ELDER LAW HANDBOOK

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TARRANT COUNTY BAR FOUNDATION

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A Community Service Project of the
Elder Law Committee
Tarrant County Bar Association

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Foreword

The Elder Law Committee of the Tarrant County Bar Association has prepared this Handbook to provide citizens of Tarrant County and the surrounding communities with information about legal issues commonly faced by those citizens age 65 and older. However, because most people will encounter an elderly person or be one themselves one day, this legal information is also helpful to the general public.

This Handbook is based on Texas State Law and Federal Law (where applicable). This Handbook is a general summary of certain Texas state laws and federal laws as they existed as of the eleventh edition (Spring 2025), but there may be changes to those laws by the time you read this Handbook. Because this Handbook is a summary, it necessarily omits certain details that could be relevant to your specific situation. Situations differ because facts differ, sometimes subtly, and what is appropriate for one person or family may not be appropriate for another. Therefore, this Handbook is only intended to inform and is not giving legal advice or recommending a course of legal action. You should seek the advice of an attorney about your particular situation.

The Handbook is divided into those topics identified in the Table of Contents. The Tarrant County Bar Association hopes that this Handbook will provide you with helpful information about Texas law and about resources for services and support organizations in the Tarrant County community.

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Disclaimer

This Handbook is published by the Tarrant County Bar Foundation and the Tarrant County Bar Association as an aid to the community. This material may not be sold or published in any form.

This Handbook is based on Texas law and is only intended to inform and not give legal advice. You should seek legal advice from an attorney of your choice to advise you in your particular situation. Reliance on this information or recommended resources shall be at your sole risk.

The Tarrant County Bar Foundation and Tarrant County Bar Association do not control and cannot guarantee the relevance, timeliness, or accuracy of information created and maintained by other organizations utilized herein. The Tarrant County Bar Foundation and the Tarrant County Bar Association make every effort to provide accurate and complete information; however, names, contact information, etc. may change prior to updating.

Personal Finances

Bank Accounts, Brokerage Accounts, and Life Insurance Policies

1. If I have a bank account or brokerage account in my name only, who can make withdrawals or write checks on the account if I become mentally incapacitated?

Upon your incapacity, no one may make withdrawals or write checks for your individual account unless you have named a convenience signer, executed a valid power of attorney, or a court appointed a guardian for your estate. Below are some ways for you to authorize a person to make withdrawals or write checks on your account if you become incapacitated.

Convenience Signer. You, as the account owner, may name a convenience signer on the account prior to your incapacity, even if the account is not a convenience account. The convenience signer may write checks or make withdrawals for the convenience of the owner for as long as the owner is alive, regardless of whether the owner is incapacitated, but the convenience signer is not an owner of the account during the owner's lifetime.

Statutory Durable Power of Attorney. You may execute a Statutory Durable Power of Attorney ("SDPOA") prior to your incapacity that gives an agent power with respect to your property and financial matters, including banking and financial institution transactions such as writing checks and making withdrawals from your account. You can decide if the SDPOA is effective immediately (as soon as you sign the document) or effective only upon your incapacity or disability.

Note: Banks and brokerage companies are sometimes reluctant to accept a power of attorney because of concerns about fraud or theft. Because of this concern, you may want to file your SDPOA with your bank or get the banks approval of your SDPOA prior to its use. The bank may want you and your agent to appear together before it accepts the SDPOA. Some banks, however, may require you to use the bank's own forms to grant such powers on your account.

Upon your incapacity, if you do not name a convenience signer or do not have a valid SDPOA, the financial institution will require a judicial procedure to appoint a guardian of your estate that authorizes the guardian access to your account.

2. How do bank accounts pass after my death?

For financial accounts, the account agreement or contract of deposit (formerly called a "signature card" in the case of bank accounts) establishes the type of account and its operation upon your death. Although different banks may use different names to describe its accounts, the accounts described below are substantially the same at most financial institutions including banks, credit unions, savings and loan companies, and brokerage firms. Determine which account description most accurately describes your account to understand its operation upon your death.

Individual Owner (Single-Party) Account without Payable on Death (POD) Beneficiary. A single-party account without a payable on death ("POD") beneficiary is an account with only one owner and a POD payee has not been designated. When the owner dies, the account becomes part of the owner's estate. To distribute estate assets, a judicial procedure is required to be filed in the county of the owner's residence to prove the validity of the owner's will to the court's satisfaction or proving the owner's heirs-at-laws if the owner did not create a will. After the hearing on the probate application, the judge signs the applicable order and the account is distributed as provided in the owner's will or, in the absence of a will, to the owner's heirs-at-law in accordance with the Texas intestate laws ("Probate Proceeding").

Note: A convenience signer on a single-party account is not considered an owner and, upon the owner's death, the account is distributed as part of the owner's estate.

Individual Owner (Single-Party) Account with Payable on Death (POD) Beneficiary. A single-party account with a POD beneficiary is an account with only one owner and a one or more POD payees are designated. Payable on death designations are also referred to as transfer on death ("TOD") beneficiaries. Although the POD beneficiary, also referred to as payee, has no rights to the account during the owner's lifetime, when the owner dies, the account passes to the person(s) named in the beneficiary designation. The account is not included in the owner's estate and does not require a judicial proceeding to transfer the funds in the account. Neither the owner's will nor Texas intestate law has any control over the distribution of the account. If the beneficiary dies before the owner, however, the owner will need to update the beneficiary designation. Without a valid beneficiary designation, the funds in the account may be included in the owner's estate and require a Probate Proceeding to distribute the funds.

Note-POD Beneficiaries: An account owner may designate one or more POD payees, or named beneficiaries, on any account even if the account is not a "POD account." For example, a multiple-party account with right of survivorship as to the account owners may name POD beneficiaries upon the last surviving owner's death.

Note-Spouse Beneficiary: If a spouse or relative of a spouse is listed as beneficiary on a POD account and the marriage is dissolved by divorce, that designation is void unless it is reaffirmed in writing after the divorce is finalized.

Multiple Owners (Multiple-Party) Account without Right of Survivorship. An account with two or more owners is commonly referred to as a "joint account". Although the bank may pay any sum to anyone named as an owner, each owner to a joint account has an ownership interest in the account equal to the amount each owner contributed minus withdrawals. When one owner of a joint account without right of survivorship dies, his or her interest in the account is included in the deceased owner's estate and distributed in the same manner as the Probate Proceeding described above.

Note: Creditors or the IRS may seize this account for a debt owed by an owner. In that case, the other owners of the account may need to file suit to recover their funds in the account; so, keep track of the deposits and withdrawals that you make from this account so that you may accurately determine your ownership interest.

Multiple Owners (Multiple-Party) Account with Right of Survivorship. A joint account with right of survivorship ("ROS") is commonly referred to as a joint tenancy with right-of-survivorship ("JTROS") account. Although the bank may pay any sum to anyone named as an owner, each owner of a joint account has an ownership interest in the account equal to the amount each owner contributed minus withdrawals. When one owner dies, the deceased owner's interest in the account transfers to the surviving owner named on the account if such owner is living. The account is not included in the deceased owner's estate and does not require a judicial proceeding or probate administration to transfer the funds in the account. The owner's will nor Texas intestate law has any control over the distribution of the account.

The owners of the JTROS account may name a POD beneficiary to receive the account upon the death of the last surviving party. The surviving owner of the account, however, can subsequently change a "transfer on death" or "payable on death" designation after the death of the other owner. This is why it is very important for the owner to confirm that he or she intends to give the account to the other owner, and not to some other individuals or distributed in accordance with a will or trust agreement.

To take ownership of the account, the surviving owner must survive the deceased owner by the length of time specified in the agreement or documents creating the account. Should the documents not reference a specific length of time, then the default length of time, as specified in the Texas Estates

Code, is 120 hours. If the surviving owner does not survive the deceased owner by the applicable length of time, then the account agreement may specify the distribution and ownership of the funds in the account. If the documents are silent as to the distribution and ownership, then one-half of the property shall be distributed as if one owner had survived and the other one-half shall be distributed as if the other owner had survived and may require two Probate Proceedings to distribute the funds in the account.

Note: Creditors or the IRS may seize this account for a debt owed by an owner. In that case, the other owners of the account may need to file suit to recover their funds in the account; so, keep track of the deposits and withdrawals that you make from this account so that you may accurately determine your ownership interest.

Note: If the account contains community property, then it is important that both spouses sign the survivorship agreement or the survivorship rights may not be enforceable (See Community and Separate Property). Furthermore, if the joint account with ROS is held between a spouse and non-spouse, the surviving spouse may have a claim for fraud on the community if the funds deposited into the account were community property and the surviving spouse did not consent to the survivorship agreement.

Convenience Account. A “convenience account” is an account that is established at a financial institution by an owner (or party) and a convenience signer and provides that the convenience signer may make account transactions “for the convenience” of the owner. A convenience signer does not own the account and payment to a convenience signer does not affect the party’s ownership of the account. On the death of the owner, and without a POD or TOD beneficiary designation, ownership of the account does not transfer to the convenience signer but instead passes as a part of the last surviving owner’s estate and distributed in the same manner as the Probate Proceeding described above.

Note-Convenience Signers: An owner of an account may designate one or more “convenience signers” even if the account is not a “convenience account.” For example, an account may be a multiple-party account with right of survivorship as to the account owners but permit one or more persons to transact business in the account as convenience signers without any ownership interest or survivorship rights.

Totten Trust Account (Established by Deposit Agreement). A Totten Trust is an account with a person named as trustee for one or more beneficiaries for only the sums on deposit in the account and is established by the terms of the account and the deposit agreement with the financial institution. The party named as trustee to the account owns the account and may withdraw funds at any time. A beneficiary may not withdraw funds from the account before the trustee is deceased. On the trustee’s death, the ownership of the account passes to the beneficiaries of the trust. The account is not a part of the trustee’s estate and does not pass under the trustee’s will or by intestacy, unless the trustee survives all of the beneficiaries.

Note: A Totten Trust does not include a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account.

Trust Account (Established by Trust Agreement). An owner may also establish a trust during his or her lifetime by a trust agreement. During the life of the creator of the trust (referred to as grantor or settlor), the funds are controlled by the trustee for the benefit of the named beneficiaries. The trustee may make account transactions in the trustee’s discretion. Upon the death of the grantor, the funds are distributed in accordance with the trust agreement.

Combination. An account owner or owners may create any of the different account types described above with or without a convenience signer and with or without a POD beneficiary designation.

CAUTION–Estate Plan. You should be very careful about the selections you make on the account agreement, as many unintended consequences can occur when uninformed choices are made on these cards. Bank employees often do not understand the legal effects of the selections made, so a bank employee's recommendation is not a guarantee that the selections made on an account agreement are appropriate for you. If you have any questions, you should consult with an estate planning attorney to confirm that your accounts, account types, and beneficiary designations are consistent with your current estate plan. The attorney may also review the account agreement and any other documents signed related to the account to confirm that you fully understand the operation of your accounts.

CAUTION–Minor Beneficiaries. Avoid naming a minor as a POD payee. Because a minor (anyone under 18 years old) lacks the legal capacity to own or manage property, a judicial procedure is usually required to appoint a guardian of the estate for the minor before someone may collect the distributed funds. Instead of naming a minor as a POD payee, you may nominate a custodian to receive the property for a minor beneficiary by using the following language: "__________________ (name of custodian), as custodian for __________________ (name of minor) under the Texas Uniform Transfers to Minors Act." Conversely, you may provide for such distribution in a will or in a trust agreement. If you provide for the gift in a trust agreement, you will instead name the trust as the POD payee.

3. How do brokerage accounts pass after my death?

Accounts with stock brokerage companies (for example, Merrill Lynch, Edward Jones, Charles Schwab & Co.) pass after death similarly to bank accounts. The documents the owner signs with the brokerage company will detail the ownership of the funds in the accounts after the death of the account owner.

The owner's will nor Texas intestate law has any control over the distribution of the brokerage account unless the beneficiary designation does not exist or is faulty in some way (e.g., it was not signed or it names a beneficiary that does not exist or who died before the account owner).

You should be very careful in your selection of the account type as many unintended consequences can occur when uninformed choices are made. Brokerage employees often do not understand the legal effects of the selections you make, so an employee's recommendation is no guarantee that the selections are appropriate for you.

You should name a beneficiary or beneficiaries as well as a contingent beneficiary or beneficiaries in the event your primary beneficiary dies before you. These assets pass directly to your named beneficiary and not through your estate or a Probate Proceeding unless your estate is named as beneficiary.

Note: Many of these accounts are not controlled by Texas law, but by the laws of the state designated in the documents. If you have any questions, have every document used in establishing or changing the account reviewed by your attorney.

If you name a beneficiary who is not yet 18 years of age or who is incapacitated in some way, then you may create a situation that causes the beneficiary to be placed in a guardianship, a court-ordered management trust and/or lose government benefits. Consult an attorney before you name a beneficiary who is not yet 18 years of age or who is incapacitated in some way as unintended consequences may occur.

4. What if I think I have a lost life insurance policy or annuity contract?

The National Association of Insurance Commissioners has a free online tool, the Life Insurance Policy Locator, that may help a beneficiary get assistance finding a life insurance or annuity of a deceased family member. In your web browser, navigate to naic.org, select the Consumer tab on top, and select the Life Insurance Policy Locator under Tools (https://eapps.naic.org/life-policy-locator/#/welcome). After submitting the deceased's information, the insurance or annuity company will contact you directly if a policy exists and you are a named beneficiary. For additional questions or assistance, contact the Texas Department of Insurance (https://www.tdi.texas.gov). You may also search the Texas Unclaimed Property website (https://www.claimittexas.gov/app/claim-search) for unclaimed benefits turned over to the state after three years.

Bankruptcy

1. What is bankruptcy?

Bankruptcy is a legal method authorized by the U.S. Constitution and created by Congress to help people overwhelmed by debt get a "fresh start." The process begins by filing a petition in the United States Bankruptcy Court. Because bankruptcy falls under federal law, the Bankruptcy Court has broad powers over both debtors (those who owe money) and creditors (those who are owed money). Most individuals file under either Chapter 7 or Chapter 13 of the Federal Bankruptcy Code.

2. What is the difference between Chapters 7 and 13?

Chapter 7 allows debtors to discharge many types of unsecured debt without making further payments.

Chapter 13 requires debtors to make payments to a bankruptcy trustee over 36 to 60 months (sometimes shorter in select circumstances) in order to reorganize their debts in a workable manner.

The Filing Process. Both chapters begin when a debtor files a petition with the bankruptcy court. For first-time filers, an automatic stay immediately goes into effect, prohibiting creditors from taking any collection action without the court's permission. The petition must include schedules listing all debts and assets, an accurate monthly budget, and a Statement of Financial Affairs answering standard questions about the debtor's finances.

Why Choose Chapter 13? Debtors might choose Chapter 13 over Chapter 7 for several reasons:

A. They want to repay debts but cannot afford to pay all of them in full;
B. Their disposable income is too high to qualify for Chapter 7;
C. They wish to protect real or personal property securing a loan that is not current; or
D. They have debts that are not dischargeable under Chapter 7.

Chapter 13 helps debtors protect assets and repay creditors through a court-approved plan. Debtors can force creditors to accept repayment of delinquent secured debts (like mortgages or car loans) in order to keep those assets. The plan can also include repayment of delinquent taxes to the IRS, and under certain provisions of the bankruptcy code, some taxes may even be dischargeable. This explanation is brief and does not cover all possible exceptions or the full complexity of the law.

3. Are there any special considerations before I file bankruptcy?

What Bankruptcy Can Do. Bankruptcy is a powerful tool that stops all attempts to collect civil judgments and debts. However, it does not stop criminal prosecutions or prevent a family court from determining or enforcing child support.

Debts That Cannot Be Eliminated. Not all debts can be eliminated through bankruptcy. The following will still be owed after your bankruptcy concludes:

- Government-guaranteed student loans
- The trust-fund portion of payroll taxes
- Income taxes on unfiled tax returns and on returns filed less than three years ago
- Debts arising from fraud

Preparing for Bankruptcy: Creating a Budget

Step 1: Track Your Spending. Begin by determining where your money goes. If you're not already keeping accurate records, start tracking your expenses periodically. Creating a spending summary will reveal important patterns. Many excellent budgeting books and inexpensive software programs are available to help you.

Step 2: Create an Annual Budget. Develop a realistic annual budget based on your actual available income. You may need an attorney's advice to determine your legal options. Generally, you should prioritize payments in this order:

1. Necessities (food, utilities, basic shelter)
2. Secured debts (mortgages, car loans, and similar assets with attached liens)

Secured creditors have the right to repossess collateral if you don't pay because you signed a document giving them that right—the asset serves as "security" for the loan.

Create a comprehensive "living expense" budget covering only necessities. This shows what you have left to pay on debts after covering essential expenses. Include not just monthly expenses like rent, childcare, utilities, and food, but also annual expenses such as clothing, dental bills, medical bills, insurance, and car repairs. Divide these annual costs by 12 and include them in your monthly budget.

This represents only a small part of what should be considered. Once you have this information organized, you can work with a bankruptcy attorney to determine the right direction for your situation.

4. Exemptions and Homestead

In bankruptcy, certain property can be classified as "exempt," meaning your creditors cannot reach it. Individual debtors can choose between two types of exemptions—federal and state—each with different allowed amounts for the total exemption.

Under Texas exemptions, individual debtors can exempt all equity in their homestead, placing it beyond creditors' reach. This allows debtors to remain in their homes provided they continue making required monthly mortgage payments. Other commonly exempt items include retirement accounts, checking accounts, and motor vehicles.

Always consult with a bankruptcy attorney about which exemptions you may claim. The law governing exemptions and exemption amounts is highly complex and depends on your individual circumstances.

Safe Deposit Boxes

1. If a husband and wife put their wills in a safe deposit box and one spouse dies, can the survivor get the will out of the safe deposit box?

Yes. If a safe deposit box is held in the names of two or more persons jointly with right of survivorship, any of the named persons are entitled to access the box and remove the contents at any time. The death of one holder of a jointly held safe deposit box does not affect the right of any other holder to have access to and remove the contents from the safe deposit box if rights of survivorship are designated. Generally, your safe deposit box is an excellent place to keep your will. You will want to ensure someone has authorized access to your safe deposit box so they can retrieve important documents, such as powers of attorney, as soon as the need arises. It is always recommended that one or more trustworthy persons other than the owner(s) be authorized to enter the box.

2. If I have a safe deposit box in my name only, who can get into the safe deposit box after my death?

The bank may, without a court order, allow the following persons to examine the contents of a safe deposit box in the presence of a bank officer:

A. The surviving spouse.
B. A parent of the deceased.
C. Any adult child(ren) or grandchild(ren) of the decedent, the deceased person; and
D. A person named as executor who presents a copy of a document that appears to be the will of the deceased box holder.

* Please note: The bank may require two employees to be present and may require an appointment.

3. If the safe deposit box is in my name only and I die, what items can the persons entitled to examine the box remove?

The bank may deliver the will to the Probate Clerk or to the person named as executor. The deed to a burial plot in which the decedent is to be buried may be given to the person examining the box. A life insurance policy may be delivered to a beneficiary named in the policy. No other items may be removed from the box until court authority is obtained.

4. If I have a safe deposit box in my name only, who can get into the safe deposit box if I become mentally incapacitated?

Using a durable power of attorney, your agent may be able to gain access to the safe deposit box. Banks are sometimes reluctant to accept a power of attorney because of concerns about fraud or theft. A court-appointed guardian of the estate for a mentally incapacitated box owner always has access to the box.

5. What if the bank still will not allow me or my agent to access the deposit box?

If you have not made the above arrangements or the bank refuses the power of attorney, the probate court can issue an order compelling the bank to allow limited access.

6. What will the bank do if I do not have the key to the safe deposit box?

The bank will have to break into the box. Banks typically charge several hundred dollars to do this. If the person is not listed as having access to the box, it is likely the bank will require a court order.

7. Do all banks have safe deposit boxes?

Some banks are discontinuing safe deposit boxes in new branches and some banks are removing safe deposit boxes in existing branches. Check with your bank on their policies.

Community and Separate Property

1. What is the difference between separate property and community property?

Texas is a community property state. Community property consists of all property, other than separate property, acquired by either spouse during a marriage. “Property” includes all your assets, including but not limited to, houses, jewelry, furniture, antiques, cars, pensions, investments, and all your debts.

Separate property of a spouse includes:

- Property owned or claimed before marriage
- Property acquired during marriage by gift or inheritance
- Recovery for personal injuries sustained during marriage, excluding recovery for lost earnings

Any property that does not clearly fall within one of these categories is presumed to be community property. For more detail, please consult a Texas-licensed attorney who is experienced in family law, estate planning, or probate law.

Property is either community property or separate property at the time it is acquired. Later events such as marriage, relocation, disability, or homestead designation, do not change that character. For example, a house owned before marriage remains separate property, even if it later becomes the family homestead. Income generated from separate property during marriage is generally community property, unless an exception applies.

In the event community property is used to benefit a spouse’s separate property (such as a spouse’s salary being used to make payments on a house that was purchased prior to marriage), or one spouse’s separate property is used to benefit community property (such as a spouse’s inheritance being used to make improvements to a community property house), there may be a reimbursement claim between spouses upon dissolution of the marriage by death or divorce.

Property is presumed to be community property unless proven to be separate property by clear and convincing evidence. Property that is otherwise separate does not lose its character merely because its form changes. For example, a house purchased with cash inheritance is separate property and the cash proceeds of the later sale of the house remains separate property. Separate property ceases to be separate property when it is commingled with community property (when a spouse does not maintain records sufficient to prove the property in question was his or her separate property by “tracing”). Tracing is the method an expert witness can use to piece together a paper trail when separate property changed form resulting in the spouse owning different property at the time of divorce or death. Spouses may also convert their separate property into community property by agreement.

2. Are there different types of community property?

Yes. Each spouse has the sole right to manage and control the community property that they would have owned as a single person, which is referred to as “sole management community property.” This includes, but is not limited to:

- Personal earnings
- Revenue from separate property
- Recoveries from lost earnings resulting from a personal injury
- Any increases in and all revenue from sole management community property

All other community property is joint management community property, subject to the control of both spouses.

3. Is it true that if an asset is in my name alone it is my separate property?

No. Title alone does not determine character. Property titled in one spouse's name may still be community property. Courts focus on source of acquisition, not the name on the account or deed.

4. What property is subject to claims of my spouse's creditors?

Joint management community property is subject to claims of creditors of either spouse. A spouse's sole management community property is generally protected from the other spouse's separate creditors, subject to statutory exceptions. When both spouses sign a contract, both spouses' separate property and community property may be exposed. Each spouse has an obligation to provide necessities (food, shelter, medical care) for the other spouse, which can create unexpected creditor exposure.

Remember, all property is presumed to be community property until proven to be separate property. It is important to keep separate property segregated from community property and keep accurate records to maintain the protection from creditors that comes from separate property.

Tax Issues

1. Will my family have to pay inheritance taxes?

Generally, no. Texas does not impose an inheritance tax, and most estates do not pay federal estate tax. Under federal tax law, estate tax applies only if the fair market value of the decedent's taxable estate exceeds the applicable federal estate tax exemption in effect at the date of death. For 2025, the federal estate and gift tax exemption amount is $13,990,000, and for 2026, it is $15,000,000 per individual and the top estate tax rate remains at 40%. For married couples, the combined exemption may be preserved through portability, potentially allowing a surviving spouse to use both spouses' exemptions.

2. If I am married, are the rules for estate taxes the same?

Generally, no. Federal tax law allows a marital deduction for assets passing outright to the surviving spouse, or to a qualifying marital trust. This defers estate tax until the death of the second spouse. Although the estate tax is deferred, it is not eliminated. At the surviving spouse's death, the taxable estate includes (i) assets owned by the surviving spouse, and (ii) assets inherited from the first spouse.

3. Do I need special provisions in my will to minimize estate taxes?

Yes, when combined assets approach or exceed the exemption. If all assets pass outright to the surviving spouse, the first spouse's exemption may be underutilized. Traditional planning techniques, such as credit shelter (bypass) trust, remain relevant, especially for:

- High-net worth families
- Blended families
- Individuals concerned about creditor exposure or remarriage

By creating a testamentary will or inter vivos trust that provides for assets up to the exemption amount to be subject to tax (although no tax is payable because of the exemption), additional estate tax benefits can be obtained by having the assets pass to a credit shelter (bypass) trust. Usually, the surviving spouse is entitled to receive income and principal from this trust during life. Upon the death of the surviving spouse, the trust assets pass estate tax free to the beneficiaries designated by the first spouse that died (i.e. the appreciation of the assets in the credit shelter (bypass) trust passes tax free to the beneficiaries).

4. Will the beneficiaries owe income tax when they inherit?

Maybe, it depends on the type of asset. Generally, inheritances are not subject to income tax, but certain assets carry deferred income tax liability including:

- Traditional IRAs
- 401(k)s and other qualified retirement plans
- Installment notes
- Certain annuities

Since the income tax was never paid on these assets during the decedent's lifetime, beneficiaries owe income tax as distributions are received.

5. Does a beneficiary pay estate or gift taxes?

Generally, no. Estate tax is imposed on the decedent's estate, not on the beneficiary. If estate taxes are due, the taxes must be paid by the decedent's estate, usually within 9 months after the death of the decedent, though extensions may be available. In limited circumstances, an executor may seek a contribution from beneficiaries, such as when life insurance proceeds are included in the taxable estate but pass directly to a beneficiary.

Gift tax is imposed on the individual ("donor") who made the gift, not the recipient ("donee"). If the value of the gift exceeds the annual gift tax exclusion amount of $19,000 per person (2026), a gift tax return must be filed by the donor.

6. What will be the income tax basis of property at my death?

Gifts given during life generally have a "carryover tax basis" (no increase for appreciation). The income tax basis remains the same as when the asset was held by the individual who made the gift but with an adjustment for any gift tax paid. There will be unrealized gain accrued by the donor making the gift when the donee sells the gifted asset.

Inherited property generally has an income tax basis equal to the fair market value of the property on the date of death of the decedent, which is called a "step-up in basis." The income tax basis gets "stepped up" to fair market value. The effect of step-up in basis on inherited property is to eliminate income tax on any unrealized gain accrued by the decedent.

7. Can I gift property during my life to reduce estate taxes?

Yes, but strategy matters:

- Annual exclusion gifts may be made without gift tax consequences
- Larger gifts may reduce future estate taxes but increase income tax exposure for beneficiaries
- Medical expenses and tuition paid directly to providers may be made in unlimited amounts

8. What exclusions are available for gifts?

An annual gift exclusion amount, a lifetime exclusion amount, and certain unlimited amounts are available. In 2025 and 2026, you may give up to $19,000 per person per year without incurring gift tax, or $38,000 if both spouses elect to gift to the donee. Gifts more than this amount must be reported on a gift tax return (Form 709) by April 15 of the year after the gift is made.

9. Does the State of Texas have an estate/inheritance/gift tax?

No. Texas does not impose estate tax, inheritance tax, or gift tax.

Property Tax

1. What are property taxes?

Property taxes are a locally administered, state-authorized system in Texas. If you own real estate and occupy it as your principal residence (your "homestead"), you may qualify for exemptions that reduce taxable value or cap certain taxes. However, this generally does not eliminate property taxes altogether. For example, if you qualify for the Over-65 Exemption on your homestead, you are entitled to a property tax ceiling that limits the school district property taxes. The valuation on your property may increase year over year, but the exemption would work to limit the amount of tax.

Your local taxing authority, such as Tarrant Appraisal District (www.TAD.org), maintains a website with resources on exemptions, deadlines, and application forms. You will receive an annual Notice of Appraised Value, which reflects:

- Appraised and taxable values
- Applicable taxing units
- Exemptions on file
- Estimated tax rates and taxes due

Since the property tax system is established under state law, you can also obtain information on the Texas State Comptroller's website, https://comptroller.texas.gov/taxes/property-tax/.

2. What is an exemption?

In order to take advantage of exemptions, you may be required to show evidence of age, physical condition or disability, military service, family relationship or other facts with your local taxing authority. Common proof requirements include:

- Ownership interest in the property
- Occupancy as principal residence
- Age (65+) or disability status
- Military service or survivor status

Applications remain free and must be filed with the correct appraisal district. Most still require paper submission, though online filing is expanding.

One good way to evaluate whether you may be entitled to a property tax exemption is to obtain the application form and read through the requirements. In Tarrant County, the application form is available online at www.TAD.org. The application form must be completed correctly and mailed to the Tarrant

Appraisal District in paper form.

Here is a list of exemptions that may apply to you:

- Residence Homestead
- Age 65 or older
- Disabled person
- Disabled veteran (partial or 100%)
- Surviving spouse of qualified disabled veteran
- Surviving spouse (55+) of a person with Over-65 or disabled exemption
- Donated residence homestead of disabled veteran
- Surviving spouse of service member killed in action
- Surviving spouse of first responder killed in the line of duty

Loss of homestead status (temporary relocation, improper transfer, or facility placement) can unintentionally terminate exemptions.

3. What is Tax Deferral?

Texas continues to allow tax deferral, but it is often misunderstood. Some homeowners may defer a portion of taxes when the value increase exceeds statutory limits. Deferred taxes accrue 8% interest annually and become a lien on the property.

For those over age 65, disabled, or disabled veterans, a deferral option is available on the entire homestead property tax. Taxes continue to accrue on the homestead during the taxpayer's ownership with an interest rate of 8%, but no attempt will be made by the local taxing authority to force payment during the deferral. Generally, the taxpayer satisfies the tax lien with proceeds from the sale of the homestead.

Consumer Information for Homeowners

1. What is a Home Equity Loan?

A home equity loan or line of credit allows you to borrow money using your home's equity as collateral. This means if you fail to repay the loan, the lender may foreclose and sell your home.

Important Warning: Carefully consider the consequences of borrowing against your home. Do not be pressured to pledge your home for risky business ventures or other endeavors. Your home is likely your most valuable asset—protect it.

2. What are the requirements for a Home Equity Loan in Texas?

Texas law allows you to borrow for any purpose by pledging your homestead, but provides important protections for homeowners through specific requirements:

1. The total of all loan balances against your home may not exceed 80% of the fair market value;
2. The lien may be foreclosed only under a court order;
3. Fees to make the loan may not exceed 3% of the loan amount;
4. The loan may close only at the office of the lender, a title company, or an attorney; and
5. The loan may not close until 12 days after you submit a written application for credit.

These protections give you time to carefully review loan terms and ensure you're making the right decision.

3. Can I refinance my home?

Yes. When you refinance your mortgage, you are applying for a new loan to pay off your existing mortgage. People typically refinance to take advantage of lower interest rates, which can reduce monthly payments and save money over the life of the loan.

Other reasons to refinance include:

- Switching from an adjustable-rate to a fixed-rate mortgage
- Shortening or extending the loan term
- Accessing home equity for major expenses
- Removing a co-borrower from the loan

Important considerations: Refinancing involves closing costs and fees, so calculate whether the long-term savings justify the upfront expense. Generally, refinancing makes sense if you plan to stay in your home long enough to recoup the costs through lower payments.

4. What is a Reverse Mortgage?

A reverse mortgage is a special type of home loan available to homeowners aged 62 or older that allows you to convert your home equity into cash. Unlike traditional mortgages, where you make monthly payments to the lender, with a reverse mortgage the lender pays you.

How it works: You continue to own your home and remain responsible for property taxes and homeowner's insurance. No loan payments are due to the lender until you sell the property, permanently vacate it, or pass away. At that time, the loan must be repaid, typically through the sale of the home.

Important warnings: A reverse mortgage will encumber your home, which could limit your options if you later need to liquidate the property to pay for medical expenses or long-term care. There are many potential pitfalls to taking out a reverse mortgage, including:

- High fees and closing costs
- Reduced inheritance for heirs
- Risk of foreclosure if you fail to maintain the property or pay taxes and insurance
- Potential impact on eligibility for government benefits

It is essential to fully discuss the advantages and disadvantages with a trusted financial advisor before proceeding with a reverse mortgage.

5. What is Foreclosure?

Foreclosure is the legal process by which a mortgage holder or other lien holder can gain ownership of your property or sell it to pay off a defaulted mortgage or lien. The proceeds from the sale are used to satisfy the debt.

Texas Homestead Protection: Texas homestead laws provide strong protection against foreclosure. Your home generally cannot be foreclosed upon except in these limited circumstances:

- Purchase money mortgages (the original loan used to buy the home)
- Home equity loans (as described in Question 2)
- Property tax liens
- Home improvement loans for work already completed
- Mechanic's and materialman's liens for work on the home
- Homeowners' association (HOA) assessment liens

This means creditors cannot force the sale of your home to satisfy most other types of debts, such as credit card debt or medical bills.

6. What about my home and Bankruptcy?

The Texas homestead exemption provides powerful protection for your home equity in bankruptcy proceedings.

In Chapter 7 bankruptcy: The homestead exemption protects all equity in your primary residence from creditors, regardless of the amount. This means you can keep your home as long as you continue making mortgage payments, even if you have significant equity.

In Chapter 13 bankruptcy: The homestead exemption helps reduce your required plan payments by protecting your home equity from being counted as an asset available to creditors. This can make your repayment plan more affordable while allowing you to keep your home.

Consult with a bankruptcy attorney to understand how the homestead exemption applies to your specific situation.

7. How do I protect my home from a fraudulent second mortgage?

According to the FBI, property and mortgage fraud is the fastest-growing white-collar crime in the United States. Seniors are particularly vulnerable because many own their homes outright, making them attractive targets for fraud.

The Crime: When someone illegally uses your home as collateral for a second mortgage without your knowledge or consent, that is mortgage fraud—a serious crime. You may not discover the fraudulent mortgage until you try to sell your home or refinance.

How to protect yourself:

1. Monitor your credit reports regularly for unauthorized loans or inquiries
2. Review your property records periodically at the county clerk's office to check for unexpected liens
3. Never sign documents you don't fully understand
4. Be wary of unsolicited offers to help you access your home equity
5. Safeguard personal documents and information, including your deed and Social Security number
6. Consult with an attorney before signing any documents related to your home

If you suspect fraud: Immediately contact local law enforcement, the FBI, and an attorney who specializes in real estate or elder law. The sooner you act, the better your chances of resolving the situation and protecting your home.

Government Benefits

Social Security

1. What is Social Security?

Social Security is a federal government program. It provides workers and their families some protection against loss of income that is the result of retirement, disability, or premature death. A person obtains this protection by working in a job that is covered by Social Security. The following information is general in nature. You may call your local Social Security office for specific information on your eligibility for benefits.

2. What kinds of benefits are available from Social Security?

Although most people think of Social Security as a retirement program, it is actually much more. Social Security also pays qualifying disabled workers and the minor children and surviving spouses of deceased workers. The disability and survivor parts of Social Security are very important parts of the program because one in three workers will become disabled, and one in six will die before retirement age.

3. How do I apply for Social Security?

You can apply either by telephone or in person. It is best to make an appointment first by calling your local Social Security office, or you can call the national SSA information line at 1-800-772-1213 to schedule an appointment to file an application by phone. You can apply up to three months before you are first eligible for retirement benefits, or, for disability benefits, after you are no longer working a full-time job or your earnings fall below a certain level known as SGA.

4. How long do I have to work to be eligible for Social Security benefits?

To receive retirement benefits, a person must have worked 40 calendar quarters, which is 10 years of work. For disability benefits, a person must also have worked during 20 of the 40 calendar quarters before the date of the disability.

5. How much will I receive from Social Security?

The amount of Social Security benefits is based on the worker's earnings over their whole working lifetime. To receive an estimate of your Social Security benefit amount, call your local Social Security office and request the Social Security Benefit Statement. The information is also available online if you set up an account through ssa.gov. The statement will give you an estimate of retirement and disability benefits, as well as an estimate of the benefits your children under 18 would receive if you died.

6. How old do I have to be to receive Social Security retirement benefits?

You must be 62 years old to begin receiving Social Security retirement benefits. The benefit at that age is reduced from the benefit at normal retirement age. For persons applying now, the normal retirement age is 66. For persons born after 1954, the normal retirement age will increase each year, and will ultimately be 67 years of age for persons born in 1960 and thereafter.

7. My spouse has never worked outside the home. Can he or she receive benefits based on my work?

Yes, at age 62, a husband or wife can receive Social Security retirement benefits based on a spouse's work unless he or she is entitled to more based on his or her own work. Also, the working spouse must be receiving his or her own retirement benefits for the non-working spouse to receive retirement benefits.

8. Will my spouse and children be able to receive benefits if I die?

When a parent who has worked enough calendar quarters dies, Social Security will pay benefits to each child until age 18. A child can continue receiving benefits until age 19 if the child is a full-time high school student or, if the child is disabled, until age 22. In addition, widows and widowers can receive Social Security benefits based on a deceased spouse's work at age 60, or at age 50 if the widow or widower becomes disabled within seven years of the worker's death. Also, a widow or widower can receive benefits at any age if he or she is caring for a child under 16 who is receiving benefits based on the deceased worker.

9. What benefits are available if I become disabled?

Social Security pays monthly benefits to qualified disabled workers and their minor children. To receive Social Security disability benefits, SSA must determine that you are so disabled and limited by your mental and/or physical impairments that you cannot do any job as defined by the Social Security rules and regulations.

10. What is SSI?

SSI is an abbreviation for Supplemental Security Income. SSI is not paid with Social Security taxes, but the program is administered by Social Security. SSI is a program for persons who are 65 or over OR 100% disabled and whose income and resources are limited. In Texas, any person who qualifies for SSI is also eligible for Medicaid. You can apply for SSI in the same way you apply for Social Security retirement or disability benefits, by visiting your local Social Security office or calling the national helpline. The Texas Health and Human Services Commission administers Medicaid. See www.hhs.texas.gov.

11. What if I disagree with a decision the Social Security Administration makes on my application for benefits?

You have the right to appeal a Social Security decision about whether you are disabled and unable to work. Social Security has an appeals process. The first step in that process is reconsideration. You have 60 days from the date of the first decision to request reconsideration. If you disagree with the reconsideration decision, you have 60 days to request a hearing before an administrative law judge. If you disagree with the decision of the administrative law judge, you may request Appeals Council review. The last step in the appeal process is a civil suit in federal court.

12. If I continue to work after beginning to receive Social Security benefits, will I be penalized?

Several years ago, any person who was receiving Social Security retirement benefits could face a reduction in benefits if he or she continued to receive earned income, regardless of whether the person began receiving benefits at early retirement age or at normal retirement age. The reduction in benefits terminated at age 70. The law was modified several years ago, and there is now no reduction for persons who reach full retirement age but continue to work. The reduction does apply if an individual elects to take early retirement benefits. If you elect to receive Social Security benefits before full retirement age, you can begin receiving benefits as early as age 62; you will lose $1 of benefit each month for every $2 you earn above a base amount.

13. Are there any exceptions to the means test for disabled individuals?

Yes, Able Accounts are a new legally authorized way to permit disabled persons to hold cash that would otherwise disqualify a person from SSI.

ABLE Accounts

ABLE accounts are a new legally authorized way to permit disabled persons to hold cash that would otherwise disqualify a person from SSI. A person who was disabled prior to reaching the age of 26 may set aside up to $20,000.00 per year in one bank account. Family members may place funds in the account for the beneficiary. Beginning in 2026, a person who is disabled qualifies to use an ABLE account if disabled before reaching the age of 46.

There are three methods to prove qualification:

1. Social Security Administration determination; or
2. Physician's Diagnosis – A licensed physician has given a written diagnosis that the person is either:
    a. blind (within the meaning of the Social Security Act), or
    b. has a medically determinable physical or mental impairment that results in marked and severe limitations, and which can either be expected to result in death or has lasted or is expected to last at least 12 months; or
3. Compassionate Allowances Conditions – The person has a condition listed on the Social Security Administration's list of Compassionate Allowances Conditions.

Many of the 50 states have an ABLE account program. The costs of the program vary by state. You can compare state programs here: https://www.ablenrc.org/compare-states/.

A beneficiary may only have one account. A beneficiary can have an account in any State. A beneficiary may have up to $100,000.00 in the ABLE account before being disqualified for SSI.

Before the ABLE Account authorization, persons on Medicaid, SSI and similar programs would be disqualified from the programs by having $2,000.00 or more in countable resources (such as cash or a bank account). With an ABLE Account, the beneficiary is not disqualified by having more than $2,000.00 in the ABLE account. Some States permit the funds in the ABLE account to be invested.

Medicaid

1. What is Medicaid?

Medicaid is a joint federal-state government program that provides assistance for persons with limited assets and income. The Medicaid program in Texas is administered by the Texas Health and Human Services Commission. There are more than fifty programs. This article is limited to those programs that a person over the age of 65 would most commonly make an application. To qualify for Medicaid, one must be blind, disabled (within the definition of Social Security), or over 65 years of age. In addition, one must meet both the income and resources limits discussed below. In Texas, any person who is receiving SSI also qualifies for medical coverage through Medicaid. Medicaid covers most hospital expenses, doctor's bills, and some home health services. Medicaid will also pay for most skilled nursing care. However, Medicaid is the payor of last resort, which means if someone is covered by both Medicare and Medicaid, then Medicaid will only pay what Medicare does not pay.

2. What are the income and resources limits?

There are more than fifty programs with various income and resource limits. To qualify for long-term care (nursing home) Medicaid, an individual may not have countable resources valued over $2,000, or an income above a specified amount. The income limit varies depending on the number of people living in your household and their ages, and the amount changes each year, based upon the cost of living. For 2026, a single individual is limited to $2,829.00. A couple may receive up to $5,964.00 and qualify. In determining the countable resources, certain items are not included in that $2,000 limit: a residence with value of $752,000 or less in 2026 (in most cases); and with certain qualifications, one automobile; most personal property (other than valuable collectibles or assets); a pre-paid burial policy; term life insurance policies; and certain other life insurance policies. The best way to truly determine your eligibility is to apply.

3. What if I have too much income to meet the qualifications, but not enough income to pay for a nursing home?

If an individual meets both the income and resource tests, and is determined to be medically eligible (which means the person is unable to perform some or all activities of daily living and in need of skilled nursing care), then that person can qualify for Medicaid assistance at a nursing home that accepts Medicaid patients. Congress has made it possible to qualify for Medicaid even if an individual's income exceeds the income limit, if that person otherwise meets the resource test. In order to qualify under this circumstance, the person must establish a Qualified Income Trust (also known as a "Miller Trust"), under which the trust income does not exceed the monthly allowance to meet the income test. With such a trust, all of one or more sources of income in excess of the monthly allowance are assigned to the trust. That income must be disbursed in a specific manner within one month of receipt. It may be used first to provide the individual with a monthly personal needs allowance (currently $75), next for the person's spouse's maintenance if the spouse is not in a nursing home, and finally to pay for supplemental health insurance for the person in the nursing home. The balance must be paid to the nursing home. The trust must provide that, upon the death of the Medicaid recipient, the trust assets are payable to the State of Texas to the extent the state has paid for medical assistance. The monthly income limit for 2026 is $2,982.00. If a person applying for Medicaid coverage in a nursing home has gross income above that amount, then a Qualified Income Trust will be necessary in order to qualify for Medicaid.

4. Are the rules the same if I have a spouse at home?

No. Special rules permit a larger amount of income and assets to be used by the spouse remaining at home. Although the rules are somewhat complex, basically a spouse who remains at home may retain the lesser of 50% of the assets owned by the husband and wife combined, but is limited to a fixed dollar amount, which is adjusted annually for increases in the cost of living. In 2026, the fixed dollar amount is $157,920. If the total combined countable resources are $32,532 or less (as of 2026), then all of the countable resources are protected. In addition, if the spouse at home has less than a specified amount of income, which is $4,066.50 per month for 2026, income from the incapacitated spouse can be allocated to the community spouse when Medicaid qualification is certified. If the community spouse is unable to receive the full spousal monthly allowance after allocation of income from the incapacitated spouse, then the Maximum Protected Resource Amount can be expanded. All these dollar amounts are subject to annual cost of living adjustments.

5. Can I give away my property to qualify for Medicaid?

If a transfer of property is made during the five-year period immediately before an application for Medicaid, then a penalty will be imposed. The penalty is determined by dividing the amount of the gift by the daily cost of a nursing home in Texas. As of January 2026, this amount is $262.37 per day. The penalty period does not begin to run until the person is otherwise eligible for Medicaid. This means the person has to meet the income and resource requirements and be in a Medicaid qualified bed at a facility that accepts Medicaid. If gifts have been made, either the gifts will need to be returned, or an alternate means of payment will need to be available during the running of the penalty period.

6. If I receive Medicaid, will the state take my home?

Texas does have a system of estate recovery, which means that the State of Texas has the right to recover from a Medicaid recipient's probate estate an amount up to the total amount paid by the state for medical assistance. This right of recovery does not apply if there is a spouse or disabled child living in the home, nor does it apply if the recovery would result in an undue hardship. The determination of "undue hardship" has specific defined circumstances. The right of recovery also does not apply to anyone whose application for Medicaid was filed before March 1, 2005. The right of recovery is merely a claim against the probate estate, and there are currently estate planning techniques available to protect the home from the state's recovery system. For example, transfers between spouses are not penalized.

Medicare

1. What is Medicare?

Medicare is a federal government health care insurance program. The General Enrollment Period runs from January 1 through March 31 of each year. Most people enroll the month before their 65th birthday through the three months after their 65th birthday. General Enrollment is an annual opportunity for individuals who are eligible for, but not enrolled in, Medicare Parts A and/or B to enroll.

Enrollment in Part A, for those not entitled to premium-free Part A, is necessary for individuals wishing to enroll in a private health plan under Medicare Part C (Medicare Advantage) and for low-income individuals wishing to participate in the Medicare Savings Program.

2. What are the various insurance programs provided by Medicare?

Part A covers hospitalization, skilled nursing facility care, and some home health and hospice care. It is available to most American citizens premium-free beginning on their 65th birthday or once they have received Social Security disability benefits for 24 months. It is also available immediately to disabled persons with end stage renal failure or ALS (Lou Gehrig's disease). Part A does not require a premium if a person has 40 or more quarters of employment prior to the date of eligibility. If one is not entitled to premium-free Part A, because the person did not work enough calendar quarters, that person can pay a monthly premium for Medicare Part A coverage (in 2026, this premium ranges from $311-565 per month, depending on number of quarters and other factors). Part A and Part B are necessary to enroll in Part C (private managed care plans) and Part A and/or Part B is also required to enroll in Part D (private prescription drug plans).

Part B covers medically necessary services and preventive services, outpatient therapies, durable medical equipment, some outpatient prescription drugs, and ambulance services. Coverage is voluntary and available to beneficiaries at the same time you are eligible for Part A. The standard monthly premium, $202.90 for 2026, is generally deducted from your Social Security or Railroad Retirement check. A penalty is imposed for late enrollment. Part B is necessary for Part A enrollment for those not entitled to premium free Part A. Persons with incomes above $109,000 in 2026 will pay a higher premium.

Part C (Medicare Advantage) is provided through private managed care plans usually organized as HMOs. The providers are required to cover all the services covered under Parts A and B. Enrollment in Part C is voluntary and available at the same time a beneficiary is first entitled to and already enrolled in Parts A and B. General enrollment is from October 15 through December 7 of each year, with benefits starting January 1 of the following year. Beneficiaries are able to change plans once during the first three months of the year. Part C plans can offer a prescription drug plan under Part D. There is no late enrollment penalty for Part C.

Part D is provided through private plans offering prescription drug coverage. It is voluntary and available at the same time you enroll in Part A or Part B. General enrollment is from October 15 through December 7 each year. A beneficiary must have either Part A or Part B to enroll in Part D. Otherwise coverable Part D drugs that are covered under Part A or Part B will not be covered under Part D, even if you have Part A or Part B coverage. Failure to enroll when first eligible will cause you to incur a perpetual late enrollment penalty. More information is available from the Social Security office at www.medicare.gov or by phone.

VA Benefits

1. Are there benefits available for older adults through the Veterans Administration?

There are a variety of benefit programs available to Veterans and their families, such as:

- Healthcare
- Disability Compensation
- Education, Training, Vocational Rehabilitation
- Pension
- Housing
- Life insurance
- Burials and Memorials

The eligibility criteria vary depending on the program offered by the VA. Below is a brief description of some of the more common benefit programs available.

2. What are the VA programs for older adults?

The VA provides benefit programs for older adults. This section will discuss the following programs:

For Veterans

A. VA Pension (Wartime Pension)
B. VA Aid and Attendance and Housebound Benefits
C. Disability Compensation
D. TDIU (Total Disability Based on Individual Unemployability)
E. VA Health Care and the PACT Act
F. Nursing Home/Extended Care and Related Services for Veterans
G. Burial Benefits

For Surviving Spouses and Dependents

H. Dependency and Indemnity Compensation (DIC)
I. Survivors Pension
J. Burial and Burial Allowance
K. Aid and Attendance
L. Health Care
M. Home Loans and Interest Rate Reduction
N. Education and Training Benefits
O. Final Monthly Payment
P. Accrued Benefits
Q. Life Insurance
R. Death Gratuity Payment

For Veterans

A. VA Pension (Wartime Pension)

The VA Pension is a monthly benefit for veterans with low income and limited assets. It is designed to provide financial support to eligible wartime veterans and their dependents for basic living expenses. To be eligible for a VA pension, a veteran must meet all of the following requirements:

- Service during wartime for the requisite period of time;
- Permanent and total disability;
- Limited income and assets.

To qualify, the veteran must have served on active duty for the minimum period shown below, with at least one day served during a recognized wartime period:

- Before September 7, 1980 – at least 90 days of active duty;
- After September 7, 1980 – at least 24 months of continuous active duty or the full period for which the veteran was ordered to active duty;
- For officers who first entered active duty after October 16, 1981 – at least 24 months of continuous active duty.

There is no requirement that the veteran served in combat during wartime; rather, the service must have coincided with a recognized wartime period. If a service-connected disability resulted in discharge before the minimum service requirements, the veteran may still be eligible for pension benefits.

What Counts as Wartime?

The VA recognizes the following wartime periods for determining VA pension eligibility:

- **World War II:** December 7, 1941 – December 31, 1946
- **Korean War:** June 27, 1950 – January 31, 1955
- **Vietnam War (in-country service):** November 1, 1955 – May 7, 1975
- **Vietnam War (other service):** August 5, 1964 – May 7, 1975
- **Gulf War:** August 2, 1990 – Present
  https://veteransguide.org/va-benefits/va-pension-eligibility/

Additionally, the veteran must be at least 65 years old, permanently and totally disabled (including those determined disabled by the Social Security Administration), or residing in a long-term facility due to a disability.

Income and Asset Requirements

Income must be at or below the eligible amount. In 2025, the amount for a single person with no dependents was $16,965.00. For a veteran with one dependent, the amount was $22,216.00. For each additional dependent, an additional $2,902.00 is allowed. Assets are also considered in determining eligibility. The current cap for income and assets is $159,240.00.

B. VA Aid and Attendance and Housebound Benefits

Because **Aid and Attendance** is tied to eligibility for VA Pension, the veteran must meet the same eligibility requirements listed above and one of the following:

- The veteran needs another person to help perform daily activities, such as bathing, feeding, or dressing;
- The veteran must stay in bed—or spend a large portion of the day in bed—because of illness;
- The veteran is a patient in a nursing home due to the loss of mental or physical abilities related to a disability; or
- The veteran's eyesight is limited (even with glasses or contact lenses, vision is 5/200 or less in both eyes, or there is concentric contraction of the visual field to 5 degrees or less).

If these requirements are met, the veteran will receive an additional monthly benefit on top of the Pension.

Similar to Aid and Attendance, **Housebound Benefits** have the same eligibility as Pension benefits. A veteran may not receive both Aid and Attendance and Housebound Benefits at the same time. Housebound Benefits are a monthly payment in addition to Pension for individuals who spend the majority of their time at home due to a permanent disability. For more information, visit https://www.va.gov/pension/aid-attendance-housebound/

C. Disability Compensation

VA disability compensation is a non-taxable payment to veterans who got sick or injured while serving in the military, or whose military service made an existing condition worse. This is not a welfare benefit. It is a benefit to honor your service to our country, a benefit you earned due to your sacrifice. A veteran may qualify for VA disability benefits for physical or mental health conditions that developed before, during, or after service. Veterans are encouraged to contact a Veterans Service Organization (VSO) or an accredited claims representative for assistance in filing a claim. Many VA medical facilities have

VSOs available on-site. To search for a VSO or accredited representative near you, visit https://www.va.gov/resources/va-accredited-representative-faqs/

D. TDIU (Total Disability Based on Individual Unemployability)

Individual Unemployability applies if the veteran is unable to work. If the veteran cannot work because of a disability related to military service, the veteran may qualify for Individual Unemployability. This means the veteran may be eligible to receive disability compensation at the same level as a veteran who has a 100% disability rating.

A veteran may be eligible for Individual Unemployability if:

- The veteran is unable to maintain a steady job that provides substantially gainful employment because of a service-connected disability. Marginal employment (such as odd jobs) does not qualify; and
- Either the veteran has at least one service-connected disability rated at 60% or more, or the veteran has two or more service-connected disabilities, with at least one rated at 40% or more and a combined rating of 70% or more.

In certain cases, such as when frequent hospitalization is required, the veteran may qualify at a lower disability rating.

This does not change the disability rating, but it increases the monthly compensation benefit. To apply, complete VA Form 21-8940. The veteran may also be required to complete VA Form 21-4192 for employment information. For more information, visit https://www.va.gov/disability/eligibility/special-claims/unemployability/

E. VA Health Care and the PACT Act

All veterans who meet basic service and discharge requirements and who were exposed to toxins or other hazards during military service—at home or abroad—are now eligible for VA health care. General eligibility requirements may include at least 24 continuous months of active-duty service, discharge due to a disability that was caused—or made worse—by active-duty service, discharge for a hardship or "early out," or service prior to September 7, 1980. Veterans may contact the toll-free hotline at 877-222-8387 to determine eligibility for enrollment in VA health care.

The PACT Act

The PACT Act is a law that expands VA health care and benefits for veterans exposed to burn pits, Agent Orange, and other toxic substances. The law helps provide generations of veterans—and their survivors—with the care and benefits they have earned and deserve.

The PACT Act affects veterans with toxic exposures and veterans of the Vietnam, Gulf War, and post-9/11 eras. It adds more than 20 presumptive conditions related to burn pits, Agent Orange, and other toxic exposures. It also mandates that the VA must provide a toxic exposure screening to every veteran enrolled in the VA health care system.

A veteran may be eligible to enroll without needing to apply for disability benefits first if the veteran meets the basic service and discharge requirements and any of the following apply:

- The veteran served in the Vietnam War, the Gulf War, Iraq, Afghanistan, or any other combat zone after September 11, 2001; or
- The veteran deployed in support of the Global War on Terror; or
- The veteran was exposed to toxins or other hazards during military service at home or abroad.

Specific toxins and hazards include burn pits, sand and dust, particulates, oil well or sulfur fires, chemicals, radiation, warfare agents, depleted uranium, herbicides, and other occupational hazards.

For more information, visit https://www.va.gov/resources/the-pact-act-and-your-va-benefits/

F. Nursing Home/Extended Care and Related Services for Veterans

A veteran may be eligible to receive health care at home or while residing in an assisted living or residential (live-in) facility. Long-term care services may include the following (where available):

- 24/7 nursing and medical care;
- Physical therapy;
- Assistance with activities of daily living, including bathing, dressing, meal preparation, and medication management;
- Comfort care and pain management;
- Support for caregivers to allow time for work, travel, have a break, or run errands.

To access these services, the veteran must meet all of the following requirements:

- The veteran is signed up for VA health care;
- The VA determines that the veteran requires a specific service to assist with ongoing treatment and personal care; and
- The service (or space in the care setting) is available near the veteran.

The VA may also consider other factors, such as service-connected disability status or insurance coverage. To obtain additional information about these services, a veteran may contact a VA social worker or call the toll-free hotline at 877-222-8387, Monday through Friday, 8:00 a.m. to 8:00 p.m. ET.

G. Burial Benefits

VA burial benefits can help service members, veterans, and their family members plan and pay for a burial or memorial service in a VA national cemetery. Family members may also order memorial items to honor the service of a veteran. The veteran must not have received a dishonorable discharge to qualify for these benefits.

Additional benefits the veteran may qualify to receive include a headstone or marker, burial flag, military funeral honors, and a medallion for a headstone in non-VA cemeteries.

For more information, visit https://www.va.gov/burials-memorials/eligibility/

A veteran is encouraged to plan in advance so that loved ones understand what steps to take and whom to contact regarding burial and memorial honors.

For Surviving Spouses and Dependents

H. Dependency and Indemnity (DIC)

A surviving spouse, child, or parent of a service member who died in the line of duty, or of a veteran who died from a service-related injury or illness, may be eligible for a tax-free monetary benefit called VA Dependency and Indemnity Compensation (DIC).

A surviving spouse may be eligible for DIC if the following requirements are met:

- The surviving spouse lived with the veteran or service member without a break until the time of death; or
- If separated, the surviving spouse was not at fault for the separation.

Additionally, the surviving spouse must have been married to the veteran within 15 years of discharge from the period of military service during which the qualifying illness or injury began or was aggravated, or was married to the veteran or service member for at least one year, or had a child with the veteran or service member.

If the surviving spouse remarries, eligibility may end. However, continued eligibility may apply if the surviving spouse remarried on or after December 16, 2003, at age 57 or older, or remarried on or after January 5, 2021, at age 55 or older. To apply, complete VA Form 21P-534a (Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child). For more information, including eligibility for a surviving child, visit https://www.va.gov/family-and-caregiver-benefits/survivor-compensation/dependency-indemnity-compensation/

I. Survivors Pension

Survivors Pension, formerly referred to as Death Pension, is a tax-free benefit payable to a low-income, unremarried surviving spouse or unmarried child(ren) of a deceased veteran with wartime service.

A surviving spouse may be eligible for this benefit if the spouse has not remarried after the veteran's death, the deceased veteran did not receive a dishonorable discharge, and the veteran's service meets at least one of these requirements:

- The veteran entered active duty on or before September 7, 1980, and served at least 90 days on active military service, with at least one day during a covered wartime period; or
- The veteran entered active duty after September 7, 1980, and served at least 24 months or the full period for which the veteran was called or ordered to active duty (with some exceptions), with at least one day during a covered wartime period; or
- The veteran was an officer who began active duty after October 16, 1981, and had not previously served on active duty for at least 24 months.

Additionally, the following must be met:

- The surviving spouse's yearly family income and net worth meet certain limits set by Congress. Net worth equals the value of everything owned (except the home, vehicle, and most home furnishings), minus any outstanding debt.

Additional requirements for a child of a veteran can be found at https://www.va.gov/family-and-caregiver-benefits/survivor-compensation/survivors-pension/

How to Apply:

A claim for Survivors Pension may be filed by completing VA Form 21P-534EZ and submitting it by one of the following methods:

- Online at: https://www.va.gov/find-forms/about-form-21p-534ez/
- By mail to:
  Department of Veterans Affairs
  Pension Intake Center
  PO Box 5365
  Janesville, WI 53547-5365
- In person at the nearest VA regional office:
  https://www.va.gov/find-locations/?facilityType=benefits

When reviewing claims for pension benefits, the Department of Veterans Affairs reviews any assets transferred within three years prior to filing the claim. For additional information regarding VA pension qualification, visit https://www.va.gov/pension/veterans-pension-rates/

J. Burial and Burial Allowance

Spouses and dependent children are eligible for a government headstone or marker only if they are buried in a national, military post/base, or state veterans cemetery. A burial allowance is paid to a surviving spouse for an eligible veteran's funeral and burial expenses based on a flat rate as set by Congress. The veteran must have either died as the result of a service-connected disability, been receiving or entitled to receive VA compensation at the time of the veteran's death, died while in the care of a VA hospital, died while on approved medical treatment travel, or died in a VA nursing home. For more information, see the VA Survivor Benefits Pamphlet: https://www.va.gov/SURVIVORS/docs/VASurvivorBenefitsPamphletFinal0604-2.pdf

K. Aid and Attendance

If a surviving spouse receives Survivors Pension and meets the additional requirements outlined in Section B, the surviving spouse may qualify for Aid and Attendance.

L. Health Care

Under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), eligible individuals may receive reimbursement for most medical expenses.

To be eligible for CHAMPVA, an individual cannot be eligible for TRICARE (the medical program for civilian dependents, provided by the Department of Defense [DoD]) and must be one of the following:

- The spouse or child of a veteran whom VA has rated permanently and totally disabled due to a service-connected disability.
- The surviving spouse or child of a veteran who died from a VA-rated service-connected disability or who, at the time of death, was rated permanently and totally disabled.
- The surviving spouse or child of a veteran who died on active-duty service and in the line of duty, for reasons other than misconduct. However, in most cases, these family members are eligible for TRICARE, not CHAMPVA.

Note: If the individual is also receiving Medicare, CHAMPVA is a secondary payer after Medicare pays its portion. For more information, see the VA Survivor Benefits Pamphlet:
https://www.va.gov/SURVIVORS/docs/VASurvivorBenefitsPamphletFinal0604-2.pdf

M. Home Loans and Interest Rate Reduction

A VA home loan may be available to a surviving spouse receiving DIC or whose spouse is listed as Missing in Action (MIA), subject to additional eligibility requirements. A certificate of eligibility must be obtained from the VA prior to applying for a loan. To apply, complete a Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses (VA Form 26-1817) and obtain a copy of the veteran's service record.

If the surviving spouse currently has a VA home loan and is experiencing difficulty making payments, an Interest Rate Reduction Refinance Loan (IRRRL) may help lower the monthly payment. For more information, visit https://www.va.gov/housing-assistance/home-loans/loan-types/interest-rate-reduction-loan/

N. Education and Training

Under the Dependents' Educational Assistance (DEA) Program, eligible survivors and children may receive benefits including monthly payments for full-time school attendance in the amount of $1,488.00, or a lesser amount for part-time attendance. Benefits may be paid for up to 45 months and may be used for college or graduate degree programs; career-training certificate courses; educational and career counseling; apprenticeships; on-the-job training; or special restorative or vocational training to help survivors with physical or mental disabilities work toward their educational or training goals.

Children and spouses of members who died in the line of duty on or after September 11, 2001, may be eligible for Post-9/11 GI Bill benefits under the Fry Scholarship. For more information, visit https://www.va.gov/family-and-caregiver-benefits/education-and-careers/fry-scholarship/

O. Final Monthly Payment

A one-time lump-sum month-of-death payment is made to the surviving spouse. It is equal to two months of the veteran's monthly benefit payment, up to a maximum of $1,195.00. This payment is automatically made to the surviving spouse or dependent.

P. Accrued Benefits

If the VA owed benefits to a veteran spouse at the time of death, the surviving spouse may be entitled to receive those benefits. For more information, visit https://www.va.gov/family-and-caregiver-benefits/survivor-compensation/accrued-benefits/#what-are-accrued-benefits

Q. Life Insurance

The VA provides life insurance coverage to service members, their spouses and dependent children, and veterans.

If a designated beneficiary is named, benefits may be payable under Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI).

To find out if a servicemember or veteran had such coverage, contact the Office of Servicemembers' Group Life Insurance at 800-419-1473 or by email at osgli.osgli@prudential.com.

Additionally, a family member may be covered under Family SGLI.

If the veteran was 1–100 percent disabled, the veteran's life may be insured under Service-Disabled Veterans Insurance (S-DVI) or Veterans Affairs Life Insurance (VALife). Veterans who received a specially adapted housing grant from VA may be insured under Veterans' Mortgage Life Insurance (VMLI). Veterans who served prior to 1967 may be insured under one of VA's other administered life insurance programs.

To find out if coverage existed under one of these programs, call 800-669-8477. Information on all VA life insurance programs, including how to file a claim, is available at www.benefits.va.gov/insurance

R. Death Gratuity Payment

The military services provide a payment called a death gratuity in the amount of $100,000 to the next of kin of servicemembers who die while on active duty (including those who die within 120 days of separation) or while serving in certain reserve statuses as a result of service-connected injury or illness. For more information, visit https://www.benefits.va.gov/insurance/forms/8283.htm

Health Planning

Powers of Attorney and Living Wills

You must be mentally competent to give informed consent to medical treatment or to enter into contracts or business transactions. One who is mentally competent understands and appreciates the nature and consequences of a treatment decision or a business decision, including the benefits and harms of, and reasonable alternatives to, proposed medical treatment decisions or business decisions. A competent adult may plan for possible later incompetence by naming a person called an agent to conduct his or her financial and personal affairs. If a person does not designate an agent and later becomes incapacitated, then health care providers, financial institutions, and other service providers must determine whether the person is competent to provide informed consent for those services or treatment. If not, a guardian may be required. By designating an agent, you can select who will make medical and financial decisions for you, and can avoid a possible later need for a court-appointed guardian. The designation must meet statutory requirements.

A power of attorney is automatically suspended if a temporary guardian is appointed by a court. It is revoked by the court if a permanent guardian of the person or a guardian of the estate is appointed, unless the court order states otherwise.

The following are documents normally used by competent individuals to designate agents:

1. Financial Power of Attorney

A. What is a Power of Attorney?

A power of attorney is a written document in which one person (the "principal") appoints another person (the "attorney-in-fact") as an agent and grants the agent authority to perform certain acts. The power of attorney may be general and include broad authority to act on behalf of the principal, or it may be limited to certain specified acts or circumstances. The power of attorney is normally used to designate an agent to handle financial matters on behalf of the principal.

B. What are the legal requirements?

1. It must be in writing;
2. It must be signed by a principal who is an adult; and
3. It must be acknowledged before a notary public or signed in the presence of two qualified witnesses.

C. What is a Statutory Durable Power of Attorney?

A Statutory Durable Power of Attorney (financial) is an important estate planning tool which can be used in a number of situations including possibly avoiding a guardianship of a person's estate. The Statutory Durable Power of Attorney ("DPOA") uses language the legislature sets forth in a statute. Banks and other institutions tend to accept a power of attorney that uses the statutory language more readily than one that uses other language. The person executing the DPOA is called the principal, and the person appointed to act on behalf of the principal is referred to as the agent.

Under new Texas law, a person who is presented with a DPOA is under a duty to accept the power of attorney immediately unless an agent's certification or an opinion of counsel is requested. Delay of acceptance can occur if the person requests an English translation. Refusal to accept the DPOA must be based on one of the reasons set out in the Estates Code. A power of attorney ends when the principal revokes it, executes a new DPOA, or passes away. Ordinarily, a DPOA includes words such as:

“This power of attorney shall not terminate upon the disability or incapacity of the Principal.”

The DPOA is a powerful document that gives an agent strong powers to manage the principal’s estate. Thus, the principal should carefully consider whom to appoint as agent.

In many cases, copies of various documents will be accepted. However, if the agent needs to conduct a real estate transaction, the original DPOA will need to be filed in the Deed Records of the county where the real estate transaction takes place.

2. Medical Power of Attorney

A. What is it?

Texas law provides for a Medical Power of Attorney. A Medical Power of Attorney allows the designated agent to make decisions about health care for the principal. The agent can make decisions that the principal would make if he or she were competent. There is now a statutory form for the Medical Power of Attorney which must be substantially complied with.

B. What are the statutory requirements?

1. The Medical Power of Attorney must be in writing and in substantially the same language as set forth in the statute.
2. A Disclosure Statement, the form of which is found in the statute, must be read and signed by the principal before the execution of the Medical Power of Attorney.
3. The Medical Power of Attorney must be delivered to the agent before it becomes effective.

C. When can the agent act and in what ways?

After the Medical Power of Attorney is properly signed, witnessed, and delivered, the agent can make any medical decisions the principal could make for himself or herself, but only after the attending physician certifies in writing that the principal is no longer able to make health care decisions alone.

D. What are the limits on the agent’s powers?

1. Treatment may not be given or withheld if the principal objects, regardless of the fact that the Medical Power of Attorney exists and regardless of the principal’s lack of capacity.
2. The principal may revoke a Medical Power of Attorney orally at any time.
3. An agent may not: place the principal in an in-patient mental health facility; authorize convulsive or psychosurgical treatment; authorize abortion; or withhold “comfort” care.
4. If a guardian of the person is appointed for the principal, then the guardian controls all health-care decisions, unless the court orders the agent to continue.

3. Directive to Physicians and Family or Surrogates (Living Will)

A. What is it?

A Directive to Physicians is a document signed by a competent adult person directing the administering, withholding, or withdrawing of life-sustaining treatment in the event of a terminal or irreversible condition. A person can revoke their Directive at any time.

B. What are the statutory requirements?

The Directive must be in writing, signed by the person (called a “declarant” in the statute) in the presence of two witnesses, at least one of whom must qualify under the statute, or before a notary public.

C. When is the Directive used?

If a Directive to Physicians has been signed by a patient, the patient’s physician must determine whether the patient’s condition is: (a) a terminal condition which will result in death within six months even with the application of life-sustaining procedures, or (b) an irreversible condition that is fatal without the application of life-sustaining treatment. If the patient's condition is terminal or irreversible, the Directive will be followed.

4. Out-of-Hospital Do-Not-Resuscitate Order ("DNR")

A. What is an Out-of-Hospital DNR?

This means a legally binding Out-of-Hospital DNR in a form specified by the Texas Department of Health. It is prepared and signed by the attending physician of a person, documents the instructions of a person or the person's legally authorized representative, and directs healthcare professionals acting in an out-of-hospital setting not to administer resuscitation or other life support measures (except for comfort). A person who has valid Out-of-Hospital DNR may wear a DNR identification device around the neck or on the wrist as prescribed by the Texas Department of Health. The presence of a DNR identification device is conclusive as a valid Out-of-Hospital DNR and responding healthcare professionals are required to honor the DNR identification device as if a valid Out-of-Hospital DNR executed or issued by the person were found in the possession of the person.

B. What are the requirements of an Out-of-Hospital DNR?

An Out-of-Hospital DNR must be on the form prescribed by the Texas Department of Health. The form must be signed by the patient, or if the patient is not competent, it must be signed by an agent under a medical power of attorney or by a guardian or family member as required by Texas law. The form must be signed by two qualified witnesses or acknowledged before a notary public, and the attending doctor must also sign the form. After the form is properly executed, the patient may obtain an identification bracelet to show that he or she has signed an Out-of-Hospital DNR and that resuscitation should not be administered if emergency personnel are called for the patient.

5. Anatomical Gifts

For information about organ donation, contact:

LifeGift Organ Donation Center
1000 12th Avenue
Fort Worth, Texas 76104
817-870-0060
www.lifegift.org

You can also go online at www.dmv.org/tx-texas/organ-donor.php or www.donatelifetexas.org. Information on how to register is available in both English and Spanish.

6. Do I need an attorney to make an anatomical gift?

An attorney is not required; however, it is illegal for a non-lawyer to prepare legal instruments for you.

Trusts

1. What is a trust?

A trust is a legal arrangement in which legal title to property is held by one person or entity, known as the "trustee," for the benefit of one or more other persons known as "beneficiaries." The trust's terms are set out in a written "trust agreement" which governs how trust property is managed, invested, and distributed.

2. How is a trust created?

A trust is created by a legal document prepared and signed by the person creating the trust, commonly referred to as the grantor or settlor. Any person with legal capacity and the right to transfer assets may create a trust. A trust may be created:

- During life, known as an "inter vivos trust" or "living trust"
- At death, through a will known as a "testamentary trust."

3. Who can and should be the trustee?

A trustee may be (i) a competent individual, or (ii) a corporation or trust company authorized to act as trustee under Texas law. The trustee is not required to reside in Texas, even if the trust is governed by Texas law. Multiple trustees may serve together, either concurrently or successively. A trustee owes fiduciary duties to the beneficiaries, including duties of loyalty, prudence, and impartiality. Accordingly, the trustee should be selected based on reliability, financial competence, and willingness to strictly follow the terms of the trust agreement.

4. Why would I create a testamentary trust?

A testamentary trust is created under a will and becomes effective at death. Such testamentary trusts may serve several purposes, including:

- Estate tax planning, such as the creation of a credit shelter (bypass) trust for married couples
- Asset management for minor beneficiaries
- Protection for incapacitated or vulnerable beneficiaries
- Control over timing and conditions of distributions

Testamentary trusts allow you to ensure continued management and protection of assets after death, particularly where beneficiaries are unable or ill-equipped to manage property independently.

5. What is a living trust?

A living trust is established during the grantor's lifetime to hold legal title to assets. Common examples include:

- Revocable living trust
- Charitable remainder trust
- Irrevocable life insurance trust
- Children's trust
- Charitable lead trust

Often, the grantor initially serves as trustee. Living trusts are widely marketed as a solution to all estate planning needs. In many cases, however, a living trust is not superior to a will, and may involve greater upfront and ongoing costs.

6. Will a living trust allow me to avoid probate?

A revocable living trust can avoid probate only if assets are properly titled in the name of the trustee prior to death. Assets owned by the trust are not subject to probate because they are not owned by the decedent individually. If assets are not transferred to the revocable living trust during life, probate may still be required. For this reason, individuals who establish a revocable living trust should also execute a pour-over will, which ensures that any assets not transferred during life will be disposed of according to the revocable living trust.

7. Should I establish a revocable living trust solely to avoid probate?

In many cases, no. Texas allows for independent administration allowing executors to administer estates with minimal probate court control or supervision. As a result, probate in Texas is often relatively efficient and cost-effective. Avoiding probate may not justify the creation of a revocable living trust.

8. Are there other reasons to establish a revocable living trust?

Yes, common reasons include:

- Avoiding ancillary probate administration. If you own real property in another state, a probate proceeding may be necessary in that state to clear title to the real property. If you establish a revocable living trust and transfer title of the out-of-state real property to the trust, you will be able to avoid the ancillary probate administration.
- Continuity of asset management during incapacity, potentially avoiding guardianship.
- Privacy, as revocable living trusts are not subject to public records in the same manner as testamentary trusts created under a will that is subject to probate proceedings.

These considerations may be particularly important for individuals with complex assets or heightened privacy concerns.

9. How are revocable trusts taxed?

For income tax purposes, a living trust is reported on the grantor's income tax return. No separate income tax return is required during the grantor's lifetime.

10. Do revocable living trusts help reduce estate taxes?

No. All trust assets are included in the taxable estate of the grantor of the trust upon death, so there is no reduction in estate tax merely by setting up a revocable living trust. However, provisions may be included within the revocable living trust to minimize or defer estate taxes. It should be noted that the same provisions may be included in a testamentary trust as well.

11. What is a Special Needs Trust?

A special needs trust (also known as a "supplemental needs trust") is designed to benefit a disabled individual while preserving eligibility for means-tested government benefits, such as Medicaid or SSI. If properly structured:

- Trust assets are not treated as countable resources
- Trust distributions may supplement, but not replace government benefits

Special needs trusts are commonly used for (i) individuals with lifelong disabilities, or (ii) older adults requiring Medicaid assistance for long-term care.

Guardianship

1. How is a guardianship initiated?

Any interested person may hire an attorney certified by the Texas Bar Association in guardianship matters to file an application or request the probate court to appoint a guardian for someone the person believes to be incapacitated. In Tarrant County, guardianship cases are heard by the probate courts. The court investigators investigate the need for guardianship for alleged incapacitated individuals and the court retains the final authority to determine whether appointing a guardian is in the individual's best interest and who is a suitable person to serve as the guardian.

The applicant must hire an attorney certified in guardianship matters to represent the applicant in filing an application for a guardianship of an incapacitated person.

The court and all attorneys involved in the guardianship matter are charged by the legislature with investigating less restrictive alternatives to a guardianship to avoid removing the rights and powers of the incapacitated person. All decisions are to be made in the best interest of the incapacitated person.

2. For purposes of guardianship, who is an incapacitated person?

A person who is unable to provide food, clothing, or shelter for himself or herself, who is unable to care for his or her own physical needs, or who is unable to manage his or her own financial affairs because of a mental or physical condition may be incapacitated and placed under guardianship. A minor is also considered to be incapacitated.

3. Are there different levels of incapacity?

Yes. The doctor treating the person who is incapacitated must specifically set out in a Physician's Certificate to the court the mental or physical basis for the incapacity and the extent of the incapacity. The doctor answers questions concerning the person's ability to drive, vote, enter into a contract, make decisions regarding his or her residence, manage money, and similar matters, as well as the doctor's opinion as to the likelihood that the person may regain capacity in the future.

The statute now allows for an advanced practice registered nurse under a physician's delegation authority and supervision to complete the Certificate, but it must also be approved by the supervising physician.

4. If a guardian is appointed, can an incapacitated person keep certain rights and powers?

Yes. A judge can appoint a guardian but can limit the guardian's powers so that the incapacitated person keeps all rights and powers except those granted to the guardian. The court and all attorneys involved in the guardianship matter are charged by the legislature with investigating less restrictive alternatives to a guardianship to avoid removing the rights and powers of the incapacitated person.

When a guardianship cannot be avoided, it is still the intent of the law to provide the least restrictive guardianship, allowing the incapacitated person to maintain as much freedom, independence and dignity as possible while at the same time protecting the incapacitated person and their estate.

5. What types of guardians are there?

There are guardians of the person and guardians of the estate. A guardian of the person has the duty and power to provide the incapacitated person with clothing, food, medical care, and shelter. A guardian of the estate has the duty and power to manage the incapacitated person's financial affairs. One person can fill both positions.

6. May I designate persons to serve as my guardian if I become incapacitated?

Yes. The designation must be in writing and signed by you. It must either be written wholly in your handwriting or signed and witnessed ("executed") in accordance with specific Texas laws. One is usually better served by consulting with an attorney regarding the drafting of a Designation of Guardian. If the court determines that a person designated as the choice for guardian is not suitable or not in the best interest of an incapacitated person, the court can appoint a more suitable person as the guardian.

7. Who may serve as guardian?

The court will appoint a guardian according to the circumstances and considering the best interests of the incapacitated person. If a person has not been named in a Designation of Guardian, the court will appoint a guardian in the following order of priority:

1. The incapacitated person's spouse.
2. The person's next of kin.
3. Any eligible person who is qualified to serve.

8. Who cannot serve as guardian?

These persons cannot serve as a guardian: a minor, a notoriously bad person, an incapacitated person, a person who is a party to a lawsuit affecting the incapacitated person (with some exceptions), a person who owes the incapacitated person money (unless it is repaid), a person with adverse claims to the incapacitated person or his property, an inexperienced or uneducated person, a person the court finds unsuitable, a person eliminated in a person's designation of guardian, or a nonresident without a resident agent.

Private persons seeking to be appointed as guardian are required to submit to a criminal background check. A private person is also required to complete a training program from the Judicial Branch Certification Commission (JBCC) and all guardians are required to register the guardianship with the JBCC before they can be appointed.

9. In a guardianship proceeding, is the incapacitated person represented by an attorney?

Yes. When a guardianship application is filed, the court appoints an attorney to represent the interests of the incapacitated person (an "attorney ad litem"). The person can also retain his or her own attorney if the court determines the person has the capacity to hire an attorney.

10. What are the costs involved in a guardianship?

The costs of handling a guardianship include attorney's fees, filing fees, attorney ad litem fees, and bond premiums. Costs can be ordered to be paid out of the incapacitated person's estate, by the applicant, or by the county if there are no other resources to pay for the costs. Those costs can be several thousands of dollars in the year the guardianship is created. There will be additional costs each year the guardianship continues, and if a guardian of the estate is appointed, an attorney will be required to represent the guardian of the estate as long as the incapacitated person has an estate.

11. What rights does the incapacitated person have?

The alleged incapacitated person has the right to receive a copy of the application for guardianship and other documents filed with the County Clerk. He or she is also entitled to be at the hearing to determine whether he or she is incapacitated. He or she is entitled to be represented by an attorney. Upon the appointment of a guardian, the guardian is required to deliver a copy of the order of appointment as guardian, a copy of the Bill of Rights, and to explain those documents to the ward.

12. How soon can a guardianship hearing be held?

The hearing can be held as early as the Monday following the expiration of 10 days after the alleged incapacitated person has been personally served with the application for guardianship.

Typically, the hearing will not take place for at least 30–60 days as the Court makes inquiries and the background information to support the guardianship is completed.

13. What happens at the hearing?

The person who filed the application must prove the incapacity through testimony and medical evidence. The person alleged to be incapacitated has the right to present witnesses, to speak to the judge, and to request a jury trial. The judge or jury will determine whether the person is or is not incapacitated.

14. After appointment, how does a guardian qualify?

The guardian must file an oath and post a bond in the amount set by the court to ensure proper performance of the guardian's duties.

15. Must the guardian report to the court?

Yes. Within 30 days of qualifying, the guardian of the estate must file an inventory listing all assets of the incapacitated person coming into the guardian's hands and all debts owed to the estate.

Additional deadlines must also be met. The guardian of the estate must file an account each year to report all receipts and disbursements. The guardian of the person must file a report each year on the location, condition, and well-being of the incapacitated person. A guardian cannot spend the incapacitated person's money or sell assets without prior approval from the court.

16. What if there is an immediate need to appoint a guardian?

A temporary guardian can be appointed for a proposed incapacitated person if his or her person or property is in imminent danger. Notice of the application and of the time of the hearing must be provided to the proposed incapacitated person. An attorney *ad litem* will be present at the temporary guardianship hearing to represent the proposed incapacitated person.

17. Does the person for whom a temporary guardian has been appointed have any rights?

That person retains all rights and powers not granted to the temporary guardian. He or she is entitled to be served with a copy of the documents that are filed. The court must appoint an attorney to represent the incapacitated person. The court must hold a hearing no later than 10 days after the date of filing the temporary guardianship application to determine whether there is a need for temporary guardianship, but this hearing may be postponed for up to 30 days.

18. What is the length of a temporary guardianship?

Generally, not more than 60 days. However, if a permanent application has been filed and it is contested or challenged, the court may extend the temporary guardianship until the contest is resolved.

19. Can an incapacitated person have their rights restored?

An incapacitated person who regains partial or full capacity can petition the court to have his or her rights restored. In addition, the doctor who completes the initial Physician's Certificate of Medical Exam is required to note if the incapacitated person is likely to recover to a point that a guardianship is no longer required, and a timeframe that the recovery is expected. The court will make an inquiry at that time to determine whether the incapacitated person can be restored.

Mental Illness and Mental Health Commitments

1. What is mental illness?

Mental illness is an illness, disease, or condition that substantially impairs a person's thought, perception of reality, emotional process or judgment, or grossly impairs behavior, as demonstrated by recent disturbed conduct. Texas Health & Safety Code Ch. 571.003 (14). For purposes of mental health treatment in Texas, a mental illness diagnosis does not include epilepsy, senility/dementia, alcoholism, or mental deficiency. A person suffering from an intellectual and developmental disability (IDD) is not considered mentally ill and should receive assistance through an appropriate organization such as Tarrant County My Health, My Resources Agency (MHMR).

2. What do I do if I suspect someone is mentally ill?

Encourage the person to seek voluntary mental health treatment. If the person is unwilling to voluntarily seek treatment for his or her mental illness and is engaging in immediate behavior that endangers self or other persons, you may call 911 for assistance and note that the person is experiencing a mental health crisis to alert responding law enforcement officers of the special circumstances. Additionally, anyone may seek a Magistrate's Warrant directing law enforcement to detain a person in crisis and transport that individual to a mental health treatment facility for observation and medical determination of the advisability of in-patient treatment. Those seeking a Magistrate's Warrant should visit the Justice Court in their Precinct of residence to complete the Application and present it to the Judge/Magistrate for consideration. The Tarrant County MHMR Crisis Line at 817-335-3022 offers screening for clinics and referrals. The local Crisis Line is answered 24 hours a day, 365 days a year, as is the National 988 Suicide & Crisis Lifeline (dial 988 or 800-273-8255).

3. What happens if a Magistrate's Warrant is issued?

Once a warrant is issued, the person will be taken by mental health deputies to a hospital emergency psychiatric unit for examination by a doctor. If the doctor finds that the person is mentally ill and as a result is likely to cause serious harm to himself or herself or others, or is experiencing substantial mental or physical deterioration, the doctor will refer the case to the District Attorney, who may forward the Application to the Statutory Probate Courts to consider placing the person in protective custody and initiating the commitment process for involuntary treatment. An attorney will be appointed to represent the Proposed Patient, and a hearing will be scheduled. After hearing the evidence, the judge may sign an order committing the patient for inpatient treatment for a period not to exceed 45 or 90 days in most cases.

4. Are mental health records confidential?

Yes, all mental health court records are confidential and are not available to the public. However, a patient or a person designated in writing by the Patient may have access to the patient's own mental health records. If a person is found to be mentally ill and an order of inpatient commitment is issued, that information is accessible to law enforcement and may affect a person's ability to purchase firearms.

5. Providers of Mental Health Services in Tarrant County

My Health My Resources (MHMR) of Tarrant County
3840 Hulen Street, North Tower
Fort Worth, Texas 76107
817-569-4300
www.mhmrtc.org

National Alliance of Mental Illness (NAMI) of Tarrant County
3136 W. Fourth Street
Fort Worth, Texas 76107
817-332-6677 (office open afternoons)
www.nami.org

Services and Residential Alternatives

1. What services and residential alternatives exist for seniors?

Living choices for seniors today range from living independently in one's own home to round-the-clock care available at long-term care facilities. There are a number of intermediate alternatives. Other services are available, such as senior centers and adult day care centers.

2. What are senior centers?

Senior centers are located in residential communities throughout the county. They offer programs for older adults. Usually they offer a hot noon meal, and provide a variety of social, educational and health maintenance services. Many senior centers provide recreational activities and exercise programs.

3. What is adult day care?

Adult day care facilities are for seniors who need supervision, but not institutionalization. They provide nursing, therapy, nutritional services, health monitoring, and recreational activities, with an emphasis on permitting the senior to make decisions for himself or herself. An adult day care facility is a good alternative for a senior who cannot be left alone, but whose caregiver must work during the day.

4. What are in-home services?

Medical home health is limited but is often paid for by Medicare or a Medicare HMO. This type of service includes: skilled nursing, such as medication management or administration, wound care, or monitoring a medical condition; physical, occupational, or speech therapy; and medical social work.

The other type of in-home service is Personal Attendant Services ("PAS"). This level of care is not provided by a nurse, so it is not considered medical home health. The services include assistance with activities of daily living (ADLs), light housekeeping, or transportation. Medicare does not pay for this level of care, but many long-term care insurance policies do pay for PAS. Private pay is also available.

5. What are retirement centers?

Retirement centers offer a variety of living arrangements for older adults, so families should investigate before choosing a retirement community. Some retirement communities offer only independent apartments with some community amenities, such as planned activities or limited transportation assistance. Other communities offer a greater variety of services and amenities, such as meals, housekeeping, laundry services, transportation, and planned activities.

6. What is assisted living?

Assisted living is an intermediate step between independent living and a long-term care facility. The resident will reside in his or her own apartment, and assistance and many services are available.

Type A assisted living facilities are for the more independent older adult who does not need routine attendance at night. Additionally, the resident must be able to evacuate independently and be able to follow directions during an emergency.

Type B assisted living facilities are for residents who require more assistance, such as staff assistance to evacuate and routine attendance at night. They may be unable to follow directions during an emergency. Residents at this level also may require assistance transferring to and from a wheelchair.

7. What are personal care homes?

Personal care homes are similar to assisted living facilities. The difference is that personal care homes usually care for a small number of seniors who need supervised living. These facilities provide meals, dispense medication, and assist the residents with bathing, dressing, personal grooming, and eating. Personal care homes provide a placement alternative for persons who do not desire to live in a large facility, cannot afford a large facility, or need supervised living but do not require the level of care provided by a nursing facility.

8. What are memory care units?

Memory care units provide closer monitoring and care of residents suffering from memory deficiencies. Memory care units are typically secured units designed to prevent residents from wandering and to offer services tailored to persons with memory issues, but they generally do not offer skilled nursing or rehabilitation services. They may offer additional services at an additional cost, in an à la carte approach, but their base costs are often less than skilled nursing facilities.

9. What are nursing homes and/or long-term care facilities?

Nursing homes and/or long-term care facilities provide the highest level of nursing care short of hospitalization. They are appropriate facilities for those who are unable to live independently or require round-the-clock nursing care. All meals are provided, along with full-time nursing care, physical therapy, occupational therapy, and speech therapy. They also provide for social activities appropriate to the needs and abilities of the residents. Personal care homes, assisted-living facilities, and nursing homes are licensed and monitored by the Texas Health and Human Services Commission (“HHSC”).

10. How should I decide which type of facility is best for me or my loved one? Is there anyone who specializes in this field to help during this process?

The most important consideration in choosing a facility is that it permits the older adult to have the greatest possible independence. Cost, location, atmosphere, and compliance with licensing requirements must also be taken into account. Visit several facilities. For specialists in this area, an Aging Life Care Expert, formerly known as a Geriatric Care Manager, may be contacted for a comprehensive evaluation of the needs of the patient. For more information, visit www.aginglifecare.org

Planning for End of Life / Advanced Care Planning (ACP)

Hospice

1. What is Hospice?

Hospice is both a program and a philosophy of care that is dedicated to improving the quality of life for patients who are believed to have six months or less to live, if the illness follows its usual course. Hospice provides a program of palliative care which encompasses the holistic care of patients whose disease is no longer responsive to curative treatment.

Hospice care is considered to be the model for quality, compassionate care at the end of life. It involves a team-oriented approach to expert medical care, pain management, and emotional and spiritual support expressly tailored to the patient's needs and wishes. Support is extended to the patient's family and loved ones as well. At the center of hospice is the belief that each individual has the right to die pain-free and with dignity and that families should receive the necessary support to allow that to happen. Hospice care may be provided at a free-standing hospice facility, hospital, nursing home, assisted living facility, or at home. Hospice services are available to patients of any age, religion, race, marital status, gender, or illness.

2. When should a decision about entering a hospice program be made and who should make it?

At any time during a life-limiting illness, it is appropriate to discuss all of a patient's care options, including hospice. By law, the decision belongs to the patient. Hospice staff members are always available to discuss this decision with the patient, family, and physician.

3. Should I wait for our physician to raise the possibility of hospice, or should I raise it first?

The patient and family should feel free to discuss hospice care at any time with the physician, other health care professionals, clergy, or friends.

4. What if our physician does not know about hospice?

Most physicians know about hospice. If your physician wants more information, it is available from the American Academy of Hospice and Palliative Medicine, medical societies, state hospice organizations, local hospices, or the National Hospice Helpline, 800-658-8898.

5. Can a hospice patient who shows signs of recovery be returned to regular medical treatment?

Certainly. If improvement in the condition occurs and the disease seems to be in remission, the patient can be discharged from hospice and return to aggressive therapy or go on about his or her daily life.

6. What does the hospice admission process involve?

One of the first things hospice will do is contact the patient's physician to make sure he or she agrees that hospice care is appropriate for this patient at this time. The patient will also be asked to sign consent forms. The hospice election form states that the patient understands that the care is palliative (aimed at pain relief and symptom control) rather than curative. It also outlines the services available.

7. Do I have to change anything in my home or get any special equipment before hospice care begins?

The hospice provider will assess the patient's needs, recommend any necessary equipment, and help make arrangements to obtain it. Often the need for equipment is minimal at first and increases as the disease progresses.

8. What specific assistance does hospice provide home-based patients?

A team of doctors, nurses, social workers, counselors, home health aides, clergy, therapists, and volunteers care for hospice patients and each provides assistance based on his or her area of expertise. In addition, hospices help provide medications, supplies, equipment, hospital services, and additional helpers in the home, as appropriate.

9. Does hospice do anything to make death come sooner?

Hospice does nothing either to speed up or to slow down the dying process. Just as doctors and midwives lend support and expertise during the time of birth, so hospice provides its presence and specialized knowledge during the dying process.

10. Is the home the only place hospice care can be delivered?

No. Although most hospice services are delivered in a personal residence, some patients live in assisted living, nursing homes or hospice centers. Hospice is a service that is provided wherever the patient is located.

11. How does hospice "manage pain?"

Hospice nurses and doctors are up-to-date on the latest medications and devices for pain and symptom relief. Hospice believes that emotional and spiritual pain are just as real and in need of attention as physical pain, so it addresses these as well. Counselors, including clergy, are available to assist family members as well as patients.

12. Is hospice care covered by insurance?

Hospice coverage is widely available. It is provided by Medicare, Medicaid, and most private health insurance.

13. If the patient is not covered by Medicare or any other health insurance, will hospice still provide care?

The first thing hospice will do is assist families in finding out whether the patient is eligible for coverage they may not be aware of. (In the past, Angels In Waiting Hospice, LLC has not denied patient care for lack of funds.)

14. Does hospice provide help to the family after the patient dies?

Hospice provides continuing contact and support for family and friends for at least a year following the death of a loved one. Most hospices also sponsor bereavement and support groups for anyone in the community who has experienced the death of a family member, a friend, or a loved one.

Funeral Arrangements

1. Who is responsible for burial arrangements?

In Texas, the right to control the disposition of a decedent's remains is governed by the Texas Department of Health. Unless the decedent executed a valid written directive, the right and responsibility to make funeral and burial arrangements generally belongs to the following persons, in order of priority:

- Person designated in a written document signed by the decedent
- Decedent's surviving spouse
- Decedent's surviving adult children
- Decedent's surviving parents
- Decedent's surviving adult siblings
- Qualified executor or administrator of the decedent's estate
- Any person within the nearest degree of kinship under Texas intestacy laws

If the person with the highest priority fails or refuses to act, the right passes to the next person in the order of priority. When responsibility falls to a person other than a spouse, funeral providers may require a written statement identifying the relationship with the decedent. If no family member or authorized person claims responsibility, then disposition may be handled by an officer of the appropriate county or State of Texas.

2. What happens if no one claims the body?

If a body is not claimed within 72 hours of death, the facility in possession of the body will attempt to locate family members or other authorized persons. In Texas, if no one assumes responsibility: (i) the county may arrange for burial or cremation under its indigent burial procedures; and (ii) each county maintains discretion over timing and method of disposition.

3. Are there any regulations regarding embalming and cremation?

Yes. Texas law does not generally require embalming. Embalming is typically required only when the body is not buried, cremated, or refrigerated within 24 hours of death. Funeral homes may impose embalming requirements based on their internal policies, but such requirements are not automatically mandated by Texas law.

Texas law does not create an automatic right to cremation. A Cremation Authorization Form, provided by the funeral home or crematory, signed by the person with the legal right of disposition or pre-signed by the decedent, gives permission for cremation and is required before a medical examiner issues a permit. The person signing is releasing the funeral home from liability, and the form outlines the priority of who can sign if the decedent did not leave instructions. Without a signed Cremation Authorization Form, the funeral home may decline to cremate if a person with priority objects. Advance written authorization signed by the decedent significantly reduces disputes among surviving family members.

4. Can I make advance funeral or burial arrangements?

Yes, it is encouraged. Anyone can enter into pre-need burial arrangements with a funeral home that control:

- Method of disposition (burial, cremation, donation)
- Location of services
- Financial arrangements

Some people leave burial instructions in a will, but often such instructions are not known until after the burial. It is better to write burial instructions in a separate document and keep them in a place where they can be easily found and shared with the person likely to make the arrangements.

5. What if I want to donate my body or organs?

The Texas Anatomical Gift Act permits anyone over the age of 18, or minors with parental consent, to donate their body or specific organs. Elderly donors may be subject to medical eligibility restrictions which vary by receiving organizations. Acceptance is not guaranteed and it is important that requirements be confirmed in advance. Family members must also authorize anatomical gifts after death, subject to statutory requirements and medical suitability.

Human Remains

1. What are human remains?

For purposes of Texas law:

- "Human remains" mean the body of a decedent.
- "Remains" include either human remains or cremated remains.
- "Cremated remains" or "cremains" mean the bone fragments remaining after the cremation process, including any residue of foreign materials cremated with the body.

2. Who determines the disposition of human remains?

"Disposition" includes burial, cremation, or other method by which a person's remains attain their final resting place. Under the Texas Health and Safety Code, a decedent may leave written instructions appointing an agent to control the disposition, state the method of disposition, and include limitations or special directions.

To be valid, the instrument must be signed and acknowledged by the decedent and the appointed agent must sign the instrument before acting. Texas provides a statutory form titled "Appointment for Disposition of Remains" that may be used to provide the instructions. Any written instrument substantially similar to the statutory form is legally sufficient.

3. What happens if the written instruction is in the decedent's will?

If disposition instructions are in decedent's will, they must be carried out immediately without waiting for probate. If the will is not probated, or is later invalidated, the directions are still valid to the extent acted upon in good faith.

4. What happens if the decedent left no written instructions?

Absent valid written instructions, the right to control disposition passes in the following order of priority:

- Person designated in a written document signed by the decedent

- Decedent’s surviving spouse
- Decedent’s surviving adult children
- Decedent’s surviving parents
- Decedent’s surviving adult siblings
- Qualified executor or administrator of the decedent’s estate
- Any person within the nearest degree of kinship under Texas intestacy laws

If the person with priority does not make final arrangements or appoint another person to make final arrangements before the earlier of the 6th day after receiving notice of decedent’s death or the 10th day after the date of death, that person is presumed unable or unwilling, and the right passes to the next person in the order of priority.

5. What is the liability for costs of disposition?

A person exercising the right to control the disposition (other than an executor/administrator) is personally liable for reasonable interment costs, with a right to seek reimbursement from the decedent’s estate. When an executor or administrator controls disposition, the estate is liable; the executor or administrator is not personally liable for the interment costs.

Any person representing that they know the decedent’s identity must sign a statement to that effect in order to procure the disposition, including cremation, of the decedent’s remains. This person is liable for all damages resulting from misidentification, directly or indirectly.

A party to prepaid funeral contracts who fails to honor the contract is liable for additional costs caused by the breach. A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent’s remains.

6. What happens if a person entitled to control disposition has been charged with family violence?

A person otherwise entitled to control disposition may not do so if, in connection with the decedent’s death, that person has been indicted for a crime that involves family violence against the decedent. An embalmer, funeral director, or provisional license holder who knowingly allows such a person to control disposition commits a prohibited practice subject to disciplinary action by the Texas Funeral Service Commission.

7. How are written instructions revoked or modified?

A written instruction for disposition may be revoked by:

- A subsequent written instruction;
- A revocation signed and acknowledged; or
- Destruction or cancellation by or at the direction of the decedent.

Unless the instrument provides otherwise, appointing a spouse as agent is automatically revoked upon divorce, annulment, or declaration of void marriage before death. The written instrument may be modified or revoked by a subsequent instrument that is substantially similar to the statutory form, Appointment for Disposition of Remains.

8. Can an agent change a prepaid funeral contract?

Generally, no. However, there are exceptions.

Texas Health & Safety Code Section 711.002(g) states that an appointed agent must faithfully carry out the decedent's written instructions to the extent financially feasible. Only the purchaser may change the method of disposition selected in a prepaid funeral contract, and only by subsequent signed writing.

If no further payments are due on a funeral contract specifying the method of disposition and afterwards the purchaser becomes incapacitated, an agent under durable power of attorney may not change the method of disposition. If an agent under durable power of attorney cancels a pre-paid funeral contract, the purchaser's written instructions on disposition are not cancelled. At the time of death, if payments are due on the funeral contract, then it is not fully funded, and the final funeral service could be different from the funeral planned.

According to the Texas Finance Code Section 154.151(e), the Texas Commissioner of Insurance shall establish a standard disclosure that must be included in each funeral contract to inform purchasers of the goods and services that will be provided or excluded under the contract and how the contract may be modified. Similarly, the Texas Administrative Code, Chapter 25, Subchapter A, Rule 25.3(a)(8) and (h), states a person's proposed prepaid funeral contract must disclose the circumstances under which the contract may be modified.

At the time of death of the beneficiary of a funeral contract who is not the purchaser, the purchaser may change the method of disposition if the modification complies with the Texas Finance Code Section 154.1551, or is otherwise agreed in writing signed by the seller or funeral provider and the agent charged with the disposition of the beneficiary's remains.

If the funeral contract is fully funded on the guaranteed services and merchandise, the agent responsible for disposition may decide to change the selections made up to 10% of the guaranteed services and merchandise. The provider must give credit if the changes result in decreased costs, but the provider is not required to issue a refund. In addition, the agent and the provider may agree to changes of more than 10% of the guaranteed services and merchandise. If so, then the provider must give credit for any changes that decrease costs and if applicable, issue a refund. The agent must pay the provider for any changes that result in increased costs.

9. What happens if there is a dispute?

Any dispute among persons with priority is resolved by a court with jurisdiction, regardless of whether a probate proceeding has been initiated. A cemetery organization or funeral establishment may decline to proceed until a court order or suitable confirmation resolves the dispute.

10. What if no one has a duty to inter?

If no one has a duty to inter, and an inquest is held, the person conducting the inquest shall inter the remains. If no inquest is held, the county in which the death occurred must inter the remains.

11. How may a county dispose of remains?

Texas Health and Safety Code Section 694.002(a) requires a county commissioners' court to provide for the disposition of a deceased pauper's body. The means and method are determined by the county commissioners' court and may include burial, donation to a medical facility, or cremation, subject to identification rules.

The Texas Attorney General's office has construed the Texas Health and Safety Code Section 694.002(a) to authorize a commissioners' court to dispose of a deceased pauper's remains by burial, by donating the body to a medical facility, or by cremation.

12. May a crematory accept unidentified human remains?

Generally, no. Texas Health and Safety Code Section 716.101 prohibits a crematory from accepting unidentified human remains for cremation unless there is an order of the county commissioners' court, or a court located in the county.

Wills

1. Do I really need a will?

Yes! Creating a will as part of your estate plan is one of the most important things that you can do for yourself and your family. A will does two things: (1) it protects your assets, and (2) it states exactly how you want your estate handled after you have passed.

A. You decide how your estate will be distributed. A will is a legally binding document that lets you determine how you would like your estate to be handled upon your death. If you die without a will, there is no guarantee that your intended desires will be carried out. Having a will helps minimize any family fights about your estate that may arise, and determines the "who, what, and when" of your estate.

B. You decide who will take care of your minor children. A will allows you to make an informed decision about who should take care of your minor children. Absent a will, the court will take it upon itself to choose among family members or a state-appointed guardian. Having a will allows you to appoint the person you want to raise your children or, better yet, make sure it is not someone you *do not* want to raise your children.

C. To avoid a lengthy probate process. Contrary to common belief, all estates must go through the probate process, with or without a will. Having a will, however, speeds up the probate process and informs the court how you would like your estate divided. Probate courts serve the purpose of "administering your estate." When you die without a will (known as dying "intestate"), the probate court will decide how to divide the estate without your input pursuant to statutes, which can cause unnecessary delays and expense.

D. Minimize estate taxes if used in conjunction with a testamentary trust or living trust.

E. You decide who will wind up the affairs of your estate. Executors make sure all your affairs are in order, including paying off bills, canceling your credit cards, and notifying the bank and other business establishments. Since executors play the biggest role in the administration of your estate, you will want to be sure to appoint someone who is honest, trustworthy, and organized (which may or may not always be a family member).

F. You can disinherit individuals who would otherwise inherit your property as heirs under laws of the State of Texas. Most people do not realize they can disinherit individuals out of their will. Yes, you may wish to disinherit individuals who may otherwise inherit your estate if you die without a will. Since your will specifically outlines how you would like your estate distributed, absent a will your estate may end up in the wrong hands or in the hands of someone you did not intend. When you wish to disinherit someone, there is no requirement that you leave them a token gift.

G. Make gifts and donations. The ability to make gifts is a good reason to have a will because it allows your legacy to live on and reflect your personal values and interests. Be sure to check the current laws for your year to learn the most up-to-date gift tax exclusions.

H. Avoid greater legal challenges. If you die without a will, part or all your estate may pass to someone you did not intend. For example, one case involved the estate of a deceased son who was awarded over $1 million from a wrongful death lawsuit. When the son died, the son's father – who had not been a part of his son's life for over 32 years – stood to inherit the entire estate, leaving close relatives and siblings out of the picture.

2. If I do not have a will, does all my property go to the State?

No. If you do not have a will, then the property in your estate will be distributed according to the laws of the State of Texas – not to the State of Texas. Your estate will pass to those persons listed in the Texas Estates Code as heirs. Under the Texas Estates Code's rules of intestacy (when a person dies without a will) and does not leave a spouse, your estate is distributed according to the following system:

- First, descendants (children);
- Second, ascendants (parents);
- Third, siblings (brothers and sisters); and
- Fourth, nieces and nephews, and so on.

3. Can a will from a computer-generated package be effective?

A computer-generated will purchased at a retail store or online may be effective, but great caution should be taken in using such a product. Texas law requires that a will include specific statutory language to appoint an independent executor, to appoint an executor without bond (the appointment of which can significantly reduce the cost of probate), and to provide for a self-proving affidavit. The inclusion of such statutory language in your will makes the probate process simpler and less costly. Likewise, if the computer-generated will does not contain the required Texas statutory language, then the probate process will be complicated and costly.

Also, the computer-generated will may not properly instruct you on the correct procedure to follow in order to execute the will. Texas law requires that wills are executed with certain formalities in order to make them valid wills. If any of those formalities are not followed, then the probate process will be complicated and costly. In the worst-case scenario, the will may be found to be invalid, and your estate will be distributed according to Texas law, and not according to your wishes.

If you purchased a computer-generated will, you should have a Texas-licensed attorney who is experienced in wills and estates review the will. Some attorneys may provide such a review at their initial consultation for a minimal cost to you, or as a free consultation.

Some courts are reluctant to accept certain form wills for probate. A form will with hand-written fill-in-the-blanks sections completed with handwriting may be rejected.

4. If I have a will from another state, do I need to get a new will now that I have moved to Texas?

Not necessarily. If the will you have from another state is a valid will in the other state, then Texas law recognizes that will as a valid will in Texas. In order for the will to be valid in the other state, it must have been properly prepared according to that state's laws, and executed with the requisite formalities of that state's laws.

The will from another state ("foreign will") may be valid in Texas but may not comply with Texas' probate process. For example, foreign wills often do not contain Texas statutory language that creates an independent administration, or it lacks a self-proving affidavit, or the language of the self-proving affidavit is incomplete or insufficient. Under these circumstances, additional steps are necessary to make the foreign will comply with Texas law and the probate process. These additional steps make probating a foreign will more costly and less efficient.

If you have a foreign will and you have moved to Texas, you should have a Texas-licensed attorney who is experienced in wills and estates review the will. Some attorneys may provide such a review at their initial consultation for a minimal cost to you, or as a free consultation.

5. How often do I need to change my will?

It is a good idea to review your will every five years to make sure it distributes your estate according to your wishes, and because estate laws and tax laws are constantly changing. How often you need to change your will depends on your life's circumstances. If you experience any of the following life-changing events, then you may want to review your will and consult with an attorney about potential changes to your estate:

- Divorce;
- Marriage or remarriage;
- Birth of children or grandchildren;
- Significant change in state or federal law;
- Move to a different state;
- Death of someone named in your will (e.g., spouse or child);
- Significant change in your health; or
- Significant change in the nature or character of your assets.

If, after reviewing your will, you determine that it still distributes your estate according to your wishes, then it may not be necessary to have a new will, even though time has passed since your will was created.

6. How do I make a will?

Generally, there are two ways to make a will.

A. Formal will. The first way to make a will is to hire an attorney to draft one for you. This is known as a formal will. There are certain statutory requirements that must be followed when drafting a formal will in order for it to be a valid will. For example, it must be completely typed and cannot contain any handwriting or handwritten notes or marks, and the will must be signed and witnessed ("executed") in accordance with Texas law. The will must be witnessed and signed by two persons unrelated to the person making the will ("testator"), in the presence of the testator, and in the presence of a notary public, who notarizes the self-proving affidavit. The self-proving affidavit appears at the end of the will and provides, among other things, that the will was executed in accordance with the formalities required by Texas law, such as the testator is over the age of 18, the witnesses are over age 14 and of sound mind. If a self-proving affidavit is attached to the will, then it is not necessary for the two witnesses to appear in court when the will is offered for probate.

B. Handwritten will. The second way to make a will is for you to handwrite your will. This is known as a "holographic" will. A holographic will must be written entirely in your own handwriting and signed and dated by you. It does not have to be notarized or witnessed.

7. Can I hand write my own will?

Yes, you may handwrite your own will. As stated above in Question Number 6, a handwritten will is called a holographic will and must be written entirely in the testator's own handwriting, signed and dated by the testator. It does not have to be notarized or witnessed.

However, handwritten wills are not recommended because (1) it may not adequately dispose of all of your property or provide for the proper administration of your estate; (2) it may omit certain language required by Texas law, and such omission will increase the complexity and cost of probating the will; and, (3) probating the will requires the appearance in court of witnesses who can testify to your handwriting. Despite the risks of a handwritten will, it may be preferable to no will.

8. Can I make a verbal will? Can I make a video will?

No. Texas law does not recognize verbal wishes or instructions as a valid will. Therefore, if you verbally tell someone how you want your estate distributed upon your death, Texas law will not enforce those wishes or instructions and your estate will be treated as if you died without a will. Texas law also does not recognize a video recording as a will. Your estate will be distributed according to the laws of the State of Texas and will pass to those persons listed in the Texas Estates Code as heirs.

9. Does a will dispose of all my property?

Not necessarily. Generally, a will only disposes of your assets that are titled in your name if you have not disposed of those titled assets by some other method. Assets such as real estate, vehicles, and valuable art are just some examples of assets that transfer by title.

Your will does not dispose of your assets that are created by a contract with a third party, such as a bank account, an insurance policy, or a retirement plan. Such assets are distributed according to the beneficiary designation that you complete and sign, which is kept by the third party holding the account or contract.

The beneficiary designation on bank accounts depends on the type of account. If it is an individual account, then the beneficiary designation will usually state that the funds are “payable on death” or “POD” to the named beneficiary or beneficiaries. If it is a joint bank account, then the beneficiary designation will usually state that the funds are “joint tenancy with right of survivorship” or “JTWROS.” This means that the funds in the account will pass to the surviving owners upon the death of one of the owners. However, there are exceptions to the rule of joint tenancy with right of survivorship so you should seek the advice of an attorney for any joint bank accounts that exist at the time of a person’s passing.

If you do not complete and sign a beneficiary designation, then upon your death, the third-party financial institution will distribute the funds in the account to your estate, and the funds will pass according to the terms of your will.

To ensure that your will disposes of all your assets, and any non-probate assets that lack a beneficiary designation, your will should contain a “residuary” clause. A residuary clause states that any property remaining in your estate which you did not specifically name and give away in your will should be distributed according to the terms of the residuary clause. Its purpose is to act as a catch-all for any asset that you did not specifically give away in your will, and to prevent such assets from being excluded as part of your probate estate. A residuary clause in your will prevents the necessity for a court’s determination of heirs in order to distribute estate property that is not governed by the will.

When preparing your will, it is important to obtain copies of your beneficiary designations on all third-party accounts, and to provide copies of such designations to your attorney for review and for coordinating with your estate plan.

When periodically reviewing your will, it is important to also review your beneficiary designations on third-party accounts to make sure that such designations express your wishes.

Some types of accounts, such as retirement accounts or brokerage accounts, may be distributed pursuant to the contract and not distributed to your estate. For this reason, it is extremely important that you understand how these accounts will be distributed at your death.

10. Can I make a new will at any time?

Yes, you may make a new will at any time if you have the legal capacity to do so. Under Texas law, you have legal capacity if you have the mental ability to (1) understand that you are making a will; (2) understand the effect of making the will; (3) understand the general nature and extent of your property; and (4) know your next of kin and the natural objects of your bounty and the claims on you. You must also use your own independent judgment, separate and apart from family members and other persons so as not to be subject to any undue influence of your family members or other persons. In Texas, a new will revokes all prior wills.

11. Can I just save an electronic copy of my will?

In this age of digital access, digital signatures and electronic files, your will is still one item that requires actual pen and ink signatures, a "wet" signature. While there are ways to probate a copy of a will, it can be more difficult and is not always successful. This is one document you need to safely store and have the original available when you die. Further, your executor needs to know where to find it.

Probating Wills and Administration of Estates

1. What is probate?

Probate is the court process by which:

(a) a will is proved (1) to be valid or invalid, (2) to be the last will of the decedent, (3) to never have been revoked, and (4) to have revoked all previous wills, and

(b) the decedent's estate is administered and distributed.

When a will is proven in court to be valid, it is "admitted to probate." Once admitted to probate, the decedent's estate is administered, first, by collecting the decedent's assets, second, by paying the decedent's debts, and third, by distributing the remainder of the decedent's estate.

The term "probate" includes all proceedings related to the administration of the estate of a deceased person, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative.

The term "probate" also includes proceedings to interpret and administer a testamentary trust created by a decedent whose will has been admitted to probate in the court, or an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

Most probate proceedings are started by filing an application to probate a will and require a hearing and witnesses' testimony in court.

The "decedent" is the deceased person whose will is being probated.

2. Is probate always necessary?

Generally, yes, but it depends on the circumstances of the decedent's estate. If, at the time of decedent's death, there are assets titled to decedent which must be transferred to decedent's heirs, then probate is necessary to transfer such title. Examples of assets titled to decedent are a homestead or vehicle. If decedent left a written will at the time of death, then for the will to be recognized as the valid last will of the decedent, it must be probated in court. Otherwise, the will has no legal effect. If the decedent did not leave a written will at the time of death, then decedent's heirs must be determined according to Texas law to legally and properly distribute decedent's estate and transfer title from decedent to decedent's heirs.

If there are no assets titled to decedent at the time of death, but decedent has non-probate assets such as a bank account or insurance policy, and there are beneficiary designations on these non-probate assets, then probate is not necessary because the non-probate assets will be distributed according to the beneficiary designations. If there are no beneficiary designations on the non-probate assets, then typically the non-probate assets will be paid to decedent's estate and probate of decedent's estate is necessary in order to legally and properly distribute the funds.

If decedent owes debts to creditors at the time of death, then it may be necessary to probate the decedent's estate; however, this alone is not a reason to open a probate proceeding.

3. How do I probate a will?

The first step is to have an attorney review decedent's will to determine whether it is a valid will and advise you of your legal options to probate decedent's will. The second step is to file an application in probate court to probate the will. The third step is to deposit the original will with the probate clerk's office. The fourth step is to issue the proper citation for a hearing on the will. The fifth step is to appear at the court hearing and provide the necessary testimony from the applicant and witnesses. The sixth step is to obtain a court order determining that the will is valid and appointing an executor or administrator of decedent's estate. The seventh step is for the executor/administrator to qualify by taking an oath. The eighth step is to gather and protect estate assets. The ninth step is to notify creditors, review and pay valid debts, notify beneficiaries and the public. The tenth step is to file an inventory with court and have it approved. The eleventh step is to distribute the property to the beneficiaries of the will.

Probate Courts in Texas will require an attorney to represent the Executor or Administrator in most cases to ensure these complicated and time-sensitive steps are correctly performed.

4. Is probate expensive?

The cost of probate depends upon several factors: (1) the nature of the decedent's assets, (2) the complexity of administering decedent's estate, (3) the cooperation of the heirs, and (4) the will. If the will names an independent executor and has a self-proving affidavit, then probate costs will be greatly reduced. The independent executor can act independently of the probate court. If the will eliminates the necessity for a bond, then probate costs will be greatly reduced. A bond premium can be a costly part of estate administration. If there is no will or the will is silent on independent administration, the estate may be determined to require a dependent administration, which requires significantly more court involvement and can increase the cost of probating an estate.

5. What is the time limit for probating a will?

Generally, a will must be admitted to probate within four (4) years after the date of decedent's death. There are some limited exceptions to the four-year time limit. If more than four years have passed since death, consult with an attorney to determine whether an exception to the time limit applies.

6. What does the administration of an estate involve?

The administration of an estate generally involves:

a. Probating the decedent's will or determining the decedent's heirs;
b. Determining, appointing, and swearing in a personal representative to manage the decedent's estate;
c. Notifying heirs, creditors, and the public that the decedent has died;
d. Gathering and inventorying the assets of the decedent;
e. Reviewing and, if proper, paying the decedent's debts, paying the expenses of the administering decedent's estate, and paying estate taxes; and
f. Distributing the remaining estate assets to the decedent's heirs according to either the terms of decedent's will or Texas' laws of intestacy.

7. What is an independent administration?

An independent administration is the administration of an estate without court supervision. After the independent executor or independent administrator is appointed and qualifies by taking an oath, he or she will receive letters of administration. The court generally requires only that the independent executor or independent administrator provide proper notice to creditors and file a sworn inventory, appraisement, and list of claims within ninety (90) days.

The advantages of an independent administration are:

a. reduced cost of administering the estate; and
b. faster, more efficient administration because decisions can be made and actions taken without court permission.

The disadvantages are:

a. it is difficult and expensive for an heir to force an unwilling independent executor or independent administrator to disclose information,
b. most independent executors and some independent administrators are not required to post a surety bond, so if they steal, lose assets, or mismanage the estate and are not able to pay it back from their personal funds, the heir is unable to recover their inheritance, and
c. a dependent executor or administrator will have orders approving all of the actions taken, thus the creditors and beneficiaries of the estate cannot attack the actions of the executor or administrator if they follow the orders of the court.

8. How is an independent administration created?

An independent administration may be created by language in the decedent's will, or by the probate court with the permission of all the beneficiaries of the estate. Creating an independent administration by language in the decedent's will requires the will to contain special language stating the decedent's intent to limit the court's administration of the decedent's estate. Absent the required special language in the decedent's will creating an independent administration, the Texas Estates Code provides that the probate court may create an independent administration if all the persons entitled to the estate agree to it in writing.

When the decedent dies without a will (intestate), the Texas Estates Code provides that the court may not appoint an independent administrator to serve in an intestate administration unless and until the decedent's heirs have been determined, through a proceeding to declare heirship.

9. What is a dependent administration?

A dependent administration is the administration of an estate with court supervision. The court appoints an administrator, after which he or she must qualify by taking an oath and typically posting a bond, and will then receive letters of administration. The court closely supervises and controls the actions of the administrator by requiring that all of the administrator's actions must first be filed with and approved by the court before being taken.

The Texas Estates Code provides an order of preference for choosing who is appointed as the administrator of a decedent's estate:

a. first, the decedent's surviving spouse,
b. second, the principal devisee (heir) of the decedent,
c. third, any devisee (heir) of the decedent,
d. fourth, the next of kin of the decedent,
e. fifth, a creditor of the decedent,
f. sixth, any person of good character residing in the county who applies for the letters,
g. seventh, any other person who is not disqualified, and
h. eighth, any appointed public probate administrator.

If persons are equally entitled to letters testamentary or letters of administration, the court:

a. shall grant the letters to the person who, in the judgment of the court, is most likely to administer the estate advantageously; or
b. may grant the letters to two or more of those persons.

10. When is a dependent administration necessary?

A dependent administration of an estate usually occurs when a person dies without a will. A dependent administration may also be proper when the will is probated and fails to provide for an independent administration, and the beneficiaries do not agree on the advisability of an independent administration. The primary purpose of a dependent administration is to use the court's supervision powers to safeguard the estate and interested parties. A dependent administration is also necessary when an estate is insolvent or potentially insolvent or where substantial conflicts exist.

11. What are executors and administrators?

An executor is the person or institution you name in your will to administer your estate. An "independent executor" is relatively free of court control in carrying out duties, and usually the administration of a simple estate may be completed in a short period of time. An "administrator" is a person or institution appointed by the probate court, not by you, to administer your estate when there is no will, or when the executor and any successor executor named in the will cannot or will not serve. Executors and administrators can also be referred to as personal representatives.

12. What are letters testamentary and letters of administration?

Letters testamentary and letters of administration are official court documents issued to the executor/administrator demonstrating that the executor/administrator has legal authority to act on behalf of decedent's estate. These documents are issued by the Probate Clerk or County Clerk after the executor/administrator has been appointed by the court and has qualified for their position by taking an oath and obtaining a bond if required by the court.

13. If a person dies without a will (intestate), how are heirs of the estate determined?

If a person dies without a will (intestate), the decedent's heirs and their shares of the estate must be determined in an heirship proceeding. An application to determine heirship must be filed with the court, and citation is posted and published. At a court hearing, the judge hears testimony about the identities of the decedent's heirs under the laws of the State of Texas. An attorney ad litem is appointed by the court to investigate and determine whether there are any unknown heirs and to represent the interests of any unknown heirs, known heirs who cannot be located, heirs suffering from a legal disability, and minor heirs.

14. If a person dies without a will (intestate), who receives his or her property?

A. Community Property
   1. All of the decedent's community property (i.e., his or her one-half interest in all of the community property belonging to the married couple) passes to the surviving spouse if
   (a) no child or other descendant survives decedent, or
   (b) all surviving children or descendants of the decedent are also children or descendants of the surviving spouse (i.e., the surviving children have the same parents).
   2. If the circumstances in Number 1, above, do not apply, and decedent dies survived only by descendants, then all of the decedent's community property (i.e., his or her one-half interest in all of the community property belonging to the married couple) passes to all of the decedent's children, divided equally. The surviving spouse retains his or her one-half interest in the community property.

B. Separate Property
   1. If the decedent is survived by both a spouse and a child or children or their descendants, the surviving spouse inherits one-third of the separate personal property, the children or their descendants inherit two-thirds of the separate personal property, the surviving spouse inherits a life estate in one-third of the separate real property, and the children or their descendants inherit a fee simple interest in the separate real property, subject to the life estate interest inherited by the surviving spouse.
   2. If the decedent is survived by a spouse but is not survived by a child or a descendant of a child, all separate personal property goes to the surviving spouse, one-half of the separate real property goes to the surviving spouse, one-half of the separate real property goes to other near kin as defined by the Texas Estates Code, but if there are no near kin, it all goes to the surviving spouse.
   3. If the decedent is survived by a child or a descendant of a child, but is not survived by a spouse, the children or a descendant of a child inherit all of the separate property.
   4. In the event the decedent is not survived by a spouse or children (or their children's descendants), all property goes to the nearest kin as defined by the Texas Estates Code.

The Texas Estates Code defines "child" to include a legally adopted child. An adopted child may inherit from a biological parent as well as from an adoptive parent under most circumstances. See the Section on Community Property and Separate Property.

15. What are the alternatives to full administration of an estate?

Alternative procedures to the full administration of a decedent's estate are:

A. Muniment of Title,
B. Heirship Determination,

C. Small Estate Affidavit,
D. Affidavit of Heirship, or
E. Community Property Administration.

16. When would a muniment of title proceeding be appropriate?

A muniment of title proceeding is used to probate a decedent's will. It is the simplest and quickest way to probate a decedent's will, and it is usually the least expensive type of probate proceeding. The will must be proved to be a valid will at a court hearing. No executor/administrator is appointed because there is no need for an administration of decedent's estate.

The applicant will receive only a court order determining that decedent's will is a valid last will and ordering any third party who has possession of decedent's assets to turn over or transfer those assets to the persons named as beneficiaries in decedent's will. After the will has been probated as a muniment of title, the beneficiaries of decedent's estate become the owners of the property. In order to transfer the title to real property, the court order and the decedent's last will should be recorded in the deed records where the real property is located. Additional steps are usually needed to transfer title to personal property.

Once the will is admitted to probate as a muniment of title, the applicant for the probate of the will shall file with the court clerk a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled within 180 days after the probate. The court may waive this requirement, for example, if the surviving spouse is the only beneficiary under the will. The court may extend the time for filing the affidavit.

A muniment of title proceeding may be used when all that is needed is legal authority to transfer title to assets (e.g., house, vehicle), or to recover decedent's assets that are held by a third party (e.g., bank account). It is especially useful where the surviving spouse is probating the will of a deceased spouse. It may not be appropriate where there are significant assets, assets which must be managed, or conflict among the beneficiaries (heirs) of the will.

A court may probate a will as a muniment of title only when the decedent had no unpaid debts at the time of death, excluding debts secured by liens on real estate (mortgage), no Medicaid Estate Recovery Program claim against the estate, no Medicaid benefits were received by the decedent after March 1, 2005, and there is no other need for an administration of decedent's estate.

17. How can a proceeding for heirship determination be used to avoid a dependent administration?

Generally, a proceeding to determine decedent's heirs is used when the decedent died without a will (intestate). If there is no will, then the decedent will not have named an executor/administrator to manage his or her estate. However, the Texas Estates Code permits all of the heirs of decedent's estate to agree in writing, by signed and sworn affidavit, to an independent administration and designate a qualified person, firm, or corporation to serve as independent administrator, and request that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined through an heirship determination proceeding.

18. What are the requirements for a small estate affidavit?

A small estate affidavit is a simple probate procedure appropriate for small, simple intestate (no will) estates. A form for a small estate affidavit may be obtained from the Probate Clerk's office. The requirements for a small estate affidavit are:

A. The decedent's assets, excluding the homestead and exempt property and any debts secured by them, must exceed the known liabilities of the decedent;
B. The decedent died without a will;
C. There is no application for a personal representative (executor/administrator) pending or granted;
D. Thirty (30) days have passed since the decedent's death;
E. The value of all estate assets excluding homestead and exempt property does not exceed $75,000;
F. An affidavit is filed with the Probate Clerk that is sworn to by two disinterested witnesses, every adult distributee of the decedent, the natural guardian or next of kin of any minor distributee, and the guardian of any incapacitated distributee;
G. The affidavit (1) contains information showing that the requirements above are fulfilled, (2) includes a list of all known assets and liabilities of the decedent and which assets are exempt, (3) includes the names and addresses of the distributees (heirs), and (4) includes relevant family history facts showing the distributees' rights; and
H. The judge reviews the affidavit and approves it if it conforms to the requirements.

19. What does a small estate affidavit do?

A small estate affidavit allows the decedent's heirs to recover estate property held by another person. A court order approving a small estate affidavit orders any person who:

(1) owes money to the estate,
(2) has custody or possession of estate property, or
(3) acts as a registrar, fiduciary, or transfer agent for an evidence of interest, indebtedness, property, or other right belonging to the estate, to turn over or transfer those assets to the distributees (heirs) of the decedent's estate. The distributees of the estate must provide a copy of the affidavit, certified by the court clerk, to each person.

A small estate affidavit does not transfer title to real property, except for a homestead that would be transferred to a surviving spouse, to minor children, and/or to adult disabled children. If the homestead is the only real property owned by the decedent, a small estate affidavit recorded in the deed records of the county where the homestead is located transfers the homestead title.

Persons who pay, deliver, transfer, or issue assets of the decedent to the distributees based upon a small estate affidavit are released to the same extent as if they made the transfer to a personal representative of the decedent's estate.

The distributees to whom payment, delivery, transfer, or issuance is made are:

(1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and
(2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.

Each person who executed the affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit.

Distributees may sue to force delivery of estate property. The distributees are heirs, creditors, or anyone else having a prior right to the property.

20. What is an affidavit of heirship?

An affidavit of heirship is an out-of-court document, signed and sworn to in the presence of a notary public, that states the facts of (A) the identity of decedent's heirs, (B) decedent's family history, and (C) decedent's assets and liabilities. It may be used instead of a court proceeding to identify decedent's heirs and to transfer decedent's assets to the heirs. There is no court action or involvement in preparing, executing, or using an affidavit of heirship. Generally, an affidavit of heirship procedure is used for intestate estates, and no will is probated.

The affidavit states the names of the heirs of the decedent, decedent's family history concerning heirship, and shows the heirs' rights to receive the estate property. It is signed and sworn to by two witnesses who are not heirs (disinterested) and who are familiar with the decedent's family history and estate (assets and liabilities).

In order to transfer title to real property, the affidavit is filed in the deed records of each county where the decedent owned real property. The affidavit completes the chain of title to transfer ownership from the decedent to the heirs of the decedent after it has been on record for five years or more in the deed records of the county where the real property is located.

An Affidavit of Heirship can be done at any time, and may be used years after a person has passed away to clear title to real property.

The Texas Department of Motor Vehicles has a separate affidavit of heirship form to transfer title to motor vehicles. Form VTR-262 may be obtained online at https://www.txdmv.gov/motorists/buying-or-selling-a-vehicle. Form VTR-262 may also be obtained from any county tax assessor's office or a county sub-courthouse. Page 2 of Form VTR-262 provides instructions on how to use the form:

A. All heirs must sign the Affidavit.
B. Pay particular attention when there are surviving children whose parent is someone other than the surviving spouse.
C. The Affidavit may be used when a decedent left a will ONLY IF no application for administration or probate has been filed or a court determined that no administration is necessary. If this is the case, then the court document attesting to the same must be attached to the Affidavit.
D. All affiants agree the will shall not be offered for probate.
E. All affiants agree they are the sole and only known heirs at the law of the deceased.
F. All affiants agree that if there is a will, all beneficiaries of the will are authorized under the law to sell, transfer, and assign the ownership to the motor vehicle.
G. All affiants agree that there are no other known heirs who have prior right to the estate of the deceased.
H. All affiants agree that title to the vehicle be issued free and clear of the lien to the named transferee.

Once an heir presents the notarized Affidavit and required attachments, the dealer will complete a new Form VTR 130-U, Application for Certificate of Texas Title, and apply for title as the dealer normally would for a sale.

21. What happens if the decedent owns real property outside of Texas?

Each state has jurisdiction and control only over the real property located inside its own geographical borders. The executor/administrator appointed in Texas to probate decedent's estate in Texas does not have legal authority over real property located in a foreign state.

When a person residing in Texas dies owning property in Texas, probate court has jurisdiction over that person's estate. Once the decedent's estate is probated in Texas first, then, if the decedent owned real property in a foreign state, the Texas executor/administrator must hire an attorney licensed to practice law in that foreign state to file an "ancillary administration" in each foreign state where the decedent owned real property (including royalties or mineral interests).

The purpose of the ancillary administration is (A) to have the foreign probate court recognize the order rendered by the Texas probate court regarding the decedent's estate; (B) to obtain an order from the foreign probate court that transfers title to the real property located within that foreign state to the proper beneficiaries; and/or (C) to otherwise transact business relating to that property and decedent's estate.

The expense and difficulty of ancillary administrations varies from state to state. Sometimes, this added expense and difficulty may be avoided by having the decedent transfer such real property during the decedent's lifetime, or by having the decedent place the real property in a living revocable trust for the reasons stated in the prior section on Trusts.

Protecting Yourself and Your Loved Ones

Consumer Protection

1. What is a sweepstakes, a lottery, or a premium?

A legitimate sweepstakes is an advertising or a promotional device that awards prizes to participating consumers by chance with no purchase or "entry fee" required. You should never have to pay a fee to enter and win a sweepstakes. The law requires that you have an equal chance of winning whether or not you order anything. If you receive a promotion congratulating you on winning a prize, but requires a shipping and handling fee, the promotion is not a sweepstakes and may be fraudulent. You should never have to pay any fee in order to receive a prize in a sweepstakes.

A legitimate lottery is a promotional device by which prizes are awarded by chance, but it requires some form of payment in order to participate. Lotteries are illegal except when conducted by states and certain exempt charitable organizations. There are NO free entries to the lotteries of other states or countries. In addition, if you personally did not buy a ticket for the lottery, you did not win.

A legitimate premium is a gift that companies make available to all recipients who respond according to the company's instructions; for example, a travel bag you receive with a new magazine subscription. BEWARE of fraudulent sweepstakes, lotteries, or promotions.

2. How do I know what is legitimate and what is fraudulent?

If you answer "yes" to any of the following questions, you may be the target of a fraudulent telemarketing scam:

A. Do I have to purchase something, pay money (shipping and handling, tax, or other sum) or call a 900 number to enter the sweepstakes, or can I simply enter by mailing in an entry form with no purchase necessary and still be qualified to win?
B. Am I required to give my credit card or bank account information when registering to win?
C. Am I being pressured for a decision right now and not being given adequate time to think this over?
D. Did the telemarketer call me on the phone, but refuse to send me additional information through the mail with representations and promises in writing?
E. Is the telemarketer insisting on my credit card or checking account number right now?
F. Does the telemarketer want to send a private courier for my check today?
G. Is the telemarketer asking me to wire transfer or send money via MoneyGram® or Western Union® money to anyone for any reason?
H. Is the telemarketer asking me to purchase gift cards, or any other value cards and provide them with the numbers on the cards?

3. How do I protect myself?

Use your head. Take your time. Before you commit to anything, take 24 hours to think about it. Talk it over with someone you trust. Read the fine print! Remember that these people are not your friends. They are trying to get money from you, legally or illegally. Do not buy something merely because you will get a "free gift." It is not free if you have to pay shipping, handling, tax, or any other fee to receive it. Get all information in writing before you agree to buy. Check out the caller's record. Do not give your credit card number or checking account number to anyone who calls on the phone or sends you a mailing. Check out charities before you give. Ask the caller how much of your donation actually goes to the charity.

Be extremely cautious about investing with an unknown caller who insists you must decide immediately. If the investment is a security, check with state officials to see if it is properly registered. If large amounts of money are involved, check with your legal or financial advisor. Do not send money by messenger or overnight mail. If you use cash rather than a credit card, you may lose your right to dispute fraudulent charges. Make sure you know the per-minute charge for any 900 number you call. Hang up instead of being pressured to buy. If it sounds too good to be true, it probably is.

4. How may I remove my name from junk mail and telemarketing lists?

Sometimes it is impossible to get off "mooch lists," but you can try. Here are a few things you can try:

A. Change your phone number and get an unlisted number.

B. You may use *67 to prevent your name and number from appearing on a recipient's phone or caller ID device when you place a call. To use this feature, on either your landline or cell phone, you dial *67 followed by the number you want to call. You may also use *61 to block individual unwanted inbound calls on your landline telephone. The limit is 100 blocked numbers. *80 turns this feature off. The phone numbers displayed on Caller ID devices have changed due to emerging technology and have no connection to the true originator of the phone call. There is no telling where a call is actually coming from based upon caller ID. New technology will even allow a caller to appear to be your own phone number calling you.

C. You can protect a lot of your personal and confidential information by writing letters to the three main credit bureaus and to the companies who maintain, purchase, sell, and operate these lists, requesting that they not sell or disclose your personal information. For a comprehensive list of the credit bureaus and other companies' names and addresses, and for form letters, contact your local United States Post Office, Postal Inspection Service. You may also place a freeze on your credit if you are a victim of identity theft.

D. You can register with the Texas Do-Not-Call List for free at www.texasnocall.com. The date of your registration determines the date by which all telemarketing to your number must stop. It takes several weeks after registration for calls to stop. Registration remains in effect for only three years initially but may be renewed, which is also free online.

E. You can enroll with the federal list at www.donotcall.gov. Registrations on the National Do Not Call Registry do not expire and do not need to be renewed. You can register your home or mobile telephone number for free. Most telemarketers should not call you once your number has been on the list for 31 days. If they do, you can file a complaint online at the website, www.donotcall.gov, using the Report Unwanted Calls page. You must provide information about the call including the date that the company called you, the number that was called, and whether the call was a prerecorded message. You also may call the registry's toll-free number 1-888-382-1222 (TTY: 1-866-90-4236).

F. Contact the Data & Marketing Association at https://www.dmachoice.org/ to remove yourself from many mailing lists for up to ten years.

G. If any of your credit card companies send random-issue convenience checks, request in writing to be removed from that mailing list. Also, ask your bank if it provides your account information to third parties. If so, ask how to opt out of this practice.

H. You can file a consumer complaint online with the Attorney General of Texas at https://texasattorneygeneral.gov/cpd/file-a-consumer-complaint against a telemarketer you suspect of fraud, deceptive trade practices or violations of the Texas no-call list rules.

I. You may also wish to contact the Public Utility Commission (PUC) at www.puc.texas.gov and the Federal Trade Commission (FTC) at www.ftc.gov. The PUC has limited jurisdiction over certain telemarketers and the FTC enforces the federal do-not-call list.

5. What if I buy a product or service and it does not work?

If you have purchased a product or service that has not lived up to expectation or has broken through no fault of your own, you can do the following things:

A. Check your warranty. Most goods and services come with a written warranty. Usually, the warranty information gives instructions on how to replace or repair the item. Even without a written warranty, Texas law enforces certain implied (that is, they are neither written nor spoken) warranties. Most products have an implied warranty of merchantability, which requires that the product be fit for the ordinary purpose for which it is used. For services, the implied warranty requires that the services be provided in a good and workmanlike manner.

B. Contact the business. Contact the salesperson, the manager or the company's customer service representative. If you are still not satisfied, contact the owner or the company's headquarters.

C. File a detailed, written complaint with the Office of the Attorney General of Texas;
Office of the Attorney General
Consumer Protection Division
P. O. Box 12548
Austin, Texas 78711-2548

D. Contact the Better Business Bureau;

E. Contact the City of Fort Worth or Tarrant County Consumer Affairs offices;

F. Attend agreed mediation;

G. Contact the Federal Trade Commission regional office;

H. Contact your local, state, and federal representatives, and other elected officials;

I. File suit in the Justice Court; or

J. Contact a lawyer about filing an action for you. The Tarrant County Bar Association has a lawyer referral service (see Services and Resources).

6. What is the Texas Deceptive Trade Practices Act?

The Texas Deceptive Trade Practices Act, sometimes known as the DTPA, is designed to protect purchasers or consumers of goods or services from the harm caused by misrepresentations made by sellers of goods or services.

Most of the purchases we make in our daily lives are included under this Act. You must meet certain deadlines in order to recover. In some situations, consumers can recover treble damages. You will probably need to hire a lawyer to handle a DTPA complaint.

7. What can I do if a creditor is harassing me?

The Texas Debt Collection Act and the Federal Debt Collection Practices Act limit the times and the manner in which a creditor, or the creditor's representative, such as a collection agency, can contact you regarding payment of a debt. If the collection agency violates these acts, you may be entitled to statutory damages.

It is illegal for any creditor to:

A. Threaten violence or other criminal acts;

B. Use profane or obscene language;

C. Falsely accuse the consumer of fraud or other crimes;
D. Threaten arrest of the consumer, or repossession or other seizure of property without proper court proceedings;
E. Use the telephone to harass debtors by calling anonymously or making repeated or continuous calls; or
F. Make collect telephone calls without disclosing the true name of the caller before the charges are accepted.

Age Discrimination

Age discrimination involves an employer treating someone less favorably because of his or her age. Employers cannot arbitrarily and unjustly discriminate against employees because of age. Federal and state laws protect employees aged 40 and over against age discrimination. Unfair treatment can include laying off older workers and keeping younger ones, and may occur in areas such as hiring, firing, promotion, compensation, benefits, job assignments, and training.

Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40. However, employers may favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older.

Generally, it is unlawful for an employer to include age requirements or limitations in job notices or advertisements. An employer may specify an age limit only when age is shown to be reasonably necessary to the operation of the business. Employers are not specifically prohibited from asking an applicant's age or date of birth. Requests for age information will be studied closely to make sure that the inquiry was made for a lawful purpose.

It is unlawful to harass a person because of the person's age, including by making offensive remarks. Simple teasing, offhand comments, or isolated incidents that are not very serious may be permitted. However, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older and is not based on a reasonable factor other than age.

Employers are specifically prohibited from denying benefits to older employees. However, in limited circumstances, an employer may reduce benefits based on age, if the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit.

A. Federal Laws Governing Age Discrimination

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. The law, which applies to all ages, permits the use of certain age distinctions and factors other than age that meet the law's requirements. The Age Discrimination Act is enforced by the Civil Rights Center.

The Age Discrimination in Employment Act of 1967 (ADEA) protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions, or privileges of employment. The EEOC enforces this law.

In 1990, Congress amended the Age Discrimination in Employment Act (ADEA), adding the Older Workers Benefit Protection Act (OWBPA) to specify that it prohibits discrimination against older workers in all employee benefit plans except when age-based reductions are justified by significant cost considerations. The OWBPA requires employers to offer older workers (those who are at least 40 years old) benefits that are equal to or, in some cases, cost the employer as much as, the benefits it offers to younger workers.

Section 188 of the Workforce Investment Act of 1998 (WIA) prohibits discrimination against applicants, employees, and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the One-Stop system, on the ground of age. Section 188 of WIA is enforced by the Civil Rights Center.

Federal regulations governing age discrimination may be found at:

- 29 C.F.R. Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act;
- 29 C.F.R. Part 1625 – Age Discrimination in Employment Act – Interpretations;
- 29 C.F.R. Part 1626 – Procedures under the Age Discrimination Act;
- 29 C.F.R. Part 1627 – Records to Be Made or Kept Relating to Age; Notices to Be Posted; Administrative Exemptions; and
- 29 C.F.R. § 1614.201(a) – Age Discrimination in Employment Act (Alternative Process for Federal Employees).

B. Texas Laws Governing Age Discrimination

Texas laws governing age discrimination may be found in the Texas Labor Code, §§ 21.001 – 21.556 (Texas Labor Code, Title 2, Subtitle A, Chapter 21).

1. Who is Covered?

Both Texas state law and federal law prohibit age discrimination against employees and job applicants if the individual is 40 years of age or older.

Texas state law applies to private employers with 15 or more employees, and to all state and local government entities no matter how many employees they have.

The federal Age Discrimination in Employment Act (ADEA) applies to employers with 20 or more employees. Additionally, it also applies to state and local government, employment agencies, and labor organizations. It also applies to both employees and job applicants.

2. What do I do if I suspect I am being discriminated against based upon my age?

If you suspect that you are being, or have been, discriminated against based upon your age, you should consult an attorney as soon as possible.

In Texas, the employer/employee relationship is governed by the at-will employment doctrine meaning either party may terminate the relationship at any time, with or without cause, and with or without notice.

To establish unlawful discrimination, a plaintiff may rely on either direct or circumstantial evidence. When a plaintiff relies on circumstantial evidence to establish a discrimination claim: (1) the plaintiff must first create a presumption of illegal discrimination by establishing a prima facie case, (2) the defendant must then rebut that presumption by establishing a legitimate, nondiscriminatory reason for the employment action, and (3) the plaintiff must then overcome the rebuttal evidence by establishing that the defendant's stated reason is a mere pretext.

In an age discrimination case, a plaintiff establishes a prima facie case of age discrimination with evidence that he or she (1) was a member of the protected class of workers who were 40 years of age or older, (2) was qualified for the position at issue, (3) suffered an adverse employment action, and (4) was either (a) replaced by someone significantly younger or (b) otherwise treated less favorably than others who were similarly situated but outside the protected class.

In 2009, the U.S. Supreme Court issued a ruling that those who claim age discrimination must prove it was not just a motivating factor, but the sole or overriding reason behind an employment decision. This puts a higher burden on older workers alleging age discrimination than on those claiming discrimination based on race, sex, national origin, or religion.

You cannot file a lawsuit claiming age discrimination until you have filed a claim with one of these agencies:

- Texas Workforce Commission Civil Rights Division; or
- U.S. Equal Employment Opportunity Commission.

A. Texas Workforce Commission Civil Rights Division (TWCCRD)

The Texas Workforce Commission (TWC) is the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas.

A TWC investigator will discuss what is required to file a complaint, how the complaint will be investigated, and will assist you in preparing the complaint. You must submit your complaint within 180 days from the date of discrimination.

When you submit an employment discrimination complaint to the TWC Civil Rights Division, it is automatically submitted to the EEOC as well. Given the 180-day limit for filing a charge, you should contact the TWC or the EEOC promptly if you believe that you have been discriminated against due to age.

B. U.S. Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing federal laws prohibiting employment discrimination on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information.

Through its administrative process, the EEOC receives, investigates, and resolves charges of employment discrimination filed against private sector employers, employment agencies, labor unions, and state and local governments. The EEOC may pursue litigation against private sector employers, employment agencies, and labor unions in cases alleging age discrimination.

3. May an employer ask an employee to waive his/her rights or claims?

Yes, an employer may ask an employee to waive his/her rights or claims under state and federal age discrimination laws. Specific minimum standards must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid.

Under the Older Workers Benefit Protection Act ("OWBPA"), an individual is prohibited from waiving any right or claim under the ADEA unless such waiver is knowing and voluntary. For such a waiver to be knowing and voluntary:

(1) Specified minimum standards must be met, including certain periods for consideration of release agreements;
(2) Additional requirements must be met if waivers are requested in connection with an exit incentive or other employment termination program offered to a class or group of employees; and
(3) In the case of waivers in settlement of a charge filed with the EEOC, or an action filed in court, alleging age discrimination, certain minimum standards are met and the individual is given reasonable time to consider the settlement agreement.

The OWBPA places on the party asserting validity of the waiver the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to such specified minimum requirements. The OWBPA further prohibits any waiver agreement from:

(1) Affecting EEOC rights and responsibilities to enforce the ADEA; or
(2) Being used to justify interfering with an employee's protected right to file a charge or participate in an EEOC investigation or proceeding.

The enforceability of such an agreement will be dependent in part upon the extent to which the terms are expressed in plain language. Complicated wording and arcane terminology will generally make the agreement less enforceable. Release (waiver) agreements must meet certain standards as to readability, clarity, and equitable (fair) treatment.

A waiver may ask the employee to give up the right to pursue various claims in court in return for accepting whatever incentive is offered and for signing the agreement. The waiver should make this as clear as possible. A waiver should include language in conspicuous lettering advising the employee of his or her right to seek legal advice before signing the agreement.

Before signing a waiver, consult an attorney to review the waiver to make sure it complies with federal and state legal requirements.

Elder Abuse and Neglect

1. What is Elder Abuse?

The Texas Human Resources Code (HRC) defines the terms "Abuse," "Exploitation," and "Neglect" as:

A. "Abuse" means:

(1) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
(2) sexual abuse of an elderly person or person with a disability, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the

person's caretaker, family member, or other individual who has an ongoing relationship with the person.

B. "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly person or person with a disability that involves using, or attempting to use, the resources of the elderly person or person with a disability, including the person's Social Security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person.

C. "Neglect" means the failure to provide for oneself the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

2. What are the warning signs of elder abuse?

While one sign may not indicate abuse, below are some red flags to look out for that when seen, can indicate physical abuse, emotional abuse, financial abuse, sexual abuse, neglect, or abandonment:

- Bruises, black eyes, pressure marks, welts, lacerations, abrasions, broken or fractured bones, burns, open wounds, untreated injuries in various stages of healing.
- Broken eyeglasses, marks around the wrists, sudden changes in behavior.
- A caregiver's refusal or unwillingness to allow you to speak with an older adult alone.
- Unexplained withdrawal from normal activities or a sudden change in alertness.
- Sudden changes in lab work may suggest overdosing or underdosing of prescribed medications.
- Bruises, redness or swelling around breasts or genital areas.
- Bedsores, untreated medical needs, poor hygiene, rapid weight loss.
- Personality changes (e.g., apologizing excessively).
- Isolation from friends and/or family members.
- Strained relationships or frequent arguments between the elderly person and caregiver.
- Behavior such as belittling, threats and other uses of power and control by spouses are indicators of verbal or emotional abuse.
- Sudden change in living situation or budget for living.
- Unpaid bills, collection letters, or lack of food in the house.
- Unusual and unexplainable credit card activity.
- Inclusion of additional names on financial accounts or large transfers of money from banks used by elderly person to new banking institution.
- Romance scams (online relationships with no in-person counterpart).
- Missing possessions from the elder's home without explanation.
- Dehydration or malnutrition.
- Lack of fresh or easily available food in pantry and refrigerator.
- Unclean living conditions.

3. What is self-neglect and what are the signs?

Tragically, sometimes elders neglect their own care, which can lead to illness or injury. Self-neglect can include behaviors such as:

- Hoarding
- Poor hygiene
- Sudden weight loss
- Failure to take prescribed medications

- Refusal to seek medical treatment for illnesses
- Leaving a burning stove unattended or an oven on
- Leaving appliances plugged in (hair tools)
- Not wearing suitable clothing for the weather
- Confusion and isolation
- Refusal of services that could improve quality of life
- Inability to attend and maintain housekeeping
- Dehydration
- Neglect of animals in the home

Self-neglect accounts for most cases reported to adult protective services. Oftentimes, the problem is paired with declining health, isolation, Alzheimer's disease or dementia, or drug and alcohol dependency. In some of these cases, elders will be connected to support in the community that can allow them to continue living on their own. Some conditions like depression and malnutrition may be successfully treated through medical intervention or third-party services such as at home nurses or food delivery services. If the problems are severe enough, a guardian may be appointed.

4. What makes an older adult vulnerable to abuse?

Social isolation, physical frailty, and mental impairment (such as dementia or Alzheimer's disease) are factors that may make an older person more vulnerable to abuse. Sometimes, living with someone else (a caregiver or a friend) may increase the chances for abuse to occur. This situation allows for both privacy and the opportunity for abuse. Older adults who have a history of domestic violence may also be more susceptible to abuse. A world that is increasingly dependent on technology leaves older adults feeling left behind and isolated. Many services such as transportation (Uber, Lyft, Waymo) can provide older adults with more freedom, but they also require accounts and the ability to successfully utilize technology. Similarly, many online retailers require accounts to obtain coupons or allow a user to proceed to check out – older adults may struggle to determine if a website is legitimate, not remember their username/password, or not know if they should input their credit card information into the website.

There are a lot of good online services, but they require knowledge to navigate to avoid financial exploitation.

5. Who are the abusers of older people?

There is no one type of abuser. There is no one specific look for an abuser. Both men and women can be abusers. While strangers can be abusive, more often than not, the abuser is a family member or close friend. Recent evidence suggests that nearly two-thirds of all perpetrators are spouses or adult children. Elder abuse is a family issue that can impact anyone. Neglect from a family member and self-neglect are the two most common types of abuse.

6. Are there criminal penalties for the abusers?

Specific laws deal with abuse of the elderly and more general laws dealing with theft, including misapplication of property, financial abuse and assault that apply to all persons including the elderly. Sentences may include probation, court supervision, restitution, community service, counseling, or a jail or prison term.

7. Who do I call if I suspect elder abuse?

Texas law says anyone who thinks a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to the Texas Department of Family and Protective Services (DFPS). If you believe your situation requires action in less than 24 hours, call the Texas Abuse Hotline at (800) 252-5400. A person who reports abuse in good faith is immune from civil or criminal liability. DFPS keeps the name of the person making the report confidential. If you have been the victim of abuse, exploitation, or neglect, you are not alone. Many people care and can help. Please tell your doctor, a friend, or a family member you trust. Call the police or 9-1-1 immediately if someone you know is in immediate, life-threatening danger.

Help is available from all levels of government:

A. Federal

Call the US Department of Health and Human Services' Eldercare Locator help line. You can reach the Eldercare Locator by telephone at 800-677-1116. Specially trained operators will refer you to a local agency that can help.

B. State

The Texas Department of Family and Protective Services (DFPS) has a central place to report suspected abuse of children, the elderly, or adults with disabilities. The Abuse Hotline is 800-252-5400, or a report may be made on the internet at www.txabusehotline.org. This agency is often referred to as CPS (Child Protective Services) and as APS (Adult Protective Services).

If the victim is a resident of a long-term care facility that receives Medicaid funding, report the criminal abuse, neglect, or exploitation to the Texas Attorney General's Medicaid Fraud Control Unit at 512-371-4700 or visit https://www.texasattorneygeneral.gov/divisions/lawenforcement/medicaid-fraud-control-unit/medicaid-fraud-control-unit-field-offices to report at your closest field office.

C. Local

The Tarrant County District Attorney has civil and criminal remedies available, including:

(1) Tarrant County Criminal District Attorney—Elder Fraud Financial Unit: If you suspect elder financial fraud, you can contact the Elder Fraud Unit at 817-884-1400 and file a complaint. For more information visit: http://access.tarrantcounty.com/en/criminal-district-attorney/criminaldivision/ElderFraud.html?linklocation=Areas%20of%20Responsibility&linkname=Elder%20Financial%20Fraud

(2) Financial Exploitation Prevention Center of Tarrant County: This center is another local resource if you suspect elder financial exploitation. For more information, call a case manager at 817-720-6556 or visit: https://www.financialexploitationpreventioncenter.org.

(3) Protective Order: A protective order is a civil court order issued by a court with civil jurisdiction to prevent continuing acts of family violence. A protective order can order the abuser to stay away from someone, stop physical and verbal abuse, and forbid the possession of a weapon. There is a separate Protective Order Unit of the Tarrant County District Attorney. The Unit is located on the third floor of the Tarrant County Family Law Center at 200 East Weatherford Street in downtown Fort Worth. Anyone seeking assistance may also call the Protective Order Unit at 817-884-1623. For more information, visit http://access.tarrantcounty.com/en/criminal-district-attorney/civil-division/protectiveorders.html.

(4) Criminal Charges. Tarrant County created the Criminal District Attorney's Special Victims Unit to specialize in prosecuting criminal cases of abuse, neglect, and exploitation of vulnerable citizens: children, the elderly, and persons with disabilities. In Texas, a person suspecting abuse and not reporting it can be held liable for a Class A misdemeanor.

(5) The Criminal Division of the Tarrant County District Attorney's Office has multiple divisions that can help victims of elder abuse and hold abusers accountable. The specific division will depend on the type of abuse sustained by the elderly person. Helpful information is available

online at https://www.tarrantcountytx.gov/en/criminal-district-attorney/criminal-division.html.

(6) MHMR of Tarrant County: If there is a perceived mental or emotional impairment of the elderly, they may be eligible for a free mental health evaluation. MHMR has resources for low-income or no-income elders to help them get out of an abusive living situation. You can call MHMR at 817-335-3022 or visit their website to schedule an appointment: https://mhmrtarrant.org/.

Criminal Elder Exploitation

1. What is Elder Exploitation?

Elder exploitation occurs when a caretaker, family member, or other individual illegally or improperly uses an elderly person's resources. This can include using the elderly person's Social Security number or other identifying information for monetary or personal benefit, profit, or gain without the informed consent of that elder person.

Criminal offenses may occur when someone transfers property without the full understanding and consent of the elderly person. It may also be a crime when someone transfers property belonging to a person without capacity. Transferring property in a harmful way when someone has a duty to protect an elder person may also result in criminal offenses.

2. What are the warning signs of elder exploitation?

While there is not one specific sign, the following can be red flags to be on the lookout for:

- Inability to pay bills (utilities, rent, daily expenses, groceries, taxes).
- Frequent past due notices.
- Sudden and unexplained cash withdrawals or unusual transactions on bank accounts.
- New joint accounts suddenly being opened with a caregiver or friend as a signatory on the account.
- New powers of attorney with a caretaker, friend, or relative named as agent that the elder person does not fully understand.

If an elder person has dementia or other memory loss, they will be more susceptible to exploitation. It will also be more difficult for someone affected by memory loss to recognize signs that they are being exploited. It is important for an elderly person to understand what assets they own and check in on those assets regularly to ensure no transactions are unusual.

3. Who are the most common offenders?

The most common offenders of elder exploitation are adult children, spouses, and hired caregivers. In recent years, there has been an increase in organized criminals targeting elderly persons to gain access to financial accounts and other assets.

4. How are criminals finding elder persons?

While many criminals meet their elder victims in their own home, they may also target elder persons where they shop or eat. It is a growing trend for elder victims to be targeted on cell phones, mail, email, or through their online social networking profiles (Facebook, Instagram, Facebook Messenger, Twitter (a/k/a X)). Criminals have even created fake profiles of an elderly person's friends or family members on social media to gain access to the elderly person's accounts.

5. Are there criminal penalties for abusers?

Yes, offenses can range from probation to days in jail to years in the penitentiary depending on the value of loss or the method of exploitation. Recovery of funds lost is dependent on the circumstances.

6. Is there a time limit on prosecuting exploitation?

Yes, depending on the offense, the limitations on prosecuting exploitation may be as little as two years or as many as 10 years. It is important to contact law enforcement as soon as you discover a criminal offense because the time starts running when the offense occurs, not when it is discovered.

7. Who do I call if I suspect elder abuse?

The first call should be to 911 to alert your local police. It is also important to notify the Texas Department of Family Services, commonly known as Adult Protective Services, at 800-252-5400.

The Tarrant County Criminal District Attorney has a dedicated unit to assist against elder abuse and financial exploitation. The Tarrant County District Attorney's Elder Fraud Financial Unit can be contacted at 817-884-1400.

Tarrant County partnered with local community service organizations to form the Financial Exploitation Prevention Center ("FEPC"). The purpose of the FEPC is to prevent the population of elder and disabled Tarrant County adults from becoming victims of exploitation and to aid victims of elder exploitation in their recovery. To make a referral to the FEPC, you may call 817-720-6556.

Service Directory
Services and Resources

Elder Abuse

Local Police Department	911
Adult Protective Services (elder abuse and exploitation)	800-252-5400
Financial Exploitation Prevention Center of Tarrant County	817-720-6556
Texas Health and Human Services (formerly DADS)	800-458-9858
Tarrant County Criminal District Attorney's Office Elder Financial Fraud Unit	817-884-1400

Caregivers

Community Living Assistance & Support Services (Easterseals North Texas) (referred to as CLASS department)	817-332-7171
Guardianship Services, Inc.	817-921-0499
Texas Health and Human Services office (food stamps and Medicaid)	817-625-2161

Texas Consumer Information Numbers

Office of the Attorney General, State of Texas: Consumer Protection Division	800-621-0508
Crime Victim's Compensation Division	800-983-9933
Texas Department of Insurance (consumer complaints)	800-252-3439

Counseling

Catholic Charities, Fort Worth	817-534-0814

Financial Assistance

Texas Medicaid client hotline	800-252-8263
Medicare	800-633-4227
US Veterans Affairs benefits	800-827-1000

Food Service

Meals on Wheels, Inc. Tarrant County	817-336-0912
Dallas County	972-437-9950
Denton County (Lewisville, The Colony)	940-382-2224
Ellis County	972-351-9943
Johnson County	817-558-2840
Metro Port Area (Grapevine, Roanoke, Keller)	817-491-1141
Navarro County	888-869-6325
Texas	844-489-6325

General Information

Tarrant County Area Agency on Aging	817-258-8125
Aging and Disability Resource Center	855-937-2372
American Association of Retired Persons (AARP) (Dallas)	866-489-7443
Tarrant County Probate Clerk's Office	817-884-1770
Texas Legal Services Center Hotline	800-622-2520, Option 3
Texas Telecommunications for the Deaf	711 or 800-735-2989

Health Issues

Alzheimer's Association, North Central Texas Chapter Fort Worth	817-336-4949
American Cancer Society	800-227-2345
Cancer Care Services	817-921-0653
American Diabetes Association (North Texas)	972-392-1181

Legal Services

Dispute Resolution Program of Tarrant County	817-884-2257

Lawyer Referral Service of Tarrant County	www.tcbalawhelp.org
Legal Aid of NorthWest Texas	817-336-3943 888-529-5277
Legal Hotline for Older Texans and Veterans (United States District Court, Northern District of Texas)	800-622-2520 Option 2 Veterans Option 3 60+
Tarrant County Criminal District Attorney's Office	817-884-1400
Tarrant County Bar Association LegalLine (2nd & 4th Thursday of each month, 5–7 p.m.)	Sign up at www.tarrantbar.org

Long Term Care

Texas Health and Human Services Commission Long Term Care Services	817-625-2161 855-937-2372
Long Term Ombudsman AAA of Tarrant County	817-258-8103
Texas Long Term Ombudsman (Hotline for complaints or to check on facility)	800-252-2412
Texas Health and Human Services Commission, Consumer Rights & Services complaint and incident intake	800-458-9858

Senior Citizen Services

Sixty and Better, Inc. (www.sixtyandbetter.org)	817-413-4949

Social Services

Social Security Administration Information (www.ssa.gov)	800-772-1213
Texas Health and Human Services (hhs.texas.gov) Fort Worth Arlington	211 or 814-563-3800 817-461-8273 817-625-2161
Texas Health and Human Services: Mental Health & Substance Abuse (hhs.texas.gov/services/mental-health-substance-use)	866-378-8440
Suicide Crisis Hotline (www.namitexas.org)	988 Text TX to 741741

Tarrant County MHMR Mental Health Crisis Hotline	817-335-3022 800-866-2465
Texas Health and Human Services Inspector General fraud hotline	800-436-6184
Texas Health and Human Services complaint and incident intake for older and disabled (hhs.texas.gov/services/your-rights/complaint-incident-intake)	800-458-9858
U. S. Department of Health & Human Services, Eldercare Locator Help Line (eldercare.acl.gov/home)	800-677-1116
Tarrant County Financial Exploitation Prevention Center (www.financialexploitationpreventioncenter.org)	817-720-6556

Transportation

(For medical purposes, to health & social service agencies, weekdays. Call at least two days ahead. Most transportation programs are very busy, so call as far in advance as possible. Donations accepted.)

Serving Our Seniors (formerly Mid-Cities Care Corps)	817-282-0531
Handitrain (Arlington) (www.arlingtontx.gov/City-Services/Transportation-Streets-Traffic/Handitran)	817-459-5390
Catholic Charities Transportation	817-336-8714

Lawyer Referral and Information Service (LRIS)

www.tarrantbar.org/LRIS | www.tcbalawhelp.org

The Lawyer Referral & Information Service, established and maintained by the Tarrant County Bar Association, is a non-profit community service. For anyone seeking legal advice and/or requiring legal assistance, who does not know an attorney, the answer may be as convenient as submitting an online referral. The online request will provide the client with a referral and in direct contact with the Lawyer Referral & Information Service which is the only service in Tarrant County certified as a Lawyer Referral Service as required by the State of Texas under Chapter 952, Occupations Code, Title V. Also, the Tarrant County Bar Association Lawyer Referral & Information Service is one of only four services in the State of Texas that meets the standards contained in the American Bar Association Model Rules.

LegalLine

Free legal advice from the Tarrant County Bar Association | 2nd and 4th Thursdays, 5–7 p.m.
Sign up at www.tarrantbar.org/LegalLine.

LegalLine is a community service program offered twice a month by the Tarrant County Bar Association. Volunteer attorneys from the Tarrant County Bar Association offer free advice to Tarrant County residents on the 2nd and 4th Thursdays of every month. As part of the Tarrant County Bar Association's commitment to the public, local lawyers volunteer two hours of their time to answer questions covering a broad range of topics. In addition to legal questions, individuals can ask for referrals to local legal or social service agencies. The Tarrant County Bar Association is a professional, voluntary organization of nearly 3,000 Tarrant County–area attorneys.

People's Law School

Have you ever wished that you knew more about legal issues and the legal system?
The "People's Law School" is your chance to get up to speed!
For more information, visit www.tarrantbar.org/Peoples-Law-School.

This one-day annual event is open to the public and is FREE! The purpose of this program is to help make the law "user-friendly" and to educate consumers about their legal rights. Classes are taught by volunteer local attorneys and judges. The event is typically held in the spring and organized into multiple 50-minute sessions.

Texas Lawyers for Texas Veterans – Tarrant County Chapter

Providing veterans and spouses of deceased veterans with
free legal assistance in Tarrant County since 2010.

Texas Lawyers for Texas Veterans – Tarrant County Chapter (TLTV) is a community service program of the Tarrant County Bar Foundation, a 501(c)(3) nonprofit organization. TLTV encourages and recruits Tarrant County attorneys to provide free legal services and education to veterans and the spouses of deceased veterans. TLTV began in 2010 in response to a State Bar of Texas initiative and has served more than 1,000 veterans with the help of hundreds of volunteers. TLTV receives financial support from donations and sponsorships, as well as grants from the Texas Access to Justice Foundation. TLTV holds free monthly legal clinics at the Fort Worth VA, 2201 SE Loop 820, Fort Worth, TX 76119. To apply online or for more information, visit txltxv.org. Interested veterans may call 817-546-4460 and leave a message to make an appointment.