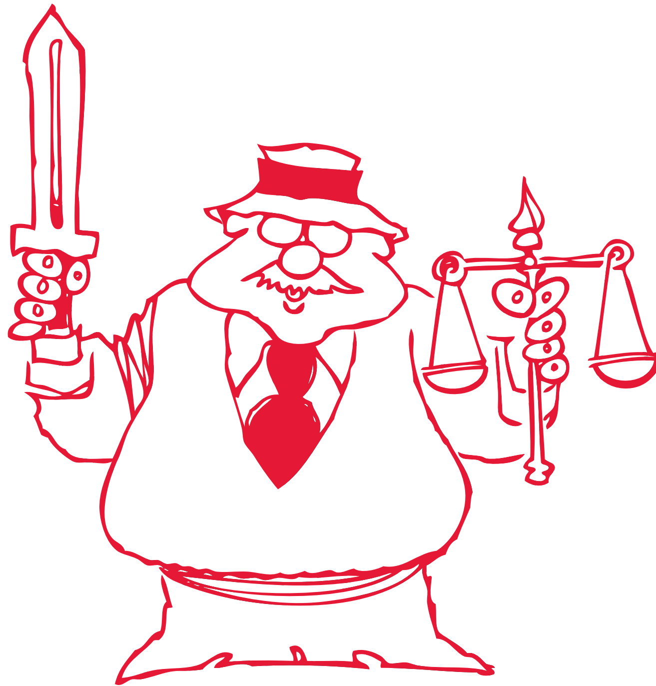
ELDER LAW



HANDBOOK

2015-2016

HOUSTON BAR ASSOCIATION
ELDER LAW COMMITTEE

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This handbook was prepared so that senior citizens and their families can become familiar with issues facing seniors. Older adults should be aware of their legal rights and ways to enforce those rights.
We tried to address problems of the elderly and how these problems can be remedied through proper planning and/or the legal process.

The handbook is divided into topics affecting the elderly in a question and answer format. All of the issues and rights of senior citizens cannot be addressed in this handbook. We hope this gives a broad overview of your rights and remedies.

This handbook is based on Texas law and is issued to inform and not advise. This is a general summary of the laws as they existed as of September 2015. This is only general and basic information and exceptions may exist. You should seek legal advice from an attorney of your choice to advise you in your particular situation.

FOREWORD

Virtually all of us have faced tough issues with legal consequences when family members have grown older. Until now, there has not been a ready source to help us plan for these inevitable events or to provide guidance to family members when they occur. To meet these needs, the Houston Bar Association's Elder Law Committee developed this handbook.

The issues and the answers are presented in a question and answer format to be more easily understood and applied. We believe you will find the material and information helpful in avoiding problems by planning and in resolving concerns when encountered. While not every situation can be foreseen, or every question answered in a booklet of this scope, we believe this handbook will assist you in your search for answers.

Laura Gibson
2015-2016 President,
Houston Bar Association

The Houston Bar Association gratefully acknowledges the contributions of the following Elder Law Committee members: Hon. Georgia H. Akers, Kelley Bentley, Melinda Brents, Joy Eckelkamp, Karen Gerstner, Linda C. Goehrs, Laura Jennett, Pi-Yi Mayo, David W. Pace, Jeff Skarda, Joellen Snow and John Yow.

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HOUSTON BAR ASSOCIATION
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SOCIAL SECURITY

What kinds of benefits are available from Social Security?

Social Security pays benefits to an eligible individual when he or she reaches retirement age or becomes disabled. Social Security also pays about twenty other categories of claimants. The most typical of the other categories are disabled workers, surviving spouses and their minor children.

How do I apply for Social Security?

You can apply for Social Security either on-line at www.socialsecurity.gov, by calling the Social Security hotline (1-800-772-1213) or in person at your local Social Security office. If you visit the office, you are often given a telephone appointment.

You will need certain information and certified copies of documents in order to apply, such as your Social Security number, your birth certificate, your military discharge papers if you have had military service, and your W-2 forms or self-employment tax return for last year. It takes time to process the application, so you should file at least three months prior to the date you intend to retire.

How much will I receive from Social Security when I retire?

By submitting form SSA-7004, called Request for Earnings, Social Security will estimate your retirement check. The amount of benefits you receive from Social Security is based on several factors: your age at retirement, your earnings during your lifetime, and the calendar date of your retirement. It is also affected by offsets such as retirement benefits from certain government-related jobs like teaching. The average monthly check in January 2015 is $1,328, for an aged retiree, with a maximum of $2,663. If you applied for delayed retirement at age 70, in 2015, the maximum benefit would be $3,501.

Can my spouse and children receive retirement benefits from my account?

If your spouse has reached retirement age, he or she can receive a benefit on your account. Your minor children (children under 18, or still in high school and under 19) and disabled adult children can also receive a benefit on your account. Those benefits, called auxiliary benefits, usually total one-half of the amount of your own check, altogether. The spouse's benefit will be reduced by any amount he or she receives on his or her own work record, and possibly by other retirement benefits he or she receives, such as teacher's retirement. Payment of auxiliary benefits does not affect the amount of the retiree's benefit.

Are the Social Security benefits I receive taxable?

In some instances, the Social Security benefits of a person will be subject to income tax. The test to determine if your benefits are taxable is somewhat complicated; currently, if a married couple's adjusted gross income combined with 50% of their social security benefits plus any tax-exempt income exceeds $32,000.00, or $25,000.00 for an individual, then the benefits will be taxable. The amount of tax that would be due is even more difficult to calculate and the amount of tax increases for married couples with an adjusted gross income above $44,000.00.

Will my spouse and children be able to collect any benefits after my death?

Yes. Your widow/widower may be entitled to benefits on your earnings record if he or she was married to you for nine months before your death, though there are some exceptions to the nine-month rule. In the case of a divorced former spouse, the marriage must have lasted for 10 years and the divorced widow must be unmarried or, if married, must not have remarried prior to age 60. The widow is eligible for benefits at age 60 or over, or at age 50-59 if disabled. The widow may also be entitled to benefits on your record at any age if he/she is caring for your minor child, or disabled adult child, who is receiving benefits on your record. The widow's benefit will be reduced by any benefit he/she is receiving on his/her own earnings record. At your death, your child will be entitled to benefits on your record if he/she is under 18, or up to age 19 and still in high school, or if the adult child became disabled before reaching age 22.

Additionally, your surviving spouse and minor children would be eligible for a one-time lump sum death benefit of $255.

What type of benefits are available if I become disabled?

Disability benefits apply to workers under age 67.5 and are paid to disabled workers, their minor or disabled adult children, and sometimes their spouses. A disabled worker must prove that he/she has a very severe impairment. Social Security denies most claims at the first and second levels, but about half of all claimants win after a hearing with a Social Security judge. It typically takes 1½ to 2 years to get to that point. If you are denied at the first or second level, or if you need help with the application, it is advisable to consult an attorney who specializes in Social Security law.

What are Supplemental Security Income Benefits?

Supplemental Security Income (SSI) is a monthly cash benefit paid to elderly or disabled adults and/or to disabled children, all of whom must meet strict tests of income and assets. SSI entitles the recipient to Medicaid. The maximum monthly benefit check in January 2015 is $733.

What are the resource limits for SSI?

SSI allows assets up to $2,000 for a single person or $3,000 for a married couple. Owning the home you live in does not count, and neither does one car per couple. There are also strict limits on income. Social Security may try to treat any cohabiting couple of the opposite sex as a married couple, so the income and resources of the live-in partner must be counted. Cohabitation decisions are mitigable. See Medicaid section for more on this topic.

How can I appeal a decision of the Social Security Administration?

Most Social Security appeals start with a request for a hearing to the Social Security Office. In only these courts, you may bring in witnesses and have an oral hearing. This hearing is your best chance of winning an appeal; the odds are fifty-fifty. If a Social Security judge makes an error, you can then file an appeal with the appeals council and take the denial to federal court. At this level, the appeal is handled through written briefs. At these higher levels, you do not have the opportunity to appear before the federal judge, bring in witnesses, or make an oral argument.

MEDICARE AND MEDICAID

What is Medicare?

Medicare is a federal health insurance program administered by the Centers for Medicare and Medicaid Services and the Social Security Administration. Medicare is the primary source for health insurance for the elderly population. Individuals who qualify for Social Security or Railroad Retirement benefits become eligible for Medicare at the age of 65, regardless of whether or not they choose to begin receiving monthly payments from Social Security or Railroad Retirement program. Also, individuals receiving Social Security disability benefits are eligible to receive Medicare twenty-four months after such benefits begin.

Medicare consists of four parts. Part A covers inpatient hospital services, post-hospital extended care services (skilled rehabilitation services), home health care, and hospice services. Part B covers physician services and medical equipment. Part C is an optional HMO plan that replaces Parts A and B. Part D became effective on January 1, 2006 and provides prescription drug coverage. Actual benefits covered by Medicare are subject to change each year. Any questions regarding Medicare may be addressed to your local Social Security office. The U.S. Department of Health and Human Services publishes a useful annual Medicare Handbook, available on-line at http://www.medicare.org.

What premiums are associated with Medicare Part A and B benefits?

The current Part A premium is $407 per month; however, most individuals are not required to pay this monthly premium. Most individuals receiving Medicare Part B pay a premium of $104.90 per month, however, individuals with a higher income may have a higher monthly premium. The Part B premium increases each year and the premium is generally deducted from the individual's Social Security check each month.

Is there any assistance available for Medicare premiums and co-payments?

Medicare cost-savings programs are offered through the Texas Medicaid program. These programs assist with Part A and B premiums, Medicare deductibles and co-insurance on Medicare services. Eligibility for these programs depends on an individual's resources and income.

What does Medicare pay for inpatient hospital services?

Medicare provides 90 days of inpatient hospital services per spell of illness, as well as a 60-day reserve. Medicare will cover all costs for the first 60 days, subject to a deductible. In 2015, the hospital stay annual deductible is $1,260. In addition to this deductible, an individual must

pay a co-payment of $315 for days 61-90, and a co-payment of $630 for days 91 through 150. After the 150th day, an individual is responsible for all costs. This co-payment is usually, but not always, covered by a Medicare Supplement Policy.

What does Medicare pay for nursing home care after hospitalization?

Medicare pays up to 100 days of therapy and skilled nursing care in a nursing home, if the stay follows a three-day hospitalization. Medicare does not cover custodial care in a nursing home, meaning that an individual must be receiving rehabilitation services in order to be entitled to the 100 days nursing home stay. Medicare pays the full cost of care for the first 20 days. In 2015, for the 21st through 100th day, there is a co-payment of $157.50 per day. However, this co-payment is usually, but not always, covered by a Medicare Supplement Policy.

What home health care services does Medicare cover?

Medicare covers home health care services, skilled nursing care and therapy for homebound individuals, when such services are prescribed by a doctor. Medicare does not pay for meals; however, an individual can receive up to 35 hours of care per week. These benefits are limited to 100 days per spell of illness.

What hospice care does Medicare cover?

Medicare provides palliative and supportive assistance to individuals who elect hospice coverage and who have been deemed terminal (i.e. a life expectancy of 6 months or less) and who elect to waive Medicare treatment coverage. Each Medicare beneficiary is entitled to receive two 90-day periods of hospice care, with an unlimited amount of additional 60 day periods.

What is a Medigap Policy?

A Medigap Policy, also called a Medicare Supplement Policy, is a private health insurance plan used to supplement traditional Medicare benefits. Medigap policies assist with the payment of deductibles and co-payments not covered by traditional Medicare. There are a wide variety of plans available and the premiums vary depending on the plan selected. When selecting a policy it is important to ensure that the plan covers the co-payment for skilled nursing facilities.

What is Medicare Part D?

Medicare Part D became effective January 1, 2006 to assist with the payment of prescription drugs. In 2015, the standard Part D coverage includes:

1. An annual deductible of $320,
2. An initial coverage limit of $2,960, and
3. An out-of-pocket threshold of $4,700.

Many individuals with several prescription drugs reach a coverage gap after meeting the initial coverage limit, but they have not reached the out-of-pocket threshold. This is commonly referred to as the “donut-hole.” In 2015, these individuals will be entitled to a 55% discount on brand-name prescription drugs while they remain in the coverage gap.

Failure to enroll in a Part D plan upon first becoming eligible or having a lapse of coverage for at least 63 days could result in a penalty added onto an individual’s Part D premium. The amount of the penalty is 1% of the premium for all months during which coverage could have been maintained.

What is Medicaid?

Medicaid provides health insurance and long-term care benefits to eligible applicants. The Texas Health and Human Services Commission is the government agency responsible for administering the Medicaid program in Texas. Medicaid provides long-term care services both in an institutional setting (i.e. nursing home) as well as in an individual's home as an alternative to nursing home placement. Since Medicare does not provide for long-term custodial care, Medicaid often becomes the only option to paying for long-term care, if an individual does not have the funds available to private pay or does not have a long-term care insurance policy.

How do you qualify for Medicaid?

Medicaid is a means-tested program, meaning that an individual must meet certain categorical and financial requirements to be eligible. To qualify for Medicaid, an individual must either be a citizen or qualified permanent resident. The individual must also be a resident of Texas. The individual must be either over the age of 65, blind or disabled. Moreover, the individual must have a medical necessity for nursing home care, meaning that the individual is in need of licensed nursing care.

To be eligible for Medicaid, an individual must have no more than $2,199 per month in income in 2015. A couple, both of whom are applying for Medicaid, can have no more than $4,398 in 2015. If only one spouse is applying for Medicaid, the spouse applying for benefits can have no more than $2,199. These numbers are adjusted each year. If an individual or married couple are over the income cap, a Qualified Income Trust, also known as a Miller Trust, can be established to qualify for Medicaid.

An individual can have no more than $2,000 in countable resources. A married couple, both of whom are applying for Medicaid, can have no more than $3,000 in countable resources. If only one spouse is applying for Medicaid and the other spouse is living at home, a protected resource amount is established and the resource limit is a minimum of $23,844 and a maximum of $119,220 in 2015. The spousal protected resource amount is the amount that the couple may keep and still become Medicaid eligible. The spousal protected resource amount may be increased, even above the maximum, in special circumstances. Certain assets, such as the home, a vehicle, burial plots and pre-need funeral contracts, may be excluded from countable resources and will not count toward the $2,000 resource limit.

Is it legal to make gifts to spend down resources for Medicaid nursing home care?

The Medicaid program assesses a penalty for all transfers that have occurred within sixty months (five years) of applying for Medicaid benefits. Transfers include charitable donations, tithing, gifts to children and sales of property for less than fair market value. All transfers for less than fair market value that have occurred within five years must be reported to the Medicaid caseworker. During the penalty period, an individual will not be able to receive

Medicaid long-term care services until the period has expired.

The penalty period is calculated by adding all of the transfers that have occurred within the last five years and dividing that number by the average daily nursing home rate, which is established by the State.

Is a nursing home stay required to receive Medicaid benefits?

Some Medicaid programs offer home based care as a more cost-effective alternative to nursing home placement. Such programs offer caregiving and other services within the patient's home. However, eligibility for such programs is subject to a lengthy wait (or interest) list for the program. These programs are known as STAR+PLUS Waiver Program, the waiver.

Does Medicaid take your home when you go on Medicaid?

Pursuant to a federal mandate, Texas created the Medicaid Estate Recovery Program ("MERP") in an attempt to recover funds from an individual who received Medicaid services. Estate recovery applies to individuals who apply for and received Medicaid services after March 1, 2005. Under MERP, when a Medicaid recipient dies, the state becomes a creditor of the recipient's estate. MERP will not attempt to recover from a surviving spouse, disabled child, minor child under the age of 21, or an unmarried child who has lived in the home of the Medicaid recipient for the year prior to the Medicaid recipient's death.

RESIDENTIAL SERVICES AND PLACEMENT

What types of residential services and placement alternatives exist for seniors?

A wide variety of residential services and placement alternatives exist for seniors within the Houston area. They include senior centers, adult day care, in-home services, retirement centers, Alzheimer's centers, assisted living, personal care homes, independent living, and nursing homes.

What are senior centers?

Senior centers, also known as recreation centers and congregate meal sites, offer daily programs (Monday through Friday) for senior citizens, which generally include a hot noon meal and a variety of social and health maintenance services such as information and referral, recreational activities, and exercise programs.

There are over 80 senior centers in Harris County, most of which are at least partially government funded. Members of the Houston Bar Association Elder Law Committee visit some of the senior centers as requested to interview eligible seniors in need of legal services offered through the HBA's Houston Volunteer Lawyers.

What is adult day care?

Adult day care facilities offer a safe environment for adults who need supervision during daytime hours, Monday through Friday, but who do not need institutionalization. Private pay services typically include a noon meal, recreational activities, exercise programs, social activities, and health maintenance programs. They are ideal for seniors who reside with family members who work during the day.

What are in-home services?

In-home services are designed to allow the senior to remain in his or her own home while receiving necessary services. Examples of such services are: primary family and home care which may include assistance with bathing, dressing, eating, cleaning the house, and doing laundry; home delivered meals; nursing services, including medication administration, injections, tube feedings, catheter care, and skin care; physical therapy; occupational therapy; speech therapy; medical social work; emergency response services; and telephone visitors. Several in-home service agencies exist in the Houston area including some with programs for low-income seniors.

What are retirement centers?

Retirement centers generally offer independent living for elderly retirees. Most are apartment complexes or towers which rent exclusively to seniors. The range of services offered by retirement centers varies tremendously, but may include complete meals; laundry; housekeeping; social, recreational, and cultural activities; day trips; transportation; exercise facilities; libraries; beauty/barber shops; and religious programs. Some retirement centers offer subsidized rent for qualified individuals.

What is independent living?

Independent living (also known as Senior Apartments, Retirement Communities, or Congregate Living) is ideal for individuals who do not require personal or medical care. These private pay facilities are a place for seniors to be with others who share similar interests and generally include apartment-style residences with the benefit of a general dining room where full meals are offered along with beauty shops, libraries, transportation services, and organized recreational activities. Many recreational activities are planned by the community including day field trips, shopping excursions and on-premises projects. Most facilities offer optional meal plans for residents, and the majority of apartments are equipped with a small kitchen so the resident may prepare his or her own meals.

What is assisted living?

Assisted living is a special program offered by some retirement centers to seniors who may not need 24 hour supervision, but may need some assistance with activities of daily living. Meals are provided along with such services as administration of medication, assistance with bathing, group activities and routine outings.

What are personal care homes?

Personal care homes are generally private residences where a limited number of seniors or disabled individuals reside. These facilities have 24 hour a day care providers who prepare meals, dispense medication, and assist the residents with bathing, dressing, personal grooming,

and eating. Funding for low income residents of such facilities is available through various programs of the Texas Department of Human Services and the Mental Health and Mental Retardation Authority. You should request to see the home's state license and local health and fire inspections. Personal care homes are an alternative to nursing home placement with a less institutionalized feeling.

What are nursing homes?

Nursing homes are the most familiar type of residential placement facility for seniors who require skilled nursing care and continuous supervision, but allow their residents to exercise less independence than other types of facilities. They offer the most sophisticated level of nursing care, short of hospitalization. Nursing homes are licensed and monitored by the Texas Department of Health. Funding is available for eligible nursing home residents through Medicare and Medicaid.

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

The most important consideration should be allowing the senior the greatest independence commensurate with his or her mental and physical abilities in addition to the usual factors to be considered such as cost, location, atmosphere, and violations of licensing requirements.

What are my Nursing Home Rights?

A resident of a nursing home has additional rights granted to them. Prior to residing in a nursing home, the admission agreement should be reviewed closely. The resident should be given a copy of Resident's Rights. These rights include but are not limited to, the right to appropriate care, treatment and services without any physical abuse and the home is required to have an individual plan of care for each resident to describe how the home will meet the resident's needs. This plan should cover nursing, rehabilitation, social services, dietary and recreational services. A resident should have the right to choose his/her own doctor, participate in the planning of care, the right to refuse treatment, and to be informed about their condition. The meals should be varied and may include bedtime snacks. If assistance is needed to eat, the staff should help. The home should offer activities. The resident has the right to visitors, the right to vote, the right to privacy when examined and the right to receive their mail unopened. A nursing home must give 30 days notice before removing a resident for non-payment.

SUBSIDIZED HOUSING

What is subsidized housing?

If you are healthy but on limited funds, you may consider applying for subsidized housing, public housing or a subsidy from your landlord. There are many types of subsidized housing, including apartments operated by the Houston Housing Authority, which are not dependent on Congressional appropriations for the number of "slots" that will be available for residents.

What types of housing subsidies exist?

There are a number of publicly and privately subsidized apartments and homes. Some of these types of subsidized housing, including the Low-Rent Public Housing Program and the Housing Choice Voucher Program, depend on Congressional appropriations. The U.S.

Department of Housing and Urban Development maintains a comprehensive list of subsidized housing. Organizations such as the United Way Information and Referral Service maintain lists of subsidized housing provided by private and religious charities. Subsidized housing also is available in the Medical Center area for those who need temporary housing because they are receiving medical treatment. For information, contact your physician or social worker.

How do I apply for subsidized housing?

It is necessary to have your name placed on a waiting list for most subsidized housing, since the demand is so great. To apply for subsidized housing, call the Houston Housing Authority to find out if a housing program's waiting list is open and ask for an application. Persons with complaints about subsidized housing have the right to a hearing, except in housing developments operated by some private charities.

WILLS

Who needs a Will?

Anyone who is 18 years of age or over or anyone who is less than 18 years of age and married or is a member of the U.S. Armed Forces and wants to direct the disposition of his or her assets at his or her death needs a Will.

How often do I need to change my Will?

Any time a significant change occurs in your life, you need to review your Will to determine if it still fits your needs. A significant change would be considered a marriage, divorce, birth, death, a move, a change of jobs, or a significant change in health or wealth. This also should include any time there is a change in the law regarding estate taxes which may cause your estate to be taxable.

Where does my property go if I do not have a Will?

The State of Texas has laws that determine how your property passes to family members upon your death. Your property will not pass to the state. However, you may want your property to go to certain family members other than those the state requires to inherit your property. If you have children, your surviving spouse or the children may inherit the property depending on the facts in each case.

How do I make a Will?

You should consult with an attorney to have him or her prepare a Will for you. A Will should be signed in front of two witnesses who are not related to you and who are not named as beneficiaries in your Will. Additionally, there are numerous internet sites that have forms to use to prepare your own Will. Be very careful in using such sites as the forms on some sites may not comply with Texas law.

Does a Will have to be notarized?

No. However, most Wills prepared by attorneys will be self-proving Wills. That means that the witnesses and the person making the Will swear in front of a notary that the Will was signed properly. If a Will has this self-proving sworn statement attached, the witnesses will not have to attend the probate hearing after the maker of the Will dies.

Can I write my own Will?

Although we do not recommend that you write your own Will, Texas law does allow it. If you do write your own Will, you must hand write the entire Will and date and sign it. You should state whom you want to receive your money and property after your death. You do not need witnesses if the entire Will is in your handwriting.

If I am very ill, can I still sign a new Will?

Yes, if you understand that you are making a Will and know what you own. You need to know who are the members of your family or other important people in your life and what each is to receive. You must understand all this at the time you sign your Will.

What should be included in my Will?

A Will should:

1. state what you want to happen to your money and property after your death;
2. appoint an independent executor without bond to handle your affairs;
3. revoke any prior Wills; and
4. provide for a guardian of any minor children.

A Will should not be used as a primary method for organ donations or burial instructions because the Will may not be reviewed until days after your death.

What property is not controlled by my Will?

Some property passes outside of your Will and is not subject to probate. Non-probate assets may include certain bank and stock accounts, U.S. Savings Bonds, life insurance, and retirement benefits if they have a named beneficiary other than your estate.

How can I change or cancel my Will?

1. By making a new Will that states it is revoking all prior Wills;
2. By destroying your Will; or
3. By signing a codicil, or an amendment, to your Will. A codicil is a document that makes changes to your Will but does not cancel your entire Will. A codicil has to be signed just as a Will is signed.

Why does it matter whether property is classified as separate or community?

Your Will disposes of all of your separate property and your one-half of the community property you own with your spouse. Your Will does not dispose of your spouse's separate property or your spouse's one-half interest in the community property.

What is community property?

Community property is all property acquired by a husband or a wife during marriage unless acquired by gift, inheritance, or a personal injury settlement. Income from separate property is also community property. It does not matter who earned the money or whose name appears on the account. Community property is owned one-half by the husband and one-half by the wife.

What is separate property?

Separate property is any property acquired before the marriage and any property acquired by gift, inheritance, or personal injury settlement during the marriage.

What can I do to make sure my pets will be maintained when I die or become disabled?

A pet trust can be created to be sure your pet receives proper care after you die or in the event of disability. In your will, you give your pet and enough money or other property to a trusted person or bank (the "trustee") who is under a duty to make arrangements for the proper care of your pet. The trustee will deliver the pet to your designated caregiver and then use the property you transferred to the trust to pay for your pet's expenses. You may create a pet trust either while you are still alive or upon your death by including the trust provisions in your will.

BANK ACCOUNTS AND SAFE DEPOSIT BOXES

How do bank accounts pass after my death?

This depends on what your original signature card stated when you opened the account. Some types of bank accounts pass under the terms of your Will and some accounts override the terms of your Will. The following is a list of common accounts that banks offer and how each passes after death:

1. Multiple-Party Account Without Right of Survivorship — This account is established in two names. Each person on the account has an ownership interest in the account equal to the amount each contributed. The bank may pay any sum in the account to a name on the account at any time. Your rights in the account pass under the terms of your Will to your heirs. In other words, your heirs will inherit the amount you owned in the account at the time of your death.

2. Multiple-Party Account With Right of Survivorship — This account is established in two names and functions in the same way as the above account. The only difference is that the survivor of the two inherits whatever is left in the account. This type of account overrides your Will.

3. Payable on Death Account (POD) — This account will belong to the person establishing the account (the "Depositor') as long as that person is alive. However, when the Depositor

dies, the property will pass to the beneficiary named when the account was established. This type of account overrides your Will.

4. Convenience Account — This account is established in two names, the Depositor and the Co-signer. The Co-signer may write checks for the convenience of the Depositor as long as that person is alive. However, at the Depositor's death, the money does not pass to the Co-signer. Instead, it will pass to the beneficiaries named in the Depositor's Will. The bank may pay funds in the account to the Co-signor before the bank receives notice of the Depositor's death.

5. Trust Account — A trust account is an account in the name of one person as trustee for another person, who is the beneficiary. The account is created through the account deposit agreement of a financial institution and is not for trusts created under a Will or trust agreement. During the trustee's life the property belongs to the trustee. During this time, the beneficiary has no rights to the account. At the trustee's death, the money passes to the beneficiary.

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 name of two or more persons jointly, any one of the persons is entitled to access to the box and shall be permitted to remove the contents at any time. The death of one holder of a jointly held safe deposit box does not affect the right of any other holder to have access to and remove the contents from the safe deposit box.

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

The bank should allow the following persons to examine the safe deposit box, without a Court Order:

1. the surviving spouse;
2. the parents of the Decedent;
3. any adult children or grandchildren of the Decedent; and
4. a person named as executor of the Decedent's estate who presents a copy of a document that appears to be the Will of the box holder.

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

The bank is allowed to deliver the Will to the clerk of the court which handles probate matters, or to the person named as Executor. Any life insurance policies can be given to the

beneficiaries named in the policies, and the deed to a burial plot may be given to the person examining the box. No other items can be removed from the box until court authority is obtained.

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

Only a court appointed guardian of the mentally incapacitated box owner is allowed access to the box.

ESTATE AND GIFT TAX ISSUES

How do I avoid paying estate taxes?

If your estate has a value that is less than the applicable estate tax exclusion amount at the time of your death, no estate taxes (sometimes also called, "death taxes") will be due upon your death. Per the "American Taxpayer Relief Act of 2012" ("ATRA"), passed in January 2013, the applicable exclusion amount (or, exemption) for persons who die in 2013 or thereafter is $5,000,000, indexed for inflation, with inflation adjustments starting from a base year of 2011. Thus, for 2015, the estate tax exemption amount is $5,430,000.

In determining the size of your estate, all assets in which you own an interest (i.e., both probate and non-probate assets) must be taken into account and valued at fair market value. The IRS has rules regarding what constitutes "fair market value" but, basically, it's what an independent person would pay to buy the asset. Note that the IRS doesn't care what method of transfer you use to transfer your assets to your beneficiaries when you die. Thus, even if you set up an estate plan to "avoid probate," that does not avoid federal estate taxes.

Therefore, in addition to the assets passing under your Will (if any), your "estate" for federal estate tax purposes includes the proceeds of life insurance on your life passing to a beneficiary by beneficiary designation, assets held in your living trust (if any), assets held in "multi-party accounts" that pass directly to named beneficiaries, and qualified retirement plans, IRAs and annuities being distributed to designated beneficiaries upon your death. Since Texas is a community property state, only one-half of the community property is included in the estate of the first spouse to die. Of course, a deceased person's separate property is also included in his/her estate.

If you are married and your estate is larger than the exemption amount at the time of your death, you can defer estate taxes by leaving your estate either directly to or in a qualified Marital Trust for your spouse (special rules apply if your spouse is not a U.S. citizen). In that case, the estate tax will be deferred until your spouse dies due to the marital deduction. However, the assets you give to your spouse (whether outright or in a Marital Trust), plus your spouse's own assets, will be included in your spouse's estate at the time of your spouse's death (if not spent by your spouse during life) and could result in estate taxes becoming payable when your spouse dies.

Note that married couples never "automatically" get two exemptions from the federal estate tax. Married couples having a combined estate larger than one estate tax exemption amount (i.e., greater than $5 million, indexed for inflation) have to do something to obtain two exemptions from the federal estate tax. Two exemptions, not one, will be needed to avoid estate taxes on the surviving spouse's death if the surviving spouse's estate exceeds the $5 million exemption amount, as adjusted for inflation.

As a result of ATRA, married couples now have two ways to obtain two exemptions from the estate tax. The traditional way is still available after ATRA: to create a "credit shelter trust" or "bypass trust" on the first spouse's death. This trust would be funded on the first spouse's death with assets owned by that spouse having a total value not exceeding that spouse's remaining estate tax exemption amount. Usually, a bypass trust is primarily for the benefit of the surviving spouse, but it can also be for the benefit of children and grandchildren while the surviving spouse is living. By naming the surviving spouse as Trustee of the bypass trust, the surviving spouse can control the trust and its assets. The surviving spouse can use the income and (usually, also) the principal of the trust for his/her health, support and maintenance. If permitted, distributions can also be made to children and grandchildren from the trust for their health, support, maintenance and education. Upon the surviving spouse's death, the remaining trust assets pass free of estate taxes (no matter what those trust assets are worth at that time) to children or other persons designated by the spouse who created the trust (i.e., designated by the first spouse to die). Thus, creating a bypass trust also allows the first spouse to die to control where his/her assets end up when the second spouse dies.

A second method for a married couple to obtain two exemptions from the estate tax is for the Executor of the first spouse's estate to file a Form 706, US Estate (and GST) Tax Return ("federal estate tax return"), to make the portability election. By filing a federal estate tax return, the unused estate tax exemption amount of the first spouse to die (called the "DSUE Amount") can be "transported" to the surviving spouse, resulting in the surviving spouse having two exemptions from the estate tax, not just one, to shelter assets in the surviving spouse's estate from estate taxes upon his/her death. The portability election can be made both for assets passing outright to the surviving spouse and for assets passing into a "Marital Trust" for the surviving spouse. Otherwise a 40% federal estate tax will apply to the amount passing on the surviving spouse's death that exceeds one estate tax exemption amount (i.e., the inflation-adjusted $5 million exemption, which amount is $5,430,000 for 2015).

If I give away my assets before I die, will I avoid the federal estate tax?

The short answer is "No" because we have a unified transfer tax system comprised of the estate tax (applicable to transfers made at death) and the gift tax (applicable to transfers made during life). Under current law, the lifetime gift tax exemption amount is $5,000,000, indexed for inflation, the same as the estate tax exemption amount and, therefore, $5,430,000 for 2015. If you make any transfers to or for the benefit of someone during your life for less than full value, those transfers are gifts under the gift tax rules. If the value of all gifts made to a particular person in one calendar year is less than the "annual gift tax exclusion amount" (currently $14,000 per recipient per year), then it's a tax-free gift. Or, if you pay someone else's medical bills directly to the health care provider or tuition directly to the school, then it's a tax-free gift. Gifts made to a spouse who is a U.S. citizen, whether made outright or in a qualified Marital

Trust, are not immediately subject to gift tax because of the marital deduction. Transfer taxes on assets transferred to a U.S. citizen spouse will not be due until the spouse transfers the assets (either during his/her lifetime or upon his/her death). In essence, lifetime transfers which do not qualify for an exclusion from the gift tax or the marital deduction are treated as "taxable gifts," and must be reported to the Internal Revenue Service in a Form 709, U.S. Gift (and GST) Tax Return ("gift tax return").

Basically, then, the value of all gifts made to each person in one year is determined, and if the total amount given to any one person exceeds $14,000 (or if that gift does not qualify for the $14,000 annual exclusion), then the person who made the gift(s) (called, the "donor") must file a gift tax return to report those gifts, which are technically referred to as "taxable gifts," whether gift tax is payable or not. The term, "taxable gift," primarily means that the donor must report the gift to the IRS in a gift tax return. Taxable gifts do not result in gift taxes having to be paid until the donor has made taxable gifts that exceed, in the aggregate, the $5 million lifetime gift tax exemption amount, indexed for inflation. Note also that, on the death of a person who made any taxable gifts during life, less estate tax exemption will be available to his/her estate to apply to transfers that person is making at death because "taxable gifts" made during life use up exemption.

Does a beneficiary of my estate or of a gift I make have to pay the estate or gift tax?

The applicable transfer tax (estate or gift tax) is assessed against the person making the transfer (a decedent's estate or the donor of a lifetime gift). No gift tax is actually due until the total of all lifetime gifts exceeds the applicable exclusion amount ($5,430,000 for 2015). A person making a taxable gift must timely file a gift tax return and pay any gift tax due. In some cases, the gift tax is apportioned to (charged against and recovered from) the recipient/beneficiary, but that is rare. The executor of a decedent's estate must timely file the federal estate tax return (for estates over the applicable exemption amount) and pay the federal estate tax due, if any. Federal estate taxes are due nine months after the decedent's death.

What will my "income tax basis" (or "cost basis") be in the assets I receive by gift or inheritance?

Under current law, a person who receives a lifetime gift of a "capital asset" (an "after-tax," investment-type asset, such as real estate, stocks, bonds and mutual funds) takes a "carryover basis" (i.e., maintains the same income tax basis that the donor of the gift had in the asset), while a person who receives an asset pursuant to a Will or by inheritance upon the decedent's death receives a new tax basis equal to the fair market value of the asset on the decedent's date of death (or on the alternate valuation date, six months after the date of death, if that applies).

Because the value of a capital asset owned by the decedent is frequently higher on his date of death than its original cost basis, this re-valuation is often referred to as a "step up" in basis (but a "step down" in basis is possible, too). When a married person dies, both halves of the community property receive an adjustment to income tax basis on the first spouse's death. If proper estate planning is done, this is usually a "tax-free" step up in income tax basis. Income tax basis is important because, when a capital asset is sold, the capital gain or loss is determined by subtracting the taxpayer's income tax basis in the asset from the sales price.

Does the State of Texas have an estate tax or other form of death tax?

Currently, the State of Texas does not impose any type of estate tax, inheritance tax or other death tax on estates of persons who die while domiciled in Texas or on estates of persons domiciled in other states who die owning real property (including minerals) in Texas. Texas also does not have a state gift tax.

IRAs

Who should be your IRA beneficiary?

The only way to ensure that your IRAs are distributed to the beneficiaries you want is to put your intentions in writing with your IRA custodian by completing a "beneficiary designation form." You may have named an IRA beneficiary many years ago when you opened your IRA account. You should review this information periodically but, especially, when your personal circumstances change. On the other hand, if you do not name a beneficiary, the default provisions in your IRA Agreement will determine who will receive your IRA on your death. In some cases, these assets could go to persons you don't like, such as an estranged spouse.

IRA beneficiaries are described generally as being (i) a spouse, (ii) a non-spouse human being, and (iii) a non-human being (e.g., an estate or charity). Your IRA beneficiary can be a person, a trust or a charity. Each designation has particular pros and cons that you need to weigh carefully in order to make sure your wishes are followed. You should also consider the tax effects of your beneficiary designation.

Your spouse as beneficiary

Pro: Your surviving spouse can make a tax-free rollover of your IRA into an IRA rollover in his/her own name. If a spousal IRA rollover is made, (i) distributions from the account will be taxed at your spouse's income tax rate when taken, (ii) required minimum distributions will not have to commence until your spouse reaches age 70½, and (iii) required minimum distributions will be calculated based on your spouse's life expectancy, plus ten years.

If your surviving spouse is "too young" to do an immediate rollover of your IRA (the penalty for early withdrawal will apply if your spouse rolls over your IRA to an IRA rollover in her name and takes any distributions prior to reaching age 59½), your spouse can remain in the position of being your IRA beneficiary, and take discretionary amounts without penalty before age 59½, and then start taking required minimum distributions from your IRA in the year when you would have reached age 70½, based on your spouse's life expectancy, recalculated each year. Your spouse can do a spousal IRA rollover of your IRA at any time after your death, such as after your spouse reaches age 59½, when the penalty for early withdrawal no longer applies.

Con: Leaving your IRA to your spouse may mean that your federal estate tax exemption amount (see Estate and Gift Tax section, above) is not being used and is, in essence, being "wasted." The portability election can help avoid wasting the first spouse's estate tax exemption amount in such a case, while preserving the favourable income tax treatment for the surviving spouse. If you have substantial assets, you should speak with an estate tax professional who can offer suggestions on how to reduce the total tax liability for your family. Another potentially negative consideration when leaving your IRA to your spouse is that your spouse then gets to control where "your" IRA ends up when your spouse dies. Thus, couples in second marriages have to consider this issue as well.

Beneficiaries other than your spouse

Pro: If you leave your IRA to your children and/or grandchildren in a way that allows separate account treatment, under current law, after your death, distributions from your IRA (which will be divided into separate "inherited IRAs," one for each beneficiary) can be "stretched" over each beneficiary's lifetime, providing your heirs with a lifelong stream of income. In addition, the inherited IRA can continue to grow tax-deferred for many additional years, assuming the transfer of assets is handled properly. All distributions from inherited IRAs are exempt from the 10% premature distribution penalty and, in any given year, the non-spouse beneficiary is allowed to accelerate distributions without penalty.

Con: Non-spouse beneficiaries are not allowed to rollover an inherited IRA into their own IRA. Inherited IRAs are a separate type of IRA from a personally-owned IRA. However, as a result of the Pension Protection Act, non-spouse beneficiaries of qualified retirement plans that have unfavourable distribution provisions may roll over a qualified retirement plan to an inherited IRA. Non-spouse beneficiaries must start taking minimum required distributions from their inherited IRA by December 31 of the year following the year of your death.

If an IRA is not passed along correctly, income taxes may be due immediately or over a very short period of time. While non-spouse beneficiaries have the opportunity to defer income taxes on their inherited IRAs for many years, any estate taxes due by your estate on the value of your IRA must be paid in cash no later than nine months following your death. Thus, sometimes amounts have to be withdrawn from IRAs to pay estate taxes, causing immediate income taxes on the withdrawn amount.

Minor children (persons under age 18) should not be named as direct beneficiaries of IRAs because minors cannot legally own anything. If you wish for your IRA to pass to a minor child, you should name a trusted person as custodian for that minor child under the Uniform Transfers to Minors Act as your IRA beneficiary. Or, even better in many cases, you should create a trust for that minor child in your Will or Living Trust Agreement and name the Trustee of that child's trust as the beneficiary of your IRA. When a minor is named directly as the beneficiary of an IRA, the local probate court will appoint someone to handle the IRA for the child as his/her legal guardian. Guardianships can be cumbersome and expensive.

A trust or estate as an IRA beneficiary

Pro: Naming a properly drafted trust as the beneficiary of an IRA allows the IRA assets to be professionally managed according to your wishes. A trust can also ensure that inherited IRA funds are not consumed prematurely by the beneficiary. A trust may protect the inherited IRA and distributions from the IRA from creditors of the beneficiary (including the beneficiary's spouse in a divorce).

Con: The rules for creating a "qualified see-through trust" that can receive IRA benefits without accelerating the income taxes are very complex and only certain knowledgeable attorneys are capable of creating such trusts.

Naming your "estate" as the beneficiary of your IRA is not a good idea because an estate doesn't qualify for post-death distributions to the estate beneficiaries based on the beneficiaries' respective life expectancies. In other words, naming your estate as the beneficiary of your IRA will accelerate the income taxes on your IRA and can also result in loss of creditor protection.

Charities as beneficiaries of IRAs

Pro: Leaving IRA assets to a charitable beneficiary is more tax-efficient than leaving IRA assets to a human being since IRAs are not subject to estate taxes or income taxes when received by a qualified charity. Thus, for persons with charitable intent, all or a portion of an IRA is one of the best assets to leave to charity at death.

Con: Assets left to a charity will be totally removed from your family. Further, if only a portion of your IRA will be passing to charity on your death, your beneficiary designation must be carefully structured to ensure that the individual beneficiaries who are also receiving a portion of your IRA still have favourable income tax options for their shares.

Selecting the right beneficiary for your IRA can be complicated. Remember to look at your IRA assets in the context of your entire estate before making any decisions. You should discuss the subjects of beneficiaries, wills, trusts, and other estate planning matters with your estate planning attorney to be sure your decisions are appropriate for your situation.

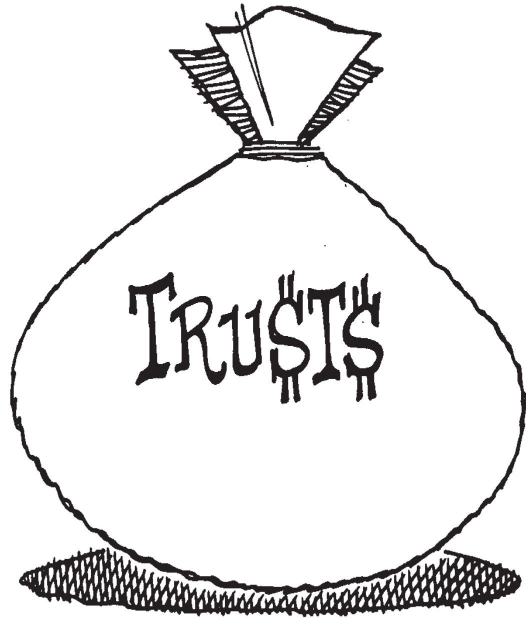
TRUSTS

What is a trust?

A trust is created when a property owner (Trustor/Grantor/Settlor) transfers legal title to an asset of any type (which will become the "corpus" of the trust) to a person (Trustee) who has the duty to hold and manage the asset for the benefit of one or more persons (Beneficiaries). The terms and provisions of the trust are contained in a document called a Trust Agreement, or in the property owner's Will. The trust relationship imposes "fiduciary" duties on the Trustee to manage the trust assets for the benefit of the Beneficiaries (i.e., the Trustee must be loyal and fair to the Beneficiaries in handling the trust and its assets and cannot act in his or her own self-interest to the detriment of the Beneficiaries).

Who can create a trust?

Any person who has legal capacity can create a trust.



Who can be a Trustee?

Any person who has legal capacity or any corporation which has powers to act as a Trustee in Texas can serve as the Trustee of a Texas trust. A trust can have more than one Trustee. Sometimes the Trustor also acts as Trustee. As to who should be Trustee, generally, a trustworthy, prudent person with good judgment should be named if a professional trustee is not appropriate or desirable.

What are the various kinds of trusts?

Trusts can be divided into two major categories based on when and how they are created: (1) testamentary trusts and (2) inter vivos trusts. A testamentary trust is created in a Will and comes into being upon the death of the Testator (or at some future time after that). An inter vivos trust is created during the life of the Trustor and the terms of trust are contained in a Trust Agreement (or Trust Declaration). Both testamentary trusts and inter vivos trusts provide for the management of the assets transferred to the trust.

Trusts can also be divided into two major categories based on whether they can be changed or revoked. An irrevocable trust cannot be revoked, amended, or otherwise modified without a court proceeding involving all "necessary parties." On the other hand, a revocable trust can be revoked, in whole or in part, and/or amended and modified during its term, by the person who created the trust if he or she retained such power in the trust instrument. All testamentary trusts are irrevocable, but inter vivos trusts can be revocable or irrevocable.

Why would I want to create a testamentary trust?

Testamentary trusts are often created to provide for professional management of assets, creditor protection (including divorce protection) for the beneficiary, ultimate control over the disposition of the assets (where more than one person is a beneficiary of the trust), and tax benefits. Providing for assets to pass in trust, rather than outright, may be appropriate for minors, adults suffering from a disability, persons who are spendthrifts, persons at high risk of lawsuits, and/or those perceived by the trust creator to lack management skills and good judgment. Substantial estate tax benefits can be achieved by the use of a "bypass" or "credit shelter" trust in the case of a married couple. Trusts are often used in a "second marriage" situation, so that the surviving spouse can be supported, but also so that the assets remaining in the trust on the surviving spouse's death can be distributed to the children of the person who created the trust.

Why would I want to create a Living Trust?

Revocable inter vivos trusts, sometimes called "Living Trusts," provide for asset management during the lifetime of the Trustor and can provide for the disposition of the assets held in trust after the death of the Trustor. One of the principal advantages of a revocable inter vivos trust

is that it may avoid the necessity of a guardianship if the Trustor becomes incapacitated. Such a trust may act as a Will substitute for the assets held in trust at the death of the Trustor. The property held in trust passes to the designated beneficiaries at the Trustor's death by the terms of the Trust Agreement and is not part of the probate estate. Revocable inter vivos trusts are also useful if the Trustor owns real property in other states. Once the non-Texas real estate is transferred to the trust, there is no need for a probate proceeding in the state where the real property is located on the death of the Trustor.

Do Living Trusts avoid probate, and is it a good idea to avoid probate?

Living trusts avoid probate on all assets that are transferred to the trust before the death of the Trustor. If an asset is not transferred to the trust before the Trustor's death, however, then the Trustor's Will most likely will have to be probated to pass clear title to the asset not held in the trust. In Texas, we have a simple probate process that provides for "independent" administration of decedents' estates. If an independent executor is properly named in a Will, the only court involvement in the estate, absent litigation, is to "admit the Will to probate" (i.e., declare it to be valid), officially appoint the independent executor, and approve the Inventory and List of Claims filed by the Executor. Therefore, probate avoidance alone would not be a compelling reason to create a revocable inter vivos trust in Texas.

Do revocable inter vivos trusts save taxes?

The mere creation of a revocable inter vivos trust (living trust) does not have any income or estate tax advantages. It is, however, possible to structure the provisions of the trust which take effect upon the death of the Trustor to take advantage of certain estate planning techniques (e.g., a bypass trust), just as the Trustor could otherwise do in a Will.

PLANNING FOR INCAPACITY

What does the term "incapacitated" mean?

A person is incapacitated if, because of a physical or mental condition, the person is substantially unable to provide food, clothing, or shelter for himself or herself, to care for his or her physical health, or to manage his or her financial affairs. Merely advanced age or hospitalization does not automatically mean that a person is incapacitated.

How can I provide in advance for the management of my financial affairs should I become incapacitated?

As you grow older and the possibility of becoming incapacitated increases, it is wise to consider choosing a trusted friend or family member who will have the legal authority to manage your financial affairs without incurring the expense of a guardianship. This is done by executing a Statutory Durable Power of Attorney. A Power of Attorney is a legal document in which one person (called a principal) appoints another person (called the attorney-in-fact) to manage the principal's financial affairs. A Power of Attorney will automatically terminate upon the principal's incapacity under Texas law unless it is durable, that is, unless it contains language to the effect that "This power of attorney is not affected by subsequent disability or incapacity of the principal."

Who will make medical decisions for me should I become incapacitated?

By executing a Medical Power of Attorney, you can appoint one or more persons whose judgment you trust to make your medical and health care decisions should you be unable to do so yourself. You can give your agent complete authority to make medical decisions or you can limit his or her authority. Without a Medical Power of Attorney, an adult surrogate can consent to medical treatment on your behalf if you become incapacitated or comatose. The adult surrogate, in the following order of priority, is: your spouse, your adult child, your parents, an individual identified to act on your behalf before incapacity, your nearest living relative, or clergy.

Can any person receive my protected medical records and information?

You may authorize any person to receive your medical information by executing a HIPAA Authorization form. This form authorizes your health care provider to disclose your medical information to anyone you designate.

What is a Living Will?

A living will is a common name for a document entitled "Directive to Physicians and Family or Surrogates." A Directive allows you to direct that life-sustaining procedures such as use of a respirator be withheld or withdrawn if, in the judgment of your physician, you are suffering with a terminal condition from which you are expected to die within six months, or you are suffering from an irreversible condition such that you cannot care for or make decisions for yourself and you are expected to die without life-sustaining treatment.

Why do hospitals always ask whether patients have a Medical Power of Attorney or a Directive to Physicians and Family or Surrogates?

Federal law requires hospitals and nursing homes to ask whether incoming patients have advance directives. If the patient doesn't have them, the hospital or nursing home is required to advise about the availability of such documents under local law. The inquiry is meant for the benefit of the patient, and while advance directives are a good idea, they are not required to receive treatment.

What is the difference between a Medical Power of Attorney and a Directive to Physicians and Family or Surrogates?

A Directive to Physicians and Family or Surrogates has very limited application. It only applies to one medical treatment decision, the decision to withhold or withdraw life support when death is imminent. A Medical Power of Attorney covers all medical treatment decisions.

Can I designate in advance who I wish to serve as my guardian if a guardianship of my person or my estate should become necessary?

Yes. As long as you are not incapacitated, you can execute a Declaration of Guardian in the event of later incapacity or need of a guardian. You can designate a guardian of your person and of your estate in this form. Additionally, you can disqualify a particular person or persons from serving as your guardian. The designation can be revoked or changed anytime before you become incapacitated.

When should I plan for incapacity?

The sooner the better. If you become incapacitated without advance planning, it may become necessary for surrogates to make medical decisions for you, as discussed above, or for a guardianship of your person and/or estate to be established as discussed in the next section.

GUARDIANSHIP

How is a guardianship initiated?

Any interested person may file an application with the proper court requesting that a guardian be appointed for a person believed to be incapacitated. There are many alternatives to guardianships and supports and services available, which should be explored before filing an application for guardianship.

For purposes of guardianship, what is an incapacitated person?

When a person is unable to provide food, clothing or shelter for himself or herself, to care for his/her physical needs, or to manage his or her own financial affairs due to a mental or physical condition, he or she may be found to be incapacitated, and placed under guardianship. A minor, anyone under 18 years of age, is also considered incapacitated.

Are there varying levels of incapacity?

Yes. The doctor treating the person who is incapacitated must specifically set out in his or her letter to the court the mental or physical basis for the incapacity and the extent of incapacity. He or she does so by answering questions concerning that person's ability to drive, vote, enter into a contract, manage money, and other acts.

If a guardian is appointed, can a person retain certain rights and powers?

Yes. A judge may appoint a guardian for an incapacitated person, but limit the guardian's powers so that all rights and powers except those granted to the guardian are retained by the incapacitated person.

What types of guardians are there?

Generally, there is a guardian of the person and a guardian of the estate. The guardian of the person has the duty and power to provide the incapacitated person with clothing, food, medical care, and shelter. The guardian of the estate has the duty and power to manage the incapacitated person's financial affairs. One person can fill both positions. And, you may have a guardian of the person only or a guardian of the estate only; you do not have to have both.

Who may serve as guardian?

The court will appoint a guardian for an incapacitated adult person in the following order of priority:

1. the incapacitated person's spouse;
2. the person's nearest of kin;
3. an eligible person who is best qualified to serve.

Who cannot serve as guardian?

A person may not be appointed guardian if the person is 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. A potential guardian must provide criminal history records from the Department of Public Safety or the Federal Bureau of Investigation to the County Clerk.

Is an alleged incapacitated person represented by an attorney?

Yes. When a guardianship is filed, the court appoints an attorney ad litem to represent the interests of the alleged incapacitated person. The person may also retain his or her own attorney with certain exceptions.

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. If the incapacitated person's estate is insufficient to pay for the cost of the proceeding, such costs may be paid by the county treasury.

What rights does the incapacitated person have?

The incapacitated person has the right to receive a copy of the application for guardianship, a Bill of Rights 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, demand a jury trial and request that the hearing be closed to the public. An incapacitated person retains all legal and civil rights and powers, except those designated by the court's order appointing a guardian.

How soon can a guardianship hearing be held?

The soonest date to schedule a hearing is the Monday following the expiration of 10 days after the alleged incapacitated person and certain interested persons have been personally served with the application for guardianship.

What happens at the hearing?

The person who filed the application must prove the incapacity through testimony and medical evidence. The alleged incapacitated person has a right to bring his or her own witnesses to court and also the right to speak to the judge. The alleged incapacitated person may also request a jury trial. The judge or jury will determine if the person is incapacitated.

Upon 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 his or her duties.

Does the guardian have reporting requirements to the court?

Yes. The guardian of the estate must file an inventory within 30 days of qualifying. The inventory must list all assets of the incapacitated person coming into the guardian's hands and

all debts owed to the estate. The guardian of the estate must file an investment plan within 180 days of qualification. The guardian of the estate must file an annual account to report all receipts and disbursements. The guardian of the person must file an annual report on the location, condition and well-being of the incapacitated person.

What if there is an immediate need for the appointment of a guardian?

A temporary guardian can be appointed if an alleged incapacitated person or his or her property is in imminent danger.

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, and is entitled to be served with a copy of the temporary guardianship application. The court must appoint an attorney to represent the alleged incapacitated person at the time the application is filed. The court must hold a hearing no later than 10 days after the date of filing the temporary guardianship, unless the hearing is postponed, to determine whether there is a need for a temporary guardianship.

What is the length of a temporary guardianship?

Generally, a temporary guardianship may not exceed 60 days. However, if there is a contest or challenge to a permanent guardianship application, the court may appoint a person to serve as temporary guardian until the contest is resolved. This is usually limited to nine (9) months.

MENTAL HEALTH COMMITMENTS

What is considered mental illness?

The Texas Mental Health Code defines mental illness as an illness, disease, or condition that:
1. substantially impairs the person's thought, perception of reality, emotional process, or judgment; or
2. grossly impairs behavior as demonstrated by recent disturbed behavior.

On what grounds can a person seek a mental health warrant for involuntary commitment?

(1) An adult must believe that the person evidences mental illness;
(2) that the person evidences a substantial risk of serious harm to himself or others;
(3) a specific description of the risk of harm;
(4) that the applicant believes that the risk of harm is imminent unless the person is immediately restrained; and
(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats.

Who may seek a mental health commitment?

Anyone 18 years of age or older with personal knowledge of the person's recent disturbed behavior can sign the affidavit necessary for commitment. The affidavit should be completed

and filed at Harris County Psychiatric Center. A peace officer, without a warrant, may take a person into custody if the officer believes that a person has a mental illness and there is a substantial risk of serious harm to the person or to others.

What happens after the affidavit is completed?

A judge reviews the application and affidavit. If it appears to indicate mental illness and harm to self and others, the judge signs an order for emergency detention, which is delivered to the constable's office. This order gives the constable the authority to detain the person.

What happens when a person is detained by the constables?

The constables will take the person to the mental health hospital where treatment has been arranged. A doctor must examine the person and complete a Certificate of Medical Examination within 48 hours, or if the 48 hour period ends on a Saturday, Sunday or legal holiday, by 4 pm of the following business day.

What happens after the doctor's examination?

Based on the doctor's recommendation in the Certificate, either the person is released or an Order for Protective Custody (OPC), which is the basis for a hospital to hold a patient until the court hearing, is issued.

What hearings is a person entitled to while under an order for protective custody?

The first hearing is a probable cause hearing which must be held within 72 hours of the date of the Order for Protective Custody. The second hearing is a commitment hearing to be held usually within 7 to 10 days of the date of the Order for Protective Custody.

Does a person who has been detained on an Order for Protective Custody have a right to an attorney?

Yes. An attorney is automatically appointed to represent him or her, although he or she still has the right to hire his or her own attorney. The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney.

What is a probable cause hearing?

A probable cause hearing is held before a judge or magistrate. The purpose is to determine whether or not a person should be held at the facility until the final hearing. The evidence presented generally consists of the Certificate of Medical Examination and the affidavit of the person who applied for the commitment and perhaps personal testimony from the patient.

What is a commitment hearing?

A commitment hearing is held before a judge or jury to determine if the person should be committed to a mental health facility for up to 90 days. A second doctor must have examined the patient and completed a second Certificate of Medical Examination prior to the hearing. Both a doctor and either the person who executed the affidavit or someone else who has personal knowledge of the patient's recent behavior must be present and testify at the hearing.

What happens after the final hearing?

A person is either released from the mental health facility or committed to outpatient treatment, or committed for up to 90 days in a mental health facility. Rarely are patients held the entire 90 days before being discharged by the treating physician.

PROBATE AND ESTATE ADMINISTRATION

What is probate?

Probate is the court procedure by which a Will is proved to be valid or invalid. When a Will is proven to be valid in court, it is "admitted to probate." However, the term probate is sometimes used to include generally all proceedings related to the administration of estates. Most probate proceedings are initiated by the filing of an application to probate a Will or for administration and require a hearing in court.

What is the time limit for filing a Will for probate?

Generally, a Will may not be admitted to probate more than four years after the date of death.

What does the administration of an estate involve?

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying his or her debts, expenses and taxes of the estate to the extent there are sufficient assets, and (3) distributing the remaining assets, if any, to those who are entitled to have them under the terms of the Will or to the heirs determined under the laws of intestacy.

What is an independent administration?

An independent administration is the administration of an estate without court supervision and without the extra time and expense required to obtain court permission for each administrative decision. Once an executor or administrator is appointed and qualifies in an independent administration, the court only requires that he or she provide proper notice to creditors and beneficiaries, and file a sworn inventory, appraisement, and list of claims, or an Affidavit in Lieu of Inventory, within 90 days.

How is an independent administration created?

An independent administration may be created in the Will or by the probate court with the permission of all of the beneficiaries of the estate. To create an independent administration by Will, the Will must contain language showing the decedent's intent that the administration not be subject to court supervision. Under certain circumstances, the probate court can create an independent administration when all the persons entitled to distribution from the estate agree.

What are an executor and an administrator?

An executor is the person or institution named in a Will to administer the estate. If there is an independent administration, the executor is relatively free of court control in carrying out his or her duties, and the administration of a simple estate may usually be completed in a short period of time. An administrator is the person or institution appointed by the probate court to administer an estate when no executor qualified to serve is named in the Will or there is no Will.

What are Letters Testamentary and Letters of Administration?

Once an executor or administrator has qualified, he or she has authority to act for the estate. Letters Testamentary are issued by the County Clerk's office as evidence of the executor's authority to act on behalf of the estate. Letters of Administration are issued for the same purpose to an administrator appointed by the probate judge.

What is a dependent administration?

A dependent administration is an administration of the estate in which the court chooses and appoints an administrator and closely supervises and controls the actions of the administrator. In a dependent administration, the administrator must be bonded, file annual and final accounts, and apply for court orders for almost every act performed.

When is a dependent administration necessary?

A dependent administration is necessary when (1) a person dies without a Will, (2) the Will names no executor, (3) the Will names an executor who predeceased the testator and no successor is named in the Will, or (4) the executor named in the Will fails or ceases to qualify after the Will is admitted to probate or fails to present the Will for probate.

If a person dies without a Will, how are the heirs of the estate determined?

If a person dies without a Will (intestate), the heirs and their shares of the estate must be determined in an heirship determination proceeding. In this proceeding, all facts concerning the identity of all heirs must be produced at a hearing. An attorney ad litem will be appointed by the court to represent the interests of any unknown heirs, known heirs who cannot be located, and heirs suffering from legal disability.

If a person dies intestate leaving a surviving spouse, what does the surviving spouse inherit?

1. If the deceased person had no children, his or her surviving spouse inherits all of the deceased person's interest in the community property, all of the decedent's separate personal property and one-half (or sometimes all) of the decedent's separate real property.
2. If the deceased person is survived by children or descendants of children, all of whom were also descendants of the surviving spouse, the surviving spouse would inherit all of the community property, but only one-third of the decedent's separate personal property and a one-third interest for life in the decedent's separate real property.
3. If the deceased person is survived by children or descendants and at least one child who was not also a descendant of the surviving spouse, the surviving spouse would inherit none of the deceased person's interest in the community property, one-third of the separate personal property and a one-third interest for life in the decedent's separate real property.

What are the alternatives to full administration of an estate?

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

1. Probate of the Will as a muniment of title.
2. Heirship determination.
3. Application for no administration.
4. Small estate affidavit.
5. Affidavit of heirship.
6. Informal family agreements.

What does probating the Will as a muniment of title mean?

The Will is admitted to probate, but no executor is appointed, even though one is named in the Will. The Will and the order admitting the Will to probate are filed in the county deed records and constitute a chain of title to real property, showing the new ownership in title to the property.

When would a muniment of title proceeding be appropriate?

A court can order the probate of a Will as a muniment of title only when there are no unpaid debts, excluding debts secured by liens on real estate, the deceased did not apply for or receive Medicaid benefits on or after March 1, 2005, 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 (1) owing any money to the deceased, (2) having custody of any property of the deceased, (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right belonging to the estate or (4) purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the Will as entitled to receive the particular asset, without any administration. After the Will has been probated as a muniment of title, the beneficiaries of the estate become the owners of the property.

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

An order determining heirship when coupled with an order of no necessity for administration constitutes sufficient legal authority to all persons owing money, having custody of property, or acting as transfer agent, of any interest, indebtedness or property belonging to the estate, and for persons purchasing or otherwise dealing with the estate, for payment or transfer to the heirs as determined in the court's order.

What are the requirements for a Small Estate Affidavit?

The requirements for the collection of a small estate by affidavit are:

1. no Will being offered for probate and no petition for dependent administration pending;
2. the value of the entire assets of the estate, not including homestead and exempt property, does not exceed $50,000;
3. thirty (30) days must have elapsed since the Decedent's death;
4. two disinterested witnesses must file a sworn affidavit concerning heirship.

What is the effect of a Small Estate Affidavit?

Persons dealing with distributees of assets from the small estate are released to the same extent as if they had dealt with a personal representative of the estate. Distributees can bring action to force delivery of estate property. The distributees will be liable to creditors or anyone else having a prior right to the property. This procedure does not transfer title to real property, except for a homestead.

What happens if I die owning real property outside of Texas?

Each state has jurisdiction and control over the real property inside its own borders. For that reason, probating an estate in Texas does not give an executor or administrator appointed in Texas any authority over property located in any other state. When a person dies owning real property (including royalties and/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 order 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 section on Trusts.

BURIAL PROVISIONS

Who has the right and/or obligation to bury a deceased person?

The family of the deceased has the duty to bury or inter as well as an obligation to pay the burial costs, unless there is a written pre-death directive or a prepaid funeral plan. This directive may be included in a Will and the funeral home is permitted to rely on such directive, even though the Will has not been admitted to probate. In the absence of a written directive, the surviving spouse has the responsibility and obligation to pay for burial costs. If there is no surviving spouse, the order of priority rests next with the adult children, parents, adult brothers and sisters, heirs at law, a guardian, the county of residence, one performing an inquest, and finally with anyone willing to assume responsibility and liability for the decedent's remains and the costs of burial. When the decedent is indigent, it is necessary to notify the Harris County Social Services Department within 24 hours of death. If this notice requirement is not timely met, the county will not pay any costs of the person's burial.

Must I make specific provisions if I wish to donate my body or specific organs following my death?

The Texas Anatomical Gift Act permits anyone over the age of 18, or those under 18 with parental consent, to donate either his or her own body or specific organs. Substantial restrictions have been placed on donations from elderly persons. If you want to make a specific purpose gift to a certain organization, it is important that you check in advance to see if your donation will be accepted. It is important to learn what requirements, if any, must be met before making this gift.

If I should die without making an anatomical gift, can one still be made?

The Texas Anatomical Gift Act does allow family members to donate a decedent's body or other acceptable organs. This authority to donate rests first with the surviving spouse and then, in order of priority, with the adult children, parents, brothers and sisters, heirs at law, or a guardian. When a family member of the same level of right to consent objects to any gift, it cannot be made without court intervention.

If I desire to be cremated how should this directive be handled?

To be certain that this wish is accomplished, you should make a pre-death written directive. There is a statutory form which can be found in the Texas Health and Safety Code at §711.002(b). If you do not have a written directive, then a surviving spouse, any one of your adult children, any one surviving parent, any one surviving sibling or other close relative, in that order, has the authority to give instructions and authorize your burial or cremation. Should any family member object, the matter may go to Court. The person you designate should be told about your wishes and given a copy of the directive.

May I obtain information describing burial services and costs?

Federal regulations require that funeral home operators make no misrepresentations of the services required for burial. They must also furnish the prices for all services even if a request is made by phone. A written price list of all goods and services must also be furnished before any casket may be shown. In addition, the cost for immediate burial or for cremation must be provided.

Are there burial services which may not be required?

Texas law does not require that the body be embalmed unless it has not been refrigerated within 24 hours of death or the death was caused by a reportable contagious disease. Other goods or services that can be eliminated are flowers, police escorts, newspaper articles, and special clothing, if the decedent specifies or the family agrees. A funeral home provider must not represent to a customer that any goods or services may be required when they are not. The funeral home cannot imply that certain services will delay the body's decomposition. If cremation is chosen, the funeral home may not represent that you need a casket of something other than unfinished wood, cardboard, or canvas material.

Can I make funeral arrangements before I die?

Yes. You may make necessary burial arrangements before they are needed. Several methods are available to set aside the money needed to pay for these services. Many funeral homes provide pre-need burial programs. These programs may be established after the burial services have been selected and may be funded by insurance or annuity payments. The type of plan as well as the services to be provided can be selected at a less stressful time and with more consideration being paid to the costs and needs of the individual.

What type of death benefits are available to my survivors?

If you are a veteran of the military, both your surviving spouse and your children may be entitled to veterans benefits. Specific information can be obtained from your regional veterans affairs office. A veteran's benefits can range from as little as $300.00 for burial and $150.00 for a plot to as much as $1,500.00. The family of a veteran may also be entitled to a flag, burial in

a national cemetery, transportation of the body to the cemetery and a headstone or marker. Social Security death benefits of $255.00 may also be available to a surviving spouse, a minor child if there is no surviving spouse, or a surviving parent if there is no surviving spouse or child eligible. An application may only be made by the eligible person to the local Social Security office. The Texas legislature has provided benefits to its citizens under the Texas Criminal Victim's Compensation Act. Specific applications must be completed in a timely manner when a criminal report has been made. The family of a public safety officer who is killed or injured while on duty may seek compensation through a Federal Government program that provides a recovery of up to $100,000.00.

Can funds of the decedent be obtained to pay for funeral and burial expenses?

Yes. The Texas Estates Code does have an emergency burial provision. This procedure permits family members and in some cases even non family members to access the decedent's bank accounts, insurance policies, and even a last pay check to pay for funeral and burial expenses up to a total of $5,000.00. These payments must be made directly to the funeral home and are limited solely to funeral and burial costs of the decedent. Also, where access to the decedent's rented residence is being denied by the landlord, there is another procedure permitting a person to gain access to the premises to locate a will, insurance policies, bank accounts or other sources from which burial funds can be obtained. In Harris County, the County Clerk's office has available forms that can be completed to obtain a probate court order requiring that funeral and burial payments be made and even permitting access to a rented residence. These procedures can be commenced as soon as the decedent's death is discovered. This procedure cannot be used after the decedent has been dead 90 days. To use this procedure does not always require the assistance of an attorney. It is important to understand when filing these forms that the probate court and the staff members are not permitted to provide legal assistance or guidance to the public with their completion.

HOMESTEADS

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 single adult who is not a member of a family, are protected from foreclosure for the payment of debts except for debts secured by liens for 1) purchase money, 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, or 5) reverse mortgages and partition liens.

What is an urban homestead?

An urban homestead may consist of a lot or contiguous lots, not exceeding 10 acres, in a city, town, or village.

What is a rural homestead?

A rural homestead may consist of not more than 200 acres of land for a family and not more than 100 acres of land for a single adult that is not located in a city, town, or village.

What is a business homestead?

Urban homesteads may be business homesteads if used both as a residential homestead and as a place of business to provide for a family or single adult. A business homestead may consist of a lot or contiguous lots not exceeding 10 acres. An urban residential homestead and a business homestead must be located within the same contiguous land.

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 $5,000 of the valuation on residential homesteads for any adult. A school district may exempt not less than $15,000 of the valuation on residential homesteads for all homeowners. Persons over the age of 65, or the surviving spouses of persons who were over the age of 65 at the time of death, may qualify for an additional $10,000 homestead exemption for school taxes. There are other exemptions and tax ceilings from the taxing authorities available for persons over the age of 65. In addition, if you are a disabled veteran, you may qualify for the 100% disabled veteran homestead exemption. You can obtain an application for an over 65 exemption and homestead exemptions from your local tax appraisal district.

Can ad valorem taxes be paid in installments?

Yes. Those that qualify for the over 65 homestead exemption may qualify to pay their ad valorem taxes in installments. Additionally, surviving spouses of disabled veterans may also qualify to pay their ad valorem taxes in installments.

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

A Texas resident over the age of 65 can defer the payment of real property taxes on a residential homestead until the property loses its homestead character. During the deferral period, taxes are still due, interest on the taxes accrue, 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 tax freezes to other homesteads if they move within the taxing unit. You can obtain an application for an over 65 tax deferral from your local tax appraisal district.

How can property lose its homestead character?

Property loses its homestead character when the homestead claimant dies without any of his or her family members continuing to occupy the property, or when the homestead is abandoned. Abandonment of a homestead occurs when the homestead claimant has a present, definite, and permanent intent to cease use of the property as a homestead, for example, when it is sold or when the homestead claimant designates another homestead.

How can I avoid the payment of capital gains taxes upon the sale of my residence?

There is an exclusion of gain on the sale of a personal residence for persons of any age. To qualify for the exclusion, you must have lived in and owned the residence for at least 24 months out of the five years preceding the date of the sale. The exclusion is up to $250,000.00 of gain if married and filing separately or single, and $500,000.00 if married and filing jointly.

How does home equity law work and what do I need to know?

Home equity law allows the homeowner to borrow money pledging their home as collateral. Homeowners can borrow for any reason and use their homes to secure the debt. The law has various requirements to protect the homeowner such as: the total of all loan balances against your home may not be more than 80% of the fair market value on your home; the lien may be foreclosed upon only with a court order; fees to make the loan may not exceed three percent of the loan amount; the loan may close only at the office of the lender, a title company or an attorney; and the loan may not close until twelve days after you submit a written application for credit. If you do not repay the loan, the lender may foreclose and sell your home. Caution should be used in getting these loans. Seniors should carefully consider the consequences of borrowing against their homes. Do not be pressured by other members of your family or "friends" in pledging your home for risky business ventures or other endeavors.

How do reverse mortgages work?

With a reverse mortgage, a homeowner receives a lump sum or regular payments based on the equity of his home. Usually these are used to provide income for retirement. Reverse mortgages should be looked at closely. The points, fees, and interest rates can be fairly high. Loan programs vary widely, so shopping around is critical. A home equity loan is usually a better method for providing additional retirement income. Alternatively, it may be better to sell the home and move to a less expensive home, and invest the difference to provide income.

DRIVER'S LICENSE

How will I receive notice to renew my driver's license?

Your license will expire on your birth date six (6) years after the date of application. A renewal notice card should be mailed to you approximately thirty (30) days before your license expires. This notice will be sent to the last address the Department of Public Safety has on file. You are still required to renew your license even if you do not receive the renewal notice.

How do I renew my driver's license?

Application for renewal must be made in person at any Texas Driver's License office, except for licensees who have received a written notice of renewal authorizing them to renew by mail. Mail renewals will not be issued to: licensees who have been convicted of any traffic violation within the last four (4) years; licensees whose license is suspended, cancelled, revoked or denied; or licensees whose driver's license reflects restrictions because of driving ability or medical condition that requires periodic reviews of such medical condition. On your renewal application you must answer questions concerning your medical history. You must bring proof of identification as well as a social security card. You must also furnish evidence of financial responsibility to the Department of Public Safety before your driver's license can be renewed. An insurance identification card, insurance policy, self-insurance document, insurance binder or affidavit of non-ownership are examples of evidence of financial responsibility that you may provide to the Department of Public Safety. You can also renew online at http://dps.texasonline.state.tx.us/ if you meet the qualifications listed on the web site.

Are there any special rules for senior applicants 79 years of age or older?

Yes, there are specific rules for applicants 79 years of age or older which eliminates the renewal by mail, internet or telephone.

Applicants 79 years of age or older:

- Office visit is required to renew driver's license.
- Must pass the standard vision exam.
- Six year expiration date for individuals 79 to 84 years of age.
- Fee is $25.00 for driver's license.

Applicants 85 years of age or older:

Original driver's license:

- Expires on the second birthday after the date of issuance.
- Must pass the standard vision exam.
- Fee is $9.00 for driver's license.

Renewal driver's license:

- Office visit is required to renew driver's license.
- Must pass the standard vision exam.
- Expires two years from the next date of birth, if unexpired. Otherwise, expires two years from the last birth date.
- Fee is $9.00 for driver's license.

What is the Driver Responsibility Program?

The Program establishes a system of surcharge fees to drivers based on driving history. Monetary surcharges will have a point value assessed if a driver is convicted of moving violations. In addition, automatic surcharges will be assessed for other convictions. See the Texas Department of Public Safety Handbook or www.txdps.state.tx.us for additional information.

Can my driver's license be suspended or revoked?

Yes. Your driver's license may be suspended or revoked if you receive four (4) or more convictions for moving violations in a 12-month period or seven (7) or more within any 24-month period; drive while license is suspended; cause a serious accident; repeatedly violate traffic laws; habitually drive in a reckless or negligent manner; flee from a pursuing police officer; if a guardian is appointed for you and you have been found by a court to be incapacitated to drive a motor vehicle; the Department of Public Safety determines that you are unable to exercise reasonable and ordinary care while driving due to a physical or mental disability or disease; or if the Department of Public Safety finds that you have a chemical dependency likely to cause serious harm to yourself or others. Consult the online Texas Driver's License Handbook for additional actions.

How does the Department of Public Safety determine if I am unable to "exercise reasonable and ordinary care" while driving?

1. The Department of Public Safety may initiate an investigation of your ability to drive if any of

the following occur:

• Your doctor forwards notice to the Department of Public Safety of any physical or mental incapacity that would impair your ability to drive. (Your doctor is not required by law to forward this information, but some doctors believe they have an ethical duty to do so.);
• A friend or family member reports a disability;
• If when filling out your license renewal application, you indicate some medical condition which may affect your driving; or
• If you have a car accident and the officer on the scene thinks you may not be capable of being a competent driver.

2. After receiving a report from one of the above sources, the Department of Public Safety will contact you to schedule a meeting with an examiner at a local Department of Public Safety office. The examiner will look for any physical problems that may affect your driving ability and ask you questions to determine your mental alertness. If the examiner determines there are no problems, the findings are reported to the Department of Public Safety.

3. If the examiner reports a problem, the Department of Public Safety will send you a letter regarding the general disability. The letter will include forms which you are to have your doctor complete. Either you or your doctor should send the completed forms to the Texas Department of Health. Your license may be revoked if you refuse to return the forms. Steps two and three are not required if your doctor was the one who initially contacted the Department of Public Safety.

4. The Medical Advisory Board will review the forms and decide whether you should or should not be driving. If the Board determines there is no problem, a letter is sent to you indicating your license will not be revoked.

5. If the Medical Advisory Board determines you should not be driving, they will schedule a hearing in front of a hearing officer, judge of a municipal court or justice of the peace in the county where you live. A letter will be sent to you indicating the date and time of the hearing. You may present new evidence at the hearing to prove you are competent to drive. The judge will then decide whether you may continue to drive. If the judge decides you are not competent to drive, your license will be revoked. If the judge decides there is no problem, you will retain your license.

6. You may appeal the decision by filing a petition in the county court where you reside not later than 30 days after the order was entered. Your license is valid until the judge enters the order to suspend or revoke your license. The telephone numbers for the Houston Area Office of the Department of Public Safety are listed in the Resource and Referral Numbers section of this handbook.

How can I appeal the revocation or suspension of my driver's license?

You have the right to appeal by filing a petition within fifteen (15) days after the date the order of the Department was entered, requesting a hearing on the matter in the County Court at Law in the county where you reside. In such appeals process, the licensee shall have the right to a jury trial.

What happens if I continue to drive after my license has been revoked or suspended?

The penalties for driving a motor vehicle while your driver's license is suspended, cancelled, denied or revoked are:

1. a fine of not less than $100.00 or more than $500.00; and
2. confinement in jail for a term of not less than 72 hours or more than 6 months; and
3. a suspension of your driver's license will be automatically extended if you are convicted of operating a motor vehicle while your license is suspended, cancelled or revoked.
4. A subsequent conviction is a Class A misdemeanor.

How do I get around town if my license has been revoked?

Metro offers transportation throughout most of the Houston area with bus stops at most major intersections. Call (713) 635-4000 or visit www.ridemetro.org for general information regarding routes and schedules. The cost of a ticket is about $1.00. Seniors 65-69 get a 50% discount and seniors 70+ ride free. If the court revokes your license because of a disability, you may qualify for a MetroLift card. The card enables you to ride the MetroLift bus, which will pick you up at your house and drop you off anywhere in Houston. You must call one day in advance to schedule your travel (713-225-6716), and you still have to pay for the ticket. To qualify for a MetroLift card, you must fill out an application indicating you have a mental or physical disability. You must also include a note from your doctor stating you need access to MetroLift. For further information on how to apply for a MetroLift card, call Metro Customer Service at (713) 225-0119 (the office opens at 10 a.m.) or visit www.ridemetro.org.

How do I obtain a disabled parking permit?

If you are disabled and need a disabled parking permit, you must submit an application, including a Disability Statement page completed by your doctor, to your county tax office. The fee is $5.00. Permits for permanent disabilities must be renewed every four years. Permits for temporary disabilities are valid for six months or until your disability ends.

How do I obtain an identification card?

The Texas Department of Public Safety issues personal identification cards, similar in appearance to a driver's license. Applicants must provide proof of identification and a fee of $16.00. Expiration is on the birth date six years from the date of issue. For persons age 60 or older, the fee is $6.00 and there is no expiration date.

Can I use my driver's license to make an anatomical gift?

No. A donor card must be used to be an eye, tissue or organ donor. The cards are available at the Department of Public Safety Driver's License offices.

LOSING A LOVED ONE

What should I do if I lose a loved one?

You may be overwhelmed with grief right now. You may want to leave the administrative matters for a later day. But there are notifications and legal steps that should not be postponed.

• Make funeral and burial arrangements.
• Obtain several copies of the death certificate. The funeral home will order the death certificates for you. They will arrive in approximately 2-3 weeks. If additional copies are needed, and the loved one died locally, you may contact your area Bureau of Vital Statistics office.
• Gather relevant documents, such as the will; trusts; stock, bank account, brokerage and annuity statements; and insurance policies.
• Contact the Social Security Administration (if the deceased was an eligible recipient). Some funeral homes will do this for you. However, if the loved one's death creates benefits for you, it is better for you to contact the Social Security Administration directly to discuss those details.
• Notify any life insurance companies of the death.
• Contact the trustee of any trust and/or the attorney who prepared it.
• Contact the executor of the will and/or the attorney who prepared it.
• Call the administrator of the decedent's pension plan.
• Notify the decedent's banks, financial institution and/or brokerage firms.
• Contact credit card companies.
• Be sure that insurance or Medicare claims have been processed before paying any medical bills.

This list is only a starting place and may not be a complete list for all estates. Despite the push to gather documents and notify people and entities, you may still find that the grief is overwhelming you. It is very important to recognize the grief and take steps to address it. The Children's Bereavement Center is a wonderful resource for our youth. Jewish Family and Children's Service, the Family Services Association and Catholic Charities also provide grief counseling for a variety of age groups. While this is not an exhaustive list, it is a start to putting you on a more positive path.

ELDER ABUSE

What should I do if I suspect someone is abusing or exploiting an elderly friend?

If a person has reasonable cause to believe that an elderly or disabled person has been abused, exploited or neglected, they have the responsibility to report the facts to the Adult Protective Agency (1-800-252-5400). Your name and the information you report are confidential.

Am I required to report suspected elder abuse?

The law mandates that all suspicion of elder abuse, exploitation or neglect be reported to the Adult Protective Agency (1-800-252-5400).

What will happen if someone finds out that my grown child is hurting me?

If an individual has been physically abused, the law requires that a report be made to the appropriate law enforcement agency.

What can I do to protect myself from an abusive caregiver or spouse?

You need to file a report with the Adult Protective Agency (1-800-252-5400) and the appropriate law enforcement agency.

RESOURCE AND REFERRAL NUMBERS

PHONE NUMBERS MAY CHANGE. THE BASIC RESOURCE FOR REFERRALS IS 211, UNITED WAY.

ADULT PROTECTIVE SERVICES

Texas Department of Adult Protective Services
of the Protective & Regulatory Services..(713) 767-2700
5425 Polk, Houston, Texas 77023
www.dfps.state.tx.us

Adult Protective Services 24 Hour Hotline (Report for Abuse)........................(800) 252-5400

CONSUMER COMPLAINTS

Attorney General's Consumer Protection Hotline ....(800) 621-0508

You can also download the consumer complaint form from the main consumer page at www.oag.state.tx.us. You may also complete an On-Line Consumer Complaint form.

To complain about a nursing home, assisted living facility, or home health care agency, call the Texas Department of Aging, Disability, Consumer Rights and Services Hotline at: ....(800) 458-9858
www.dads.state.tx.us

To report Medicaid provider fraud, abuse or neglect of a Medicaid recipient, contact the Attorney General's Medicaid Fraud Control Unit: ....(512) 463-2011
Fax: (512) 320-0974 Email: mfcu@oag.state.tx.us

Better Business Bureau ....(713) 868-9500
www.bbbhou.org

No call list (to stop telephone sales calls) ....(888) 382-1222
www.donotcall.gov

EMERGENCY FOOD, SHELTER & MATERIAL ASSISTANCE

Texas Health and Human Services Office of the Ombudsman (statewide)...(877) 787-8999
Texas Health and Human Services Adult Foster Care (local) .... (713) 692-1635
www.hhsc.state.tx.us

Medicaid of the Texas Health and Human Services Commission...................(800) 252-8263
5425 Polk St., Suite 130..(713) 767-2000
Houston, Texas 77023
www.cms.hhs.gov
Harris County Community Services..(713) 578-2000
www.cedd.hctx.net

Harris County Social Services Dept...(713) 696-7900
8410 Lantern Point (hearing impaired)..(713) 578-2000
Houston, Texas 77054
They help with rent, utilities, transportation, burial
www.csd.hctx.net

Interfaith Ministries ....(713) 533-4900
3303 Main St., Houston, Texas 77002
www.imgh.org

Salvation Army, Family Shelter ....(713) 650-6530
2202 Main St., Houston, Texas 77002
www.salvationarmyhouston.org

Salvation Army - Social Services Department ....(713) 658-9205
2008 Main Street, Houston, Texas 77002
www.salvationarmyhouston.org

FINANCIAL ASSISTANCE/BENEFITS

Texas Department of Human Services
5425 Polk, Houston, TX 77023
www.yourtexasbenefits.com
Intake for Provider Services...(713) 692-1635
Food Stamp Program (Texas)...(713) 767-2000
Food Stamp Program (Regional)... (713) 767-3177
Texas Department of Aging and Disability.......................................(713) 767-2157
Medicaid (Regional)...(713) 696-3695 or (713) 696-7189
Medicare SSI Program...(800) 772-1213
Provider Care Services, Current SSI Recipients................................ (713) 964-2777

Catholic Charities (food pantries, social services programs)..........................(713) 526-4611
2900 Louisiana, Houston, TX 77006
www.catholiccharities.org

HEALTH SERVICES AND REFERRAL

Quentin Mease Community Hospital .... (713) 873-3700

Mental Health America of Greater Houston ....(713) 523-8963
2211 Norfolk, Suite 810, Houston, Texas 77098
www.mhahouston.org

Mental Health-Mental Retardation Authority of Harris County (local)....... (713) 970-7000
7011 SW Frwy., Houston, Texas 77074
www.mhmraharris.org

Department of State Health Services.. (800) 458-9858
www.dshs.state.tx.us - mental health

Department of Aging and Diability...(800) 458-9858
www.dads.state.tx.us - mental retardation

Mental Health Information, Referral and Crisis Hotline.................................(713) 970-7000
www.mhmraharris.org

Harris County Psychiatric Center...(713) 741-5000

United Way Crisis Hotline ....(713) 468-5463
www.unitedwayhouston.org

Sheltering Arms ....(713) 956-1888
3838 Aberdeen Way, Houston, Texas 77025
www.shelteringarms.org

Alzheimer's Association ....(713) 266-6400
6055 S. Loop East at Long Drive, Houston, TX 7787............................(800) 272-3900
www.alztex.org

Houston Area Parkinson Society Parkinson's Disease Information ....(713) 626-7114
www.hapsonline.org

HOME DELIVERED MEALS

Houston/Harris County Area Agency on Aging ....(832) 393-4301
www.houstontx.gov/health/Aging
Houston/Galveston Area Council Agency on Aging .... (713) 627-3200

For persons outside of Houston/Harris County: www.h-gac.com

Greater Houston Meals on Wheels Program ....(713) 533-4978

Interfaith Ministries ....(713) 533-4900
3303 Main St., Houston, Texas 77002
www.imgh.org

HOUSING ASSISTANCE

Harris County Housing Authority ....(713) 578-2100
8933 Interchange Drive
Houston, Texas 77054
www.hchatexas.org
Houston Housing Authority .... (713) 260-0500
2640 Fountainview Dr.
Houston, Texas 77056
www.housingforhouston.com

INFORMATION AND REFERRAL

American Association of Retired Persons (AARP) .... (800) 424-2277
Member Hotline .... (888) 687-2277
www.aarp.org

Houston-Harris County Area Agency on Aging ....(832) 393-4301
8000 North Stadium Drive
Houston, Texas 77054
www.houstontx.gov/health/Aging

Senior Guidance Directory ....(832) 443-5083
www.srguidance.org

Texas Department of Aging & Disability Services ....(800) 252-9240
701 W. 51st St.
Austin, Texas 78751
www.dads.state.tx.us

United Way Information (local) ....(713) 685-2300
50 Waugh, Houston, Texas 77007
www.unitedwayhouston.org

LEGAL SERVICES

Dispute Resolution Center ....(713) 755-8274
49 San Jacinto, Suite 220
Houston, Texas 77002
www.drchouston.org

Lone Star Legal Aid ....(713) 652-0077
1415 Fannin, 3rd Floor, Houston, Texas 77002
www.lonestarlegal.org

Houston Bar Association .... (713) 759-1133
www.hba.org

Houston Lawyer Referral Service, Inc. ....(713) 237-9429
www.hlrs.org

Houston Volunteers Lawyers...(713) 228-0732
www.makejusticehappen.org

LegalLine ....(713) 759-1133
(First and Third Wednesday of every month from 5:00 p.m. to 9:00 p.m.)

Consejos Legales .... (713) 759-1133
(Spanish language legal advice, first Thursday of every month, 6 p.m. to 8 p.m.)

Elder Law Committee ....(713) 759-1133
(Speakers Bureau and Legal Advice at Various Senior Centers)

Legal Hotline for Older Texans and Veterans .... (800) 622-2520
815 Brazos, Suite 1002, Austin, Texas 78701
www.tlsc.org

Texas Attorney General's Office
(Consumer Protection & Public Health Division)..(713) 223-5886
808 Travis, Suite 300, Houston, Texas 77002

VETERANS LEGAL SERVICES

The Houston Bar Association/Houston Bar Foundation Veterans Legal Initiative sponsors free legal advice clinics every Friday, 1-5 p.m., at the Michael E. DeBakey VA Medical Center, 2002 Holcombe, Houston, TX 77030, First Floor, near the Emergency Room Entrance.
No appointment necessary. Clinics also are held on Saturdays in selected areas.
Veterans Legal Initiative Information:
www.hba.org/services/veterans-legal-initiative/

SENIOR CENTER/NUTRITION SITES

There are numerous senior centers in the Houston-Harris County area. For the one nearest you, contact:
Houston-Harris County Agency on Aging ....(832) 393-4301
8000 North Stadium Drive
Houston, Texas 77054
www.houstontx.gov/health/Aging

City of Houston Senior Centers: www.houstontx.gov/health/aging/seniorcenters.html
Magnolia Multi Service ....(713) 928-9515
Sunnyside Multi Service ....(832) 395-0069
West End Multi Service .... (713) 866-4239

OTHER HELPFUL NUMBERS

Information and Referral (United Way).. 211

Department of Veteran's Affairs Telephone Assistance Service .... (800) 827-1000

Metro Lift .... (713) 225-0119
www.ridemetro.org

Relay Texas TDD (operators who can help relay calls for the hearing impaired)
www.puc.state.tx.us/relay/index.cfm.. (800) 676-3777
(800) 735-2989

Texas Department of Insurance .... (800) 578-4677
www.tdi.state.tx.us

Senior Services (Serving West University and surrounding area) ....(713) 662-5895
6104 Auden, Houston, Texas 77005
Social Security Administration Information..(800) 772-1213
www.ssa.gov

Houston Area Office of the Department of Public Safety
General Information..(281) 517-1200

Driver's License Information..(281) 517-1333
Office Hours and Locations...(281) 517-1200
www.txdps.state.tx.us

Health and Human Services Ombudsman Office...(800) 252-9330
www.hhsc.state.tx.us/medicaid/index.html

Texas State Securites Board
(Protects Texas investors by regulating the securities industry in Texas)
208 E. 10th St., 5th Floor, Austin, Texas 78701
www.ssb.state.tx.us.. (512) 305-8300

USEFUL PUBLICATIONS

Senior Guidance Directory...(877) 393-1090
www.srguidance.org

New Lifestyles...(800) 869-9549
Directory of a variety of residential placement facilities and sources for seniors.
www.newlifestyles.com

HBA Elder Law Handbook...(713) 759-1133

Individual copies are available free of charge from the Houston Bar Association, 1111 Bagby, FLB Suite 200, Houston, Texas 77002. To obtain one handbook by mail, please send a check or money order for $2.00 in order to cover shipping costs. Please call the HBA office at 713/759-1133 for more information about obtaining multiple copies.

All HBA Legal Handbooks are available online, and some in other languages, at www.hba.org.

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