No Will: Who Gets the Minerals in Texas?

Intestate succession for mineral interests under the Texas Estates Code, and how I prove the heirs on a title report.

The two questions

1. **Character:** was the mineral interest the decedent's **separate** property or **community** property?
2. **Survivors:** who survived the decedent: a spouse, children (and whose children they are), parents, siblings?

Property acquired during the marriage is presumed community. Property owned before the marriage, or received by gift, devise or inheritance, is separate. Minerals are real property. I always state which presumption I am relying on and the instrument it comes from (volume and page).

Community property: Estates Code 201.003

Survivors	Decedent's one-half of the community passes to
No child or descendant	Surviving spouse
All children and descendants are also the surviving spouse's	Surviving spouse
Any child or descendant who is not also the surviving spouse's	The decedent's children and descendants (the spouse keeps only the spouse's own one-half)

Separate real property: Estates Code 201.002

Survivors	Spouse	Others
Spouse and a child or descendant	Life estate in one-third of the land	Children take the land, subject to that life estate, with the remainder
Spouse, no child or descendant	One-half of the land outright	Other one-half under 201.001 (parents, siblings and their descendants); if none survive, the spouse takes all (201.002(d))
No spouse	n/a	Under 201.001: children and descendants first, then parents and siblings

Personal property follows different shares (201.002(b)(1)-(2) and (c)(1)).

Worked example

Dad owned **1/8** of the minerals, inherited from his mother (separate property). He died without a will, survived by his wife and two children.

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Each child: 1/2 x 1/8 = 1/16 = 0.06250000 of the minerals (fee)
Wife: life estate in 1/3 of Dad's 1/8 (1/24 = 0.04166667 subject to her life
estate)
Check: child 0.06250000 + child 0.06250000 = 0.12500000 = Dad's 1/8
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If the same 1/8 had been bought during the marriage and both children are hers: community. Mom keeps her one-half and takes Dad's one-half outright under 201.003(b)(2).

Proving the heirs

- **Affidavit of heirship** recorded in the county where the land is, or
- **Judgment declaring heirship** from a court of record.

Under Estates Code **203.001**, a recorded affidavit or judgment that has been of record for **five years or more** in the deed records of the county where the property is (or where the decedent lived) is received as prima facie evidence of the facts in it.

My checklist

☐ Death certificate or obituary: date of death and county of residence
☐ Will search: county probate index (if a will exists, this is not intestacy)
☐ Marriage(s) and the date the interest was acquired: separate or community
☐ Every child, and whether each is also the surviving spouse's child
☐ Recorded affidavit of heirship or judgment: volume and page, recording date (five-year rule)
☐ Curative: a missing heirship is ranked title-defeating until cured; the curing instrument is named

Sources: Texas Estates Code 201.001, 201.002, 201.003 and 203.001, as shown on statutes.capitol.texas.gov (checked 10-17-2026). Example names and numbers are for illustration. General education only, not legal, tax or financial advice. I am not an attorney; talk to a licensed attorney in your state about your situation.