

COMMON LAW MARRIAGE:

THE INTERSECTION BETWEEN FAMILY AND PROBATE LAW

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AGENDA

- Elements of a Common Law Marriage
- The Importance of a Common Law Marriage in Probate
- Marital Status and Property Distribution
- Scenarios
- Questions

COMMON LAW

1. Parties agree to be married
2. Parties lived together as a married couple
3. Parties represented themselves to others as married
4. *option to file a declaration of informal marriage with the county clerk

CEREMONIAL

1. Obtain a marriage license from the county clerk
2. Ceremony must be performed by a person authorized by law to conduct marriage ceremonies



AGREEMENT

1. Express; or
2. Implied through circumstantial evidence; and
3. Intent to create an immediate, present, and permanent marriage

LIVE TOGETHER

1. No time requirement
2. Cohabitation does not need to be continuous

HOLD OUT

1. Public is aware of couple's status
2. Consider themselves married in community

HOW DO YOU PROVE ELEMENTS WHEN ONE PARTY IS DECEASED?

Texas Civil Practice and Remedies Code § 37.005

A person interested as or through an executor or administrator, including an independent executor or administrator, a trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, mentally incapacitated person, or insolvent may have a declaration of rights or legal relations in respect to the trust or estate:

- (1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- (2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity;
- (3) to determine any question arising in the administration of the trust or estate, including questions of construction of wills and other writings; or
- (4) to determine rights or legal relations of an independent executor or independent administrator regarding fiduciary fees and the settling of accounts.

PROBATE



1 - The Application

Starts the legal process

Administrator requests authority to act on behalf of the Estate

Notice is sent to all creditors and heirs



2 - Inventory & Appriase

Includes real estate, personal property, bank accounts, investments, etc.



3 - Pay any debts and taxes

We brainstorm to get the final idea



4 - Distribute assets according to will or state law

If there is no will, distributed to next of kin

PROPERTY



Community

Generally acquired during the marriage and is owned equally by both spouses

Surviving spouse does not need to go through probate for assets that have joint ownership



Separate

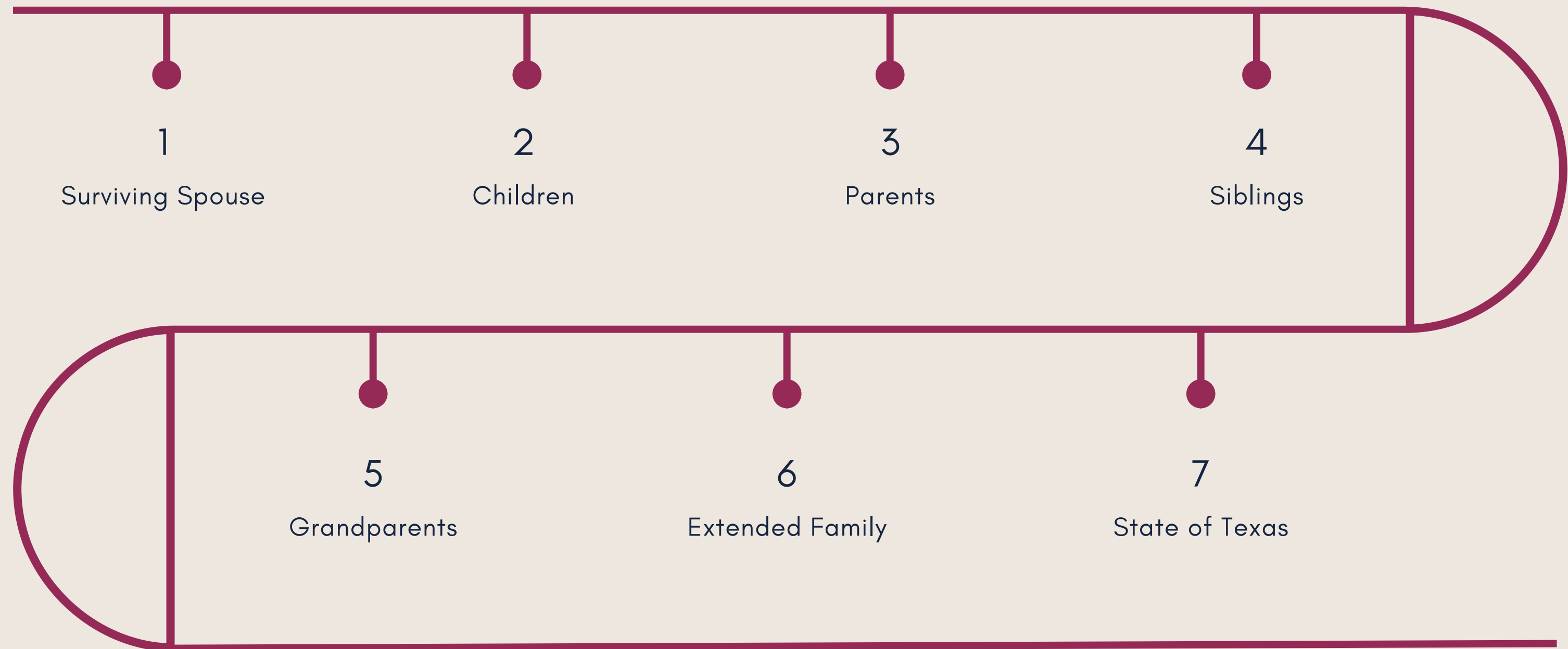
Assets owned before marriage or received as gifts or inheritances during marriage



Distribution

Depends on whether the deceased spouse is survived by a spouse, children, or other relatives

NEXT OF KIN



Texas Estates Code § 201.001

(a) If a person who dies intestate does not leave a spouse, the estate to which the person had title descends and passes in parcenary to the person's kindred in the order provided by this section.

	ALL PROPERTY
UNMARRIED WITH CHILDREN	All to children who take equally
UNMARRIED NO CHILDREN	<ul style="list-style-type: none">• 1/2 to father; 1/2 to mother• 1/2 to siblings, or descendants of siblings; 1/2 to parent• All to surviving parent• All to siblings or descendants of siblings

Texas Estates Code § 201.002

(a) If a person who dies intestate leaves a surviving spouse, the estate, other than a community estate, to which the person had title descends and passes as provided by this section.

	SEPARATE PERSONAL	SEPARATE REAL
MARRIED WITH CHILDREN	1/3 to surviving spouse; 2/3 equally to children	1/3 to surviving spouse; All equally to children, subject to spouse's 1/3
MARRIED NO CHILDREN	All to surviving spouse	<ul style="list-style-type: none">• 1/4 to father; 1/4 to mother; 1/2 to spouse• 1/4 to parent; 1/4 to sibling; 1/2 to spouse• 1/2 to parent; 1/2 to spouse• 1/2 to sibling; 1/2 to spouse• All to surviving spouse

Texas Estates Code § 201.003

(a) If a person who dies intestate leaves a surviving spouse, the community estate of the deceased spouse passes as provided by this section.

	COMMUNITY
MARRIED WITH CHILDREN	<ul style="list-style-type: none">• When children of surviving spouse: all the surviving spouse• When children outside marriage: all the children take equally but spouse retains own share
MARRIED NO CHILDREN	All to surviving spouse

PROVING MARRAIGE

SCENARIO 1

- Couple was married then later divorced. A few years later, the couple agreed to be married. After 2 years of a common law marriage, the decedent passed. A dispute arose over the marital status in probate court.
- A motion for summary judgment was filed, arguing there was no written agreement to be married between the parties
- Evidence used to prove the elements of the common law marriage:
 - Federal Income Tax Returns
 - Relationship Status Section on Questionnaires
 - Identifying Next of Kin on Medical Documents
 - “Husband”, “Wife” or “Spouse” Language on Official Documents
- Won MSJ because there was no need for the agreement to be in writing

SCENARIO 2

- Partner did not claim to be the spouse
- The death certificate listed her as the spouse, so the funeral home did too
- Son filed suit alleging fraud, was eventually dropped
- City had to first change the death certificate

SCENARIO 3

- When there is no evidence of holding out, there is no marriage



WITNESSES MATTER

SCENARIO 1

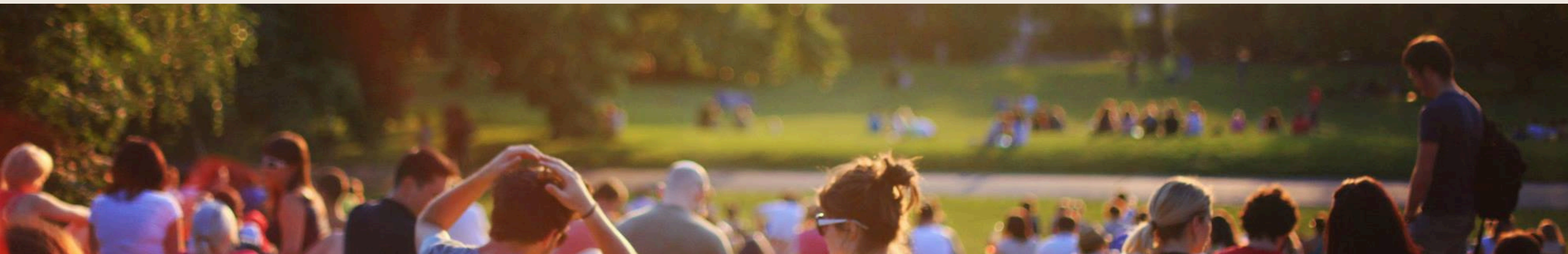
- Evidence matters but there can be difficulties with other legal professionals
- A guardian ad litem was appointed for a minor beneficiary. The guardian ad litem took the stance that the entire estate should be for the child.
- The Court believed there was good evidence of a common law marriage, but ultimately disagreed

SCENARIO 2

- Client stated her and the decedent were married
- The Witnesses did not report to the attorney ad litem regarding the common law marriage
- The attorney ad litem would not claim that the parties were married
- Therefore, we had to amend our claims

SCENARIO 3

- Our Client claimed her and decedent were married
- Our Client was adamant that her Witnesses would testify to the same.
- When the Witnesses were asked about the common law marriage at the hearing, neither Witness confirmed
- The Witnesses said they thought they were married but never heard the decedent say he was married
- This helped meet the element of holding out, but not the agreement element





QUESTIONS?

THANK YOU!



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www.tessmerlawfirm.com

EVER ARGUE

With a Woman?

TESSMER LAW FIRM, PLLC
