



Elder Law Handbook[©]

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

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UNDERWRITTEN BY

***Tarrant County Bar Foundation
&
Tarrant County Bar Association***

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FOREWORD

It is easy to look back and see the many significant social, technological, and medical advances of the past century. One result of these advances has been the great increase in the number of citizens over the age of sixty-five. In earlier generations, sixty-five was retirement age; in future generations, persons sixty-five and older will continue to be healthy and active. In this new century, as those over sixty-five constitute a growing percentage of the population, their needs will increase and become more varied.

The Tarrant County Bar Association has prepared this handbook to provide citizens of Tarrant County and the surrounding communities with information about issues commonly faced by an aging population. Much of the information contained in this handbook is applicable to the general population as well as to senior citizens.

The handbook is divided into topics identified in the Table of Contents. Most topics are addressed in a question and answer format.

This handbook is based on Texas State Law and Federal Law (where applicable) and is meant to inform, not to advise. This is a general summary of the laws as they existed as of the fifth edition (2012), but there may be exceptions or changes to the laws by the time you read this. Moreover, situations differ, and what is appropriate for one person or family may not be appropriate for another. You should seek the advice of an attorney about your particular situation. Because laws are subject to change by the legislature and according to judicial interpretation, this handbook is not intended as a substitute for sound legal advice.

This handbook was written by the Elder Law Committee of the Tarrant County Bar Association. The Association gratefully acknowledges the contributions of the following committee members: Chair Cary Schroeder; Chair-Elect Kathy Roux, and committee members Leslie Barrows, Bill Catterton, Steve Cocanower, Tom Corbin, Traci Hutton, Karen Johnson, Roger Jones, Thomas Mastin, Thomas Mazurek, Paula Moore, Will Trevino, and Cynthia Williams. Special thanks to Carol Baker for her proof reading. Thanks also to Cindy Rankin, the Tarrant County Bar Association staff, who kept everyone organized and shepherded the handbook through publication.

We hope this handbook will provide you with helpful information about the law and about resources for services and support organizations in the community. If you live in another county, you may find other resources in your county.

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Contents

Foreword	Page i
Table of Contents	Page ii

Personal Finances

BankAccounts and Brokerage Accounts	Page 1
Bankruptcy	Page 2
Safe Deposit Boxes	Page 4
Community and Separate Property	Page 5
Social Security.....	Page 6
Medicaid	Page 7
Medicare	Page 9
VA Benefits	Page 10
Tax Issues	Page 12
Homestead and Property Tax Exemptions	Page 13
Consumer Protection	Page 15
Age Discrimination in Employment	Page 19

Health Planning

Elder Abuse, Exploitation and Neglect.....	Page 20
Powers of Attorney and Living Wills	Page 23
Trusts	Page 26
Guardianship	Page 28
Mental Illness and Mental Health Commitments	Page 30
Services and Residential Alternatives	Page 31

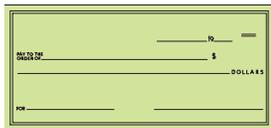
Planning End of Life

Hospice	Page 33
Funeral Arrangements	Page 36
Wills	Page 36
Probating Wills and Administration of Estates	Page 38

Service Directory

Services & Resources	Page 42
Useful Website for Seniors	Page 44
Helpful Periodicals for Seniors	Page 45

PERSONAL FINANCES



BANK ACCOUNTS AND BROKERAGE ACCOUNTS

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?

Using a Power of Attorney, the agent named in your Power of Attorney may be able to make withdrawals or write checks on the account. Banks and brokerage companies are sometimes reluctant to accept a Power of Attorney because of concerns about fraud or theft. A court-appointed guardian of a mentally incapacitated account owner always has access to the account.

2. How do bank accounts pass after my death?

Ownership of an account after death is determined by the type of account selected on the signature card. (Various types of accounts are described below.) Your signature on the signature card creates a legal contract between you and the bank. You should be very careful about the selections you make on signature cards, 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 no guarantee that the selections made on a signature card are appropriate for you. You should have every account signature card reviewed by your attorney; therefore, ask your bank to fax the signature card to your attorney. (This also applies to accounts at credit unions and savings and loans.) Different banks use different names to describe their accounts. The account titles used here are from the Texas Probate Code, but your bank may use other names.

- A. **Single-party account without Pay on Death (POD) Beneficiary** - The owner of the account is the only person on the account. When the owner dies, the account passes by will or, if there is no will, to the owner's heirs.
- B. **Single-party account with Pay on Death (POD) Beneficiary** - Only the owner of the account can withdraw funds. When the owner dies, the account passes to the person(s) named as beneficiary. **Note:** Neither your will nor Texas inheritance laws control this account; the account is not part of your probate estate. However, if the POD dies, you need to update your beneficiary designation.
- C. **Multiple-party account without Right of Survivorship** - This is commonly referred to as a joint account. Two or more names are on the account. Each person has an ownership interest in the account equal to the amount each contributed. But, the bank may pay any sum in the account to anyone named on the account at any time. When one owner dies, his or her rights in the account pass by will or, if there is no will, to the owner's heirs. **Note:** Creditors or the IRS may seize this account for a debt owed by any owner. In that case, the other owners of the account may need to file suit to recover their funds in the account.
- D. **Multiple-party account with Right of Survivorship** - This is commonly referred to as a joint tenancy with right-of-survivorship account. Two or more names are on the account. Each person has an ownership interest in the account equal to the amount each contributed. The bank may pay any sum in the account to anyone named on the account at any time. When one owner dies, his or her rights in the account pass to the other person named on the account if he or she is living. **Note:** Neither a will nor the inheritance laws control this account; the account is not part of your probate estate. Creditors or the IRS may seize this account for a debt owed by any owner. In that case, the other owners of the account may need to file suit to recover their funds in the account.

- E. **Convenience Account** - Two or more names are on this account, the depositor/s and the co-signer/s. The co-signer may write checks for the convenience of the depositor as long as the depositor is alive, but when the depositor dies, the money does not pass to the co-signer. Instead, the account passes by will, or if there is no will, to the heirs. The bank may pay funds in the account to the co-signer before the bank receives notice of the depositor's death. **Note:** Creditors or the IRS may seize this account for a debt owed by the owner/s on the account. In that case, the other owners of the account may need to file suit to recover funds in the account.
- F. **Trust Account** - A Trust Account is an account with one person named as trustee for the funds, and one or more other persons named as beneficiary of those funds. During the life of the creator of the trust (referred to as grantor or settlor), the funds belong to the trustee and the beneficiary has no rights to the account. Upon the death of the grantor, the funds are distributed to the beneficiary as provided for in the written trust agreement. **NOTE:** In this case, the account is not part of the probate estate; neither the will of the grantor nor inheritance laws control the distribution of this account. However, if there is no written trust agreement, the account passes by the grantor's will or to the grantor's heirs if there is no will, but it may be necessary to probate the estate to obtain payment of the funds in the trust account to the beneficiary.

3. How do brokerage accounts pass after my death?

Accounts with stock brokerage companies (for example, Merrill Lynch, Paine Webber, Edward Jones, Charles Schwab & Co.) pass after death similarly to bank accounts. The documents you sign with the brokerage company may control ownership after death; in such a case, neither Texas inheritance laws nor your will controls your brokerage account. You should be very careful in your selection of 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. **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; ask your broker to fax the documents to your attorney.

BANKRUPTCY



1. What is bankruptcy?

Bankruptcy is a legal method to help a person who is overwhelmed by debt to get a "fresh start." It requires that a person file a petition in a Federal court: a United States Bankruptcy Court. Bankruptcy is a creation of Federal laws by Congress and is authorized under the U.S. Constitution. Because bankruptcy is a matter of Federal law, the Bankruptcy Court has a lot of power. Once a person seeks Bankruptcy protection both persons who owe money (debtors) and the persons who are owed money (creditors) are subject to the full power and control of a Bankruptcy Court to the extent of the legal issues about the property owned by a person in Bankruptcy and the money owed to a creditor (a person or company to whom money is owed). Most individuals file under parts of the Federal statutes called Chapter 7 and Chapter 13.

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

Chapter 7 currently is designed to permit a person filing for bankruptcy (a debtor) to wipe out (discharge) many types of debt without making further payments on unsecured debts. Chapter 13 requires debtors to make payments to a Bankruptcy Trustee over the course of at least 36 months to reorganize their debt in a workable manner.

A debtor files a petition to begin either process. Upon filing the petition, an immediate order is put in place that prohibits creditors from taking any action to collect a debt (automatic stay) without getting prior permission of the bankruptcy court. The petition must list all debts owed, all assets, and include schedules that reflect an accurate monthly budget and answer many standard questions set forth in the statement of the debtor's financial affairs.

There are many reasons a debtor might choose to file Chapter 13 rather than Chapter 7. A debtor might choose Chapter 13 if:

- A. The debtor wants to make an attempt to repay debts but cannot afford to pay all of the debts;
- B. The debtor's disposable income is too large to qualify for Chapter 7;
- C. The debtor wishes to protect real or personal property which is subject to a secured loan which is not current; and/or
- D. The debtor has debts which are not dischargeable under Chapter 7.

Chapter 13 is designed to help debtors protect assets and repay their creditors through a repayment plan over a period of 36 to 60 months.

Through proper use of a Chapter 13, a debtor may force a creditor to accept repayment of delinquent payments on secured debts in order to keep assets such as a home or car. The debtor can also pay the IRS through the plan on delinquently owed taxes. Under the bankruptcy code provisions, some taxes may even be dischargeable and at minimum, upon filing of a bankruptcy petition, all penalties imposed by the IRS are immediately stopped. This is only a brief explanation and is not meant to cover all of the possible exceptions and full complexity of the law.

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

Bankruptcy is a powerful tool to help you restructure your finances. Filing Bankruptcy stops ALL attempts to collect civil judgments and debts. It does not stop criminal prosecutions nor does it stop a family court from determining or enforcing child support.

Not all debts can be eliminated in a bankruptcy. Government guaranteed student loans, the trust-fund portion of payroll taxes, and income taxes on unfiled tax returns and on returns filed less than 3 years ago are some of the debts that will still be owed at the conclusion of your bankruptcy.

Debt arising due to fraud can not be discharged.

The first step in addressing your financial problems is to determine where you are spending your money. If you are already keeping good records, that is a great beginning. If you are not, review how you spend your money periodically. There is a lot that you can learn by creating a summary. There are many excellent books on budgeting and inexpensive budget software programs which could help you.

The second step is to create a budget based on what you actually have available. This may require the advice of an attorney to help you determine what you can do. Pay for your necessities first and then pay for the items that can be taken from you if you do not pay the loan. Items that can be repossessed include: a house if you have a mortgage, a car, and similar assets may own that also have attached liens. These creditors are called "secured" because you signed a document giving the creditor the right to take back the collateral purchased if you do not pay. The asset is considered the "security." Create a "living expense" budget. Budget for the necessities only so that you know what you have left to pay on your debt after you pay for your living expenses. This should not only include items like rent, child care, utilities and food, but include items that you do not buy every month. Include in the budget items you need every year such as clothing, dental bills, medical bills, insurance, car repairs and similar expenses, and include 1/12th of that total in your monthly budget.

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



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, any of the named persons is entitled to access to the box and may 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. Generally, the best place for your will is in your safe deposit box. 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 should, 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 deceased; and
- D. a person named as executor who presents a copy of a document that appears to be the will of the deceased boxholder.

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 Power of Attorney, the agent named in your Power of Attorney 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 of a mentally incapacitated box owner always has access to the box.

COMMUNITY AND SEPARATE PROPERTY



1. What is community property?

Community property is owned equally by spouses. The Texas Constitution defines the only recognized separate property. Separate property includes: (1) property owned by a spouse before marriage; (2) property acquired during marriage by gift or inheritance to one spouse; (3) recoveries by a spouse for personal injuries while married, except recoveries for loss of earnings; and (4) gifts from one spouse to the other of community property. Community property is all property not defined as separate. One of the most important rules of community property is that upon divorce or the death of one spouse, all property is presumed to be community, unless it is proved to be separate. Specifically, income earned during marriage, whether earned from community or separate property, is

presumed to be community property. The burden of proof falls upon the person trying to show that the property is separate. After January 1, 2000, spouses can agree to convert separate property into community property.

2. Are there different types of community property?

Yes. While married, each spouse has the sole right to manage and control the community property that he or she would have owned as a single person, which is referred to as “sole management community property.” This includes, but is not limited to: (1) personal earnings, (2) revenue from separate property, (3) recoveries from personal injuries, and (4) any increases in and all revenue from sole management community property. All other community property is joint community property and is subject to the management and control of both spouses.

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

No. Placing title to an asset in only one spouse’s name is not sufficient to make the asset separate property. Again, the property is presumed to be community unless it is proved to be separate.

4. Is my sole management community property liable for my spouse’s debts?

No. A spouse’s sole management community property is not liable for any debts of his or her spouse incurred before they married, or for any contractual liabilities incurred by the spouse during the marriage, except for items necessary for the spouse’s health, maintenance, and support. Sole management community property may be liable for the other spouse’s tortious acts (such as a car wreck). The joint community property is generally subject to all liabilities incurred by either spouse before or during marriage.

5. Is my separate property liable for my spouse’s debt?

No. A spouse’s separate property is not subject to the other spouse’s liabilities. Therefore, it is important to keep separate property in a separate bank account and not co-mingled with any community property. If separate property is co-mingled with community property, it is all presumed to be community, unless proved otherwise.

6. How do I make a gift to my spouse?

One spouse may always give to the other spouse property that is his or her separate property, or his or her interest in sole management or joint community property. This gift property will then become the separate property of the spouse receiving the gift. Both spouses may also agree to divide community property into separate property, with each spouse owning one-half. Further, spouses may agree to designate property, such as bank accounts, as property with right of survivorship, so that the property will pass to the surviving spouse without the necessity of probate.

7. Can one spouse manage the community property if the other spouse is incapacitated?

Yes. A spouse may manage an incapacitated spouse’s sole management community property. Texas law provides that when a spouse is judicially declared incapacitated, the other spouse acquires full power to manage and control the entire community estate, without the necessity of a guardianship. The competent spouse still owes a fiduciary duty to the incapacitated spouse. Management of the incapacitated spouse’s separate property may require guardianship.



SOCIAL SECURITY

1. What is Social Security?

Social Security is a social insurance program. It insures workers and their families against loss of income that is the result of retirement, disability, or premature death. A worker 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 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 1 in 3 workers will become disabled, and 1 in 6 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 set an appointment first by calling your local Social Security office. You can apply up to 3 months before you are first eligible for benefits.

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 preceding 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 his 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 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 die.

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.

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 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 benefits for the non-working spouse to receive 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 7 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 from the deceased worker.

9. What benefits are available if I become disabled?

Social Security pays monthly benefits to disabled workers and their minor children. To receive Social Security disability benefits, one must be 100% disabled, which means you must be so disabled you cannot do any job.

10. What is SSI?

SSI is an abbreviation for Supplemental Security Income. SSI is not Social Security and is not paid with Social Security taxes. 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. The Texas Health and Human Services Commission administers Medicaid.

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. Social Security has an appeals process. The first step in that process is a reconsideration. You have 60 days from the date of the first decision to request a reconsideration. If you disagree with the reconsideration, you can request a hearing before an administrative law judge. You have 60 days from the date of the reconsideration decision to request the hearing. If you disagree with the decision of the administrative law judge, you may request Appeal 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 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. The base amount in 2007 is \$12,960, and it is adjusted annually for the cost of living. In the year you reach full retirement, the reduction is \$1 for every \$3 earned above a different threshold amount, which in 2007 was \$34,440. For persons retiring in 2008 and thereafter, the full retirement age has increased to 66. There will be a phased in increase in the full retirement age for persons born between 1955 and 1960. Persons born in 1960 and thereafter will have a full retirement age of 67.

MEDICAID



1. What is Medicaid?

Medicaid is assistance for persons with limited assets and income. The Medicaid program in Texas is administered by the Texas Health and Human Services Commission. 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 limit discussed below. In Texas, any person that is receiving SSI also qualifies for medical coverage through Medicaid. Medicaid covers most hospital expenses, doctors bills and 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 resource limits?

To qualify for Medicaid, an individual may not have countable resources valued over \$2,000, or an income above a specified amount. The income limit changes each year, based upon the cost of living. In determining the

countable resources, certain items are excluded. Among the excluded items are a residence with a value of \$500,000 or less (if there is an intent to return to the home), one automobile, most personal property (other than collectibles or assets of substantial economic value), a pre-paid burial policy, term life insurance policies, and other life insurance policies which have an aggregate face value of \$1,500 or less. If an individual meets both the income and resource tests, and is determined to be medically eligible (which means the person is in need of skilled nursing care), then that person can qualify for Medicaid assistance at a nursing home that accepts Medicaid patients.

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

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 is not treated as such for purposes of meeting the income test. With such a trust, all of one or more sources of income are assigned to the trust. That income must be disbursed in a specific manner within one month of receipt. The distribution can be used first to provide the individual with a personal needs allowance (which in 2012 is \$60), and then for the person's spouse's maintenance, if he or she is not in a nursing home (up to certain limits, based upon the healthy spouse's income), and then 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 assets in the trust at the death of the Medicaid recipient are to be paid to the State of Texas to the extent the state has paid for medical assistance. The income limit, as of 2012, is \$2,094. 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. This amount increases each year based upon cost of living adjustments.

4. Are the rules the same even 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 (1) 50% of the assets owned by the husband and wife combined, or (2) a fixed dollar amount, which is adjusted annually for increases in the cost of living. In 2012, the fixed dollar amount was \$113,640. If the total combined countable resources are \$22,728 or less (as of 2012), the person can immediately qualify (this floor amount is also adjusted annually for cost of living). In addition, the spouse at home can retain a specified amount of income. This amount is \$2,841 in 2012, and is also subject to annual cost of living adjustments. If the combined income of the husband and wife is below that amount, it may be possible to increase the amount of assets that can be retained, on the basis that the additional assets are necessary to allow the spouse at home to generate enough income to bring the total income up to the maximum income allowed.

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

Transfers of property within five years of an application for Medicaid benefits result in a penalty period before qualification. If a transfer is made during the five year period immediately before the application (three years with respect to transfers made before February 8, 2006), 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 2012, this amount is \$142.92 per day, and this amount is generally changed every two years. 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? (Medicaid State Recovery Program-MERP)

Texas does have a system of estate recovery, which means that the State of Texas does have 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 planning techniques available to protect the value of the home from estate recovery.



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 during the three months 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.

Part A covers hospitalization, skilled nursing facility services 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. If you are not entitled to premium-free Part A, because you did not work enough calendar quarters, you can pay a premium (for 2012, up to \$441 per month). There will be a penalty imposed on anyone enrolling in Part A after the deadline to do so. Part A is necessary to enroll in Part C (private managed care plans) and is enough to enroll in Part D (private prescription drug plans). General enrollment for Part A is available January through March of each year, with benefits starting July 1 of that year.

Part B covers physicians' services, outpatient therapies, durable medical equipment, long term home health services and other outpatient services. Coverage is voluntary and available to beneficiaries at the same time you are eligible for Part A. The monthly premium, \$104.90 per month for most people in 2013, is generally deducted from your Social Security or Railroad Retirement check. A one-time limited penalty is imposed for late enrollment. Part B is necessary for Part A enrollment for those not entitled to premium free Part A. It is necessary but not enough for Part C enrollment, and is adequate to enroll in Part D. The general enrollment period is the same as for Part A.

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 Parts A and B. A beneficiary must have both Parts A and B to be eligible to enroll in Part C. General enrollment is from November 15 through December 31 of each year, with benefits starting January 1 of the following year. Beginning in 2007, 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 for Part A or Part B. General enrollment is from November 15 through December 31 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 suffer a perpetual late enrollment penalty.

You can obtain huge amounts of information by going to www.medicare.gov or by calling the Social Security office about enrollment.

VA Benefits



There are a variety of benefit programs available to Veterans and their families. The eligibility criteria vary depending upon the nature of the disability or loss. Below is a brief description of some of the benefits programs available. For more information please see to the reference list for Veterans' Benefits located in the Resource Section.

Dependency and Indemnity Compensation

Eligibility: For a survivor to be eligible for Dependency and Indemnity Compensation (DIC), the veteran's death must have resulted from one of the following causes:

1. A disease or injury incurred or aggravated in the line of duty while on active duty or active duty for training.
2. An injury, heart attack, cardiac arrest, or stroke incurred or aggravated in the line of duty while on inactive duty for training.
3. A service-connected disability or a condition directly related to a service-connected disability.

DIC also may be paid to certain survivors of veterans who were totally disabled from service-connected conditions at the time of death, even though their service-connected disabilities did not cause their deaths. The survivor qualifies if the veteran was:

1. Continuously rated totally disabled for a period of 10 years immediately preceding death; or
2. Continuously rated totally disabled from the date of military discharge and for at least 5 years immediately preceding death; or
3. A former POW who died after Sept. 30, 1999, and who was continuously rated totally disabled for a period of at least one year immediately preceding death.

VA Aid and Attendance/Housebound Program

Monthly benefits, in addition to social security and/or disability income, are available for veterans and surviving spouses who require the regular attendance of another person to assist in bathing, dressing, meal preparation, medication monitoring or other various activities of daily living and that are not living in a nursing home. This benefit can help pay for care in the home, skilled nursing facility, personal care home, or an assisted living community. A person who is "permanently housebound," someone who is substantially confined to his or her dwelling (permanent residence) or, if institutionalized, to the ward or clinical area, and it is reasonably certain the disability or disabilities will continue throughout his or her lifetime (for example they are a ward in a guardianship) may qualify for this benefit. The individual must qualify both medically and financially. Assets cannot exceed \$80,000.00. However, the home, vehicle, annuities, pre-paid funeral expenses, and many other items don't count toward this asset limit. A veteran may be eligible for up to \$1,412.00 per month, the surviving spouse of a veteran may be eligible for up to \$907.00 per month, and a married couple may be eligible for up to \$1,674.00 per month (these amounts change annually) The average processing time is between 3 - 6 months. However, the pay is retroactive to the date of application.

Death Pension

VA provides pensions to low-income surviving spouses and unmarried children of deceased veterans with wartime service.

Death Gratuity Payment

Military services provide payment, called a death gratuity, in the amount of \$100,000 to the next of kin of service members who die while on active duty (including those who die within 120 days of separation) as a result of service-connected injury or illness. If there is no surviving spouse or child, then parents or siblings designated as next of kin by the service member may be provided the payment. The payment is made by the last military command of the deceased. If the beneficiary is not paid automatically, application may be made to the military service concerned.

Nursing Home Care

VA provides nursing home services to veterans through three national programs: VA owned and operated Community Living Centers (CLC), state veterans' homes owned and operated by the states, and the contract community nursing home program. Each program has admission and eligibility criteria specific to the program.

VA Community Living Centers: Community Living Centers (CLC) provide a dynamic array of short stay (less than 90 days) and long stay (91 days or more) services. Short stay services include but are not limited to skilled nursing, respite care, rehabilitation, hospice, and maintenance care for veterans awaiting placement in the community. Short stay services are available for veterans who are enrolled in VA health care and require CLC services. Long stay services are available for enrolled veterans who need nursing home care for life or for an extended period of time for a service-connected disability, and those rated 60 percent service-connected disabled and unemployable; or veterans or who have a 70 percent or greater service-connected disability. All others are based on available resources.

State Veterans' Home Program: State veterans homes are owned and operated by the states. The states petition VA for grant dollars for a portion of the construction costs followed by a request for recognition as a state home. Once recognized, VA pays a portion of the per diem if the state meets VA standards. States establish eligibility criteria and determine services offered for short and long-term care. Specialized services offered are dependent upon the capability of the home to render them.

Contract Community Nursing Home Program: VA medical centers establish contracts with community nursing homes. The purpose of this program is to meet the nursing home needs of veterans who require long-term nursing home care in their own community, close to their families and meet the enrollment and eligibility requirements.

Admission Criteria: The general criteria for nursing home placement in each of the three programs requires that a resident must be medically stable, i.e. not acutely ill, have sufficient functional deficits to require inpatient nursing home care, and is assessed by an appropriate medical provider to be in need of institutional nursing home care. Furthermore, the veteran must meet the specific eligibility criteria for community living center care or the contract nursing home program and the eligibility criteria for the specific state veteran's home.

Non-Institutional Long-term Care Services: In addition to nursing home care, VA offers a variety of other long-term care services either directly or by contract with community-based agencies. Such services include adult day health care, respite care, geriatric evaluation and management, hospice and palliative care, home based skilled nursing, and home based primary care. Veterans receiving these services may be subject to co-pay.



TAX ISSUES

1. Will my family have to pay inheritance taxes?

Generally, no. Most estates pay no federal estate taxes because the fair market value of the decedent's estate on the date of their death does not exceed the exemption amount, which is \$5,120,000 for tax year 2012. If the value of the decedent's estate exceeds the exempt amount in 2012, estate taxes at rates up to 35% will be assessed. On January 2, 2013, the President signed into law the American Taxpayer Relief Act of 2012 ("the 2012 Act"). The 2012 Act made permanent the \$5 million dollar estate and gift tax exemption to be indexed for inflation since 2011 (approximately \$5.25 million in 2013). For married couples, the aggregate exemption will be twice the \$5 million dollar amount. The estate and gift tax rate is set at up to 40%.

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

Generally, no. A married couple can defer estate taxes until the death of the second spouse. Federal estate tax law allows a deduction for the entire value of assets passing to either: (1) the surviving spouse, or (2) a trust that qualifies for the marital deduction. Although the estate tax is deferred, it is not eliminated. When the second spouse dies, the value of all of the assets owned by the second spouse, including the assets inherited from the first spouse who died, are subject to estate tax.

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

Yes, if the value of the assets exceed the exempt amount. If a married couple has assets greater than the exempt amount (approximately \$5.25 million for 2013), special planning is necessary for both spouses to take advantage of the exempt amount. If the first spouse to die leaves all assets to the surviving spouse, all of the property given to the surviving spouse qualifies for the marital deduction. However, there is no benefit obtained from the exempt amount (approximately \$5.25 million) in the estate of the first spouse to die. By creating a Will that provides for assets up to the exempt 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 property pass to a "credit shelter" or "By-pass" trust. Usually, the surviving spouse is entitled to receive income from this trust during life. Upon the death of the surviving spouse the trust assets pass estate tax free to the persons designated by the first spouse that died (i.e. the appreciation of the assets in the trust passes tax free to the beneficiaries).

4. Will the beneficiaries of my estate have to pay *income* tax when they receive the assets from my estate?

Maybe. Generally, property received as an inheritance or as a gift is not subject to income tax. However, assets received through inheritance or gift for which tax has not been paid previously are subject to income tax. Some common examples of these types of assets are: (1) an individual retirement account (IRA), (2) a qualified retirement account (401(k) or other pension plan), and (3) installment note payments. Since the income tax has not been paid on the asset or the earnings during the lifetime of the decedent, the recipient will owe income tax on the distributions.

5. Does a beneficiary of my estate or the recipient of a gift have to pay an *estate* or *gift* tax?

Generally, no. The estate and gift tax is imposed on the person who gives the bequest or gift, not on the person who receives the bequest or gift. If estate taxes are due, they must be paid by the decedent's estate, usually within nine months after the death of the decedent. However, in some cases the executor is entitled to recover a portion of the estate taxes from a beneficiary; for example, when life insurance proceeds are included in the decedent's taxable estate but the beneficiary received the life insurance proceeds. If gift taxes are due, the gift tax must be paid by the individual making the gift. If the value of the gift exceeds the current annual exemption amount (\$14,000.00), a gift tax return must be filed by the individual who made the gift.

6. What will be the income tax basis of property given as *gifts* during my lifetime or as bequests at my death?

Gifts given during life generally have a carryover tax basis (i.e. no increase for appreciation). Inherited property generally has a tax basis equal to the fair market value of the property on the date of death of the decedent for the value six months later if the alternate valuation date is used.

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

Yes, up to a limited value. An individual is able to make gifts of property up to \$14,000.00 annually.

8. What exclusions are available for gifts?

An annual exclusion amount, a lifetime exclusion amount, and certain unlimited amounts are available. An outright annual gift of money or property (annual exclusion amount) given to an individual in the amount of \$14,000.00, or \$28,000.00 if both spouses elect to gift to an individual, is exempt from gift taxes. Gifts in excess of this amount must be reported on a gift tax return (form 709) by April 15 of the year after the gift is made. The American Taxpayer Relief Act of 2012 makes a lifetime exclusion amount for gifting of \$5 million to be indexed for inflation since 2011 (approximately \$5.25 million in 2013). Since the gift and estate tax exclusions are unified, amounts "gifted" reduce the estate tax exclusion applicable at death. To qualify for these annual and lifetime exemptions, the gift must be of a present interest, so gifts to trusts generally do not qualify for either exemption. However, there are techniques that allow gifts to be made to trusts which will qualify for the exemption. You should consult your attorney or accountant to determine if a gift will qualify for the exemption. Gifts in an unlimited amount may be made for medical expenses and school tuition, if paid directly to the provider.

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

No. Effective for decedents whose date of death is on or after January 1, 2005 the State of Texas does not assess either an estate, inheritance, or gift tax.

HOMESTEAD & PROPERTY TAX EXEMPTIONS



1. What is a residential homestead?

A residential homestead is the real property and improvements which, when occupied and maintained as a home by a family or a single adult who is not a member of a family, is protected from foreclosure for the payment of debts EXCEPT for debts secured by liens for (1) purchase money for the homestead; (2) taxes on the property or an IRS tax lien; (3) work and material used in constructing improvements on the property if contracted for in writing before the work is done or the material is furnished; (4) home equity loans and (5) owelty (equality) of partition. Recent constitutional amendments may allow additional types of home equity loans.

2. What is an urban homestead?

Effective January 2000, an urban homestead may consist of a lot or lots, not exceeding ten acres, in a city, town or village, together with all improvements.

3. What is a rural homestead?

Effective January 2000, a rural homestead may consist of not more than 200 acres of land and all improvements for a family and not more than 100 acres and all improvements for a single adult, which is not located in a city, town or village.

4. What is a business homestead?

An urban homestead may be a business homestead if it is used as a place of business to provide for a family or a single adult. Effective January 1, 2000, a business homestead may consist of a lot or contiguous lots not exceeding 10 acres. An urban homestead and a business homestead must be located within the same urban area. Before January 1, 2000, an urban homestead could be used as either a residence or as a business. Now a business homestead must also include an urban homestead.

5. How can I obtain an over-65 or homestead exemption for real property taxes on my residential homestead?

Cities, counties and other political subdivisions may exempt not less than \$3,000 of the valuation on residential homesteads for persons over the age of 65, or for the surviving spouses of persons who were 65 or older at the time of death. Political subdivisions may also exempt a percentage of the valuation on residential homesteads, not to exceed 20% and not less than \$5,000 (\$15,000 for school district property taxes) for a married or unmarried adult. You can obtain an application for an over-65 exemption and for a homestead exemption from your local tax appraisal district.

6. Can I defer payment of real property taxes on my residential homestead?

Texas residents over age 65 or disabled can defer the payment of real property taxes on a residential homestead until the property loses its homestead character. During the deferred period, taxes are still due, interest on the taxes accrues and a tax lien may be imposed on the property, but the tax lien cannot be enforced and a penalty may not be imposed. Senior citizens may transfer current property freezes to other homesteads if they move. You can obtain an application for an over-65 deferral from your local tax district.

7. Can I perform community service in lieu of payment of real property taxes on my homestead?

Under certain specified circumstances, cities, counties, and other political subdivisions may permit residents 65 or older to perform community service instead of paying property taxes on the homestead. This is a new law, so check with your local tax appraisal district to determine your eligibility.

8. How can property lose its homestead character?

Property loses its homestead character: (1) when the homestead claimant dies and qualified family members no longer occupy the property; or (2) when the homestead is abandoned. Abandonment occurs when the homestead claimant has a present, definite and permanent intent to cease using the property as a homestead. That intent is shown for example, when the homestead is sold or when the claimant designates another homestead.

9. How can I avoid the payment of capital gains taxes when I sell my residence?

There is an allowable exclusion of gain on the sale of a personal residence for persons of any age, which may not be used more frequently than once every two years, if you have owned and occupied a residence for at least two of the five years preceding the sale. Additionally, if you become physically or mentally incapable of self care (including living in a nursing home), but lived in the residence for 1 year out of the last 5, you still qualify. In most situations, \$250,000 for an individual and \$500,000 for a joint return may be excluded.

10. How does the new home equity law work and what do I need to know?

Under the new home equity law, you may borrow for any purpose by pledging your homestead. That law protects homeowners with the following requirements: (1) the total of all loan balances against your home may not

be more than 80% of the fair market value on your home; (2) the lien may be foreclosed only under a court order; (3) fees to make the loan may not exceed three percent 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. If you do not repay the loan, the lender may foreclose and sell your home. Use caution: you should consider carefully the consequences of borrowing against your home. Do not be pressured to pledge your home for risky business ventures or other endeavors.



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 requiring 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 to members of the public 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.

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 or a bottle of perfume you receive.

BEWARE of fraudulent sweepstakes, lottery, or promotion. Unfortunately, Americans lose about \$40 billion each year due to fraudulent sales. These frauds are frequently perpetrated on the elderly. The telemarketers usually portray themselves as polite, friendly young people who are interested in the well-being of the elderly person. A person may be placed on what is known as a "mooch list." A "mooch list" is a list of names and telephone numbers of likely victims of telemarketing fraud. According to Congress, 56% of the names on the "mooch lists" are aged 50 or older. These lists are sold or transferred from one fraudulent group to another. If you receive a call from one group, don't be surprised if your phone soon begins ringing off the wall. Fraudulent companies may also attempt to contact you by mail. They use creative and misleading schemes to make you believe that you have won a great prize or are one of a very few who have a chance to win. They tell you that all you have to do is send money to claim or qualify for the prize.

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. Do I have adequate time to think this over or am I being pressured for a decision right now?

- D. If the telemarketer calls me on the phone, will he or she 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?

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 (see sources listed below). 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 money 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 do I get off 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. Get a caller ID box, which the phone company will provide for a small monthly fee, and have all anonymous calls blocked. Keep a list of all these calls and report them to the police or the Attorney General’s office.
- 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.
- D. You can enroll with the Texas do-not-call list at www.texasnocall.com or by calling toll-free 1-888-382-1222. You may register for free online at the website. If you register by telephone or mail, there is a small fee for each number you list. 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.
- E. You can enroll with the federal list at www.donotcall.gov. Telephone numbers placed on the National Do Not Call Registry will remain on it permanently due to the Do-Not-Call Improvement Act of 2007, which became law in February 2008. 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 File a Complaint page. You must provide the date that the company called you and the number that was called and respond to a question asking if the call was a prerecorded message. You may provide your name and address, but this information is not required for you to submit a complaint. You also may call the registry’s toll-free number 1-888-382-1222 (TTY: 1-866-90-4236).

- F. Contact the Direct Marketing Association at www.the-dma.org to remove yourself from many mailing lists for up to five 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 www.oag.state.tx.us/consumer/complain.shtml against a telemarketer you suspect of fraud, deceptive trade practices or violations of the Texas no-call list.
- I. You may also wish to contact the Public Utility Commission (PUC) at www.puc.state.tx.us 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/010
 - 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, privately or through Dispute Resolution Services (see Services and Resources).
- G. Contact the Federal Trade Commission regional office.
- H. Contact your local, state, and federal representatives, and other elected officials.
- I. File a suit in the Justice of the Peace court (limit \$10,000.00 in damages).
- 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;
- f. make collect telephone calls without disclosing the true name of the caller before the charges are accepted.

Try to stop telephone harassment by sending a letter by certified mail asking the creditor to contact you by mail only in the future.

8. If I am denied credit, what information am I entitled to?

The Fair Credit Act requires that businesses give you notice of the reason for the denial of credit. The Equal Credit Opportunity Act states that you may not be denied credit on the basis of gender, marital status, race, or age.

9. What can I do to dispute a credit card charge?

A credit card holder may refuse to pay off his card balance if he is in a dispute with a local merchant involving more than \$50 and has made a good faith attempt to get satisfaction from the merchant. The issuing bank in such a case may not exercise its common-law right of set-off against the customer's account to force payment of the disputed amount.

10. What can I do if someone steals my credit card and charges on it?

Notify the credit card company immediately! It is also important to file a police report to document the loss and your response. If you lose your credit card or suspect that it may have been stolen, do not hesitate to notify your credit card company and request that they suspend all charges to that card until further notice. If you subsequently determine that the card has been stolen and used to make fraudulent charges before you could notify your credit card company, notify your local police agency immediately and file a report to document the circumstances under which your card was stolen. You can also protect yourself against someone using your credit card, bank account or personal identify information (e.g. driver's license, social security number) by periodically checking your credit report at the three major credit reporting companies. Checking your credit report will reveal whether someone has used your identity information to obtain credit cards or bank accounts and write checks or make charges that were fraudulent. If you do not check your credit report from time to time, fraudulent use of your identification information may continue over time and make correcting negative credit reports more difficult. You can obtain copies of your credit reports by calling the following reporting agencies: Experian 1-888-397-3742; Trans Union 1-877-322-8228; and Equifax 1-800-685-1111.

11. What can I do if I suspect I am a victim of identity theft?

- A. File a report with the police and obtain a copy of the police report.
- B. Contact the three major credit reporting agencies (see numbers above) and request a fraud alert be placed on your account and that no new credit be issued without your permission. If you are unaware if you have had personal credit information stolen, you can request a temporary alert. Alternatively, you can request a Texas Security Freeze from the credit reporting agency, which will prohibit the credit reporting agency from releasing your credit report or information without express authorization from you. Victims of identity theft are usually not charged a fee for this service, but other consumers will be charged a \$10 fee. Keep in mind that this security freeze will make obtaining new credit more difficult.

To place a freeze, send a letter by certified mail to one of the three credit reporting agencies:

Equifax Security Freeze
P O Box 105788
Atlanta, GA 30348

Experian Security Free
P O Box 9554
Allen, TX 75013

Trans Union Fraud Victim
Assistance Department
P O Box 6790
Fullerton, CA 92834

Include the following information:

- * Your full name, address, Social Security number, and date of birth;
 - * Proof of current address such as a current utility bill or phone bill;
 - * Copy of a government issued identification card (state drivers license or ID card, military identification, etc.);
 - * Copy of the police report; and
 - * \$10, if the fee is not waived.
- C. For any accounts that have been fraudulently opened or accessed, contact the creditor and report the theft to the creditor's fraud unit, then close the account and open a new account with new access information.

12. Who should I contact if I am a victim of fraud?

The Texas Attorney General's Consumer Protection Division, with offices in several major Texas cities, works to identify and prosecute those who cheat or deceive the elderly. The Division focuses its efforts on advertising and sale of insurance and retirement-oriented investments, financial planning services, estate planning and legal services directed at senior citizens, home improvements, medical devices, telemarketing and mail fraud. It also seeks to protect Texans from abuse, neglect or exploitation, and to assure quality treatment in nursing homes, assisted living facilities and home health agencies. The Consumer Protection Division's regional office phone numbers are listed in the government pages of your local telephone directory or you may obtain information on filing a complaint by writing to them at P O Box 12548, Austin, TX 78711-2548. In addition, you should call your local District Attorney's Office.

AGE DISCRIMINATION



1. What is 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, hiring, firing, promotion, compensation, benefits, job assignments, and training.

2. Who is covered?

Federal and Texas law applies to all private sector firms with twenty or more employees and to all state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Federal and Texas law also protect job applicants from age discrimination.

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

If you believe that you have been discriminated against at work because of your age (40 or older), you may call the Texas Workforce Commission Civil Rights Division (TWCCRD) office at 1-512-463-2642 or 1-888-452-4778. An investigator will discuss what is required to file a complaint, how the complaint will be investigated, and will assist you in preparing the complaint.

Complaints filed with TWCCRD are dual-filed with the U.S. Equal Employment Opportunity Commission (EEOC) so it is not necessary to file with both the state and federal agencies. There are time limits for filing a charge. Therefore, you should contact them promptly if you believe that you have been discriminated against due to age.

You may also obtain information about the U.S. Equal Employment Commission (EEOC) by visiting their website at <http://www.eeoc.gov>, or you may contact the local EEOC District office at: 207 S. Houston Street, 3rd Floor, Dallas, TX 75202.

1-800-669-4000 (for general information)
214-253-2867 (to make an appointment only)
214-253-2720 (fax)

The EEOC Dallas District Office is open Monday - Friday from 8:00 a.m. to 4:30 p.m. Intake assistance for filing a charge is regularly on Monday, Tuesday, Wednesday and Friday.

HEALTH PLANNING

ELDER ABUSE, EXPLOITATION & NEGLECT



1. What is elder abuse?

Under Chapter 48, "Investigation and Protective Services for Elderly and Disabled Persons" of the Texas Human Resources Code (HRC) the definitions of Elder "Abuse," "Exploitation," and "Neglect" are defined as follows:

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 or disabled person, 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 the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.
- C. "Neglect" means the failure to provide 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 does not necessarily indicate abuse, some tell-tale signs that there could be a problem are:

- A. Bruises, pressure marks, broken bones, abrasions, and burns may be an indication of physical abuse, neglect, or mistreatment.
- B. Unexplained withdrawal from normal activities, a sudden change in alertness, and unusual depression may be indicators of emotional abuse.
- C. Bruises around the breasts or genital area can occur from sexual abuse.
- D. Sudden changes in financial situations may be the result of exploitation.
- E. Bedsores, unattended medical needs, poor hygiene, and unusual weight loss are indicators of possible neglect.
- F. Behavior such as belittling, threats, and other uses of power and control by spouses are indicators of verbal or emotional abuse.
- G. Strained or tense relationships, frequent arguments between the caregiver and elderly person are also signs.

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:

- A. Hoarding
- B. Failure to take essential medications or refusal to seek medical treatment for serious illness
- C. Leaving a burning stove unattended
- D. Poor hygiene
- E. Not wearing suitable clothing for the weather
- F. Confusion
- G. Inability to attend to housekeeping
- H. Dehydration

Self-neglect accounts for the majority of 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. If the problems are severe enough, a guardian may be appointed.

4. What makes an older adult vulnerable to abuse?

Social isolation and mental impairment (such as dementia or Alzheimer's disease) are two factors that may make an older person more vulnerable to abuse. But, in some situations, studies show that living with someone else (a caregiver or a friend) may increase the chances for abuse to occur. A history of domestic violence may also make a senior more susceptible to abuse.

5. Who are the abusers of older people?

Abusers of older adults are both women and men. Family members are more often the abusers than any other group. For several years, data showed that adult children were the most common abusers of family members; recent information indicates spouses are the most common perpetrators when state data concerning elders and vulnerable adults is combined. The bottom line is that elder abuse is a family issue. As far as the types of abuse are concerned, neglect is the most common type of abuse identified.

6. Are there criminal penalties for the abusers?

In Texas, criminal penalties vary, depending on the specific charges and circumstances. There are specific laws dealing with abuse of the elderly and more general laws dealing with theft, including misapplication of fiduciary property 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, or person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to the Department of Family and Protective Services (DFPS). 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 immediately. You can reach the Eldercare Locator by telephone at 1-800-677-1116. 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 state can be reached by dialing 711 or 1-800-735-2989. The Abuse Hotline is 1-800-252-5400, 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).

Information on the rights of senior citizens and nursing home care is available at https://www.oag.state.tx.us/elder/rights_down.shtml

C. Local

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

1. **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 prohibit the possession of a weapon. 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

2. Criminal Charges

a. In 1997, the Criminal District Attorney's Office joined forces with the Commissioners Court and concerned citizens to create a misdemeanor court exclusively dedicated to hearing family violence cases. This focused approach allows for more effective and efficient prosecution of these cases. The caseload for this court - Tarrant County Criminal Court #5 - has steadily increased over the years. Experts believe the increase reflects an increase in the number of cases

b. In Texas, any person suspecting abuse and not reporting it can be held liable for a Class B misdemeanor.

c. An online complaint is available for economic crimes against any person including the Elderly at <http://www.tarrantda.com/wp-content/uploads/2011/10/ECU-ComplaintForm.pdf>

3. The Family Violence Unit of the Tarrant County Criminal District Attorney's Office exists to help victims of family violence and to hold abusers accountable for their behavior. Helpful information is available on line <http://www.tarrantda.com/wp-content/uploads/Helpful-Resources.pdf>. There is a separate Protective Order Unit of the Tarrant County District Attorney http://www.tarrantda.com/?page_id=442

POWERS OF ATTORNEY & 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 designating 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 avoid the later need for a court-appointed guardian. The designation must meet statutory requirements. The following are documents normally used by competent individuals to designate agents:

1. Power of Attorney.

A. What is it?

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 of a general power of attorney?

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.

C. What is a Durable Power of Attorney?

A Durable Power of Attorney is an important estate planning tool used to avoid a guardianship of a person's estate. Normally, a power of attorney becomes invalid upon the incompetency of the principal. But the Texas Probate Code authorizes a Durable Power of Attorney that does not terminate if the principal becomes incompetent. Acts performed under a Durable Power of Attorney are binding on the principal whether or not the principal is incompetent. A Durable Power of Attorney includes words such as: "This power of attorney shall not terminate upon the disability or incapacity of the principal."

D. What is a Statutory Power of Attorney?

A Statutory Power of Attorney is a general power of attorney, using language that 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. Therefore, you should consider revising powers of attorney that do not use the statutory language.

2. Medical Power of Attorney.

A. What is it?

Since 1989, Texas law has provided 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 mandatory statutory form for the Medical Power of Attorney.

B. What are the statutory requirements?

1. The Medical Power of Attorney must be in writing and in substantially the same language as that 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, may not authorize convulsive or psychosurgical treatment, may not authorize abortion, and may not 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 principal directing his physician to either use or withhold life-sustaining procedures if the principal is suffering from an irreversible or terminal condition. The Directive can be revoked at any time by the principal.

B. What are the statutory requirements?

The Directive must be in writing and signed by the principal (called a “declarant” in the statute).

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 meets the requirements of the Directive, the Directive will be followed.

4. Out-of-Hospital DNR

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

An Out-of-Hospital DNR is a form issued by the Texas Department of Health that, when signed by a person who has a terminal condition, instructs paramedics and other healthcare professionals not to administer resuscitation or other life support measures (except for comfort), even if the person is not a patient in a hospital. If emergency personnel are called for the person, the form must be carried on the person or the person must have a special identification bracelet to show that he or she has executed the form—otherwise full cardiopulmonary resuscitation will be administered.

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. That form has a red Texas logo on the top. 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 witnessed by two witnesses, and the doctor must also sign the form, stating that the patient is terminal. 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
1701 River Run Road, Suite 300
Fort Worth, Texas 76107
(817) 870-0060

You can also go online at <http://www.dmv.org/tx-texas/organ-donor.php>.

LifeGift can give you instructions about becoming a donor and can help you with completing an organ donation card. The organ donation card you will complete has a “DONOR” sticker attached, which should be placed on the front of your driver’s license to identify you as an organ donor.

6. Do I need an attorney?

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

Many of these forms are available for your use online, including at:

http://www.dads.state.tx.us/news_info/publications/handbooks/advancedirectives.html

<http://texasprobate.co/professional-forms/disability-planning-forms/>.



TRUSTS

1. What is a trust?

In a trust, legal title to property is held by one person or entity, known as the “trustee,” and the beneficial ownership belongs to one or more other persons, who are known as “beneficiaries.” The terms of the trust are in the written “trust agreement,” which defines how the property is to be managed by the trustee and under what circumstances the assets are to be distributed to beneficiaries. A trust is a useful tool for managing the assets of minors or incapacitated individuals who lack the capacity to handle their own assets. Trusts may also reduce estate taxes and other transfer taxes.

2. How is a trust created?

A trust is created by a legal document prepared and signed by the grantor or settlor. Any person with legal capacity and the right to transfer assets may create a trust that is effective either during life or at death by will. A trust created during one’s lifetime is an “inter vivos trust” or “living trust.” A trust established by will is known as a “testamentary trust.” An inter vivos trust can be either revocable or irrevocable. In Texas, a trust is treated as revocable unless it contains language specifically stating that it is irrevocable.

3. Who can and should be the trustee?

The trustee may be any competent individual or a corporation with legal capacity to act as a trustee under Texas law. An individual trustee does not have to live in Texas, even if the trust is set up in Texas. More than one person or entity can serve as trustee. The trustee manages the assets and distributes trust assets according to the trust agreement. The trustee owes fiduciary duties to the beneficiaries, so the trustee should be a person, entity or combination thereof that will follow the terms of the trust, as well as manage, invest, and distribute the assets in accordance with the trust agreement.

4. Why would I create a testamentary trust?

Some testamentary trusts provide for reduction or deferral of estate taxes. For example, property can be left in a trust (commonly known as a “bypass” or “credit shelter” trust) to maximize the use of the estate tax exemptions for a married couple. A testamentary trust further allows you to bridge the gap between life and death, allowing you to care for family and loved ones after your death. Specifically, a testamentary trust can also provide for qualified management when the ultimate beneficiary, such as a minor child or an incapacitated individual, cannot properly manage the assets. The settlor can determine when the beneficiaries shall receive the property.

5. What is a living trust?

A living trust is a trust set up during your lifetime to hold legal title to assets. Common living trusts include a revocable living trust (also known as a “loving trust” or a “Dacey Living Trust”), a charitable remainder trust, an insurance trust, a children’s trust, or a charitable lead trust. However, due to recent developments, a living trust typically refers to the loving trust or Dacey Living Trust. Typically, the creator of the trust is also the trustee. Living trusts are heavily marketed as a solution to all estate planning needs. In many cases, however, the living trust is not superior to a will, and is often more expensive to establish than a will.

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

A living trust permits the heirs to avoid probate if title to all assets are transferred to the trustee of the trust. Assets titled in the name of the living trust avoid probate because they are not owned by the person who died. However, if all of the assets are not transferred to the living trust before death, the goal of avoiding probate will not be accomplished. Assets not owned by the living trust may be subject to probate. To avoid such situation and make certain that all of the property is disposed of in accordance with the living trust, you should also have a will leaving all assets to the living trust (known as a "pourover will"). A pourover will assures that all assets will be disposed of according to the living trust.

7. Should I set up a living trust to avoid probate?

Because Texas allows for an independent administration of an estate (executor is not subject to the probate court control or supervision), the probate process can be fairly simple. Therefore, in Texas, avoiding probate is not a reason for establishing a living trust.

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

Yes, there are other reasons to establish a living trust. They are:

- A. Avoiding ancillary administration. If you own real property in another state, a probate proceeding is necessary in that state to clear title to the property. If you establish a revocable trust and transfer title to that out-of-state real property to the trust (whether you transfer any other property to the trust), you will be able to avoid the ancillary administration.
- B. Management of assets. If you want to allow someone else to manage your assets in the future, the living trust can transfer management of property to another person in the case of incapacity. This helps avoid guardianship.
- C. Privacy. A will is a matter of public record. Often, if the estate is subject to full administration, identification of all assets become public record. If privacy is important, a revocable trust can keep asset information private.

9. How are living trusts taxed?

Income from a living trust is reported on the trust grantor’s income tax return. No separate tax return is necessary for the revocable living trust.

10. Do 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 living trust. However, provisions may be included within the living trust to minimize or defer estate taxes. It should be noted that the same provisions may be included in a will as well.

11. What is a Special Needs Trust?

A special needs trust (also known as a “supplemental needs trust”) is a trust designed to allow a beneficiary to collect funds for services and needs that are not provided by state or other government sponsored programs. Specifically, it is used to provide for disabled persons that need to continue to receive medical coverage through Medicaid, or for older adults needing Medicaid assistance to cover nursing home expenses. If set up properly, the assets in the trust will not be treated as available assets for purposes of qualifying for Medicaid benefits. It allows the trust assets to supplement, but not supplant, the benefits available from governmental sponsored programs.

GUARDIANSHIP



1. How is a guardianship initiated?

Any interested person may request the probate court to appoint a guardian for someone the person believes to be incapacitated. In Tarrant County, Guardianships are heard by the probate courts. The Court Investigators investigate the need for Guardianship for alleged incapacitated individuals.

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, manage money, and similar matters.

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 all rights and powers except those granted to the guardian are kept by the incapacitated person.

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.

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 two or more eligible persons are equally entitled to be appointed guardian, and a person has not been named in a Designation of Guardian, the court will appoint a guardian in the following order of priority:

- A. the incapacitated person’s spouse;
- B. the person’s next of kin; or
- C. 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.

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 to be paid out of the incapacitated person's estate. Those costs can be several thousands of dollars in the year the guardianship is created. There will be costs each year the guardianship continues, 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.

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 incapacitated person has been personally served with the application for guardianship.

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 request a jury trial. The judge or jury will determine if the person is incapacitated and may find that the person 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 insure 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. 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 if 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.

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 behavior. For purposes of mental health treatment in Texas, mental illness does not include persons who suffer from epilepsy, senility, alcoholism, or mental deficiency. A person suffering from mental retardation is not considered mentally ill and should receive assistance through a mental health and mental retardation agency.

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 behavior that endangers self, other persons or property, you may seek to have a Magistrate's Warrant issued by calling the Tarrant County MHMR at 817-569-5294, Monday through Friday, 8:00 a.m. to 5:00 p.m., or appearing at the office located at 1051 Haskell Street, Fort Worth.

Tarrant County MHMR also has a Crisis Line at 817-335-3022 which offers screening for clinics and referrals. The Crisis Line is answered 24 hours a day, 365 days a year

For those not in crises but needing support services, Mental Health America of Great Tarrant County has a Warm Line at (817) 546-7826 from 1 p.m. to 5 p.m. weekdays.

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 to be examined 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/herself or others, or is experiencing substantial mental or physical deterioration, the doctor will refer the case to the District Attorney who may place the person in protective custody and initiate the commitment process for involuntary treatment. An attorney will be appointed to represent the patient and a hearing will be scheduled. After hearing the evidence, the judge may sign an order committing the patient for inpatient treatment for up to 90 days.

4. What if the person needs immediate attention for mental illness?

If an emergency exists, you should immediately contact the police. A police officer may take the person to the nearest hospital emergency psychiatric unit for evaluation and the process for commitment may be initiated as described in paragraph 3.

5. Who is responsible for the costs of obtaining a mental health commitment?

The person requesting the commitment is responsible for paying the filing fee if the District Attorney files the application for commitment. Additional fees may be incurred when seeking commitment in a private hospital.

6. Are mental health records confidential?

Yes, all mental health records are confidential and are not available to the public. A patient may have access to their mental health records.

7. Providers of Mental Health Services in Tarrant County

Mental Health Mental Retardation of Tarrant County
3840 Hulen Street, North Tower
Fort Worth, Texas 76107
(817) 569-4300
<http://www.mhmrtc.org>

Mental Health America of Greater Tarrant County
3136 W. 4th Street
Fort Worth, Texas 76107
(817) 335-5405
www.mhatc.org

NAMI of Tarrant County
3136 W. Fourth Street
Fort Worth, Texas 76107
(817) 332-6600 (message line)
(817) 332-6677 (office open afternoons)
www.nami.org



SERVICES AND RESIDENTIAL ALTERNATIVES

1. What services and residential alternatives exist for seniors?

There are a wide variety of living choices for seniors today. These range from living independently in your own home to round-the-clock care available at nursing homes. There are a number of intermediate alternatives. In addition, there are other services available, such as senior centers and adult day care.

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. In Tarrant County, the senior centers are managed by Senior Citizen Services, a non-profit agency which receives funding from a number of sources, including the Tarrant County Area Agency on Aging.

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?

There are two types of 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/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 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.

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 only offer 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 nursing home. The resident will reside in his or her own apartment, but there is a range of services and assistance 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 also 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 who need supervised living but do not require the level of care provided by a nursing facility.

8. What are nursing homes?

Nursing homes provide the highest level of nursing care short of hospitalization. Nursing homes 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. Nursing homes 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 Department of Aging and Disability Services (DADS).

9. For the services and living arrangements described above, is financial assistance available?

Under some circumstances, DADS will provide for or subsidize the cost of adult day care services. Home health care services may be paid by Medicare or Medicaid. Additionally, DADS can provide PAS services for qualified adults. Nursing home costs may be paid by Medicare or Medicaid. Medicare is available for a person who has moved to a nursing home from a hospital. If certain conditions are met, Medicare will pay entirely for the first twenty days; after that, the patient will pay a co-payment. Medicare benefits are available only if a skilled

nursing facility is required. Seniors in financial need (who meet the certain other requirements) can have their care subsidized by Medicaid. Also, Medicaid will provide subsidies for certain assisted-living environments under the Community Based Alternative Program (CBA). Contact the Texas Department of Aging and Disability Services for information about these services.

10. How should I decide which type of facility is best for me or my loved one?

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.

PLANNING FOR END OF LIFE

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 with a terminal illness. 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 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 of us has the right to die pain-free and with dignity and that our families will receive the necessary support to allow us to do so. The focus is on caring (palliative), not curing. Hospice care is provided wherever patients consider home, whether at a free standing hospice facility, hospital, nursing home, assisted living facilities, 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's 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 their physician, other healthcare 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, 1-800-658-8898.

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 reads 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. Is there any special equipment or changes I have to make in my home before hospice care begins?

Your hospice provider will assess your 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. How many family members or friends does it take to care for a patient at home?

There is no set number. One of the first things a hospice team will do is prepare an individualized care plan that will, among other things, address the amount of caregiving a patient needs. Hospice staff visit regularly and are always accessible to answer questions and provide support.

9. Must someone be with the patient at all times?

In the early weeks of care, it's usually not necessary for someone to be with the patient all the time. Later, however, since one of the most common fears of patients is the fear of dying alone, hospice generally recommends that someone be there continuously.

10. How difficult is caring for a dying loved one at home?

It's never easy and sometimes can be quite hard. At the end of a long, progressive illness, nights especially can be very long, lonely and scary. Hospices have staff available around the clock to consult with the family and to make night visits, as appropriate.

11. 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.

12. 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.

13. 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.

14. 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.

15. Is hospice care covered by insurance?

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

16. 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. (Angels In Waiting Hospice, LLC does not deny patient care for lack of funds.)

17. 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.

18. Who can get Medicare hospice benefits?

You can get Medicare hospice benefits when you meet all of the following conditions:

- * You are eligible for Medicare Part A (hospital insurance), and
- * Your doctor and the hospice medical director certify that you are terminally ill and have six months or less to live if your illness runs its normal course, and
- * You sign a statement choosing hospice care instead of other Medicare-covered benefits to treat your terminal illness, and
- * You get care from a Medicare-approved hospice program.

19. What will Medicare pay for?

Medicare will pay for doctor services, nursing care, medical equipment, medical supplies, drugs for symptom control or pain relief, social worker services, speech therapy, dietary counseling, grief and loss counseling for you and your family, short-term inpatient care, and short-term respite care.

20. What benefits are NOT covered by Medicare benefits?

When you choose hospice care, Medicare won't pay for any of the following:

- Treatment for the terminal illness which is not for symptom management and pain control;
- Care given by another healthcare provider that was not arranged for by the patient's hospice; and
- Care from another provider which duplicates care the hospice is required to provide.



FUNERAL ARRANGEMENTS

1. Who is responsible for burial arrangements?

The Texas Department of Health regulates the burial of Texas residents. Under Texas law, unless other directions have been given by the decedent, a decedent's surviving spouse has the responsibility and obligation to provide disposition of the decedent's remains. If there is no surviving spouse, the responsibility falls to these persons, in this order: the adult children of the decedent, the decedent's parents, the decedent's adult siblings, and finally those persons within the nearest degree of kinship under the Texas laws of intestacy. In such a case, a written statement of the informant's relationship to the decedent is necessary. If the person with primary responsibility does not take steps for disposition of the decedent's remains, then the next person in priority can assume the responsibility. If none of those persons make a claim for burial, the responsibility falls upon an officer of the State of Texas. If a body is not claimed within 72 hours of death, the institution with control of the body will begin looking for relatives or persons able to assume responsibility for burial. Each Texas county has regulations providing for the burial, interment, or cremation of those who are poor and for whose burial no one will take responsibility.

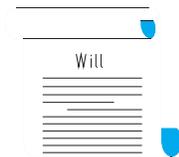
2. Are there any regulations regarding embalming and cremation?

Bodies not claimed within 24 hours of death will be embalmed; otherwise, there is no provision in Texas law requiring embalming. There is no right under Texas law to be cremated. A person who wishes to be cremated must make a written directive before death. Without a written directive, the funeral provider probably will not cremate if the next of kin objects. Some Texas counties may have procedures for handling of decedent's remains where the disposition may include cremation.

3. What advance arrangements can be made?

Anyone can make advance burial arrangements with a funeral home. The provisions of those arrangements will control the details of burial or interment. Some people leave directions about burial in a will, but often such directions 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 are easily found. You should discuss your preferences with the persons likely to be making the arrangements.

WILLS



1. Do I really need a will?

A will is an important tool—through it you can make sure that your assets are distributed the way you want, you can designate the persons who are to handle the administration of your estate, and you can arrange for the care of loved ones.

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

If you do not have a will, the State of Texas has effectively written one for you. Your assets will pass to those persons listed in the Texas Probate Code. Under the rules of intestacy, your assets will pass to your closest family members. (See question 14 on page 40 of this handbook for a description of the rules of inheritance by intestacy.) Where there are no close relatives and the distant relatives cannot be located, only then will your property pass to the State. The problem with letting the State write your will is that the persons who receive your assets under the law may not be those whom you want to receive your assets.

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

A computer-generated will document bought in a retail store may be effective, but great caution should be taken in using such a product. Texas law requires specific 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, which makes the proof process simpler and less costly. If the will omits specific language, the cost of administration may actually be increased, rather than decreased.

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

Because each state has its own rules concerning the requirements for a valid will, it is a good idea to have a will from another state reviewed by an attorney. The will from another state may be effective in Texas, but often does not provide for an Independent Executor or have a self-proving affidavit.

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

It is a good idea to review your will periodically, especially when a significant change, such as marriage, divorce, birth, death of a beneficiary or an executor, or a significant change in your health, or the nature or character of your assets, occurs in your life. If there have been no major changes in your family or the size of your estate, 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?

Your will must be signed and witnessed (“executed”) in accordance with specific Texas laws. It is advisable to consult with an attorney to prepare the will. There are certain formalities necessary to execute the will. A written will must be witnessed by two persons. These persons may not be related to you or named as beneficiaries in the will. A notary public must notarize the self-proving affidavit. This is an affidavit attached at the end of the will stating that the will was executed in accordance with the formalities required by law. If the affidavit is attached to the will, then it is not necessary for the witnesses to appear in court when the will is offered for probate.

7. Can I handwrite my own will?

Yes. It is possible to prepare your own will. To be effective, a handwritten will must be written entirely in your own handwriting. It also must be signed and dated. It does not have to be notarized or witnessed. **Note:** A handwritten will is not recommended; it may not adequately dispose of your property or provide for the proper administration of your estate. But a handwritten will is preferable to no will.

8. Can I make a verbal will?

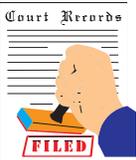
No. Even if you tell someone who you want to receive your property at your death, those verbal instructions are not valid. Your family and friends will be required to give your property to those persons required under the rules of intestacy as described in question 2 above.

9. Does a will dispose of all my property?

Not necessarily. A will controls assets that are titled in your name and for which no specific disposition is otherwise provided. Several types of assets pass by contract. These include annuities, life insurance policies, retirement plan benefits, and joint bank accounts. Joint bank accounts (and other types of assets such as brokerage accounts and stocks) will not pass under the will if they are set up as joint tenancy with right of survivorship accounts (JTROS), as community property with right of survivorship accounts, or as a pay on death account (POD). These are special types of ownership which allow property to pass automatically to the co-owner of the property. Since the will does not control these assets, it is important to coordinate the beneficiary designations of annuities, life insurance policies, and retirement plan benefits with beneficiary designations of the will.

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

You can execute a new will at any time if you have legal capacity. You have legal capacity and thus can make a valid will if you understand the nature and character of your property and know the members of your family or other people whom you want to receive your property. You must also use your own independent judgment and not be subject to the undue influence of another person. In Texas, a new will revokes all earlier wills.



PROBATING WILLS AND ADMINISTRATION OF ESTATES

1. What is probate?

Probate is the court process by which a will is proved: (1) to be valid or invalid, (2) to be the last will of the deceased person, and (3) to have revoked all previous wills. When a will is proved in court to be valid, it is "admitted to probate." However, the term "probate" usually includes all proceedings related to the administration of the estate of a deceased person. The deceased person is referred to as the "decedent." Most probate proceedings are started by filing an application to probate a will and require a hearing in court.

2. Is probate always necessary?

Probate is necessary if there are assets that are titled in your name that need to be transferred to the persons named in your will (or your heirs-at-law if there is no will). Probate will be necessary if there are debts owed to creditors. If all your property passes to other persons by means of beneficiary designations, and you have no debts at the time of your death, then probate will not be necessary. (See question 6 on page 27.) But most people cannot structure their assets in such a manner as to avoid probate, and a will is therefore desirable.

3. How do I probate a will?

The first step is to have a court hearing to determine the validity of the will. If the will is admitted to probate, generally an independent executor or administrator is appointed. That person is responsible for gathering the assets of the estate, paying the debts and expenses, and distributing the assets to the persons named in the will (the beneficiaries). In most cases, an attorney is necessary to probate a will. It is strongly recommended that an attorney be consulted in all cases to determine if probate is necessary.

4. Is probate expensive?

The cost of probate depends upon the nature of the assets and the complexity of the estate administration. In Texas, probate does not have to be expensive. 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. The will can also eliminate the necessity for a bond. A bond premium can be a costly part of estate administration. If the will provides for no bond and for an independent executor, then the cost of probate can be significantly reduced.

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

Generally, a will must be admitted to probate within four years after the date of death. There are some limited exceptions to the four-year time limit. If over four years have passed since death, ask your attorney to determine if an exception applies.

6. What does the administration of an estate involve?

The administration of an estate involves: (1) gathering the assets of the decedent; (2) reviewing and, if proper, paying the decedent's debts, and paying expenses of the administration and taxes of the estate; and (3) distributing the remaining assets to those entitled to them under the terms of the will or to the heirs determined under the 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, the court generally requires only that the independent executor or independent administrator provide proper notice to creditors and file a sworn inventory, appraisal, and list of claims within 90 days. The advantages of an independent administration are: (1) reduced cost of administering the estate, and (2) faster, more efficient administration because decisions can be made and actions taken without court permission. The disadvantages are: (1) it is difficult and expensive for an heir to force an unwilling independent executor or independent administrator to disclose information, and (2) 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 loses.

8. How is an independent administration created?

An independent administration may be created in the will of the decedent or by the probate court with the permission of all the beneficiaries of the estate. To create an independent administration by will, the will must contain special language showing the decedent's intent to avoid administration by the court. Under certain circumstances, the probate court can create an independent administration when all the persons entitled to the estate agree to it.

9. What is a dependent administration?

In a dependent administration, the court chooses and appoints an administrator and closely supervises and controls the actions of the administrator. The Texas Probate Code provides an order of preference for choosing who is appointed—first, the surviving spouse, then next of kin. In a dependent administration, the administrator must be bonded, must file annual and final accounts, and must usually apply for and receive court approval prior to acting. Dependent administration generally is expensive and lengthy because of the court supervision, but court supervision may provide the best protection for the persons entitled to the decedent's estate.

10. When is a dependent administration necessary?

A dependent administration is necessary when (1) the decedent dies without a will, or (2) the will names no executor, or (3) the executor named in the will predeceases the decedent, the executor is unable or unwilling to serve, or the executor is disqualified from serving and the will fails to name a successor executor, or (4) the will fails to use special language making the executor an independent executor. In some complicated probate cases, the attorney representing the executor or administrator may recommend a dependent administration to protect the personal representative of the estate.

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.

12. What are letters testamentary and letters of administration?

These are documents issued to the executor or administrator demonstrating authority to act for the decedent's estate. These documents are issued by the Probate Clerk or County Clerk after the executor or administrator has been appointed by the court and has qualified.

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

The heirs of the intestate decedent and their shares of the estate must be determined in an heirship determination proceeding. At a court hearing, the judge hears evidence identifying all heirs and their shares of the estate. A court-appointed attorney represents the interests of unknown heirs, known heirs who cannot be located, heirs suffering from disability, and minors.

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

A. Community Property

1. All the decedent's community property (i.e., his or her one-half of the community property belonging to the married couple) passes to the surviving spouse if
 - no child or other descendant of the decedent is surviving, or
 - all surviving children or descendants of the decedent are also children or descendants of the surviving spouse.
2. If neither of those conditions apply, all the decedent's community property (i.e., his or her one-half of the community property belonging to the married couple) passes to all the decedent's children. The surviving spouse retains his or her one-half of 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;
 - the children or their descendants inherit 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 Probate 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 the separate property.

C. Decedents not survived by a spouse or children (or children's descendants)

- all property goes to the near kin as defined by the Probate Code.

The Texas Probate Code defines "child" to include an adopted child. An adopted child may inherit from a biological parent as well as from an adoptive parent under most circumstances.

See page 4 of this handbook for an explanation of community property and separate property.

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

The alternate procedures to a full administration of an estate are:

- A. Probate of the will as a muniment of title;
- B. Heirship determination;
- C. Small estate affidavit; or
- D. Affidavit of heirship.

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

A muniment of title is the simplest and quickest type of probate and is usually the least expensive. It is a simplified procedure used when all that is needed is to transfer title to assets. 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, friction among the devisees of the will, or creditor problems.

A court can probate a will as a muniment of title only when there are no unpaid debts, excluding debts secured by liens on real estate, and there is no need for administration. Although the will must be proved to be a valid will at a probate hearing, no executor will be appointed. The court's order admitting the will to probate is legal authority to all persons for payment or transfer to the persons described in the will as entitled to receive the particular asset, without an administration.

After the will has been probated as a muniment of title, the beneficiaries of the estate become the owners of the property.

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

An order determining heirship, which also states that there is no necessity for administration, is sufficient legal authority to all persons for payment or transfer to the heirs as determined in the court's order.

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

A small estate affidavit is a simple probate procedure appropriate for small, simple 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 assets of the decedent, not counting the homestead and exempt property and any debts secured by those, must exceed the known liabilities of the decedent;
- B. No will is being offered for probate and there is no petition for dependent administration pending;
- C. Thirty days have elapsed since the decedent's death;
- D. The value of all assets of the estate, not including homestead and exempt property, does not exceed \$50,000;
- E. An affidavit is filed with the Probate Clerk, sworn to by two disinterested witnesses, by every adult distributee of the decedent, by the natural guardian or next of kin of a minor distributee of the decedent, and by the guardian of any incapacitated distributee of the decedent;
- F. The affidavit must contain information showing that the requirements of items 1-4 above are fulfilled, and must include a list of all known assets and liabilities of the decedent, the names and addresses of the distributees of the decedent, and family history concerning heirship that shows the distributees' rights to receive the money or property of the estate of the decedent; and
- G. The judge reviews the small estate affidavit, and if the affidavit conforms to the requirements, approves the affidavit.

19. What does a small estate affidavit do?

Persons who pay, deliver, transfer, or issue assets of the decedent to the distributees based upon a small estate affidavit are released as if they had dealt with a personal representative of the estate. Distributees can sue to force delivery of estate property. The distributees are heirs, creditors, or anyone else having a prior right to the property. A small estate affidavit does not transfer title to real property, except for a homestead. 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.

20. What is an affidavit of heirship?

An affidavit of heirship is a document used instead of probate or estate administration. There is no court action or involvement. An affidavit of heirship transfers assets to the heirs of the decedent. To determine who inherits and their shares, the decedent is considered to have died without a will (intestate) so the devisees named in a will don't inherit under the terms of the will. When using an affidavit of heirship procedure, no will is probated.

The affidavit gives the names of the heirs of the decedent and family history concerning heirship that shows the heirs' rights to receive the property of the estate of the decedent. It is signed and sworn to by two witnesses (one of whom is not an heir) who are familiar with the family history of the decedent. 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. The affidavit is usually used to transfer real property. A separate affidavit of heirship form transfers title to motor vehicles and it can be obtained from the tax-assessor collector at county offices or a sub-courthouse.

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

Each state has jurisdiction and control over the real property inside its own borders. For that reason, the executor or administrator appointed in Texas to probate the estate in Texas does not have authority over real property located in any other state. When a person dies owning real property (including royalties or other mineral interests) outside of Texas, the Texas executor or administrator of his or her estate usually has to open an “ancillary administration” in each state where the decedent owned real property. The purpose of the ancillary administration is to pass title to the property in that other state to the proper beneficiary or otherwise to transact business relating to that property. The expense and difficulty of ancillary administrations varies from state to state; however, a person may avoid this added expense and difficulty by disposing of such real property during life or by placing it in a lifetime trust for the reasons stated in the prior section on Trusts.

SERVICES & RESOURCES



ASSISTANCE FOR CAREGIVERS

Adult Protective Services (elderly abuse).....	(800) 252-5400
Community Living Assistance & Support Services (Easter Seals)	(817) 332-7171
Guardianship Services, Inc.	(817) 921-0499
Health & Human Services Office (Food stamps & Medicaid)	(817) 625-2161
Heritage Adult Day Care.....	(817) 534-1935

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
Public Information & Assistance.....	(800) 806-2092
Insurance Board (consumer complaints)	(800) 252-3439

COUNSELING

CAPS (Children of Aging Parents).....	(800) 227-7294
Catholic Charities, Fort Worth	(817) 921-5381
Counseling Center @ Southwestern	(817) 921-8790

FINANCIAL ASSISTANCE

211 Texas (General Information)	211
Texas Medicaid	(800) 252-8263
Medicare	(800) 633-4227
Veteran's Assistance	(800) 827-1000

FOOD SERVICE

Meals on Wheels, Inc.	
Tarrant County	(817) 277-3705
Johnson County	(817) 558-2840
Northeast Tarrant County (Metroport Meals on Wheels)	(817) 491-1141
Senior Citizen Services Of Tarrant County	(817) 413-4949

GENERAL INFORMATION

For General information call	211
Area Agencies on Aging	211
American Association of Retired Persons (AARP)	866-554-5377
Probate Clerk's Office.....	(817) 884-1254
Texas Legal Services Center Hotline	(800) 622-2520

HEALTH ISSUES

Alzheimer's Association-Main Office.....	(817) 336-4949
American Cancer Society	(817) 737-9990
American Diabetes Association	(800) 342-2383

LEGAL SERVICES

Dispute Resolutions	(817) 877-4554
Lawyer Referral Service of Tarrant County	(817) 336-4101
Legal Aid of Northwest Texas	(817) 336-3943
Legal Hotline for Older Texans	(800) 622-2520
Tarrant County Criminal DA's Office.....	(817) 884-1623
Tarrant County Bar LegalLine (2nd & 4th Thursday of each month, 6-8pm).....	(817) 335-1239

LONG TERM CARE

Health & Human Services Commission.....	(817) 927-2834
Long Term Care Services	(817) 625-2161
Long Term Ombudsman	(817) 335-5405
TX Long Term Ombudsman (Hotline for complaints or to check on facility)	(800) 252-2412
TX Department of Aging & Disability Services, Consumer Rights & Services	(800) 458-9858

SENIOR CITIZEN SERVICES

Senior Citizens Services of Tarrant County	(817) 413-4949
.....	www. scstc.org

SOCIAL SERVICES

Social Security Administration Information	(800) 772-1213
Texas Department of Health & Human Services Commission	
Arlington	(817) 460-6491
Jacksboro Highway	(817) 625-2161
Department of Health Services, Mental Health & Substance Abuse	(800) 252-8154
Department of State Health Services, Licensing and Complaints	(512) 834-6650
Department of Aging & Disability Services (DADS)	(800) 458-9858

TELEPHONE ASSURANCE

(Programs designed to provide homebound persons with a telephone call on a regular basis from trained volunteers.)

United Community Centers:

Bethlehem Community Center	(817) 332-7911
Maddox Community Center	(817) 926-5329
Mid-Cities Care Corps	(817) 282-0531
Polytechnic Community Center	(817) 531-2803

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.)

Care Corps (Mid-Cities)	(817) 282-0531
Handitran (Arlington)	(817) 459-5390
The T	(817) 332-4444

VETERANS BENEFITS

VA Benefits	(800) 827-1000
Education Customer Service Office	(888) 442-4551
Headstones and Markers Memorial Programs Service	(800) 697-6947
Insurance Center	(800) 669-8477
National Suicide Prevention Lifeline (Veterans Crisis Line)	(800) 273-8255
Telephone Assistance Service	(800) 749-8387
Telecommunications Device for the Deaf (TDD)	(800) 829-4833

VOLUNTEER PROGRAMS

Volunteer Income Tax Assistance/Tax Counseling for the Elderly (AARP Tax Aid) Drivers Safety Information Line	(888) 227-7669
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USEFUL WEBSITES

Administration on Aging	www.aoa.gov
AgeNet (Aging Research Network)	www.Agenet.org
Age of Reason	www.wiredseniors.com
Aging with Dignity	www.agingwithdignity.org
Alzheimer's Association	www.alz.org
American Association of Retired Persons	www.aarp.org
Department of Health and Human Resources	www.hhs.gov

Environmental Alliance for Senior Involvement	www.easi.org
Federal Benefits Guide for VA	www.va.gov
Gerontological Society of America	www.geron.org
Huffington Center on Aging	www.hcoa.org
Long-term care information.....	www.ownyourownfuturetexas.org
Medicare (official government site).....	www.socsec.org
National Aging Information Center	www.womenshealth.gov
National Council on Aging	www.ncoa.org
National Council on Aging -- Benefits Check-Up.....	www.benefitscheckup.org
National Institute on Aging	www.nih.gov/nia
National Senior Citizens Law Center	www.nsclc.org
Organ Donations	www.nationalnetworkoforgandonors.org
Pension and Welfare Benefits Administration	www.dol.gov/ebsa
SeniorCom.....	www.senior.com
Senior Law.....	www.seniorlaw.com
SeniorNet	www.seniornet.org
Senior's Resource Center	www.srcaging.org
Social Security Administration	www.ssa.gov
Special Committee on Aging.....	http://aging.senate.gov
Tarrant County Cares.....	www.tarrantcares.org
Tarrant County DA's Office	www.tarrantda.com
Texas Department of Aging & Disability Services,.....	www.dads.state.tx.us
Texas Lawyers for Texas Vets	www.txltxv.org
Texas Medicaid (A Consumer Guide to Better Healthcare)	www.tmhp.com
VA Home Page.....	www.va.gov
(For information on Healthcare, Benefits, or anything not listed below, see the main website above)	
VAHealth Site for veterans, including prescription refill	www.myhealth.va.gov
VA Burial and Memorial Benefits	www.cem.va.gov
VA Forms	www.va.gov/vaforms
VA Education Benefits	www.gibill.va.gov
VA Home Loan Guaranty	www.benefits.va.gov
VA Life Insurance.....	www.benefits.va.gov/insurance
VA Mental Health	www.mentalhealth.va.gov
VA Records	www.archives.gov/st-louis/military-personnel
Returning Veterans.....	www.oefoif.va.gov
Veterans Employment and Training	www.dol.gov/vets
VA Benefit Payment Rates	www.benefits.va.gov/compensation
Texas Veterans Commission	www.tvc.state.tx.us
Links to National Veterans Service Organizations.....	www.va.gov

HELPFUL PERIODICALS FOR SENIORS (FREE PUBLICATIONS)

ID Theft: What's It All About; Federal Trade Commission	9015 Junction Drive, Suite 2 Annapolis Junction, MD 20701 1-877-FTC-HELP or 1 877-ID-THEFT
Own Your Future-Planning Guide For Long Term Care	Office of the Governor P. O. Box 12428 Austin, TX 78711 (512) 463-2000

www.TexasOnline.com

Medicare & You (Booklet updated annually)1 800-633-4227

Seniors & The Law: A Guide for Maturing Texas.....www.tyla.org
or 1 800-204-2222 X2610

“Take Charge: Fighting Back Against Identity Theft”
published by the Federal Trade Commission.....1 800-458-9858
.....or www.consumer.gov/idtheft

Your Guide to the Medicaid Estate Recovery Program.....1 800-458-4338

Medicare, Medicaid, and SSI, A General Guide.....State Bar of Texas Communications Division
P O Box 12387, Austin, TX 78711
1 800-204-2222 ext. 2610
www.texasbar.com

New Lifestyles-The Source for Seniorswww.NewLifeStyles.com

Guide to Senior Housing Care in Fort Worth area

Aging with Dignity - Five Wisheswww.agingwithdignity.org
Aging with Dignity
P O Box 1661, Tallahassee, FL 32303
1 800-594-7437

**LAWYER REFERRAL SERVICE
of the Tarrant County Bar Association**

(817) 336-4101

The Lawyer Referral 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 and who does not know an attorney, the answer may be as convenient as the telephone. Call (817) 336-4101 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. That number places the caller in direct contact with the Lawyer Referral 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 Service is one of only four services in the State of Texas that meets the standards contained in the American Bar Association Model Rules.

The caller is entitled to a one-half hour consultation with the attorney for \$20. The consultation fee is waived for contingency matters. Any fees beyond the initial consultation fee will be decided between the client and the attorney. Referrals are made on a rotational basis.

LEGALLINE

Free legal advice from the Tarrant County Bar Association
on 2nd & 4th Thursday of each Month, 6 to 8 p.m.

(817) 335-1239

Tarrant County attorneys volunteer their time and expertise so that this valuable community service program may continue. LegalLine is answered at the Tarrant County Bar Association offices from 6:00 p.m. until 8:00 p.m. the second and fourth Thursday of each month. LegalLine is a completely free, no-strings-attached public service.

**TO TALK WITH A LAWYER FREE BETWEEN 6 & 8 P.M.
CALL (817) 335-1239
ON THE SECOND AND FOURTH THURSDAY OF THE MONTH.**

