



Pretermitted Heirs in Texas

Question 1: Is the child pretermitted?

A pretermitted heir is any child born or adopted after the execution of a deceased parent's will.

Est. Code §255.051 DEFINITION In this subchapter, "pretermitted child" means a testator's child who is born or adopted: (1) during the testator's lifetime or after the testator's death; and (2) after the execution of the testator's will.

Question 2: *Is the pretermitted child eligible to inherit?*

A pretermitted child may only take if the child was not mentioned or provided for by will or other death triggered event.

Est. Code §255.052 APPLICABILITY AND CONSTRUCTION.

[A pretermitted child is entitled to an intestate share of the deceased parent's estate only when the child is] not:

- (1) mentioned in the testator's will;
 - (2) provided for in the testator's will; or
 - (3) otherwise provided for by the testator.
- (b) For purposes of this subchapter, a child is provided for or a provision is made for a child if a disposition of property to or for the benefit of the pretermitted child, whether vested or contingent, is made:
- (1) in the testator's will, including a devise to a trustee under Section 254.001; or
 - (2) outside the testator's will and is intended to take effect at the testator's death.

Question 3: How much does the pretermitted child take?

A pretermitted child who is not provided for (by will, testamentary trust, advancement, or intestacy) may take an amount **up to** their intestate share of their deceased parent's estate, *except* when deceased parent's entire estate is bequeathed to pretermitted child's other parent.



Est. Code §255.054 [PRETERMITTED CHILD w/out SIBLINGS]

If a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, **other than any portion of the estate devised to the pretermitted child's other parent**, to which the pretermitted child would have been entitled if the testator had died intestate without a surviving spouse.

Question 4: *From whom does the pretermitted child take their share?*

A pretermitted child, who is not provided for (by will, testamentary trust, advancement or intestacy), may take an amount up to their intestate share of their deceased parent's estate from a sibling, step-parent, any relative (except pretermitted heir's other parent), or any other beneficiary.

Est. Code §255.053 (a) and (b) [PRETERMITTED CHILD with SIBLINGS]

(a) If no provision is made in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, **other than any portion of the estate devised to the pretermitted child's other parent**, to which the pretermitted child would have been entitled if the testator had died intestate without a surviving spouse.

(b) If a provision, whether vested or contingent, is made in the testator's last will for one or more children of the testator who are living when the testator executes the will, a pretermitted child is entitled only to a portion of the disposition made to children under the will that is equal to the portion the child would have received if the testator had:

- (1) included all of the testator's pretermitted children with the children on whom benefits were conferred under the will; and
- (2) given an equal share of those benefits to each child.

Question 5: *Can a pretermitted child take an intestate share from a surviving parent or step-parent?*

No, a pretermitted child **may not** divest a gift to a surviving spouse who is the child's other parent.

Yes, a pretermitted child **may** divest a gift to a surviving spouse who is not the child's other parent, but the pretermitted child may take **no more than one half** of the gift.

Est. Code §255.05 LIMITATION ON REDUCTION OF ESTATE PASSING TO SURVIVING SPOUSE.

If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

