



Where There is No Will or A Bad Will:  
There is Still A Way

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# Where There is No Will or A Bad Will: There is Still A Way

- Professor Google tells us that 70% of Americans die without a will.
- Decedent may have a will that fails to dispose of property because some or all of the devisees are dead or there is no residuary clause.

# **Where There is No Will or A Bad Will: There is Still A Way**

## **Techniques for HANDLING Intestacy – Texas Estate Code**

- **Determination of Heirship – TEC Chapter 202**
- **Affidavit of Heirship – TEC 201.053**
- **Small Estate Affidavit – TEC 205**

# **Intestate Succession- TEC Chapter 201**

**If someone does not have a will, the State of Texas has one for them. The laws of intestacy dictate what heirs will receive from specific types of property owned by the Decedent.**

# **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 (\$600 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.

# **Affidavit of Heirship – TEC Chapter 203**

- Not a Court proceeding
- Filed in the Deed Records
- Requires two disinterested witnesses

# **Small Estate Affidavit – TEC 205**

- Filed with the Court
- Non-exempt assets cannot exceed \$75,000
- Requires two disinterested witnesses
- Does not create an administration

# 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

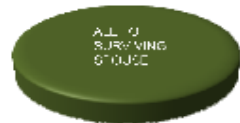


ALL REALTY IS  
OWNED BY  
DECEDENT'S  
CHILD(REN) WHEN  
SURVIVING  
SPOUSE DIES

### ALL OTHER PROPERTY



### COMMUNITY PROPERTY REAL ESTATE

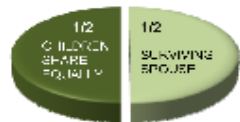


**ONLY APPLIES IF**  
ALL SURVIVING  
CHILD(REN) AND  
DESCENDANTS OF  
DECEDENT ARE ALSO  
CHILD(REN) OR  
DESCENDANTS OF  
SURVIVING SPOUSE

### ALL OTHER PROPERTY

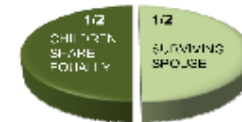


### COMMUNITY PROPERTY REAL ESTATE



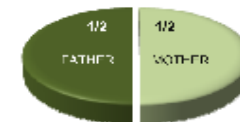
**ONLY APPLIES IF**  
THERE ARE CHILDREN FROM  
OUTSIDE THE EXISTING  
MARRIAGE ON THE DATE OF  
DEATH OF DECEDENT  
  
CHILDREN OF DECEASED  
CHILD(REN) INHERIT THEIR  
PARENTS SHARE SUBJECT TO  
ADVANCEMENTS

### ALL OTHER PROPERTY



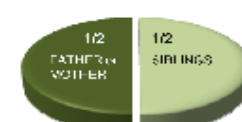
## SINGLE OR WIDOWED WITH NO CHILDREN

### 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



ANY CHILDREN TAKE THEIR SHARE (SUBJECT TO ADVANCEMENTS)

### ALL OTHER PROPERTY



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## MARRIED WITH NO CHILDREN

### A. SEPARATE PROPERTY

#### BOTH PARENTS SURVIVE



#### ONE PARENT SURVIVES



#### NO SURVIVING SIBLINGS OR SIBLINGS DESCENDANTS



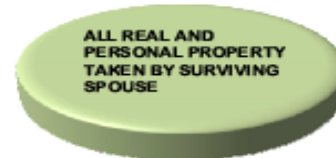
#### NO SURVIVING PARENT



#### NO SURVIVING PARENTS OR SIBLINGS DESCENDANTS




### B. COMMUNITY PROPERTY



# Where There is No Will or A Bad Will: There is Still A Way

**There is no stop in Texas**

**Unlike the Uniform Probate Code which limits inheritance to grandparents and their descendants, in Texas, you can go back to Adam and Eve if you have to.**



# Definition of Forensic Genealogy

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The application of “genealogical knowledge, methods, and standards to legal problems and proceedings”

– *Michael S. Ramage, J.D., CG (Past President of the APG Forensic Genealogy SIG)*



Investigative  
Genetic  
Genealogy

Unknown  
Parentage

Resolving Real  
Estate Title

Natural  
Resources and  
Mineral Rights  
Ownership

Other

Military  
Repatriation

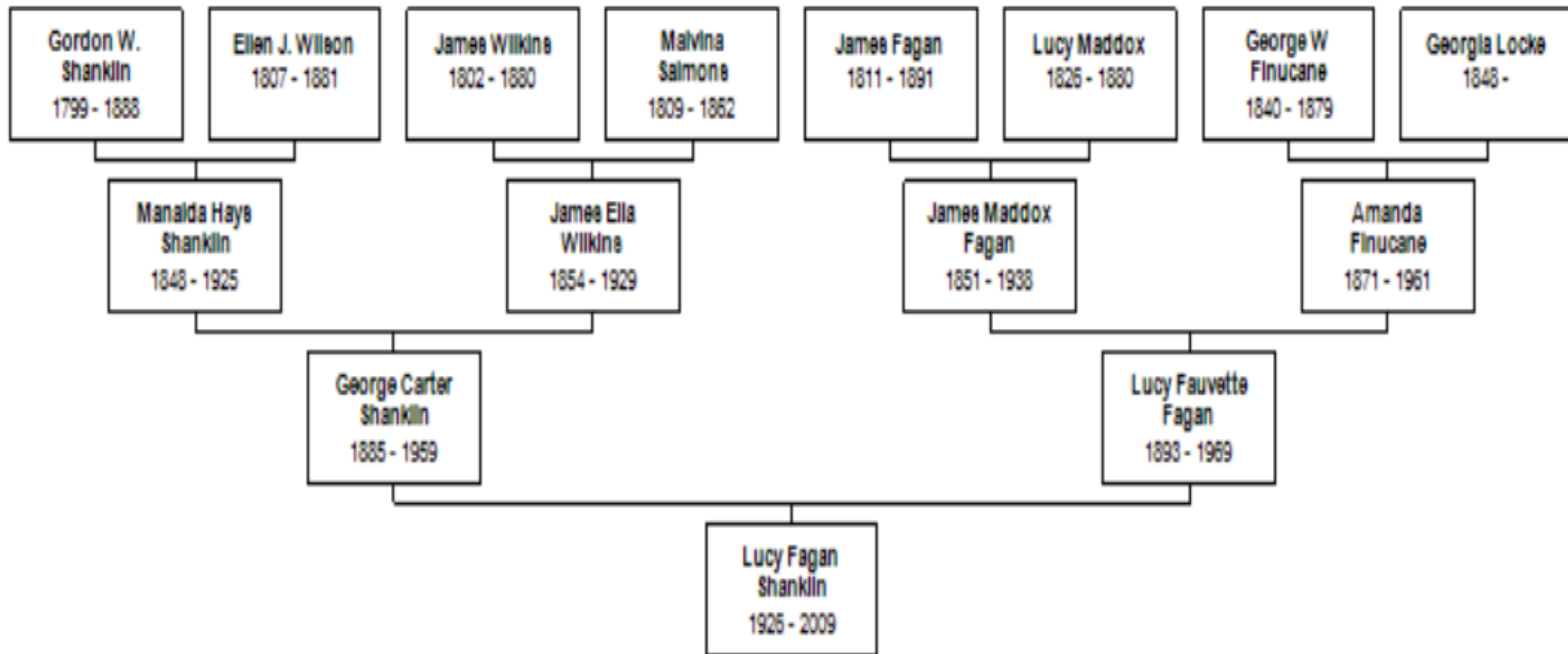
Citizenship, Immigration,  
and Tribal Membership

Research for Authors  
and Publishers

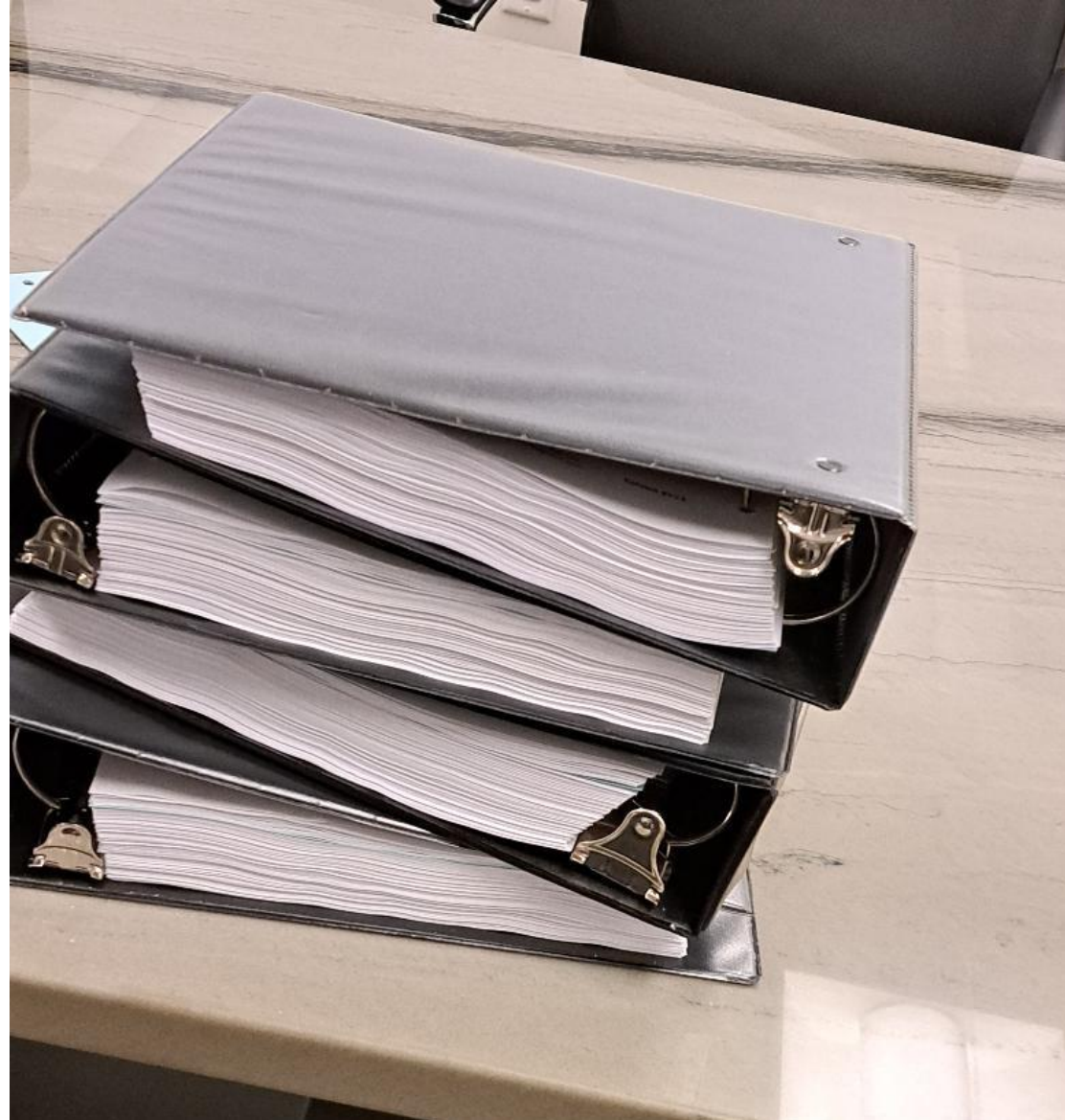
Missing and  
Unknown  
Heirs

# Where There is No Will or A Bad Will: There is Still A Way

- Lucy Shanklin – incapacitated person, never married, no children
- One brother who predeceased as a child
- Parents predeceased
  - Mother only child
  - Father had 2 brothers and a sister, who all predeceased without leaving children
- This goes beyond grandparents – Under Uniform Probate Code this would have stopped and escheated to the state- \$2.3 million
- Went to great grandparents and now includes 4 equal moeties







# Problems in Finding Heirs

- No cooperation from anyone who has knowledge
- Incomplete information from family
- Incomplete records
- Fear of scam

# What happens to a moiety when you cannot locate any descendants?

## **Kirkpatrick vs Estate of Kane – 743.S. W. 2d 371**

In *Kirkpatrick vs Kane*, decedent had no spouse, children, siblings, nor parents. The estate divided into 2 moieties, one for the paternal grandparents and one for the maternal grandparents. No paternal descendants could be discovered. Court, citing other cases, held that the legislature intended to pass on intestate decedent's entire estate to his descendants. To accomplish this, Court held that the paternal moiety should descend to the heirs of the maternal line.

# What Happens to Heir's Share Who Can't be Located?

- Property Code 71.001 -- Escheat Sections
  - If they die intestate and without heir, property escheats.
- Estates Code 362.011
  - On final settlement, if a person is unknown or missing their share is paid into the registry of court.
- Estates Code 555.001
  - Court order to escheat property
    - After approval of final account;
    - Hold for 6 months and then “any portion” held in registry of the Court also escheats.

# DNA & Heirship

- You can petition the court for DNA testing – 204.051
- Cannot use Ancestry.com due to their terms of service
- You can use FTDNA and 23&Me
- Parabon Affinity DNA Testing Service

# Adoption & Heirship

Estates Code 201.054

- Child can inherit from both natural parents and adoptive parents, unless the adoption decree terminates rights to inherit from natural parents.
- Natural parents do not inherit from a child who has been adopted.

# Adoption & Heirship

- Problem – child is often placed for adoption at birth. Adoption records are quite often sealed and difficult to obtain, especially if adoption was out of state.
- Without records, do not know who the natural parents are and we do not know if paternal right were terminated.

PFEIFFER ALICIA N	DALLAS	OCT 14	1567
PFEIFFER CASSIE O	ANGELINA	NOV 29	2177
PFEIFFER CULLEN T	GILLESPIE	FEB 19	190
PFEIFFER JONATHAN A	BEXAR	OCT 1	17093
PFEIFFER KEVIN W	EL PASO	JUN 14	8395
PFEIFFER LAURA A	BEXAR	JAN 31	1318
PFEIFFER MELANI D	POTTER	MAR 3	5875
PFEIFFER MICHAEL W	BEXAR	OCT 30	17094
PFEIFFER SHANNON R	HARRIS	MAY 31	87481
PFEIL ADAM N	WHARTON	FEB 18	44392
PFEIL DARRYL W	WILSON	SEP 4	151905
PFEIL JANELL M	LAVACA	NOV 23	180857
PFEIL SUSAN A INF OF	TRAVIS	AUG 24	168448
PFEIL TINA M	WILSON	JAN 7	11391



**TEXAS BIRTH DATA 1950-74**

<b>CHILD'S NAME</b>	<b>DOB</b>	<b>GDR</b>	<b>BIRTH COUNTY</b>	<b>FATHER'S NAME</b>	<b>MOTHER'S MAIDEN NAME</b>
TERESSA NINETIA YARBROUGH	8/24/1973	F	TRAVIS		HELEN LORRIANE THOMPSON
LISA ANN GROAT	8/24/1973	F	TRAVIS	CHARLES GEORGE GROAT	BARBARA ANN FEIGEL
RUTH V LOERA	8/24/1973	F	TRAVIS	JOHN SOSA LOERA	ESPERANZA VILLEG GONZALES
TAMMARA DAWN FRASIER	8/24/1973	F	TRAVIS	JOHNNIE REX FRASIER	CAROL LEE DIANE
ROBERTA LYNN EASLEY	8/24/1973	F	TRAVIS	ROBERT EDWIN EASLEY	ANITA JOYCE FOWLER
AMY ELIZABETH DIXON	8/24/1973	F	TRAVIS	THOMAS NELSON DIXON	DIANE ELIZABETH GAINES
SERILDA R HERNANDEZ	8/24/1973	F	TRAVIS	VICTOR GONZALEZ HERNANDEZ	ERLINDA RIVERA
KAY ELLEN EALEY	8/24/1973	F	TRAVIS	WILLIAM HERBERT EALEY	DENA FAY ROBERTSON

# **Whole Blood or Half Blood TEC 201.057**

- Normally occurs in cousins when a grandparent is married more than once and has issue from both marriages.
- Half bloods inherit half as much as whole blood
- How do I determine their share?

# Whole Blood or Half Blood TEC 201.057

Example:

- You have 3 whole bloods and 3 half-bloods
- Each whole bloods gets 2 shares and each half-bloods gets 1 share
- You have 9 whole shares
- To determine what each heir gets, use 9 as a denominator and the number of shares as numerator
- Thus, each whole blood gets  $\frac{2}{9}$ ths and each half-blood gets  $\frac{1}{9}$ th of the Estate.



**QUESTIONS?**