

The Legal Issues of Aging

A Brief Guide to the Most Common Legal Issues
Encountered by Seniors and their Families



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ESTATE PLANNING MATTERS:



A. Wills

A will is a legal document indicating what you want to happen to your estate when you die. The will, legally called Last Will and Testament, informs a Court of who you want to settle your estate and how you want your estate to be distributed. For the will to be effective, it must be admitted to probate, the legal proceeding approving the will, appointing your executor/executrix, and issuing letters of testamentary. These letters give the executor/executrix the legal authority to settle your estate.

The legal requirements for execution of a will in Texas include the following:

1. You must be competent at the time the will is executed. The level of competency required is that you are aware of your estate's nature and character and know who you want to receive it.
2. You must be at least 18 years of age

3. Two persons who are not listed in the will and do not otherwise have any interest in your estate must be witnesses. These witnesses must be at least 14 years of age.
4. The document must be properly executed, with formal sworn statements and signatures before a notary.
5. If you have a will from another state, it is probably valid in Texas. There is a lot of misunderstanding about this. Texas requires that the will meet the requirements of a valid will in the jurisdiction where it was executed and meet the requirements of execution in Texas. Even if it does not entirely meet the execution requirements in Texas, it can probably be admitted anyway, with some additional documents being filed in the court.

Additionally, most Texas wills do not list the individual personal items you want to distribute. This process is usually accomplished by a "Personal Effects Memorandum," which you create **after** the date of the will and by hand. In that document, you write out who gets what about your personal effects. For example, "I want my granddaughter Sally to have my diamond engagement ring." Later, if you change your mind, you destroy the first memorandum and write a new one.

You should consider who will make a good executor when considering your will. The executor is responsible for gathering all the assets, paying required debts and taxes, notifying potential creditors, contacting investment advisors, insurance companies, and banks, creating an inventory of your estate, and, finally, making the distributions of your estate to your beneficiaries. The person you select should be a good manager, good with finances, and have the time to spend to complete the process. You should not select your child just because they are your child.

Further, you should be aware that not everyone needs a will. For most of our lives, we all hear that everyone needs a will, but in the right situation, and if you follow the instructions given to you by your attorney, you may be able to avoid the necessity of a will altogether.

Finally, you should not print off wills or use online legal services unless you know that what you get will be a valid will in Texas. Often, these companies will tell you that the will they prepare is good in Texas, but there are issues when it comes time to probate the will. The will does not work, and then the family is left with an intestate estate that will be divided according to the law in Texas and not based on what you stated in the will you attempted to create.

It should be noted that there are many considerations in preparing a will. There may be reasons to shelter some of the money you want to leave to someone. For instance, a spouse might become incompetent due to early dementia. You would not

necessarily want to leave money to them directly. You might have a child or a grandchild with special needs due to mental or physical disability or addiction. You would want to consider other options that leave money to them directly. You may also have minor children who could be in your beneficiary line, and you might want to establish a trust or other options to protect the monies for them until they are adults. For these reasons, and for the peace of mind knowing that your wishes will be followed after you are gone, it is highly recommended that you consult with a qualified and experienced Elder Law or Estate Planning attorney. Attorneys specializing in these areas are well-versed in the options, limitations, and requirements necessary to accomplish your objectives.

B. Trusts

There is a lot of information around about revocable living trusts. Several well-known financial advisors make it sound like everyone needs a trust. In some states where probate is a long, drawn-out, and expensive process, these trusts are an excellent way to save money, time, and resources. However, in Texas, probate is a relatively inexpensive and straightforward process. For this reason, trusts are not as popular in Texas because the cost of setting up a trust and the difficulties in managing the trust make it less desirable than executing a will.

However, there are some specific situations where a revocable living trust is the best option. One example is if you own property in more than one state or country. Texas probate only controls Texas property. If you have property out of state, you may have to probate your will in every state you have property. The minimum would be to do ancillary probate where the court in another state recognizes the Texas probate and accepts it. This process is still a Court proceeding, and your family will have to pay additional court and attorney fees for each piece of additional property.

Another example is if you have a blended family. If you or your spouse have children from a previous relationship and brought your accumulated estate into the marriage, a trust can be beneficial. A trust will allow you to give access to your estate to your spouse during their lifetime, with or without limitations, but it will pass to your children when your spouse dies.

The final situation most commonly utilizing a trust in Texas is a very complex estate. If you have several business interests, multiple properties, and a complex scheme for distributing your estate, a trust is the easiest way to accomplish your goals.

The advantage of the revocable living trust is that it allows for more specific distribution schemes that can be enforced and completed. Sometimes, it is difficult to enforce any restrictions with a will once distributions have been made. After your estate assets are disbursed, the executor has no actual legal authority over them. A trust also avoids probate. Many people like the idea, but it is not necessary to avoid

probate in most cases. Another advantage is to use a specific type of trust to avoid estate taxes; however, there are many ways to avoid those taxes other than using a trust.

The disadvantages of a revocable living trust include the necessity to manage the trust and that most people do not understand how trusts work. Trusts are living, breathing entities. While you are alive, the trust is taxed most of the time under your social security number. However, the trust becomes a separately taxed entity and must have its tax ID number and file its tax return when you die. It usually becomes irrevocable at that time, as well. During the time between your death and your spouse's death, the trust controls distributions, and the use of assets. These restrictions can create issues for you or your spouse until the last one of you dies.

There are other trusts besides revocable living trusts. We will discuss Special Needs or Supplemental Needs trusts under the section on family matters. However, to briefly explain them here, these trusts allow you to preserve funds for a person who is disabled or incompetent to allow them to retain their government benefits and still use the money to provide a better quality of life. Other trusts include "contingent" trusts in your will that allow any funds from your estate by a minor to be placed in trust until the minor reaches majority or whatever ages you stipulate before they receive the funds.

Additionally, many different types of trusts are used to preserve assets for large estates concerned about estate tax issues. These include charitable trusts and irrevocable trusts that take funds out of your estate and beyond your control to reduce the likelihood of estate tax. Since the current exemption for estate tax is over \$12 million, there are fewer people interested in these specific trusts.



C. Probate

As previously mentioned, probate is the court proceeding by which a will is given legal authority. Until a will is probated, it is just a piece of paper. No action can be taken under a will until it is probated. The process in Texas is easy, but it must be completed before the executor can do any of the necessary steps to administer the estate. There are few exceptions to the requirement that an attorney must file probate. One exception is if the person applying for probate is the named executor and the sole beneficiary. Otherwise, the application must be filed by an attorney. The application must be posted in a public place in the county for ten days. Both Williamson County and Travis have a locked case by the clerk's office where the applications are posted. Once the ten days have passed, the matter can be set for hearing. The hearing requires the attorney and the executor to be present, but it only lasts about ten minutes. Once the will is accepted to probate, the executor has to take an oath of office and begin administering the estate. Within 90 days, the executor must file a copy of the inventory or an affidavit in place of the inventory.

If the will is drafted correctly to allow for an independent administration, these are the only two steps that must be taken in which the court is involved. Everything else is done without the court and mainly without an attorney. Of course, there are a

few other steps, but the court has very little interference for the rest of the administration unless something goes wrong.

Probate is a very different situation if no properly drafted will exists. The proceeding in the court then includes a hearing to determine who the heirs are. This scheme follows the statutory distribution and may include heirs you did not intend. The most common unintended heir is usually a child from a previous relationship that you intended to disinherit either because a step-parent adopted them or you have had no relationship with them since the relationship with the other parent ended. The statutory distribution can have devastating consequences for your spouse or other children. Another situation can arise where you have siblings or parents who will inherit when you have someone else in mind. The process for determining heirship and appointing an administrator to settle your estate is much more costly than routine probate. There is an attorney appointed by the court, in addition to the attorney for your estate, whose job is to represent any unknown heirs. The court hearing requires two disinterested witnesses to be present in addition to the proposed administrator. Additionally, if you had a stepchild that you took into your home and raised as your own, there is a possibility that they can claim a share of your estate even if you did not adopt them.

These are examples of why it can be important to have a properly drafted will before you are incapable of doing so.

D. Probate Avoidance

Despite all the reasons given above for having a will, there are situations where no will or trust may be necessary to avoid probate. In certain situations, real property can be transferred using a Lady Bird or Transfer on Death deed, and bank accounts can be set up as beneficiary designated accounts. If all of these steps are taken correctly, nothing in the estate requires either a will or trust. HOWEVER, it must be stressed that you should never assume that you know how to do this without consulting with a qualified Elder Law or Estate Planning attorney! Some pitfalls and loopholes can create issues that will require a will or probate to resolve, and you will need a will and not have one.

Even if you consult with an attorney and do everything you need to do to avoid probate now, you must be diligent in the future to make sure that you do not create a problem later.

It should also be noted that most counties in Texas allow for the transfer of a motor vehicle with a gift title and either an affidavit of heirship form or transfer on death title application. If you know that your grandson wants your car, you should complete the necessary paperwork to enable that transfer without having to probate your will.

Many decisions and hidden issues relate to all steps to avoid probate. An attorney who specializes in these areas will be aware of all of them and be able to guide you through the pitfalls. If the result is not having to probate your will, or maybe not even drafting a will, to begin with, then the attorney will most likely cost you less than the will and subsequent probate.

ALTERNATIVE DECISION MAKING

A. Power of Attorney

Most people know about powers of attorney. Adult children are very familiar with the documents because they have power of attorney for their parents. There is more than type of power of attorney for financial matters in Texas. The one most people are familiar with is the Statutory Durable Power of Attorney. This form, as the title states, is statutory. The State Legislature has determined what the form should contain, as a minimum, and the format for the document. If you download a form from the internet, the form you get will be the minimum statutory form for Texas. Go to an attorney who specializes in Elder Law or Estate Planning. You will get a form that does much more than the minimum statutory form because the attorneys are aware of the form's shortcomings. Be sure that any form you use states that the form is not affected by your later incompetence or incapacity. Otherwise, it will become void if you become incapacitated or incompetent.

The purpose of this form is to let you appoint someone else to take over management of your finances should you become unable to take care of them yourself. There are options for you to limit the financial matters that you will allow your agent to manage. However, if you do not trust the individual you have appointed to manage all of your affairs, perhaps you have chosen the wrong person. The form in Texas can be drafted to either be effective the day it is signed or only to be effective when a threshold event occurs. It is much more efficient and flexible to allow the form to be effective the day it is signed. If the threshold event of your incompetence or incapacity must be reached first, then every six months, your agent will have to get a letter from your doctors claiming that you cannot manage your affairs. Sometimes, having one more thing to do when you are a caregiver for someone else is just one too many. The added advantage of allowing the form to be effective immediately is that there is no requirement that you be incompetent or incapable of managing your finances, which enables your agent to use the form to assist you whenever you need them. Another option in Texas is to use co-agents in your power of attorney. You then have to decide if they can work independently or if they must work together. There are several issues to consider either way, so it is recommended that you discuss this with your attorney.

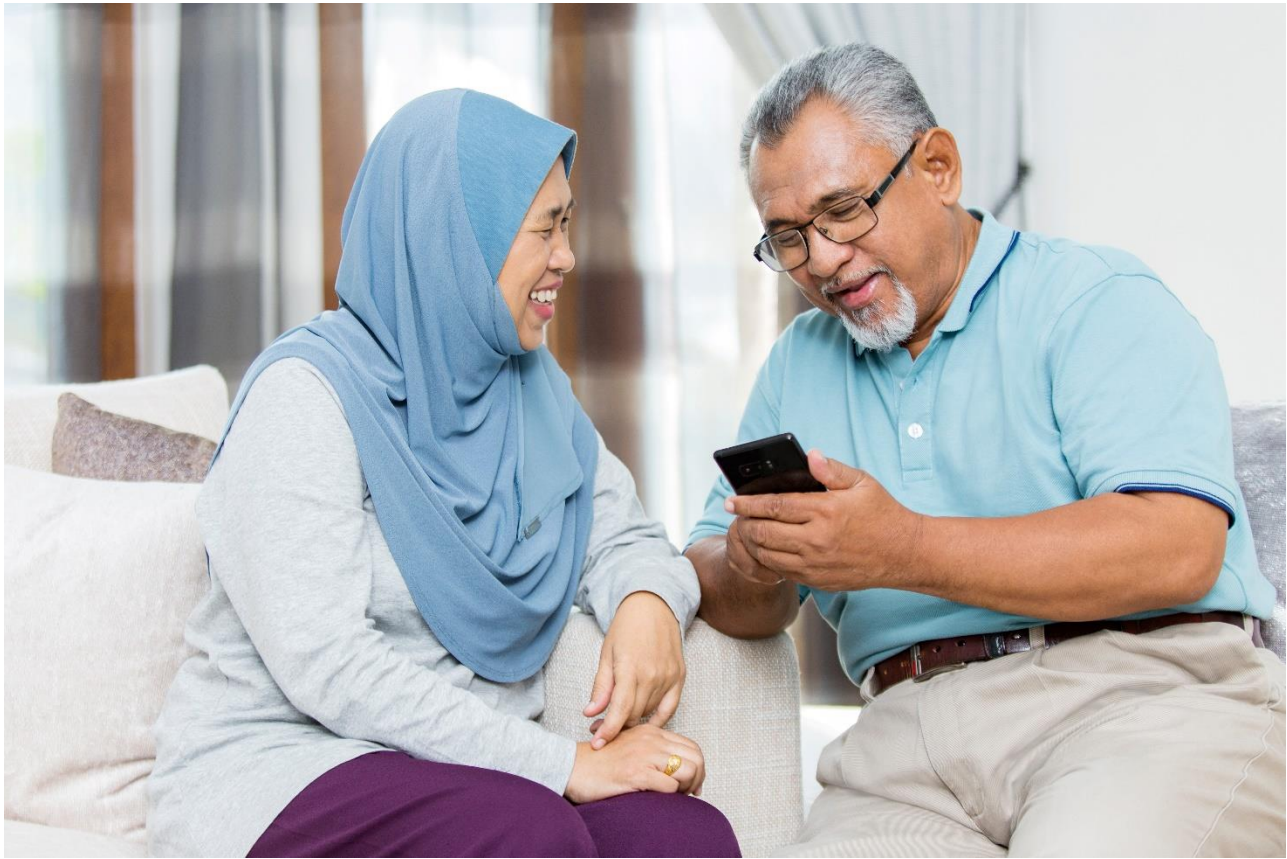
Other forms of a power of attorney for financial matters include a general power of attorney. This form is always limited in time and scope. It is used for someone to handle one specific matter for you for some specified time. Maybe you are

moving closer to your daughter in Dallas, but you need to sell a home in Austin. You issue a general power of attorney to enable your son to sign all the real estate documents. This form becomes void if you become incompetent or disabled during the document's time frame.

Either way, you need to ensure that the person you select as your agent under a power of attorney is the right person. Again, it may not be the best choice to appoint your children. Sometimes it might be better to appoint a sibling or good friend if your children are younger adults or are not good at managing money at this time. You also need to know that even if you appoint your children and they make a mistake, you have the legal right to undo anything they do so long as you are competent to do so.

You should give your agent all the information they will need to handle your financial affairs. You should include all your account numbers and the name and address of all the financial institutions where you have accounts. They need to know what credit cards you have, when they are due, and how you pay them. They need to know about your insurance, financial advisors, tax accountant, and attorneys. I strongly suggest that you make lists of this information and keep it in a safe place. Let your agent know where they can find the information.

Please do not add your child or agent to your bank account as an owner. There are several issues involved with this. First, you have made a gift to your child or agent. IRS will count this as a gift. So depending on the amount of money in your account, you may be liable for a gift tax return. Also, since joint tenancy, the classification of ownership you have given, means that everyone on the account owns the account in its entirety, your child can take money out of the account without your approval. If your child gets sued, your account could be at risk. So please do not put them on the account as an owner. Most banks allow you to put a child on the account only as a "signer." It is not explicitly required if they hold your power of attorney because they already have the legal right to sign on your behalf. Give your bank a copy of the power of attorney. They should not need anything else.



B. Guardianship

Guardianship is a legal process that determines that someone is legally incompetent to handle their financial affairs or personal needs. If you become incompetent for any reason and do not have a power of attorney for your financial or medical affairs. During the guardianship, the court will receive evidence from your physician, your primary caregivers, and your family that prove you do not have the mental or physical capacity to manage your money or healthcare. It is an expensive process. The court will appoint an attorney to represent you since your supposed incapacity makes it impossible for you to hire one for yourself. If the court finds that you are incompetent, the court will remove many of your rights. For instance, you will not be able to drive, vote, get married, live where you want to live, manage your money, or determine what doctors you see or what medications you take. You can appeal to the court to reconsider, but there must be a valid reason for the request. You will have to prove that you have regained sufficient competency for the court to reverse the guardianship.

Guardianship is also used when the person you appointed under a power of attorney needs to be removed for failing to do their job or exploiting you. The procedure is the same and will have the same effect on your rights.

Your guardian will make all decisions for you. They will decide what treatments you receive, what medicines you take, where you live, how your money is handled and how much you can spend. However, they must file a report in court every year to prove that they have been handling things the right way.

Attorneys that handle guardianships in Texas must be certified guardianship attorneys. The attorneys must take specific training in guardianship to make sure they follow all the specifications for guardianship. The attorneys must also check into alternatives to guardianship to determine if a less restrictive solution might be available.

Because it is so devastating to have to undergo guardianship, it is best to avoid the need for one. The best way to avoid guardianship is to have powers of attorney, both financial and medical, with good people as the agent for each.

MEDICAL DOCUMENTATION

A. Medical Power of Attorney

As most of you are aware, the medical power of attorney allows you to appoint someone to give someone else the ability to make healthcare decisions for you. Texas does not allow for co-agents under medical powers of attorney. It would be best to appoint someone you believe will follow your wishes and values for your healthcare. It would help if you also discussed with your agent what your desires are when it comes to specific medical treatments or options. The more open you are in this discussion, the easier it is for your agent. It would be a good idea to include other family members in this discussion if at all possible to alleviate the stress on your agent of having to defend their decisions if you are not able to discuss them.

Your agent will have the right to decide where you live and what procedures or treatments you receive. You can verbally override most decisions so long as you are competent. However, once you become incompetent, you can make fewer decisions for yourself.

Agents under a medical power of attorney are limited in some decisions. They are not allowed to commit you to a mental institution against your will, approve the use of psychotropic drugs or electroshock therapy, or force you to undergo an abortion. If these procedures become necessary, the agent will have to obtain guardianship with specific orders to allow such treatments.



Your agent cannot force you to remain in a facility if you do not want to stay there. Unless you have been adjudicated as incompetent, your agent does not have the power to force you, nor does the facility. If you are incompetent and are attempting to escape from your care facility, your agent will have to obtain guardianship to force you to stay there.

B. Mental Health Power of Attorney

Under a standard medical power of attorney, your agent cannot agree to mental commitment and specific mental health treatments. If you have a condition that may result in you needing mental health treatments or institutionalization, you should execute a designation of mental health care agent in advance of need. This document advises the court that you have selected this person to make mental health decisions for you. It allows you to specify what treatments or medications you are allowing them to choose for you. It also allows you to stipulate whether or not they can commit you to an institution.

These documents are not used often. Most people have no idea that they will need them in the future. However, inherited conditions predetermine the need for such treatments in particular families; if your family has one of those conditions, you should consider executing this form. If you have been diagnosed with Parkinson's, Alzheimer's, or any other disease with a psychotic or mental health component, you should also execute one.

C. Advance Directive to Physicians (Living Will)

This document allows you to make decisions about medical treatment utilizing life-sustaining measures. The conditions under which this decision is made are limited. The first choice is whether you want life-sustaining measures utilized if you are in the end stages of a terminal medical condition and expected to die within six months. Your choices are to use life-sustaining measures or be kept comfortable and allowed to die as gently as possible. The second condition is if you are in a coma or vegetative state. The choices are the same: utilize life-sustaining measures or be kept comfortable and allowed to die as gently as possible.

The State Legislature approved the new version of this document in 2017. The changes provided an expanded definition of the two previous conditions and added a third. The new condition is if you have dementia to the point that you cannot recognize family and friends and are no longer able to participate in activities that give your life meaning. The choices are the same as before. The new form allows you to permit your agent under your medical power of attorney to decide for you should a condition arise not currently covered in this document. The agent should decide based on your values and choices expressed in the document.

The new document allows you to voice your desire to die at home if at all possible. While many people think this is what they want, it is essential to consider how it might affect those you leave behind. For instance, would your spouse still be able to live in the house if you died there?

This document does not have anything to do with resuscitation. There is a different form for those decisions. You should have a Do Not Resuscitate order executed if you do not want to be resuscitated. (See below) The form does not cover any other specific condition. If you are concerned about other conditions, be sure that you discuss them with your agent so they can feel comfortable making those decisions for you. Whether you choose to utilize life-sustaining measures or not, you should discuss your decisions with other family members to make sure they know your desires and decisions. Your agent does not need the added stress of arguing or worrying about someone else when making these decisions on your behalf.

Also, you should know that the decisions you make on this document are verbally reversible at any time, even if you lack mental capacity otherwise. All you have to do is say you have changed your mind.

D. HIPAA Authorization

HIPAA Authorizations are needed in Texas because the medical power of attorney is a springing form. It does not go into effect until the threshold event of you not being able to make medical decisions for yourself occurs. Since the agent cannot

use the medical power of attorney to discuss this with the doctor, they need to be given access to your medical records through a HIPAA Authorization. The agent can use the HIPAA form to ask the doctor if you have reached the level of incapacity to effectuate the medical power of attorney. The doctor must limit the amount of personal health information provided to the least amount to answer the request. So, while the current form used to provide HIPAA Authorization allows you to specify what records you are releasing by this authorization, the doctor will only provide those answering the questions. If your agent asks if you have reached the point that the agent can use the medical power of attorney, the doctor will only answer that question.

There is also a great deal of misinformation about HIPAA. First, it only applies to health care professionals and their associates. It includes billing agents, attorneys, accountants, allied health personnel, and suppliers to the facility. It does not include anyone else. Suppose your doctor gives information to your agent. In that case, your agent can disseminate the information however they choose. It is not covered under HIPAA unless they happen to be acting as a professional health care provider for you. However, they are not allowed to treat you and act as your agent by law. HIPAA does not apply to neighbors discussing your health condition, your church praying for you, or any other use of your personal health information.

You can include anyone you want to access your medical records and information on your HIPAA Authorization. You may want to use groups or classes of people. For instance, you may indicate that your spouse has access and state that your children only get access if your spouse is unavailable. You may add that your minister has access without using a specific name. That way, if your minister changes, they would still be able to get information.

Again, this is where an attorney specializing in Elder Law or Estate Planning can assist you in making good choices to meet your needs.



E. Declaration Regarding Anatomical Gifts

Most of you would call this a donor form. The State Legislature has recently redesigned this form. The form now allows you to indicate if you do not want to be a donor. The form now makes it clear to your family what your choice is. They will not have to wonder if you didn't fill out the form or if you meant to be a donor.

The form also allows you to indicate if you have made the selection on your license to be a donor. However, you should know that merely indicating your interest in being a donor on your license does not complete the process. You should go to [DonateLife Texas](#) and complete the registration process if you want to be a donor. The form also allows you to choose what you want to be used and how you want it used.

If you consider being a cadaver for educational purposes or allowing your body to be used for research, you should register with one of the organizations that take whole body donations. There is a list of them online, and it will tell you all of the requirements for each organization. If you find one you like, you should register with them in advance.

Again, it would help if you discussed these options with your family to make sure they know what you want. There are limitations on anatomical donations if they are not done at the right time under the right conditions. It is much better if the medical team doesn't have to wait for your family to agree.

F. Appointment of Agent For The Disposition

This document allows one person to have the legal authority to dispose of your remains as you requested. Your powers of attorney die with you, so they cannot be used for this purpose. By law, in Texas, if you want to be cremated and someone in your family says no, you cannot be cremated unless someone has the legal authority to make that decision.

This document gives one person the ability to comply with what you told them you wanted to happen to your body after you die. That person will make all the necessary decisions and handle the entire disposition. If you have specific requests that do not include burial in a cemetery or depositing your ashes in a columbarium, you should discuss them with your family. Again, you want to try to limit the amount of possible discord in your family. Emotions are very high at the time of death in a family, and irreparable damage can happen when people think they know what you want when they don't.

Make sure that you write down instructions for the person you have named as an agent under this appointment. If you have specific requests for funeral services, who should be notified, where you are to be interred, or any other specifics, make sure your agent knows them.

G. Do Not Resuscitate Orders

Do Not Resuscitate Orders indicate your desire to be resuscitated if you should have a respiratory failure or cardiac event. They are appropriate if you feel that you have reached a place in life where resuscitation may cause more damage than you can tolerate. For instance, in older women who have become frail, CPR can often break ribs or breastbones and cause severe pain and serious complications. You can execute the form in front of a notary, by you in front of two witnesses who are not involved in your health care, by your agent under your medical power of attorney; or by two physicians who agree that resuscitation would be detrimental to you. This form does not control whether you have a feeding tube or any other life-sustaining treatment; it only covers whether or not you are to be resuscitated in an emergency requiring CPR or respiratory intervention.

Do Not Resuscitate Orders come in two forms. One is to be used in the hospital and only in the hospital. The other form, an Out of Hospital DNR, is used everywhere else. You must have the original of this document with you or on file in the location

where you are to have it be effective. There is a lot of disagreement currently with EMS over the acceptance of DNRs. Currently, if EMS is called, they will often resuscitate you until you get to the hospital. To improve your chances of having your DNR honored, the EMS must have the original. They may still refuse; however, they are violating the law, and you do have legal recourse against them if you choose to pursue it.

This form is also verbally revocable even if you lack capacity. This is another form that you can print from your computer. Please do not do so. There are very specific execution requirements and very strict instructions on using the document. Consult with a qualified attorney before you need the form and find out that you didn't follow the instructions.

PAYING FOR LONG-TERM CARE

A. Self Pay

Many people do not consider how they will pay for care when they can no longer stay at home. There are not as many options as people think. Regular health care insurance does not cover the cost of facility care. Medicare does not pay for long-term care either. Some people think that their children will provide for them or that they will live with their children and not need facility care. Families are busier than ever before. The adult child of an older parent who is failing in health is unlikely to have the resources necessary to take care of the parent in their home, even if they would like to be able to take care of them.

So, many parents are left with having to consider self-paying for long-term care. However, the average cost of a skilled nursing facility in the Austin area is currently around \$6,500 per month or more. It is not difficult to figure out how long you can afford to pay that much before you run out of available funds. If you are a single person who needs long-term care, you will not be adding the cost of facility care to your current living expenses. You can sell your home and car and use those funds to pay for your care. The issue becomes more difficult when you and your spouse currently live at home, and only one of you needs facility care. In that situation, you will be adding \$6,500 a month to your current living expenses. It can be a severe issue for those who have limited resources. It may force the at-home spouse to sell the family home and move into a less expensive living arrangement to pay for the facility care for the other spouse.

If you believe that you might be facing that situation, you should consult with an Elder Law attorney as soon as possible to help you start planning on how to protect your assets. The earlier you begin the process of asset protection, the more options you have.



B. Long-Term Care Insurance

Depending on your age and your health condition, you may be able to obtain long-term care insurance. While the expense is significant, it is less than facility care. There are many considerations when shopping for long-term care insurance.

1. What do they cover? Does the insurance pay for in-home care, assisted living, memory care, or only skilled nursing?
2. What does it pay for? Will it pay for therapy, caregivers, room and board, transportation, or only for the actual skilled nursing fees?
3. How long do you have to wait to receive benefits? Some policies pay from day one; some make you wait for several months before they pay for care.
4. How long does it pay? Some pay for only a limited time, maybe a year or two. In comparison, other policies pay for as long as you need them.

Long-term care insurance is another situation where the longer you wait, the more it will cost you, and the fewer options you have. A good insurance agent who represents several companies can give you more options. However, well-known

companies like New York Life or Transamerica have many options within their lines. Some companies offer incentives to entice you to purchase insurance from them. At least one company offers long-term care insurance that converts to life insurance for the unused portion of long-term care. Getting the life insurance payment helps offset the cost of long-term care insurance and benefits your family.

If you can, you should investigate the possibility of getting insurance. Do not just assume that you wouldn't qualify. There may be more options than you know, and it is worth looking into what is available.

C. Medicaid

There is an enormous amount of misinformation regarding Medicaid. Medicaid is a needs-based program of the Federal Government. While it is a federal law, it is implemented by the individual states. That means that each state makes its own rules and regulations. All state's laws are different. So, what applies in Texas wouldn't be the same in California or Illinois. Be sure that the information you are getting is accurate. Be aware that it is against the law for someone other than an attorney or a state employee to assist you in applying for Medicaid.

To apply for Medicaid, you must meet the asset and income limits. Elder Law attorneys know the current rules, know what options you have to protect some of your assets, and know what is necessary to get you qualified in your state. Elder Law attorneys specifically work in this area and keep updated on the latest figures and requirements. Elder Law attorneys can also assist you in protecting your assets from estate recovery after you or your spouse has died. The rules and numbers are different if it is a single person, one of a couple with a spouse at home, or both partners applying for assistance simultaneously.

If you get approved for Medicaid, you will use some of your income to pay a portion of your costs, and Medicaid will pay the remainder of the State rate for skilled nursing. The state requires that a Medicaid resident receive the same care as a private pay resident. However, it is not always possible for a resident who is paying what the state pays to get the same services and amenities available to someone who is paying three times as much to private pay. The problem is growing as rates increase. Fewer nursing homes want to accept Medicaid patients, and those that do are limiting the number of beds they will reserve for Medicaid.

Medicaid does not pay for assisted living or memory care through the long-term care benefits. To get paid for these services, you must qualify for the Star+ program (formerly called the CBS or community-based services program). While you must meet the same income and asset limits, the application process is different, and currently, there is a long waiting list of applicants. You should check with HHSC to get on the waiting list. You might be admitted to a skilled nursing facility, qualify for

Medicaid, then "step-down" to an assisted living with your benefits. It is not a guarantee, but it often works and is usually quicker than trying to wait for Star+. To qualify, you must meet the medical necessity requirement for admission to a skilled nursing home.

Please see a qualified Elder Law attorney for more information.

D. Veteran's Benefits

It is possible to get various Veteran Benefits if you meet the criteria. Many require specific locations of service, times of service, conditions of service, and length of service before you can qualify. If your spouse qualified for benefits, you might qualify for benefits, but it will probably not be the same as your spouse received.

Knowing what benefits your spouse was getting makes it easier to determine what benefits you might get as a surviving spouse.

If you were in the service, especially if you served during wartime, you should check into what benefits you might be qualified to receive. Several organizations can assist you in applying for VA benefits. TexVets is a nonprofit funded by the state that provides veterans who assist other veterans in obtaining benefits at no charge. If you want to know if you qualify, you should talk to them first.

While some attorneys assist veterans in obtaining benefits, please be aware that the VA does not allow attorneys to charge for assisting a veteran in applying. However, some attorneys will assist with the VA application when the veteran is paying them for other services. Some attorneys assist veterans at no cost. If you are looking for assistance, please ask about the cost before making an appointment.

There are many good VA facilities in the Austin area that having benefits would qualify you to use. It is worth the effort to determine what you qualify for if you have been in the service.

E. Medicare

It is a surprise to most people that Medicare does not pay for long-term care. You can get 100 lifetime days of rehab paid for in a nursing home. Once those days are used, Medicare will not pay for any other cost related to nursing homes unless you need hospice or direct medical care covered under the Medicare medical insurance coverage. There are very few exceptions to the 100 lifetime days rule.

Medicare does not pay for assisted living, memory care, or other long-term care facilities except for rehabilitation services. If you have been in the hospital and need physical or occupational therapy services before returning home, that is the 100 days that Medicare pays. You must show improvement during your stay at the rehab

facility, or you must have a statement from your medical team that if you do not continue to get rehab services, you will rapidly decline.

Medicare will also pay for inpatient hospice services in a nursing home if you were already a resident in the nursing home when you entered hospice. Medicare will pay for at-home hospice services. However, it may be difficult to get Medicare to pay for hospice services in a nursing home if you were not in the nursing home when you entered hospice unless you meet all the requirements for admission.

PRESERVING YOUR ASSETS

A. Driving



None of us wants to give up the independence of driving ourselves around. We like not having to ask others and being able to go wherever we want, whenever we want. However, you may be putting your entire estate at risk if you drive after a doctor has advised you not to drive, take medications that warn you not to drive, have dementia, or are physically or mentally impaired by injury or disease.

You should think about how you would feel if you had an accident where someone was permanently injured because you made a mistake. Many services will provide rides for you if you cannot drive yourself.

If you drive under the circumstances above and have an accident where you are at fault, you can be sued. Your insurance may not pay for the liability because you drove against a doctor's orders or knew medications or other limitations impaired you.

One of the best things you can do to preserve your assets is not to drive when you should not. Do not take the risk. Ask a friend, ask your children, as a neighbor, sign up for metro services, ask your church if they have volunteers who will drive you, or sign up with one of the nonprofits in the area that will provide rides for seniors for free. Please do not make your children have to take your keys away from you. They don't want to be the bully you make them be when you force them to take these steps to protect you and your assets from your poor decisions. It may be difficult, but you do not want to be responsible for the damage you could cause otherwise.

Even if you think you are fine, you should check with every doctor you see throughout the year to see if they think you should be driving. If one of them says no, ask why. If the answer is because you have some health condition that puts you at risk, don't drive!

B. Scam Proofing

Many unscrupulous businesses prey on the elderly. Please take steps to protect yourself from them.

Do not purchase any type of investment product without consulting your usual financial advisor, banker, family, or friends. Be very wary of someone who keeps coming back to your home to bring you food, flowers, or other gifts while talking to you about your finances or your investments.

Do not give out any information over the phone or by text message unless you know the person requesting the information very well. Do not think that someone who stopped by and talked to you for a long time is your friend.

If you get any mail or telephone call saying that you are in trouble with the police, the FBI, IRS, your bank, or any other business or government agency, call your local police department and report it. Please do not send them any money or give them any personal information.

Do not let some new acquaintance talk you into selling your investments to switch to them. Please do not make any financial decisions without discussing them with your family or your trusted advisors, whom you have known for a long time.



It can be very tempting to invest in some new industry or to donate a lot of money to some good cause, and if you want to do so, make sure that you know the company or the cause, and you can verify that you are doing what you think you are doing with your money.

Stay alert. Do not let salesmen that come to your door, call you on the phone, or send you letters become your new friends and trick you out of your money. It can be very helpful to have a friend support group. Ask one or more friends to check in with each other at least every week, hopefully more often. Just call each other or get together for coffee or drinks. Check in to see how everyone is doing. Ask about any situation that came up since the last get together and see what your friends think about it. Make sure everyone is eating and getting out and doing things. Be accountable to your support group. Having this kind of safety net might help you be more independent and feel more secure.

C. Exploitation

Unfortunately, people we know and love sometimes take advantage of us. Our children can get into a bind and don't mean to take money from us but will "borrow" a little here and there to get by on. Soon there is a lot of money gone, and we have no idea what to do about it.

The best thing to do is to say no the first time. If you have an only child, it can be complicated to deny them help. They may try to make you feel guilty for protecting yourself. Understand that you giving them money will not help them in the long run and may set you up for further exploitation later.

If you want to help your children, first make sure that any loan you give them should be in writing, so there are no discussions about not paying you back. It is essential when you have more than one child. You should discuss the situation with other family members or good friends who can make sure that you are not being manipulated.

Be careful of any other acquaintance or friend who asks for loans or assistance from you. Everyone needs a little help occasionally. But be wary of anyone who keeps coming back for more.

If you are afraid to say no to someone because you worry they will attack you or harm you, don't hesitate to contact APS or the police. You should never feel scared to be in your home.

We don't like to believe our friends or children would take from us, but it happens. Be vigilant, be wary, and carefully consider the situation and determine for yourself if you want to give them money or not. Do what is best for you. If you need help telling them no, have someone else you know to come and sit with you.



FAMILY MATTERS

A. Family Meetings

If you have not done so, you should begin the habit of having regular family meetings. At least once or twice a year, your family should get together and discuss family issues. You should be open and honest with your children about your health, your feelings, any depression or other mental health issues you may be experiencing, and any problems you have had with scams or exploitations.

It is an excellent time to go over your paperwork and talk about what you want and do not want regarding medical treatment or procedures. It also helps to discuss your desire to be a donor or your decision not to be a donor. It is a good forum for you to discuss the disposition of your remains, so everyone hears you.

It's an excellent time to listen to your family, too. Let them tell you what they are worried about with you. If they are concerned about you living alone, or if they would like to be closer to see you more often, listen to what they are saying. Try not to be threatened by their concerns. You may be able to dispel some of their worries just by talking about them.

If one of your children has been exploiting you or trying to take advantage of you, this might be the right time to discuss it with them in front of everyone else.

The idea is to spend time together. Listen to each other, discuss concerns and ideas, and keep everyone in the loop. It will make later transitions easier if you can get together often enough to keep everyone in touch with where you are and what is happening with you.

B. Choosing The Right Person

When you need help, who you ask makes a difference. If you are preparing an estate plan and need to ask someone to serve as executor or agent for you, it is different from asking a neighbor to take you to the grocery store. You need to carefully think about what the person needs to be able to do to help you before you ask for help.

The section on estate planning above discusses some of the characteristics you need to consider when looking for an executor or agent for a power of attorney. There are similar considerations when looking for a financial advisor, a tax adviser, a geriatric care manager, an attorney, or any other professional you need.

If you do not select the right person for you, it can cause serious problems. If you put the child you do not get along with as your agent for medical care, what happens when you are sick and need their help, and they are just angry and distant? Being your agent won't solve the problems you have with anyone.

You would be better to name a paid agent or executor than to pick a family member you cannot trust or do not like. Do not put an overly anxious or delicate person in the position of making life or death decisions for you. Do not put someone reckless with money in charge of your finances.

When you need a new financial advisor, attorney, care manager, insurance agent, or any other professional service advisor, get a recommendation from someone you trust. Do not rely on a magazine or newspaper advertisement or something you got in the mail. Be careful of television, Facebook, and Google ads.

Use services you can trust to help you get the other services you need. For instance, several companies can assist you in finding the right place to live or find the right home health for you or find the right care manager who will oversee everyone else. Sometimes, it is worth the peace of mind to pay someone to help us when we can't do something, and our kids don't have the time or knowledge to help.

D. Difficult People

Sometimes there are people in our lives who are just too challenging for us. It might be a child or sibling. It could be a neighbor who always tells us what to do or tells us how we are always doing something wrong.

If there is something this person is doing to threaten you, call APS and report them. If they are a threat to themselves or others, contact the police and tell them the situation. If they are your family members, try talking to them, but do not let them distress you to the point of causing you severe side effects.

You do not have a legal obligation to any family member. You can tell someone to get out of your life, and there are no legal repercussions. You might ask other family members or neighbors to assist you in talking to this person.

You do not need to stay where you feel scared, threatened, or abused. If you are being abused, contact the police and APS and get away from that person. Protect yourself first.

If you are experiencing difficulties with a caregiver in a facility, report them to the supervisor or the administrator. You do not have to be a victim. You have rights, and you have protections built into the system. Use them! Be proactive and protect yourself. If all else fails, think about relocating somewhere else.

E. Special Needs Family Members

If you have someone in your family who is currently or may become disabled to the level that they need assistance, you need to make special arrangements for them in your planning.

For example, if your spouse has dementia, you probably do not want them to inherit your estate. They are an easy target for exploitation or abuse if they cannot manage it. They can also lose any public funding they are receiving if they get money from you. The same applies to any special needs child you might have.

There is also the issue of guardianship for a special needs child, maybe even your spouse, if you did not get documents done in time. It is imperative. Someone has to have the legal authority to provide care and protection for them.

You may have a special needs grandchild. Be careful how you leave them money and how it affects the other grandchildren you may have. You do not want what you leave to a beneficiary to diminish the quality of life for that person. You also don't want your gifts to cause family resentment or discord.

A qualified Elder Law or Special Needs attorney can help you make the right decisions for your family that will help you accomplish your goals without creating problems or loss of benefits.



F. Dementia

Dementia is an increasing issue for seniors. There are many forms of dementia. New causes, diseases contributing to memory issues, and new treatments offered or developed every day. Of course, the legal aspects of dementia are the lack of capacity and the need for disability and special needs planning. Long-term care is likely to be necessary at some time during the progression of the disease.

If you have a spouse with dementia, get powers of attorney prepared as soon as possible if they are still competent to sign them. Check into what benefits you might be able to get to help you take care of them. Make sure that you adjust your estate plan to protect any benefits your spouse may be getting. You will need to plan on a successor guardian or agent to take over should you die first. You should investigate programs that provide daycare or respite services for families with dementia patients.

It would be best to make plans regarding long-term care for dementia patients. It would help if you also investigated protecting yourself. It is a very long and challenging progression, and sometimes dementia patients get violent, abusive,

angry, and can be difficult to assist. You should make sure you have someplace to go and someone else who can assist you in caring for your dementia patient.

The Alzheimer's Association has a list of programs and support groups that can be invaluable in helping caregivers care for dementia patients. AAA can also provide resources for you.

Be sure to consult with an Elder Law or Special Needs Attorney who can also provide a lot of resources in your area and prepare the documents you will need to provide the care required by your patient. Remember that the earlier you start preparing for the situation, the more choices you have.

If you have questions about the information provided in this booklet, please get in touch with the author or an Elder Law attorney in your area.



About the Author:

Teresa Shahan Shapiro has been an Elder Law and Estate Planning attorney in the Austin area for over twenty years. She is certified in Guardianship with the State Bar of Texas, a member of the Austin and Williamson County Bar Associations, a member of the American Bar Association, and the State Bar of Texas. She is also a member of the National Academy of Elder Law Attorneys and the College of the State Bar of Texas.

Teresa believes in giving back to the community and volunteers for the American Association of University Women in Georgetown, is an Advisory Board Member for the Assistance League of Georgetown, a Director on the Board for Faith in Action Drive a Senior in Georgetown, and the legal advisor for WayWiser website for caregivers.

Teresa enjoys reading and participates in several book clubs, she crochets and pursues other artistic interests. She lives in Leander with her two Dachshunds, Bonnie and Clyde.