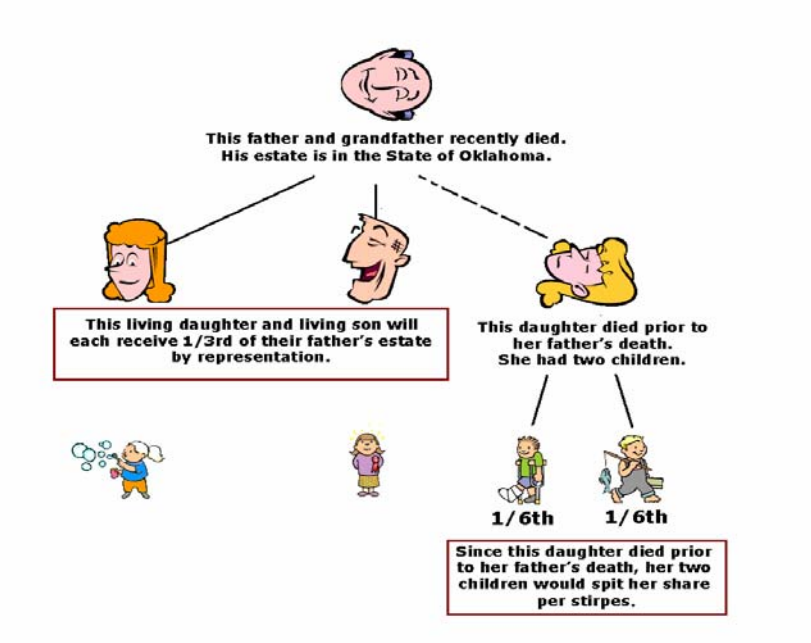
PER STIRPES

The method of dividing an estate where a group of individuals take the share which their deceased ancestor was entitled to (had he or she lived), taking by their right of representing the deceased ancestor (sometimes referred to as *taking by representation*).

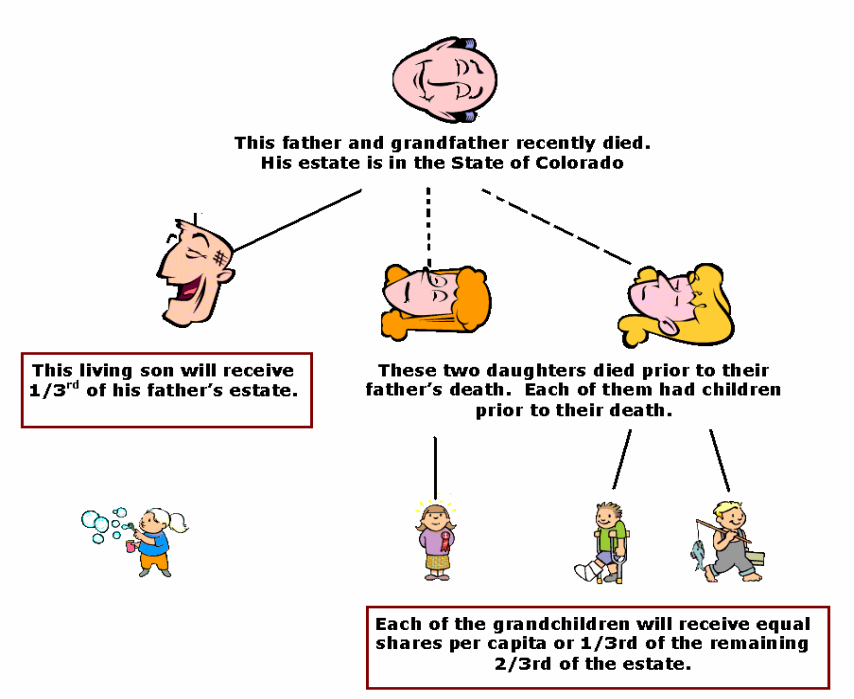
PER CAPITA

The term *taking per capita* is used to describe heirs-at-law. This term refers to those parties that will divide an estate equally at the generational level rather than dividing the estate equally by representation. If a grandparent had three children (two of which had pre-deceased him), his estate would be divided one-third to his living child and the remaining two-thirds to be divided equally among any living grandchildren from those children that pre-deceased him.

AN EXAMPLE OF REPRESENTATION



AN EXAMPLE OF PER CAPITA

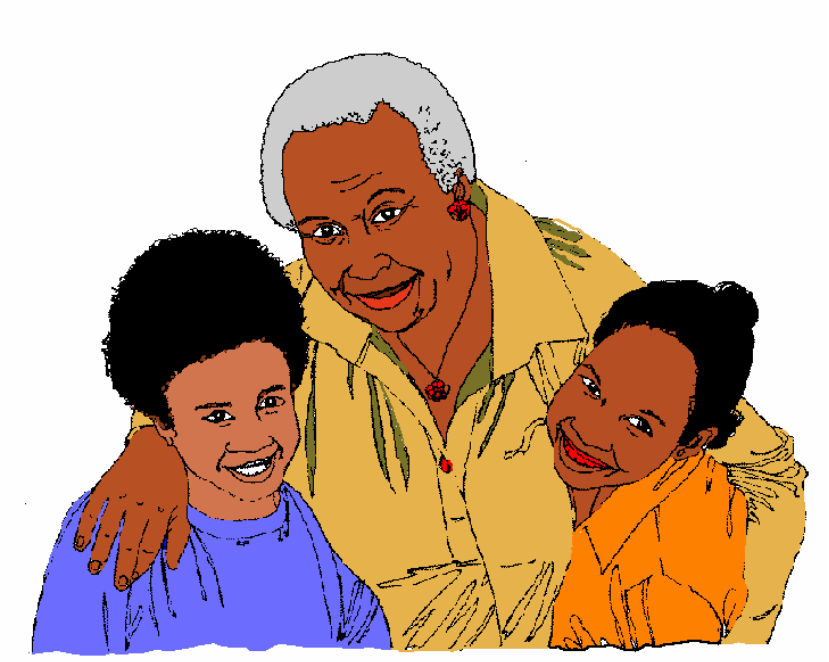


POSTHUMOUS PERSON

A child conceived before the decedent's death but born thereafter is a *posthumous person.* Such a child would inherit as if he or she had been born in the lifetime of the decedent.

STEPCHILDREN AND FOSTER CHILDREN

Generally stepchildren and foster children are treated the same. They do not inherit.



A woman prepared her Last Will and Testament referencing a child (really a stepson) as one of her "issue." The will stated that this child was the son of her husband and herself. The language in the will also stated that "issue" was defined as children by birth or adoptions.

The will left her estate to her "issue" in equal shares. Even though the language in the will seemed to contradict itself, the woman can designate any heir she so wills, biological or non biological. If the will is probated, the heirs as set out (including the stepson) will inherit. If the will is not probated, the laws of descent and distribution will determine the heirs. In this case the stepson will not inherit.

KINDRED OF HALF BLOOD

Half-blood children generally inherit the same share they would inherit if they were of the whole blood.

Arkansas	Heirs by half blood will inherit the same share as if they were whole blood.
Colorado	Heirs by half blood will inherit the same share as if they were whole blood.
Mississippi	Heirs by half-blood are generally treated the same as whole-blooded heirs, except that the heirs of the whole-blood, in equal degree, are preferred to the relatives of the half-blood in the same degree.
Montana	Heirs by half blood will inherit the same share as if they were whole blood.
New Mexico	Heirs by half blood will inherit the same share as if they were whole blood.
North Dakota	Heirs by half blood will inherit the same share as if they were whole blood.
South Dakota	Heirs by half blood will inherit the same share as if they were whole blood.
Texas	Heirs by half blood will inherit the same share as if they were whole blood.
Utah	Heirs by half blood will inherit the same share as if they were whole blood.
Wyoming	Heirs by half blood will inherit the same share as if they were whole blood.

DIVORCE AND CHILDREN'S RIGHTS

Generally divorces of husbands and wives do not affect the right of children to inherit their property.

Children Conceived Before the Parent's Death and Born After the Parent's Death

State laws regarding children in the category vary.

States that would allow these children to inherit as if they had been born in the lifetime of the decedent are:

Alabama	Louisiana	Nebraska
North Dakota	Texas	Wyoming

In the following states there is a provision to this law that the newborn must live at least 120 hours after birth in order to inherit:

Arizona	Colorado	Montana
New Mexico	South Dakota	Utah

For these same states, with the exception of Utah, this rule does not apply if the end result is that the State ends up with the intestate estate.

Failing to Survive the Decedent by 120 Hours

Generally, any heir who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of intestate succession. This is true for the following states:

Alabama	Colorado	Kansas
Montana	Nebraska	New Mexico
South Dakota	Texas	Utah

An Example of Intestate Succession in the State of COLORADO

When a person dies owning assets in the state of Colorado, and these assets are not addressed by a will, the intestate portion of the estate will be divided as follows:

1) To the surviving spouse:

- When there are no surviving children (or their heirs) or parent of the decedent, the surviving spouse gets the entire intestate estate.
- When all of the decedent's surviving children (or their heirs) are also descendants of the surviving spouse and there are no other children (or their heirs) of the surviving spouse who survive the decedent, the surviving spouse receives the whole intestate estate.

- When no children (or their heirs) of the decedent survives the decedent but a parent of the decedent survives, the surviving spouse receives the first $200,000, plus three-fourths of any remaining balance of the intestate estate.
- When all of the decedent's surviving children (or their heirs) are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent, the surviving spouse receives the first $150,000, plus one-half of any remaining balance of the intestate estate.
- When one or more of the decedent's surviving children (or their heirs) are not descendants of the surviving spouse and all those who are children of the decedent are adults, the surviving spouse receives the first $100,000, plus one-half of any remaining balance of the intestate estate.
- When the decedent has one or more surviving children (or their heirs) who are not a descendant of the surviving spouse, and if any of these children are minors, the surviving spouse receives one-half of the intestate estate.

2) Heirs other than the surviving spouse:

- When there is no surviving spouse, the entire intestate estate passes to the children (or their heirs), who take *per capita* at their generation.
- When there is no surviving spouse or children (or their heirs), all will go to parent or parents equally.
- When there is no surviving spouse, children or parents, the entire estate goes to the parents' surviving descendants *per capita* at each generation.
- When there is no surviving spouse, children, parents or descendants of parents, all goes to the grandparents equally.
- When there is no surviving spouse, children, parents, descendants of parents or grandparents, all goes to the aunts, uncles (or their children) *per capita.*

If a child that was born to the deceased parent was previously adopted away from this parent, then, in order for this child to inherit, he or she must file a claim with the probate court within 90 days from the parent's death.

AN EXAMPLE OF INTESTATE SUCCESSION IN THE STATE OF LOUISIANA

In order to briefly explain descent and distribution in Louisiana, it is necessary to understand the difference between community and separate property, since the descent and distribution of each is different. Separate property is that which a person owns prior to marriage or which comes to him or her after marriage by donation or inheritance.

Community Property would pass in this order:

- When there is a surviving spouse and no surviving children (or their heirs), the spouse is entitled to all the community property.
- When there are surviving children (or their heirs), they inherit. What is known as a "usufruct" would go to the surviving spouse. A usufruct is the right to use the decedent's share of the community property for their lifetime or until there is a remarriage.
- If there are no surviving children (or their heirs) and no surviving spouse, the brothers and sisters would inherit with a usufruct going to the parents.
- If there are no brothers or sisters, the nieces and nephews would inherit with a usufruct going to the parents.
- If there are no nieces and nephews, the parents would inherit.

Separate Property would pass in this order:

- The first group in line to inherit separate property is the children (or their heirs).
- If there are no children, the brothers and sisters would inherit with a usufruct going to the parents.
- If there are no brothers and sisters, the nieces and nephews would inherit with a usufruct going to the parents.
- If there are no nieces and nephews, the parents would inherit.
- If there are no parents the spouse would inherit.

A Portion of Oklahoma Intestate Succession – beginning July 1, 1985

Assuming the Estate is not otherwise limited by a prenuptial marriage contract:

1. **If someone dies without a will leaving a *spouse and children which came from that marriage,* the surviving spouse will receive one-half of all the property of the estate, and the couple's joint children will share equally the remaining one-half of the property.**
2. **If there are *children from a prior marriage* then…**
   - **the surviving spouse would take an undivided one-half (1/2) interest in the property acquired by the joint industry of the husband and wife during coverture.**
   - **The remaining property not acquired by joint industry during their marriage is divided equally among the surviving spouse and all of the children from the decedent.**
   - **The share of the estate not passing to the surviving spouse is to be distributed in undivided equal shares to the surviving children of the decedent and issue of any deceased child of the decedent by right of representation**

A Portion of Oklahoma Descent and Distribution Statute

Terms Continued

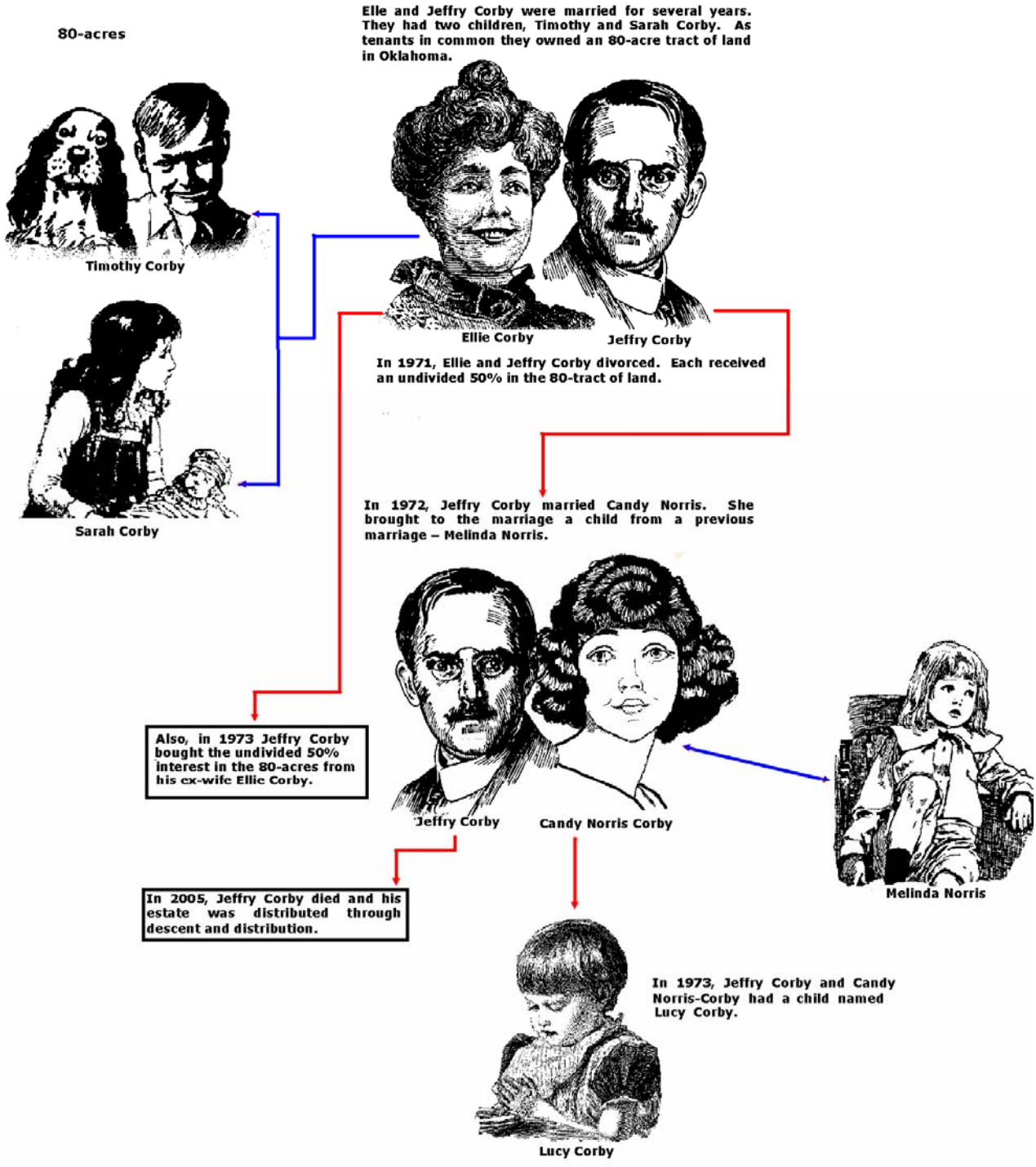
Joint Industry by Coveture - means the industry of a husband and wife, each in his or her recognized sphere of marital activity, and not that both must pursue jointly the same business or calling.

Non-Joint Industry Property – *includes all property owned prior to the marriage, acquired thereafter by gift, devise, or descent.*

Devise – A devise is a special gift of real property in a will.

Practicing the Statute

In the following example, several title issues occur. Track the ownership from Elle & Jeffry Corby and determine the percentage of minerals each individual owns in the 80-acre tract.



Who owns what percentage of this 80-acre tract?

Work Area

	Non-Joint Industry 50%	Joint Industry 50%	Totals
Lucy Corby			
Timothy Corby			
Sara Corby			
Candy Corby			
Total	50%	50%	100.00%

At the point in time that Jeffrey and Candy received the joint industry portion of the land, she would have owned 50% of this portion as a tenant in common. Jeffrey would have owned the other 50%. When he died only his 50% would have passed through descent and distribution.

	Non-Joint Industry 50%	Joint Industry 50%	Totals
Lucy Corby	12.5%	4.1666%	16.666%
Timothy Corby	12.5%	4.1666%	16.666%
Sara Corby	12.5%	4.1666%	16.666%
Candy Corby	12.5%	25% + 12.5% = 37.5	50%
Total	50%	50%	100.00%

AFFIDAVIT OF HEIRSHIP

When an estate has not gone or will not go through probate proceedings, an *affidavit of heirship* is needed to determine the legal heirs at law. Such an affidavit should be sworn before a notary and signed by someone who knew the decedent but is not an heir of the decedent.

In those cases where an heir is also deceased, a different affidavit must be secured.

Affidavit of Death and Heirship

Alma L. Miller formerly known as Alma Wallace, Decedent

STATE OF COUNTY Oregon
COUNTY OF JASMINE

Maggie Bontoci whose address is 555 W. 5th Ave. hereinafter referred to *"Affiant"* being of lawful age and being duly sworn, upon oath deposes and says that (s)he was well acquainted with Alma L. Miller, hereinafter referred to as "the Decedent," and that the answers and statements given in the following questionnaire are based upon Affiant's personal knowledge and are true and correct:

1) **How long did you know the Decedent? 61 years.**
2) **The Decedent died at the age of 82 on January 19, 1996.**
3) **Did the Decedent leave a will? Yes.**
4) **Have proceedings been commenced with respect to the decedent's estate? No.**
5) **At the time of death was the Decedent single ____, married ___divorced, __ a widow Yes ?**
6) **How many times was the Decedent married? 1.**
7) What was the total number of Decedent's children, both natural and adopted? 5.

Complete the following table with respect to all children of the Decedent, whether living or dead, natural or adopted:

Name of Child	Date of Birth	Child's other Parent	Address or Date of Death
Billie Wallace	10/20/34	Bill Wallace	11/15/88
Margerite Boston	03/16/36	Bill Wallace	Sandy Pass, OR
Ronnie Wallace	04/14/43	Bill Wallace	Arvada, CO
Kevin Wallace	07/23/47	Bill Wallace	Pistol Gulch, CO
Darmell Wallace	08/24/48	Bill Wallace	Pistol Gulch, CO