

How can property be transferred to the heirs? Some property passes automatically to a beneficiary, such as insurance proceeds, retirement funds, and bank accounts or deeds payable on death. Joint bank accounts and jointly held real estate with a right of survivorship will pass to the other joint owner(s). Some property passes only if you go through a probate proceeding. If your relative had a will, the property is distributed according to its terms. The will must be filed in the probate court (“admitted to probate”) within 4 years of the date of death. If a person dies without a will (intestate), the property will pass to heirs depending on how closely related they are to the decedent and how the property is characterized - personal or real estate, community (marital) property, or separate property.

Debts: Debts are paid from the estate to the extent that there are assets to cover them. The IRS, Medicaid, and creditors can file claims against the estate for payment or reimbursement. Some property is exempt from creditor claims if the deceased is survived by a spouse, minor child, or adult child living in the home. Relatives are not personally liable for debts of the deceased unless they co-signed or guaranteed the debt.

Bank account balances: If over 90 days since death, the court can order a bank to release the bank account balance to a spouse, heir, creditor or another with a claim or interest in the estate.

Muniment of Title: If there are no debts owed by the estate (except those secured by an interest in real property, like a mortgage) and no administration is required, a Will may be probated as a “Muniment of Title” to transfer title to real property and vehicles without an administration. A certified copy of the Order Admitting the Will as Muniment of Title and a copy of the Will is filed in the real property records of the county where the property is located.

Transfer on Death Deed (TODD): A TODD transfers real property to the named beneficiary after death of the owner. Owner must prepare and file in property records of the county where the property is located; after death of owner, beneficiary files Affidavit of Death in property records to effect transfer. Self help forms: <https://texaslawhelp.org/sites/default/files/0-entire-transfer-on-death-deed-kit-final-updated-1-16.pdf>

Life Estate in Homestead of Surviving Spouse: Even if a will transfers property to someone else, the surviving spouse and minor children have the right to use the homestead for life as long as they maintain certain responsibilities.

Small Estate Affidavit: Requires court approval. Transfers real and personal property if everything in the estate, *excluding* the homestead and exempt property, is less than \$75,000. The Affidavit must be witnessed by two people who are not heirs and who can swear to facts about the decedent and the decedent’s family members. For a sample Small Estate Affidavit and checklist, visit www.traviscountytx.gov/probate.

Affidavit of Heirship: Does not require court approval. Transfers title to real estate when the decedent died intestate or the will was not probated within 4 years of the death of the decedent. The Affidavit of Heirship can be used to transfer *all* of the decedent’s real estate. The witness requirements are the same as the Small Estate Affidavit. A free Affidavit of Heirship form is at www.window.state.tx.us/taxinfo/taxforms/53-111-a.pdf.

Motor Vehicles: An Affidavit of Heirship for Motor Vehicle can transfer vehicle title to one of the heirs. All of the heirs must agree which of them gets the vehicle, and all must sign the Affidavit in front of a notary. No court approval is required. The form affidavit, Form VTR 262, is available from the Texas Department of Motor Vehicles at <http://txdmv.gov/forms-tac>.

Manufactured Housing: If co-owners checked the right of survivorship box on the statement of Ownership, the house will pass automatically to the survivor.

Veteran’s Survivor Benefits: The Death Pension is a benefit payable to a low-income, un-remarried surviving spouse and/or unmarried child(ren) of a deceased Veteran with wartime service discharged under other than dishonorable conditions. Income limits apply. The Dependency Indemnity Compensation (DIC) is payable to survivors of veterans who die from service-related causes. Some surviving spouses and dependents may be entitled to education and training benefits, medical care through TRICARE, and home loan guaranty benefits. Veterans also are entitled to free headstones and burial in veteran cemeteries.