CHAPTER 4

THE CASE OF THE HEIR’S PROPERTY AT 1165 CURVE STREET

ISSUE AREAS:
Adverse Possession, Tenancy in Common, Intestate Succession

LEARNING OBJECTIVES:
1. Deepen your understanding of tenancy in common, intestate succession, and adverse possession through the lens of a real case.
2. Develop strategies for accomplishing your clients’ goals using creative problem solving, including exploration of non-legal and law-reform strategies.
3. Engage in statutory analysis in the context of a specific case.
4. Gain insights into how individuals are impacted by legal systems and how some develop their own informal or extra-legal approaches to their problems.
5. Practice accessing and analyzing real property and other public records.

BACKGROUND

This case study builds upon your understanding of tenancy in common and adverse possession doctrine by introducing you to a real case involving an individual named Freddie Thomas. Mr. Thomas grew up in a house located at 1165 Curve Street in Austin, Texas (the “House”). Mr. Thomas’ mother, Ruby, died in 1979, and his father, Earl, died in 1992. Since his father’s death, Mr. Thomas has lived in the House alone. At the beginning of the case, Mr. Thomas believed that he was (or should be) the sole owner of the House, but was unsure of the legal title and his ownership interest. In fact, his father died without a will, and via the law of intestate succession, several family members inherited property interests in the House. According to Mr. Thomas, no other family members have lived with Mr. Thomas in the House or contributed to its upkeep. Mr. Thomas wants to resolve title and become the sole owner of the House in fee simple absolute.

The facts of this case are quite common. Estate planning can be expensive for people of modest means, and property owners who do not consult a lawyer often do not understand the legal implications of dying without a will.
At common law, there are three different kinds of co-tenant relationships: (1) joint tenancy with right of survivorship; (2) tenancy in common; and (3) tenancy by the entirety.

A joint tenancy with right of survivorship is created when property is conveyed to two or more persons and the “four unities” of time, title, interest, and possession are present, along with words of conveyance that express a clear intention to create a joint tenancy with right of survivorship. The four unities are present if two or more grantees receive their property interest: (1) at the same time; (2) in the same instrument (deed or will); (3) with identical ownership (e.g., 50/50 or 33/33/33); and (4) with equal rights to possess the entire property.

Owners with a tenancy in common interest in real property likewise have an undivided ownership interest in the whole property and equal rights to possess the entire property. In contrast with a joint tenancy with right of survivorship, owners with a tenancy in common interest may own similar or different ownership interests (e.g., 70/30) and do not need to acquire their property interest at the same time.

One of the main differences between these two forms of co-tenancy relationships is what happens when one of the co-tenants dies. When a co-tenant in a joint tenancy dies, that co-tenant’s interest is automatically transferred to the other co-tenant (thus the reference in the name to “right of survivorship”). In contrast, when a co-tenant in a tenancy in common dies, that co-tenant’s property interest can be transferred by devise (i.e., by will) or by descent (i.e., by intestate succession) to one or more persons.

For example, assume A and B own Blackacre as equal co-tenants. A dies. If A and B were joint tenants with right of survivorship, B now holds Blackacre in fee simple absolute. If A and B were tenants in common, A’s heirs or devisees own A’s 50% interest in Blackacre, and B continues to hold a 50% interest. In the tenancy in common situation, B is now a co-tenant with the persons who took A’s interest by descent or devise.

At common law, a joint tenancy with right of survivorship was historically the preferred co-tenancy. In modern statutory and common law, the tenancy in common is favored. (See, e.g., Tex. Estates Code, § 101.002).

The third kind of co-tenancy, tenancy by the entirety, is of diminishing importance in modern property law. Only married couples who acquire real estate after marriage hold real estate as tenants by the entirety. States which still have this tenancy differ on whether married couples who take title to real property are presumed to be tenants by the entirety, or if the instrument creating the interest must specify that co-tenancy. Five unities are necessary to create a tenancy by the entirety—the four unities necessary to create a joint tenancy with right of survivorship, plus marriage. The value of the tenancy by the entirety is that neither co-tenant may sell or mortgage his or her property interest without the consent of the other party, and neither may unilaterally sever the co-tenancy. Upon the death of one of the spouses, the tenancy by the entirety operates like the
joint tenancy with right of survivorship—the surviving spouse automatically becomes the owner of the property in fee simple absolute.

As a general rule, state intestate succession statutes govern how the property of a decedent who dies without a valid will passes to the decedent’s heirs. State statutes vary, but generally a surviving spouse takes the most significant share of the decedent’s estate. In many jurisdictions, the share inherited by the surviving spouse depends on whether the decedent left descendants (children and offspring of children). If there is no surviving spouse, typically the decedent’s descendants inherit the decedent’s property. If there are no children, the property may be inherited by the decedent’s parents, siblings, or other next of kin.

For example, it is common for an intestate succession statute to provide that a surviving spouse will inherit a one-half interest in the decedent’s property and the decedent’s descendants will inherit the remaining one-half interest as equal tenants in common. Assume that a decedent had three children: X, Y, and Z. Child X died before the decedent, leaving children D and E. Decedent dies leaving a surviving spouse and four descendants: Child Y, Child Z, Grandchild D, and Grandchild E. Property ownership will be shared by decedent’s heirs as tenants in common, as follows:

- **Surviving spouse**: 1/2 interest
- **Child Y**: 1/3 of 1/2 interest (1/6 interest)
- **Child Z**: 1/3 of 1/2 interest (1/6 interest)
- **Grandchild D**: 1/2 of Child X’s 1/6 interest (1/12 interest)
- **Grandchild E**: 1/2 of Child X’s 1/6 interest (1/12 interest)

Heirs’ property (i.e., property owned in tenancy in common by multiple family members as co-tenants), is especially prevalent in low-income urban centers and rural communities. According to one finding, “where pockets of poverty and low education persist, the economic and social effects of the laws of intestacy are likely to be relatively widespread and intense.”¹ Heirs’ property is prevalent in socio-economically disadvantaged areas across the United States, including New Orleans Parish; Letcher County, Kentucky; East St. Louis, Illinois; the Gullah Coast in South Carolina and other regions of the rural South; and the Sisseton-Wahpeton Lake Traverse Sioux Reservation in South Dakota.²

Fractured ownership can cause significant logistical problems in terms of property maintenance, property taxes, and alienation. And as Mr. Thomas’ case demonstrates, the consolidation of ownership can be expensive and difficult to achieve.

One of the first cases that co-author Tanya Marsh was assigned as a first-year associate involved calculating the interest a client owned in a 40-1

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The Case of the Heir’s Property

AT 1165 Curve Street

The case of the heir’s property at 1165 Curve Street in Austin, Travis County, Texas (the “House”). The House was purchased by Ruby and Earl Thomas, Mr. Thomas’ parents. Ruby Thomas died in 1979 without a will. Earl Thomas died on August 24, 1992, without a will. After their deaths, Mr. Thomas became the sole occupant of the House. In 2002, several Affidavits of Heirship were filed in the public records of Travis County, Texas, stating that Earl Thomas died without a will and naming his heirs.

Although his parents did not leave him the House in a will or deed it to him during their lifetimes, Freddie Thomas asserts that he became the sole owner of the House in 2002 pursuant to Texas’ adverse possession law. Your task is to evaluate whether Mr. Thomas is correct, and what additional steps are necessary or desirable for Mr. Thomas to take in order to perfect his claim to the House. Before conducting this assessment, you will first examine documents in the public record to assess the facts surrounding Mr. Thomas’s claim and to determine the nature of his ownership interest. Your professor will let you know which of the following
parts of the assignment you should prepare before class versus during class.

![Image of The House at 1165 Curve Street]

The House at 1165 Curve Street

PART ONE: DETERMINING PRESENT OWNERSHIP OF THE HOUSE

Before we can determine what steps Mr. Thomas must take to perfect his ownership claim, we must determine the current ownership of the House. This investigation consists of two steps. First, we must interview our client to obtain a brief family history, including the names of his parents and the dates of their deaths. That step has already been completed. Second, we must fully investigate the public records to locate the relevant records. This is our task in Part One.

1. We first need to search the online probate records in Travis County to confirm that no will for Earl Thomas has been probated since his death in 1992. A “probate” is the legal process that a court follows when there is a will to resolve all claims to the estate and to distribute the deceased’s property under the will. Probate records are court records created after an individual’s death that pertain to the settling of the deceased’s estate, including the distribution of an individual’s property interests.

For the first part of your assignment, search the Travis County probate records to see whether a will was probated for Mr. Thomas after his death in 1992. Try to first research the records without looking at the hints below.

**HINT:** The probate records for Travis County can be found at [www.traviscountyclerk.org](http://www.traviscountyclerk.org). Click on the “Probate” tab at the top of the screen and then click on the link for “View the Probate Document Search System.” In the search screen, enter “Thomas” under last name and “Earl” under first name. Public record indexes may sometimes include misspellings. How would you deal with this potential problem?
YOUR HOMETOWN: Can you find a document in any online probate or real property records system that relates to your family’s intergenerational transfer of real property? A probated will? An affidavit of heirship?

2. We next need to check the real property records for any relevant deeds or other documents. See Chapter 1 for more details on searching real property records. In this case, Mr. Thomas has informed us that two relevant affidavits of heirship have been filed. The real property records in Travis County, Texas, are online. Can you locate the affidavits of heirship filed in 2002 (instrument number 2002175081) and 2010 (instrument number 2010026110) in the Travis County real property records?

HINT: If you cannot find the affidavits of heirship on your own, use the website link www.traviscountyclerk.org and click on the “Recording” tab at the top and then the “Search for Recorded Documents Online” tab on the left side of the screen. Next, click on “Search Recorded Documents” in the center of the screen, followed by “Official Public Records” at the top of the screen. Once you pull up the search engine, enter “Thomas Freddie” as the grantor. Be sure to pull up only the two affidavits referenced above. If you still have trouble accessing the affidavits, they are available in Appendix A. But only look there as a last resort!

Use the affidavits of heirship listed above to sketch a family tree for the Thomas family, starting with Ruby and Earl Thomas. You can use the template family tree in Appendix B or start with your own template. During your research in the real property records, you will come across additional affidavits of heirship and other documents pertaining to the Curve Street property. For purposes of this case study, please ignore these documents and rely only upon the affidavits listed above.

3. Appendix D sets forth the relevant Texas laws of intestate succession. Using the family tree you constructed above, analyze: (1) who has inherited the House since the death of Earl Thomas in 1992; and (2) each heir’s fractional interest in the House (e.g., one-half interest, one-eighth interest, etc.).

Begin with Mr. Thomas’ parents, Ruby and Earl Thomas, who purchased the House as a married couple. Texas is a “community property” state, meaning that it treats some property owned by spouses as separate property and some as community property. Different rules apply to each category. In Texas, “separate property” includes property: (1) owned by either spouse before the marriage; (2) acquired by either spouse during the marriage by gift, descent, or devise; (3) received as a recovery for personal injuries suffered by either spouse during marriage, other than damages for loss of income capacity during the marriage. “Community property” is property that
is acquired by any spouse during the marriage, other than separate property.

The concept of tenancy by the entireties is no longer relevant in Texas; the historical protections for the innocent spouse have been supplanted by the protections provided by community property. In Texas, statutory law provides that all co-tenancies are tenancies in common unless the co-tenants enter into an express survivorship agreement pursuant to Section 111.001 of the Texas Estates Code (if the property is not community property) or Section 112.051 of the Texas Estates Code (if the property is community property). As a result, married couples who acquire real property during the marriage but do not have an express survivorship agreement own the community property as tenants in common. The Texas Estates Code dictates how such property is conveyed upon the death of one spouse.

In this case, the House was acquired by Earl and Ruby Thomas after their marriage. You may assume that they held the House as tenants in common, as community property, and that they never entered into an express survivorship agreement.

When Ruby died in 1979, without a will, what happened to her interest in the House? When Earl died in 1992, without a will, what happened to his interest in the House? Trace the passage of title all the way down to each of the relatives in your tree.

HINT: Refer to the relevant Texas Estates Code provisions in Appendix D each time you need an answer about who inherits what interest.

YOUR HOMETOWN: Is the outcome different if you apply the intestate succession laws of the state where your law school is located?

PART TWO: ADVERSE POSSESSION ANALYSIS

In Part One, you determined that Mr. Thomas owns the House as a tenant in common with other relatives. Assume that none of his co-tenants have contributed to the maintenance of the House or have paid any of the property taxes for the House. Mr. Thomas wants to consolidate legal title in his own name and become the sole owner. In Part Two, you will analyze whether he can use adverse possession law to do so.

Mr. Thomas has filed an affidavit of adverse possession in the real property records asserting his consolidated ownership claim. Can you locate the affidavit of adverse possession in the Travis County property records (instrument number 2002175080)?

Unless your professor asks you to analyze this case pursuant to a different state statute, utilize the Texas adverse possession statute in Sections 16.021 and 16.026 of Texas Civil Practice and Remedies Code (Appendix E). Do not look ahead to the upcoming parts of this case study.
as you formulate your conclusions. Your analysis should be organized as follows:

1. Break down the elements of a successful adverse possession claim under the assigned statute.

2. Prepare a list of facts that support Mr. Thomas’ adverse possession claim, and those facts that pose a problem for him. For your facts, rely upon the statements in the Affidavits of Heirship (Appendix A) and Affidavit of Adverse Possession (Appendix D).

3. List any additional information you would want to try and gather to help assess the validity of Mr. Thomas’ adverse possession claim.

Bring your notes to class.

**YOUR HOMETOWN:** Does the statutory framework for adverse possession in your hometown differ from Texas law in any significant respect?

**REFLECTION:** The typical avenue for proving up an adverse possession claim is to file a quiet title lawsuit or a trespass-to-try title lawsuit in local court. What are the reasons why Mr. Thomas might be asserting his adverse possession claim via an affidavit of adverse possession versus filing a lawsuit?

**PART THREE: PROBLEM SOLVING**

Tenancy in common ownership can cause significant logistical problems. Each co-tenant holds an undivided interest in the entire property and has the equal right to use, possess, and enjoy the entire property. After multiple generations of title passing in this manner, dozens and even hundreds of heirs dispersed throughout the country can all become co-tenants of the same property.

If Mr. Thomas’ adverse possession claim fails, are there any other options available to him? Brainstorm ideas about some other avenues that Mr. Thomas could take to consolidate ownership of the House in his name. To what extent are these other avenues viable? Bring your notes to class.

**PART FOUR: POLICY REFORM**

Assume you are an aide for a state legislator in Texas. The legislator is interested in making it easier for co-tenants who have been in possession of their home for a long time to obtain exclusive title via adverse possession. At the same time, she wants to preserve, if possible, some protections for the co-tenant heirs who are not in possession of the property. She is specifically concerned about instances in which the relatives may have had an informal agreement about allowing one relative to live in the home rent free, with an explicit understanding that all the heirs would sell the property down the road as it increases in value.
Draft an amendment to the Texas adverse possession statute (or re-draft the statute) in order to give co-tenants in long-term possession of a home the clear right to obtain exclusive possession via adverse possession. Include any provisions you think are warranted to protect the interests of the co-tenants not in possession. Do not worry about drafting formalities here.

As you draft your legislation, consider the following: What are the pros and cons of passing legislation to make it easier for co-tenants in possession to obtain exclusive possession via adverse possession? What interest groups would you expect to be in favor of such legislation? Against?

DOCUMENTS USED IN THE CASE STUDY

1. Appendix A: Affidavits of Heirship
2. Appendix B: Template Family Tree of Earl and Ruby Thomas
3. Appendix C: Excerpts from Texas Estates Code
4. Appendix D: Affidavit of Adverse Possession
5. Appendix E: Texas Adverse Possession Statute, Sections 16.021 and 16.026
APPENDIX A

AFFIDAVITS OF HEIRSHIP

AFFIDAVIT OF HEIRSHIP

OF

EARL THOMAS AND

RUBY HARRIS THOMAS

THE STATE OF TEXAS

COUNTY OF TRAVIS

KNOW ALL BY THESE PRESENTS

Date: June 19, 2002

Deceased: Earl Thomas and Ruby Harris Thomas

Property: The South 115 feet average of the West 51.5 feet of lot No 8, Outlot 55, Division "B" in the City of Austin, Travis County, Texas, as described in the Deed Records of Travis County, Texas, and known locally as 1165 Curve Street, Austin, Texas 78702

Affiants: John A Fayyid and Linda Lois Conley

Affiants on oath swear that the following statements are true and are within the personal knowledge of Affiants:

1. A My name is John A. Fayyid, and I live at 1511 Faro Dr, Apt 114, Austin, TX 78741. I am personally familiar with the family and marital history of Earl and Ruby H. Thomas (Decedents,) and I have personal knowledge of the facts stated in this affidavit.

B I knew Decedent Earl Thomas from the 1950s until the date of his death. This decedent died on August 24, 1992, in Austin, Texas, Travis County Texas. At the time of this Decedent's death, Decedent's residence was 1165 Curve, Austin, Texas 78702.
AFFIDAVITS OF HEIRSHIP

C  I knew Decedent Ruby H. Thomas from the 1950s until the date of her death. This
decedent died on March 22, 1979, in Austin, Texas. Travis County, Texas. At the time
of this Decedent's death, Decedent's residence was 1165 Curve, Austin, Texas 78702

A  My name is Linda Lois Conley, and I live at 915 Juniper, Austin, TX 78702. I am
personally familiar with the family and marital history of Earl and Ruby H. Thomas
(Decedents,) and I have personal knowledge of the facts stated in this affidavit.

B  I knew Decedent Earl Thomas from the 1950s until the date of his death. This Decedent
died on August 24, 1992. Decedent's place of death was Austin, Travis County, Texas.
At the time of this Decedent's death, Decedent's residence was 1165 Curve, Austin, Texas
78702.

C  I knew Decedent Ruby H. Thomas from the 1950s until the date of her death. This
Decedent died on March 22, 1979. Decedent's place of death was Austin in Travis
County, Texas. At the time of this Decedent's death, Decedent's residence was 1165
Curve, Austin, Texas 78702.

Decedent's Earl Thomas marital history was as follows: Earl Thomas was married but once, to
Ruby Harris Thomas, from September 2, 1941 in Austin, Travis County, Texas until the date of
Ruby's death, March 22, 1979, in Austin, Travis County Texas.

Decedent's Ruby H. Thomas marital history was as follows: Ruby Thomas was married twice, first
to Teddy Blair from 1938 to 1940, when the marriage ended in divorce, in Austin, Texas. No
children were born of their marriage. Ruby Thomas then married Earl Thomas on September 2,
1941 in Austin, Travis Texas until the day she died.
5 Decedents had two children, both born during their marriage, namely

A Judith S. Thomas
DOB [redacted]
DOD February 21, 1994, in Austin, Travis, Texas
Place of Birth Austin, Travis, Texas
Marriages None, never married

B Freddie R. Thomas
1165 Curve St
Austin, Texas 78702
DOB [redacted]
Place of Birth Austin, Texas

Both children are of and born during the marriage of Earl and Ruby H. Thomas

6 Decedent Judith Thomas never married, however she had four children, namely

A Timothy Thomas
501 E. Oltorf, Apt 259
Austin, TX 78704

B Patrick Thomas
3801 Candy Dr
Austin, TX 78749

C Freddie Thomas
7610 Cameron Road, Apt 303
Austin, TX 78752

D Nicole Thomas
2400 E. 10th St
Austin, TX 78702

7 Decedents did not have or adopt any other children nor did Decedents take any other children into Decedents' home or raise any other children.

8 The following persons also have knowledge regarding Decedents, the identities of Decedents' children, and their parents and siblings, if any: Wilhe Makins and Hattie Blair
Decedents both died without leaving a written will

There has been no administration of Decedents' estates

Decedent left no debts that are unpaid, except NONE

There are no unpaid estate or inheritance taxes

To the best of my knowledge, Decedents owned an undivided community property interest in the following real property: The house and lot described above and known locally as 1165 Curve, Austin, Texas.

The following are the heirs of Decedents:

A. Freddie Thomas, son
B. Timothy Thomas, grandson
C. Freddie Thomas, grandson
D. Patrick Thomas, grandson
E. Nicole Thomas, granddaughter

Decedents' estate consist of Decedents' interest in their home, the house and lot described above and personal household effects, whose gross value does not exceed $50,000.00

Signed this 19 day of June 2002

[Signature]
John A. Fayyid, Affiant

[Signature]
Linda Lois Conley, Affiant
THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared John A. Fayss, known to me to be the person whose name is subscribed to the foregoing instrument, and who expressed that the matters contained therein are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19 day of June, 2002.

[Signature]
Notary Public

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Linda Ross Conley, known to me to be the person whose name is subscribed to the foregoing instrument, and who expressed that the matters contained therein are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19 day of June, 2002.

[Signature]
Notary Public

After recording return to
Ignacio D. Treviño

[Address] (512) 417-7707, ext 314
Austin, Texas 78704-4000
Fax (512) 417-9660
1-800-365-9270
AFFIDAVITS OF HEIRSHIP

FILED AND RECORDED

Unofficial
AFFIDAVIT OF HEIRSHIP-STATUTORY FORM

AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

Before me, the undersigned authority, on this day personally appeared, Nicole Michelle Thomas, (insert name of affiant) who, being first duly sworn, upon his/her oath stated:

1. My name is Nicole Michelle Thomas. (insert name of affiant) and I live at 2400 E 10th Austin, TX (insert address of affiant’s residence). I am personally familiar with the family and marital history of (insert name of decedent). I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from (insert date) until (insert date). Decedent died on (insert date) (insert date of death). Decedent’s place of death was Seton Medical Center (insert place of death). At the time of decedent’s death, decedent’s residence was 2400 E 10th Austin, TX (insert address of decedent’s residence).

3. Decedent’s marital history was as follows: Single (insert marital history and, if decedent’s spouse is deceased, insert date and place of spouse’s death).

4. Decedent had the following children: (see exhibit) (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent’s home or raise any other children, except (insert name of child or names of children, or state “none”).

6. (Include if decedent was not survived by descendants.) Decedent’s mother was Ruby Lee Thomas (insert name, birth date, and current address or date of death of mother, as applicable): 1145 Curve St 78702 Austin, TX

7. (Include if decedent was not survived by descendants.) Decedent’s father was Earl Thomas (insert name, birth date, and current address or date of death of father, as applicable): 1145 Curve St 78702 Austin, TX

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: Freddie Ray Thomas (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state “none”).

9. (Optional.) The following persons have knowledge regarding the decedent, the identity of decedent’s children, if any, parents, or siblings, if any. Michelle Thomas (insert names of persons with knowledge, or state “none”).

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no admission of decedent’s estate. (Modify statement if there has been administration of decedent’s estate.)
12. Decedent left no debts that are unpaid, except: none

13. There are no unpaid estate or inheritance taxes except: none

14. To the best of my knowledge, decedent owned an interest in the following real property:

2400 E 10th Ave, Austin, TX

15. (Optional) The following were the heirs of decedent: Nicole Michelle Thomas, Patricia Earl Thomas

16. (Insert additional information as appropriate, such as size of the decedent's estate.) Signed this 08/30/2010 day of Feb, 2010.

Nicole Thomas

State of Texas
County of Travis

Sworn to and subscribed to before me on Feb 25, 2010, by Nicole Thomas

KB Pfertner
Notary Public
State of Texas
Commission Exp. 02-20-2013

My commission expires: 2-28-13
## AFFIDAVIT OF HEIRSHIP-STATUTORY FORM

**AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS**

**JUDITH SANDRA THOMAS**

<table>
<thead>
<tr>
<th>NAME OF CHILD</th>
<th>BIRTH DATE</th>
<th>NAME OF OTHER PARENT</th>
<th>CURRENT ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nicole Thomas</td>
<td></td>
<td>Joe Ford</td>
<td>2400 E 10th St Austin, TX 78702</td>
</tr>
<tr>
<td>Patrick Earl Thomas</td>
<td></td>
<td>Hood Medriss</td>
<td>815 W Slaughter Ln Austin, TX 78748</td>
</tr>
<tr>
<td>Timothy Eugene Thomas</td>
<td></td>
<td>Hood Medriss</td>
<td>8420 Steamline Cir Austin, TX 78745</td>
</tr>
</tbody>
</table>

Unofficial Copy
Nicole Thomas
2400 E 10th St
Austin, TX 78702

Filed and Recorded
Official Public Records
Dana DeBeauvoir
2018 Feb 25 11:25 AM 2010022510
Haywood $32.80
Dona DeBeauvoir County Clerk
Travis County Texas
APPENDIX B

TEMPLATE FAMILY TREE OF EARL AND RUBY THOMAS
APPENDIX C

EXCERPTS FROM TEXAS ESTATES CODE

TITLE 2. ESTATES OF DECEDEENTS; DURABLE POWERS OF ATTORNEY
SUBTITLE E. INTESTATE SUCCESSION
CHAPTER 201. DESCENT AND DISTRIBUTION
SUBCHAPTER A. INTESTATE SUCCESSION

Sec. 201.001. ESTATE OF AN INTESTATE NOT LEAVING SPOUSE.
(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.

(b) The person’s estate descends and passes to the person’s children and the children’s descendants.

(c) If no child or child’s descendant survives the person, the person’s estate descends and passes in equal portions to the person’s father and mother.

(d) If only the person’s father or mother survives the person, the person’s estate shall:

   (1) be divided into two equal portions, with:

      (A) one portion passing to the surviving parent; and

      (B) one portion passing to the person’s siblings and the siblings’ descendants; or

   (2) be inherited entirely by the surviving parent if there is no sibling of the person or siblings’ descendants.

(e) If neither the person’s father nor mother survives the person, the person’s entire estate passes to the person’s siblings and the siblings’ descendants.

(f) If none of the kindred described by Subsections (b)-(e) survive the person, the person’s estate shall be divided into two moieties, with:

   (1) one moiety passing to the person’s paternal kindred as provided by Subsection (g); and

   (2) one moiety passing to the person’s maternal kindred as provided by Subsection (h).

(g) The moiety passing to the person’s paternal kindred passes in the following order:
(1) if both paternal grandparents survive the person, equal portions pass to the person’s paternal grandfather and grandmother;

(2) if only the person’s paternal grandfather or grandmother survives the person, the person’s estate shall:
   
   (A) be divided into two equal portions, with:
       (i) one portion passing to the surviving grandparent;
       and
       (ii) one portion passing to the descendants of the deceased grandparent; or
   
   (B) pass entirely to the surviving grandparent if no descendant of the deceased grandparent survives the person; and

(3) if neither the person’s paternal grandfather nor grandmother survives the person, the moiety passing to the decedent’s paternal kindred passes to the descendants of the person’s paternal grandfather and grandmother, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(h) The moiety passing to the person’s maternal kindred passes in the same order and manner as the other moiety passes to the decedent’s paternal kindred under Subsection (g).

Sec. 201.002. SEPARATE ESTATE OF AN INTESTATE. (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.

(b) If the person has one or more children or a descendant of a child:
   
   (1) the surviving spouse takes one-third of the personal estate;
   
   (2) two-thirds of the personal estate descends to the person’s child or children, and the descendants of a child or children; and
   
   (3) the surviving spouse is entitled to a life estate in one-third of the person’s land, with the remainder descending to the person’s child or children and the descendants of a child or children.

(c) Except as provided by Subsection (d), if the person has no child and no descendant of a child:
   
   (1) the surviving spouse is entitled to all of the personal estate;
   
   (2) the surviving spouse is entitled to one-half of the person’s land without a remainder to any person; and
   
   (3) one-half of the person’s land passes and is inherited according to the rules of descent and distribution.

(d) If the person described by Subsection (c) does not leave a surviving parent or one or more surviving siblings, or their descendants, the surviving spouse is entitled to the entire estate.
Sec. 201.003. COMMUNITY ESTATE OF AN INTESTATE. (a) If a person who dies intestate leaves a surviving spouse, the community estate of the deceased spouse passes as provided by this section.

(b) The community estate of the deceased spouse passes to the surviving spouse if:

(1) no child or other descendant of the deceased spouse survives the deceased spouse; or

(2) all of the surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse.

(c) If the deceased spouse is survived by a child or other descendant who is not also a child or descendant of the surviving spouse, one-half of the community estate is retained by the surviving spouse and the other one-half passes to the deceased spouse’s children or descendants. The descendants inherit only the portion of that estate to which they would be entitled under Section 201.101. In every case, the community estate passes charged with the debts against the community estate.

SUBCHAPTER B. MATTERS AFFECTING INHERITANCE

Sec. 201.056. PERSONS NOT IN BEING. No right of inheritance accrues to any person other than to a child or lineal descendant of an intestate, unless the person is in being and capable in law to take as an heir at the time of the intestate’s death.

Sec. 201.057. COLLATERAL KINDRED OF WHOLE AND HALF BLOOD. If the inheritance from an intestate passes to the collateral kindred of the intestate and part of the collateral kindred are of whole blood and the other part are of half blood of the intestate, each of the collateral kindred who is of half blood inherits only half as much as that inherited by each of the collateral kindred who is of whole blood. If all of the collateral kindred are of half blood of the intestate, each of the collateral kindred inherits a whole portion.

SUBCHAPTER C. DISTRIBUTION TO HEIRS

Sec. 201.101. DETERMINATION OF PER CAPITA WITH REPRESENTATION DISTRIBUTION. (a) The children, descendants, brothers, sisters, uncles, aunts, or other relatives of an intestate who stand in the first or same degree of relationship alone and come into the distribution of the intestate’s estate take per capita, which means by persons.

(b) If some of the persons described by Subsection (a) are dead and some are living, each descendant of those persons who have died is entitled to a distribution of the intestate’s estate. Each descendant inherits only that portion of the property to which the parent through whom the descendant inherits would be entitled if that parent were alive.
APPENDIX D

AFFIDAVIT OF ADVERSE POSSESSION

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF ADVERSE POSSESSION

BEFORE ME, the undersigned authority, on this day personally appeared FREDDIE THOMAS, Affiant, known to me to be a credible person of lawful age who, being first duly sworn, upon his oath states the following

1. That for at least forty-five (45) years, since 1957, preceding the making of this affidavit, affiant has been in possession of the land described as follows in the County of Travis, State of Texas, to-wit

South 115 feet, average, of the West 51.5 feet of Lot No 8, Outlot 55, Division "B", in the City of Austin, Travis County, Texas as described in the Deed Records of Travis County, Texas

2. This property is known locally as 3165 Curve Street, Austin, Texas, 78702. There is one resident structure, a 830 square foot house on a 5922.5 square foot lot designed and used as a residential lot,

3. That said Freddie Thomas has occupied, used, and enjoyed aforesaid property as his home for at least 45 years preceding the making of this affidavit,

4. That possession of aforesaid property has been actual, notorious, and continuous for at least 45 years preceding the making of this affidavit,

5. That possession of aforesaid property has been exclusive for at least 10 years preceding the making of this affidavit. Specially since the death of Earl Thomas, affiants' father, on August 14, 1992,

6. That possession of aforesaid property has always been hostile and contrary to all other claimants and/or owners, for 10 continuous years, since August 1992,

2. That affiant has paid taxes levied and assessed against the aforesaid property for a period of 10 years, since 1992,

3. That occupancy of aforesaid property has been under circumstances as would constitute reasonable notice to the all other claimants and/or owners of the property of the fact that the house and lot are being occupied by Freddie Thomas as any owner would occupy the property, to-wit

In 1986, Freddie Thomas replaced the roof with a tin roof and installed vinyl siding,
In 1988, Freddie Thomas remodeled the kitchen,
In 1999, Freddie Thomas enclosed the porch, added outside lights and replaced most of the plumbing including the kitchen and bathroom sinks, the water and drain lines, the water heater, and the stove and refrigerator,
In 2000, Freddie Thomas replaced the washer and dryer,
In 2001, Freddie Thomas painted and wall papered the interior, and concreted the driveway,
Freddie Thomas maintains the home, he regularly cleans the house and yard and mows the grass,
Freddie Thomas’ name, and his name only are on the house and mail box, continuously for 10 years

That only Freddie Thomas and his family, have lived on the property for the last 45 years, the last 10 years exclusively, preceding the making of this affidavit,

That affiant has declared to all that he/s is the sole owner of the property, specifically to the utility providers, tax collectors, and to all city, county, and state government agencies, as well as to all family, friends, and neighbors, including

1. Linda Conley, 915 Juniper, Austin, Texas 78702 (479-7207)
2. Tabatha Conley, 1405 E 14th Street, Austin, Texas 78702 (457-0378)
3. Alfred Loewy, 1704 Perez, Austin, Texas 78721 (927-8930)
4. Rosie Brown, Sweeney Lane, Apt C, Austin, Texas 78723 (929-5804)
5. John P. Sayyed, 1511 Faro Dr., #114, Austin, Texas 78741 (385-9336)

SIGNED this 19 day of June, 2002

Freddie Thomas, Affiant

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Freddie Thomas, known to me to be the person whose name is subscribed to the foregoing instrument, and declared that the matters contained therein are true and correct.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19 day of June, 2002

Tracey Ann Richard
Notary Public

After recording return to

LEGAL AID

Ignacio D. Treviño
Attorney/Notary

Legal Aid of Central Texas
2261 Post Road, Suite 104
Austin, Texas 78704-4300

(512) 447-7707, ext. 314
Fax: (512) 447-7940
1-800-389-3270

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APPENDIX E

TEXAS ADVERSE POSSESSION STATUTE, SECTIONS 16.021 AND 16.026

SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

Sec. 16.021. DEFINITIONS. In this subchapter:

(1) “Adverse possession” means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.

(2) “Color of title” means a consecutive chain of transfers to the person in possession that:

(A) is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or

(B) is based on a certificate of headright, land warrant, or land scrip.

(3) “Peaceable possession” means possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.

(4) “Title” means a regular chain of transfers of real property from or under the sovereignty of the soil.

Sec. 16.026. ADVERSE POSSESSION: 10-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

(b) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(c) Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor’s claim extends to the boundaries specified in the instrument.