

How inheritance rights stand against a false affidavit

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By [Paul Premack](#)

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When a person dies intestate, there are two factors that must be considered. First: what arrangements has that person made contractually for the disposition of their property? Second: what does Texas law say about passage of title to other assets?

Dear Mr. Premack: My father passed way in Bell Co. Texas intestate August 2003. I am his child from his first marriage, and he had two children from his second marriage. Three years after he died, his second wife filed and Affidavit of Heirship. It lists all three children, but does not show me as being a child from his first marriage. There have not been any court proceedings, so last month I filed an Affidavit listing me as a child from his first marriage. I was told that if she makes a Will she could leave everything to her two children and

exclude me. Do I have any rights or recourse? MBC

When a person dies intestate, there are two factors that must be considered. First: what arrangements has that person made contractually for the disposition of their property? Second: what does Texas law say about passage of title to other assets?

Your father may have died without a Will, but that does not mean he died without leaving legally binding instructions. For instance, if he had a bank account he could have signed a pay on death (POD) designation at the bank. Under the law, when he died that account became the property of whomever he designated. Or he may have owned a retirement account (like an IRA) which named his wife as beneficiary. If so, she owns that account even though he died without a Will and there have been no court proceedings.

Title to any asset that does not have a contractual designation is likely to pass under the Texas laws of intestacy. For instance, if they owned a home – even a community property home – his half interest would pass via intestacy in equal shares to his children (including you). However, the children would have no right to possess or control the home until such time as his wife voluntarily abandons the homestead or decides to sell it.

The fact that she filed an Affidavit of Heirship indicates that the home should have passed under Texas intestacy law. Such an Affidavit provides evidence of the family history of the decedent, so that the law can be applied to the facts in order to determine how title passed. Sadly, the Affidavit she filed misrepresented the facts; instead of listing you as a child from a prior marriage she listed you along with the other children. Under the law, the mere existence of children from a prior marriage alters the pattern of inheritance.

Her misrepresentation of the facts would have induced third parties (like a potential buyer of the home) to ignore your legal rights. Fortunately, Texas law allows any heir to file a correction to the facts in an Affidavit of their own, which you have done. The correction Affidavit was your best recourse under the circumstances, and re-asserted your right to be treated as a partial owner of your father's homestead (subject to her legal homestead occupancy rights).

Could she have made a Will leaving everything to her own two children? Yes, but we have to define "everything". She always has the legal right to devise her entire estate to anyone she selects but she cannot dispose of any asset that she does not own. Even if she made a Will saying that she leaves "all of her estate" to her two children, your legal right as heir under your father's estate per Texas law makes you an active partial owner of the house. She cannot take away your rights or give them to someone else so long as you prove they belong to you and assert their validity.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Wills and Trusts, Probate, and Business Entity issues. View past legal columns or submit free questions on legal issues via www.TexasEstateandProbate.com or www.Premack.com.