

Introduction

Dear Friends in Christ,

One of the privileges of pastoral ministry is to be present with people in times of need. As a pastor I am aware that there is no greater time of need than during the death of a loved one. As believers in Christ, we know that His Easter victory has overcome death. However, we still experience significant challenges, difficulties and loss upon the passing of loved ones.

The following document, *“Planning Well for Your Passing”* is intended to assist All Saints members in the many plans and decisions surrounding one’s passing. Hopefully it can help family members when planning for the funeral of their deceased loved one. But even more, I hope we will use it to plan our own funeral arrangements and make our desires known to our loved ones who remain, as a final, thoughtful gift to them.

I encourage each member of All Saints to invest the time needed to engage with this document and, along with a loved one and/or member of our pastoral staff, let it serve you in developing a gift for your loved ones who remain as you pass to your true and eternal home with Christ. In addition, I ask that you share a copy of your funeral plans with All Saints, so our staff may be well-prepared in our desire to be present and supportive of your family and friends.

Together in Our Savior,

Rev. A. Craig Chapman
Pastor, All Saints Presbyterian Church
www.allsaintsaustin.org

November 2019

Table of Contents

	Page
Introduction	2
Table of Contents	3
Preparing Well for Your Passing	4
Planning for Your Funeral	6
Letter of Instruction for Funeral Plans	7
Funeral Planning Information.....	7
The Worship Service.....	8
Burial or Interment Service.....	9
Death Certificate Information	10
Obituary Information	11-12
Estate Planning Basics – What Every Texan Needs To Know	13-24
Legal Forms	25-38
Who Makes Decisions	25
Form for Medical Power of Attorney	26-30
Form for Directive to Physicians & Family or Surrogates	31-33
Form for Statutory Durable Power of Attorney	34-39
Letter of Instructions to Survivors.....	40
Professional & Organization Contacts.....	40
Organizations & Clubs.....	41
Estate Planning Documents.....	42
Keys, Combinations, PINS & Passwords.....	43
Disposition of Personal Effects.....	44
Benefits & Entitlements.....	45
Banking.....	46
Investment Accounts.....	47
Insurance.....	48
Debtors.....	49
Credit & Bank Cards.....	50
Loans ... Location of Other Important Documents.....	51
Recurring Expenses.....	52
House ... Vehicles.....	53
Credits	54
Appendix 1 – Burial or Cremation	
Appendix 2 – Suggested Readings & Hymns for Funeral Services	

PREPARING WELL FOR YOUR PASSING

Jesus Planned and So Should You

Psalm 90.3ff says God returns man to dust...For a thousand years in your sight are but as yesterday. Verse 9ff: we bring our years to an end like a sigh.¹⁰ The years of our life are seventy, or even by reason of strength eighty ... they are soon gone, and we fly away.¹² So teach us to number our days that we may get a heart of wisdom.¹³ Return, O LORD! How long?

For the Christian, there's more to life than these few years on earth. James 4 tells us: you do not know what tomorrow will bring. What is your life? For you are a mist that appears for a little time and then vanishes. (v.14)

Both Psalm 90 and James 4 beg questions of us: Are we numbering our days? Are we living and preparing with our passing in mind? My father-in-law used to say, "None of us are getting out of this alive." And I would add, "... unless Jesus returns." And so, come, Lord Jesus! Which he will! But until he does, *your testimony to others about your life in Christ extends to how you die in Christ.* Will it be an inspiring example of anticipation, hope, and wisdom, expressing itself thru openness, engagement, and planning? Or will it be a regrettable example of apprehension, uncertainty, or fear, expressing itself as denial or avoidance?

All Saints is a relatively young church; consequently it has hosted relatively few funerals. Regardless, as believers in Christ, we should not avoid the topic of death, nor should we avoid planning for our own.

In some ways this thinking is counter-cultural today. 21st century Americans would rather talk about sex than dying, or preparing for one's death. But this hasn't always been the case. In Robb Moll's book, *The Art of Dying*, he notes that

"For Christians in most times and places, death has been a routine part of life. But during the last century, Americans have embraced an unprecedented denial of death.... In general, we have removed death from our homes. People no longer die there; corpses no longer repose there before burial. We no longer allow people to say that they are dying—rather, they are 'battling' an illness. Far from encouraging the perilously ill to recognize the imminence of their death, we encourage the sick (and their doctors) to fight death—but not to prepare for it." (p.10)

And yet our Lord anticipated and prepared for his own death; therefore, so should we. He spoke of it often. And he urged his disciples to anticipate and prepare for it. For example, in John 14 he says:

Let not your hearts be troubled. Believe in God; believe also in me. ² In my Father's house are many rooms. If it were not so, would I have told you that I go to prepare a place for you? ³ And if I go and prepare a place for you, I will come again and will take you to myself, that where I am you may be also. (vv. 1-3)

What comfort! Jesus is preparing a place for you. However, He didn't have to prepare a place for himself, either in heaven, or in his burial. He knew the prophecy in Isaiah 53.9: *"They made his grave with the wicked and with a rich man in his death...."*

Through a rich man, Joseph of Aramethea, Matthew 27 tells us of the fulfillment of Isaiah's prophecy (vv.57-60). Although Our Sovereign Father provided through Joseph a burial place for Jesus, his mother Mary's care did need planning. And so, from the cross, in John 19:

²⁶ When Jesus saw his mother and the disciple whom he loved standing nearby, he said to his mother, “Woman, behold, your son!” ²⁷ Then he said to the disciple, “Behold, your mother!” And from that hour the disciple took her to his own home.

In providing for his mother, Jesus teaches us that loving your neighbor as yourself includes loving and providing what you can for your loved ones, especially those who will be there with you ... in your “pre-passing”, your passing, and your “post-passing”—the **pre-passing** before and during your last illness, the **passing** of your last breath, and the **post-passing**, when loved ones mourn your loss through visitation, memorial, and burial services. And so, *what can you do now? How can you plan now, to provide for and love those loved ones, your closest neighbors?*

Planning for Your Pre-Passing

In his *Meditation on Death*, St. Isaac the Syrian of Qatar, a 7th century bishop said this:

Prepare your heart for your departure. If you are wise, you will expect it every hour... And when the time of departure comes, go joyfully to meet it, saying, ‘Come in peace. I knew you would come, and I have not neglected anything that could help me on the journey.

What does it look like to live in a state of preparing our hearts for our departure? Well, it at least means keeping short accounts in our relationships. It means, in an ongoing way, seeking reconciliation with God and your neighbor. And, it means what we pray every Sunday in the Lord’s Prayer: *forgive us our debts as we forgive our debtors*. In other words, moment by moment, forgive those who’ve wronged you as God in Christ has forgiven you.

Planning for Your Actual Passing

In addition to living with a heart attitude perpetually prepared for our departure, we would also do well to plan for the moments, hours, maybe days of our actual passing by gathering your favorite Scripture verses, your favorite hymns and praise songs for your loved ones to read to you and sing with you, if the Lord gives you such time with them. This can not only be a great encouragement to you as you pass from this life into eternity with the Lord, it can also be a great testimony to your loved ones, and to any visitors or medical staff that might be nearby.

And then, too, planning for your actual passing means praying now and until then, asking the Lord to give you opportunities to share him, even in your final hours, to perhaps be an instrument of conversion. Consider the thief on the cross next to Jesus in Luke 23, who trusts himself to Jesus, and to whom Christ then says, “today you will be with me in paradise.” And remember the Roman centurion nearby the cross, along with those who were with him, keeping watch over Jesus after he passed. Matthew 27 says “they were filled with awe and said, “Truly this was the Son of God!” Who knows? Perhaps the way you die might also be a means of someone’s conversion to Christ. It’s certainly something to pray for!

Planning for Your Post-Passing

And now, planning for your “post-passing”, once you’ve breathed your last breath. I’ve prepared the remainder of this document with the hope that it will become, in some form, endorsed by our Session for distribution widely to All Saints members. Until then, it’s just Craig’s “hopefully wise counsel” to you. *“Preparing Well for Your Passing”* is intended to assist you or your family members in planning for as many aspects of your passing as possible. So, read on!

PLANNING FOR YOUR FUNERAL

The liturgy for All Saints' memorial and burial services is an Easter liturgy. It finds its meaning in Christ's Resurrection. Because Jesus was raised from the dead, we too, shall be raised to new life! The liturgy, therefore, is characterized by joy, in the certainty that "*neither death nor life, nor angels nor rulers, nor things present nor things to come, nor powers, ³⁹ nor height nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord.*" (Romans 8:38-39)

Burial or Cremation

In the Fall of 2018, the Session of All Saints Church decided to begin planning for the construction of an All Saints Columbarium on our church grounds, as well as, eventually, an offsite All Saints Cemetery at some point in the future. While an All Saints Columbarium is in the very early stages of development, we invite our members to consider cremation and interment in our future Columbarium as they make their funeral plans. Due to the greater cost and regulation involved, it is probable that All Saints' future cemetery plans may not be as timely as its columbarium. For more information on this topic, please see "Appendix 1 – Burial or Cremation", attached; and/or, you may contact Craig Chapman (cchapman@allsaintsaustin.org).

LETTER OF INSTRUCTION FOR FUNERAL PLANS

FUNERAL PLANNING INFORMATION

This form is to assist one in pre-planning their own funeral or to assist family members in planning their deceased loved one's funeral. If you have any questions, please contact All Saints Church (512.732.8383) and speak to Mary Freiberger (mfreiberger@allsaintsaustin.org).

Full Name of Deceased _____

Date of Birth _____ Date of Death _____

Clergy Requested _____

Family Contact _____ Phone _____

Funeral Home _____ Phone _____

Burial or Cremation? _____ Place of Interment _____

If Cremation: Before any service _____ After a memorial service _____

Visitation? (Y/N) _____ Casket present? (Y/N) _____ Open or Closed? _____

Ashes present? (Y/N) _____ Guest Book? (Y/N) _____

Florist Name & Phone _____

Floral Preferences _____

Assuming a Visitation, the Funeral Home will receive and handle flowers. What are your wishes for

flowers at the subsequent Worship Service and/or Interment? _____

* * *

After consultation with the Funeral Home, the following information would be helpful to record here:

- Has a cemetery plot been purchased? (Y/N) _____

If yes,

The deed for the plot can be found: _____.

The contact person and phone number for the cemetery is:

_____.

I purchased the plot from: _____ on _____ (date).

If no,

Please purchase a plot for me in _____ Cemetery in
_____ (city, state).

Or, please contact the military survivor assistance officer to arrange for a plot for me in

_____ Cemetery, located at _____

- I want a _____ (metal/wood/name of style, if known) casket.

Note: there may be savings by buying from a distributor rather than a funeral home.

- I want to be buried in _____ (clothing, jewelry, glasses)
- I want the following items buried with my remains: _____
- I want a headstone (describe or provide photo of type): _____

(Note: Service members and honorably discharged veterans can receive a VA headstone free of charge)

THE WORSHIP SERVICE

*Enclosed is a sample bulletin for a worship and memorial service. If you would like a **photo** and/or **obituary** of the deceased printed in the worship bulletin, please provide each to All Saints as soon as possible.*

Greeters _____ Guest Book? (Y/N) _____

Ushers _____ Casket present? (Y/N) _____

Family process in? (Y/N) _____ Names _____

Pall Bearers (up to 8) _____

Officiant/Preacher Requested _____ Eucharist? (Y/N) _____

Soloist(s) Requested _____ Musicians(s) Requested _____

Requested Quote(s) or Scripture for Preparation _____

Psalm(s) Requested _____ Reader _____

Personal Reflections by _____
(Family member(s) and/or friend(s) are recommended to prepare/read remarks not to exceed 5 minutes)

Hymn(s) or Offertory Music Requested _____

Old Testament Reading _____ Reader _____

New Testament Reading _____ Reader _____

Gospel Reading _____ (Read by Clergy)

Reception following Service (Y/N)? _____ Receiving line for guests to offer condolences? (Y/N) _____

Video Slideshow During Reception? (Y/N)? _____ Additional Requests _____

Is All Saints named as a recipient of memorial gifts? (Y/N) _____ Other named? _____

If All Saints receives memorial gifts, who should receive the donor names? _____

BURIAL OR INTERMENT SERVICE

Enclosed is a sample bulletin for a Burial or Interment Service, which may occur before or after the Worship Service, at the discretion of the deceased or family.

Officiant/Preacher Requested_____

Psalm Requested_____ Reader_____

Personal Reflections by_____
(Family member(s) and/or friend(s) are recommended to prepare/read remarks not to exceed 5 minutes)

Hymn(s) or Music Requested_____

Old Testament Reading_____ Reader_____

New Testament Reading_____ Reader_____

Will there be military or other honors?_____

Signed: _____ Date: _____

Printed Name (Relation to Deceased):_____

Please share a copy with All Saints Church of this 3-page "Letter of Instruction for Funeral Plans" so that All Saints staff may be well-prepared in their efforts to be present and supportive of the family and friends of the deceased. Also, please let loved ones know you have made these choices by sharing this information with them.

Letter of Instruction for Funeral Plans – Revised: May 2019

DEATH CERTIFICATE INFORMATION

Information funeral director will need for death certificate:

Full name	
Maiden Surname	
Date of birth	
Age	
Birthplace (City & State or Foreign Country)	
Social security number	
Marital status	
Surviving Spouse's name	
Residence address	
Inside city limits?	
Father's name	
Mother's maiden name	
Your name	
Your address	
Military service dates	
Number of copies of death certificates	Need a copy for insurance policies, all assets that require title transfers, VA, some account closings/transfers

Obituary Information

It is very helpful to write your obituary or at least to have all the pertinent factual information assembled. The obituary is needed quickly after a death, and it is sometimes hard for those left behind to gather the needed information in a short time.

Please provide the obituary below to the following newspapers or communication media:

Newspaper or Communication Media	Phone/Fax/E-Mail

Obituary – either write your own (space provided below) or provide bullet points from which a newspaper or media outlet can craft an obituary. Important items to include:

- Full name: _____
- Parents' names: _____
- Date of birth: _____
- Circumstances of death - to be provided by survivor after death
- Education information: _____
- Career information: _____
- Community activities: _____
- Dates of military service along with rank achieved: _____

- Special honors/awards received – military, civic, education: _____
- Favorite quote(s)/tag lines: _____
- Survived by (and relationship) along with town/city where they live – parents, spouse, children (and in-law), grandchildren: _____
- Donation in lieu of flowers to _____
(Give complete names and addresses of those charities that are suggested.)
 - Include information on viewing and funeral - to be provided by survivor after death
 - Any other information deemed appropriate

Text of obituary:

Estate Planning Basics – What Every Texan Needs To Know

*Dick Terrell Brown, President, Brown & Lacallade, P.C., Attorneys at Law
Board Certified in Estate Planning & Probate Law, Texas Board of Legal Certification*

This paper is provided for general educational purposes only. It may not be considered as legal advice. Neither may its receipt create or imply an attorney-client relationship. The author and Brown & Lacallade, P.C. take no responsibility for any reliance on this paper by anyone without their specific, actual and not implied, independent authorization.

Every Texan has an estate plan.

It is not uncommon for someone to ask whether they even need an estate plan and say that they don't have many assets. They think that they don't have an estate plan because they have not executed a will, but they are wrong – every Texan has an estate plan.

Some Texans have chosen to establish their own plan using documents that they have created and executed.

Those Texans who have not established their own plan have the “default” or “intestacy” plan established by the Texas legislature. (“Intestacy” means dying without a valid will.) In my experience, once someone understands what the legislature’s default plan for them is, they do not like it, either because it would never provide the results they want or because it is subject to the risk of providing undesired results as a consequence of what happens in the future!

Do I need my own personal estate plan?

Very probably, the answer is “Yes!” Although it is sometimes possible to structure the ownership of assets in such a way that they all pass by beneficiary designation or by right of survivorship, in our experience that often turns out to have unintended and undesired consequences. Plus, those asset transfer methods are subject to change through outside events – like if the intended “survivor” child passes first. And, as noted above, the state’s default plan for you almost certainly will have loads of problems and the estate planning equivalent of the buried IED’s our troops have faced in Iraq and Afghanistan. Therefore, it is almost certain that you should create your own custom plan that will provide predictability and protection for you and your family.

Ideally, it should be an up-to-date plan created with the help of a lawyer who specializes in estate planning and so has a deep understanding of what works and what doesn’t work in real life and what can and often does go wrong in estates and planning done without that knowledge and experience.

Who will get my property if I don't have my own estate plan?

Our legislature has enacted laws that say what happens when a Texan dies owning assets subject to probate, but does not have a valid will directing the disposition of some or all of them. It has separate rules for both community and separate property and separate rules for those who are single, those who married and in a “nuclear” family, and those who are in a blended family.

In the absence of a will or other arrangements governing how your property will pass at death, your property passes under the “intestacy” statutes.

Many people think that their surviving spouse will get all of the community property. However, that happens only if all of the deceased spouse’s children are also the children of the surviving spouse. If

the deceased spouse has no will and has any children who are not also the surviving spouse's children, the deceased spouse's half of the community estate passes to his or her children.

Separate property passes under a different set of intestacy rules. Separate property is property owned before marriage and any property received by gift or inheritance during marriage (including any appreciation in the separate property's value). It also includes transmutations of property, like if someone inherits Exxon stock and sells it and buys a house with the proceeds. If you are married and have descendants, one-third of your separate property real estate (which includes mineral interests) will pass to your spouse "for life" and the other two-thirds will pass to your descendants. The surviving spouse will be entitled to the income generated by the portion of the real estate passing to him or her, but the principal will eventually pass to the deceased spouse's descendants upon the surviving spouse's death. All of the rest of the deceased spouse's property, such as personal effects, bank accounts, stocks, bonds, vehicles, etc. ("personal property"), passes one-third to the surviving spouse and two-thirds to the deceased spouse's descendants.

For someone who is married but has no descendants, then half of their separate real estate passes to the surviving spouse, while the other half passes to their parents, siblings, or their descendants. All of their separate personal property passes to their spouse.

For someone who is not married, all of their property passes to their descendants, if any. If they have no descendants, their property passes to their parents, siblings, or their descendants.

An exception to these rules applies to the "homestead." Unless properly waived, the surviving spouse has the right to use and occupy the homestead as his or her home for the rest of their life, regardless of whether the homestead was community property or the deceased spouse's separate property and regardless of who inherits the property. Similar rules apply to limited amounts of exempt personal property.

Do I have to have a lawyer create my own custom estate plan?

There is no *legal* requirement that a will or trust or any estate plan document be drafted by an attorney.

It is possible for a non-lawyer to create their own estate plan without the help of an experienced lawyer. It is also *possible* for someone to pull their own teeth or sew up their own wounds. "Possible" is not necessarily the same thing as "a good idea"! Plus, with dentistry or surgery, you know pretty quickly if you mess it up. Someone who creates their own estate plan is typically "six feet under" before their problems are discovered.

There are also companies out there like LegalZoom who make a lot of money helping people who want to create their own estate plans without legal help. If you are tempted, read their "satisfaction guarantee." And note that they recommend that their customers have a lawyer check their work. Great – the customer pays LegalZoom, then pays a lawyer to read the documents and point out the mistakes, then pays a lawyer to prepare documents that meet their needs.

Texas law even allows "holographic" wills. Those are wills written entirely in the maker's own handwriting and signed by the maker. They were very popular when this was the frontier. While a holographic will may be valid to dispose of one's property, the money saved by avoiding a lawyer today is very often far, far less than the legal cost of dealing with the problems such a will usually cause, such as dealing with the property that is not disposed of, failure to provide for independent administration, etc., etc. Even lawyers who create their own holographic wills often make big mistakes in them and those

mistakes can be and usually are very costly to deal with. It is often said that a lawyer who chooses to represent himself has a fool for a client.

The problem with anyone but the specialized estate planning lawyer preparing an estate plan is ignorance. As many a wise man has said, “you don’t always know what you don’t know.” And some anonymous sage¹ said, “It ain’t what you don’t know that gets you into trouble. It’s what you know for sure that just ain’t so.”

Is there more than one type of estate plan?

Yes, there are at least six. The simplest, but hardest to implement, is the “last check bounces” plan. It does not provide a legacy to your survivors and timing is absolutely critical to its working properly. We do not recommend it!

Another one that some people choose is the “beneficiary designation/no probate” plan. In this type of planning, all assets are set up to be held in a way that has a designated person who will get the asset when the owner dies. Examples are transfer-on-death (“TOD”), pay on death (“POD”), and joint tenancy with right of survivorship (“JTROS”) accounts and assets that pass by beneficiary designation, like retirement plans and annuities. Typically, this planning fails because there is an asset that is held by someone who will not release it without a probate. It is also critically vulnerable to lack of flexibility resulting in unintended and costly consequences, such as when the named beneficiary dies in the same car crash as the owner, leaving minor children.

A third is the State of Texas default or “intestacy” plan explained above.

When we meet with people to discuss their estate planning, we first explain the intestacy plan to see if that is what they want. So far, we have not had anyone choose the one the state has written for them.

For those who do not want one of the three plans described above, we recommend just three types of estate plans,² all known by what is their cornerstone document. Those types are the will-based plan, the trust-based plan, and the hybrid will and trust plan.

The will-based plan works best for the client who anticipates that they will die without being incapacitated for more than a few hours, is willing to risk the potential high costs that can result if they do become incapacitated for more than a few hours, and doesn’t mind their beneficiaries and their assets becoming a matter of public record. In Travis County, being a “matter of public record” means being in an open internet file that anyone anywhere in the world is free to look at.

The trust-based plan works best for the client who is concerned that they might die being incapacitated for more than a few hours, does not want to risk the potential high costs that can result if they do become incapacitated for more than a few hours, and does not want what their assets are and who gets them to be accessible to anyone who has an internet connection.

The hybrid will and trust plan anticipates the will is not going to *have* to be probated, but creates an *opportunity* for that to be done if needed to protect the surviving spouse from the risk of losing everything to the crippling costs of long-term care in a skilled nursing facility.

¹ In a quote variously attributed to Mark Twain, Will Rogers, and others.

² If someone needs nursing home care and can’t afford it or is concerned about running out of money, they may need Medicaid planning, which is beyond the scope of this paper.

How does a will-based plan work?

The corner stone of the will-based plan is the will. This is the formal document that says who the maker wants to be in charge of administering their estate after they die and what they want to have done with their estate. It is in the nature of a formal letter to a judge that says, in effect:

Dear Judge:

If somebody proves to you that I am dead or I am presumed to be dead because I have not been heard from in years, I would like for you to appoint John Doe to administer my estate under the following restrictions and for him to have the legal obligation to dispose of my assets as follows:

The will can and should be a complex document that deals with all of the “what ifs” the future holds, such as “what if little Johnny, who is now just 2 years old, later has a closed head injury or becomes a drug addict.” A trained and experienced lawyer can help you to go through the “what ifs” and offer sage advice on how to deal with the possible futures your family may face.

Also included in the will-based estate plan should be a number of ancillary documents covering everything from who can have access to your individually identifiable medical records to what you want done with your remains. A trained and experienced lawyer knows what these are and can help you make those decisions, too.

A will-based plan is founded on the presumption that if you do become incapacitated, your power of attorney for property will work or your family will be able to afford the crushing costs of establishing and maintaining a guardianship for you.

How does a trust-based plan work?

The cornerstone document in a “trust-based” plan is a revocable living trust.

A trust is a fiduciary relationship in which a person (usually called a “grantor” or “trustor”) gives property to a fiduciary called a “trustee” to hold and use for the benefit of someone called a “beneficiary.”

When someone establishes a revocable living trust, most often they initially hold all three positions. The trust also provides for who will take over if they resign or become incapacitated and when they die and how the trust assets are to be administered, both while they are living and after their death.

As with the will-based estate plan, the trust-based estate plan typically includes the same ancillary documents as the will-based plan - covering everything from who can have access to your individually identifiable medical records to what you want done with your remains – plus a “pour-over” or back-up will that can be used if it is discovered that any assets were left out of the trust.

Who uses a hybrid will and trust plan and how does it work?

The hybrid will and trust plan is only for married couples. It works just like a trust-based plan, but includes an option to go another way if that seems best when the first spouse dies.

Our federal government has created three health programs for civilians – Medicare, Medicaid, and the VA benefits program.

Medicare is a highly discriminatory program, depending on what kind of disease the insured participant falls victim to. If the participant suffers kidney failure, for example, the program picks up the vast

majority of their dialysis and other care costs for the rest of their life. Likewise, the benefits for the patient who needs an organ transplant or gets cancer are terrific. But, woe be the patient who contracts Parkinson's disease or develops dementia.

They will need long-term skilled-nursing care, but Medicare only provides that for up to one hundred days and only for patients coming out of a hospital stay of at least three days. After that, the patient is on their own unless they can qualify for Medicaid.

In Texas today, Medicaid picks up the care cost of more than two-thirds of all of our patients who receive long-term skilled-nursing, i.e. "nursing home," care. Texas Medicaid-funded skilled nursing care is a program to provide for the abjectly poor.

To get Medicaid to pay for their skilled nursing care, a person has to meet three criteria:

- They must have a medical need to be cared for in a skilled-nursing care facility;
- They must have insufficient income each month to pay for the care that they need; and
- They must have \$2,000 or less in "available" resources.

For a married person, the spouse who does not need to receive skilled nursing care gets to keep sufficient available resources to generate a "minimal monthly needs allowance." That amount is currently \$126,420.³

Available resources is essentially everything owned except clothing and personal effects, household goods, a house, a vehicle, income producing property, and trusts established for their benefits by someone other than themselves or their spouse.

There is an exception to the "trusts established for their benefits by someone other than themselves or their spouse" rule. Trusts established under the probated will of a deceased spouse do not count. Thus, the hybrid plan.

Under it, assets are put in a trust by a married person. When the married person dies, a decision is made. If the surviving spouse is receiving or likely to need nursing home care that would deplete the estate the couple has worked all their life to accumulate, the deceased spouse's estate can be "poured out" of the trust and run through probate so that, under their will, a Medicaid-exempt trust will be established for the surviving spouse. If the surviving spouse does not meet one of those criteria, the assets remain in the trust and are administered there.

What are all those "ancillary" documents?

A **Durable Power of Attorney** names another person, often your spouse or children, as your agent or "attorney-in-fact." The agent is given broad powers to manage your assets on your behalf, like in financial transactions. Then, if something should happen to you, it may be unnecessary to have a guardian appointed in order to have someone be able to manage your assets for you. Guardianships are *very* expensive because they require a great deal of involvement on the part of attorneys and the probate court. The term "durable" means that the power of attorney will not terminate if you should become incapacitated. You can even provide that the power of attorney does not become effective *until* you

³ Under some circumstances, it is possible to prove that that is not enough assets to generate the income needed and so get an additional asset allowance for the spouse who dies not need to be in a nursing home.

become incapacitated. Texas has a short form statutory durable power of attorney. Estate planning lawyers also often include a longer and more detailed durable power of attorney in their clients' plans.

If you become incapacitated, a guardianship may and should be avoided, if at all possible. However, if for some reason a guardianship is required, then Texas law also allows you to designate in advance the persons you would like to act as your guardians and to designate any person you would not wish to be your guardian. So, just in case, your estate plan should include a **Declaration of Guardians** nominating guardians of your estate and guardians of your person.

The guardian of the estate must seek court permission for virtually any action and must file an "accounting" annually, listing every receipt, every expense, and the property remaining on hand. Because all of these documents that are filed with the court are prepared by lawyers, the maintenance cost of an estate guardianship can be extremely high.

Texas law also allows you to execute several estate plan documents that relate to you, not to your assets.

One is the **Medical Power of Attorney**. It allows you to empower someone to make medical decisions for you if you are incompetent to make them for yourself. The person you designate may only exercise decision-making authority for you if your attending physician certifies in writing that you lack the capacity to make the health care decision for yourself. (If you have minor children, your estate plan should also include a **Medical Power of Attorney for Minor Children**.)

A similar, but different, document is the **Directive to Physicians and Family or Surrogates**, also known as a "living will." A Texas living will is limited in scope. It only addresses withholding and withdrawing medical treatment while you suffer from a terminal medical condition or from a condition that, without support, will cause your death.

Both federal and Texas law protect the privacy of our medical records. The federal law that does this has the acronym "HIPAA." Your estate plan should include a **HIPAA Authorization** that specifies who can gain access to your personally identifiable medical information.

Many people wish to allow their bodies or parts thereof to be used to sustain others' lives after their own deaths through organ donation. If you want to be an organ donor, you can execute an **Anatomical Gift Declaration**.

Texas also allows us to designate who we want to be in charge of the disposition of our mortal remains and how we want those remains disposed of. Your estate plan should, therefore, include both an **Instructions for Disposition of Remains** and an **Appointment for Disposition of Remains**.

Many people want to leave funeral and burial instructions and put them in their will. That is a bad idea. Your family members may not find or read your will until after the funeral and burial have taken place. There is no formal written document needed to express these desires. You should let your family members know if you have any specific desires, or consider taking care of the funeral and burial arrangements in advance. An estate planning lawyer will provide documents to allow you to do this.

If you have minor children, your estate plan should also include a **Declaration of Guardians for Minor Children**.

There are two different questions here, and the answers to them may be different. First, you need to decide who will care for of your children if you die before they become adults. The person who gets custody of your children is called a "guardian of the person." You can name two people to serve as

guardian a child, but only if they are married to each other. You should designate alternate guardians in case the person you choose first either cannot or will not act as guardian. Also, you should waive any bond requirement.

The other guardian your minor children might need is a “guardian of the estate” to manage the child’s assets until the child reaches adulthood.

You can name two people to serve as guardian a child, but only if they are married to each other. You should designate alternate guardians in case the person you choose first either cannot or will not serve. Also, you should waive any bond requirement for the guardian of the person.

If there is anyone who you definitely do not want to be appointed as the guardian of your minor child’s person or his estate, you can and should also mandate that in this document.

If you fail to name a guardian for your minor children, then their closest ancestor (your parents, for example) is entitled to be appointed. If there is more than one ancestor in the same generation, they are equally entitled, and it is up to the probate court to determine whose appointment would be in the child’s best interest. If there are no grandparents (or great-grandparents), then the “nearest of kin” is appointed guardian. This would usually be an uncle or aunt, but could be a sibling if you had an adult child.

The second question you should address is who will take care of any property passing to your children. As minors, the children do not have the legal right to take possession of any property passing to them. If you do not make any other provisions in your will, then someone will be appointed by the court as “guardian of the estate.” This type of guardianship (as opposed to a guardianship of the person) can be very expensive.

The guardian of the estate must seek court permission for virtually any action, and must file an “accounting” annually, listing every receipt, every expense, and the property remaining on hand. Because all of these documents that are filed with the court are prepared by lawyers, the cost of an estate guardianship can be extremely high. You can and should avoid a guardianship of the estate for your children by making sure that any property passing to your children will pass instead to a trust for their benefit if they are under a certain age. The trustees whom you select will then invest the property for the benefit of the children and distribute money to the person having custody of them as necessary for their health, support and education. The trustee is not subject to court supervision, and therefore the expenses associated with property held in trust are much lower.

The guardian of the person is in charge of raising your children, while the trustee is in charge of managing and spending the property passing to your children wisely. It may be that one person (or one couple) will not be the best person to fill both rolls. Therefore, you may decide to name one person or couple as guardian of the person and name someone else as trustee.

Your will can also contain a trust similar to the one described above for minor children that would automatically hold any property passing to an incapacitated beneficiary until the beneficiary regained capacity. Again, the benefit of this trust is the avoidance of the high cost usually associated with a guardianship of the estate.

You will also want to execute a **Medical Power of Attorney for Minor Children** designating who will have the authority to make medical decisions for them if you are not able to do so for any reason.

What if I get divorced?

If you are divorced after executing your will or trust, Texas law provides that any provision in your will or trust giving your ex-spouse property or naming the ex-spouse as a fiduciary (executor, trustee, or guardian) is revoked. The same is usually the case with respect to life insurance made payable to the ex-spouse. However, reviewing the provisions of your will and trust and the beneficiary designations for your life insurance and retirement plans should always be done during or immediately following a divorce. NOTE: IRA and other qualified plan beneficiary designations may or may not be affected by a divorce, so they should be carefully reviewed and changed as appropriate in case of a divorce.

What should I do with life insurance policies and retirement plan accounts?

All of your beneficiary designations and account transfer provisions should be a part of your estate plan. For many, the assets that pass other than pursuant to a will or trust are the largest part of their estate. Many an estate plan has been derailed by beneficiary designations and account designations not reviewed or made or changed without effective legal counsel.

Often people name their spouse as the primary beneficiary of insurance proceeds and retirement benefits upon their death by executing a beneficiary designation provided by the insurance company or the retirement plan administrator. You also need to name a “contingent” beneficiary. This is who will receive the proceeds in the event your primary beneficiary dies before you do or disclaims the benefits after your death.

Whether your spouse should be the designated beneficiary and who should be the alternate beneficiary is a very complex matter with lots of variables. It is something that should be decided only with the advice and counsel of an experienced estate planning lawyer. It is most definitely not something that a bank employee, insurance agent, or financial advisor should be giving advice about, but they sometimes do.

What about death taxes?

There are two kinds of taxes commonly referred to as “death taxes,” the estate tax and the inheritance tax. The *estate* tax is an excise tax imposed on the assets *transferred from* a deceased person’s estate. The *inheritance* tax is an excise tax imposed on the assets *received from* a deceased person’s estate.

Good news – At this time, Texas has neither an estate tax nor an inheritance tax!

The United States imposes an estate tax on all transfers of assets from a living person⁴ or from a deceased person’s estate. However, under the current law **the vast majority of Texans will not have any estate tax liability** because by the grace of Congress, every estate gets a credit against those taxes.

When George W. Bush became President, which was in 2000, each American had an estate and gift tax credit sufficient to cover the tax on \$675,000 worth of assets and Texas had an inheritance tax.

As a result of changes to the tax laws made during his administration, the federal estate tax exemption equivalent was raised, from \$1 Million in 2001 to \$3.5 Million in 2009 and there was no federal estate tax at all in 2010. Texas eliminated its inheritance tax beginning in 2005.

Under the Bush tax law, the exemption equivalent was going to go back to \$1 Million in 2011.

⁴ Except for exempt transfers during life to any person of not more than \$15,000 in a year and either during life or at death in any amount to a spouse.

But by then we had a new President. Under President Obama the law was changed in December, 2010, to make the exemption equivalent \$5 Million adjusted for inflation from 2010 until the end of 2012.

Then, on January 2, 2013, the law was changed again under President Obama, this time to make the \$5 Million adjusted for inflation from 2010 exemption equivalent permanent.

That permanent change only lasted until 2017, when a new president took the office. Under President Trump the exemption equivalent was increased to \$10 Million adjusted for inflation from 2010, but only through the end of 2025,⁵ when it will revert to \$5 Million adjusted for inflation from 2010.

All laws are subject to change and elections have consequences. Several of those seeking the nomination of the Democratic Party for the 2020 election are following the lead of their candidate in the last presidential election and proposing to lower the exemption equivalent amount. Mrs. Clinton proposed lowering the exemption equivalent amount to \$3.5 Million for estates and \$1 Million for lifetime gifts.

One of the many benefits of living in Texas is that Texas is a community property state. Only the deceased spouse's half of community property is considered in determining whether the deceased spouse's estate owes estate taxes and that is after a dollar-for-dollar deduction allowed for all property given outright to and some gifts given in trust for the benefit of the surviving spouse.

There is also portability through which a surviving spouse can get access to any estate tax exemption equivalent the deceased spouse did not use. How this works is complicated and beyond the scope of this paper.

Beyond the scope of this paper is another federal excise tax – the Generation Skipping Transfer Tax.

What about lifetime gifts?

The exemption equivalent covers both gifts made at death and *lifetime* gifts that are (a) not subject to the annual exclusion (currently \$15,000 of "present interest"⁶ per donor to a donee each year); (b) not gifts to a spouse, charity, or government; and (c) not amounts paid on behalf of another (i) as tuition paid directly to certain educational organizations or (ii) payments made directly to a care provider for medical care. If someone makes a lifetime gift that is taxable, they are obligated to file a Form 709 Gift Tax Return for the year and some of their lifetime exemption equivalent credit will be used up. The annual exclusion is indexed for inflation in minimum \$1,000 increments.

What about income taxes?

Most assets received by the beneficiaries of an estate will not cause income tax liability if sold immediately. That is because most assets held by a decedent get a new income tax basis as of the date of death and all untaxed increase in value while held by the decedent escapes taxation as does the depreciation that is wiped off the books. Moreover, for surviving spouses, they get a basis adjustment to date of death value on their half of all community property assets.

The exception to the general rule is assets referred to as "income in respect of a decedent" or IRD assets. The most common type of IRD asset of a decedent is qualified retirement plan benefits (e.g., 401(k) and IRA accounts. (A surviving spouse beneficiary of a retirement plan account may "roll it over" to be their own IRA and defer income taxation until the funds are withdrawn.)

⁵ Under the rules of the Senate, it would take 60 Senators voting "aye" to make a permanent increase in the estate tax exemption equivalent so we have had many increases lasting 10 or fewer years.

⁶ A "present interest" means the gift is given outright to the donee or to special qualifying trusts for the donee's benefit.

LEGAL FORMS

Legal and Personal Considerations: The matters covered in the next few pages are to be discussed with your attorney, if you have not done so, and with your loved ones.

Difficult Decisions in Advance

A common fear that many of us share, often based on past observations of friends or loved ones, is that we may come to a point in life where we can no longer make critical decisions about our lives or medical treatments.

Most people, when asked, say that they would like to die a peaceful death surrounded by family and friends. Often this is not the case because these wishes have not been discussed and have not been put in written form.

The forms on the following pages,

- Medical Power of Attorney
- Medical Directive/Living Will
- Statutory Durable Power of Attorney

when executed, offer a way to clearly convey your wishes about end-of-life support, treatment and handling of your personal and business activities prior to your death.

Preparing a valid estate plan and keeping it updated are important elements in end-of-life planning for families of all ages as well.

CONSIDERATIONS WHEN EXECUTING A MEDICAL POWER OF ATTORNEY OR LIVING WILL

1. Is the proposed agent/decision-maker aware of your wishes?
2. Is the person willing to speak on your behalf?
3. Does the person live close by or could travel to be by your side if needed?
4. Is this person someone who knows you well and understands what's important to you?
5. Is this person someone you trust with your life?
6. Will this person talk with you now about sensitive issues and will listen to your wishes?
7. Will this person honor your wishes even if he or she does not agree with them?
8. Will this person be available long into the future? (Is the person in good health?)
9. Do you want to consider a successor or alternate decision-maker?
10. Will this person be able to handle conflicting opinions between family members, friends and medical personnel?
11. Can the person be a strong advocate in the face of an unresponsive doctor or institution?
12. Do you desire any of the following, and, if so, under what circumstances and for how long (e.g., immediately after a stroke, but to be discontinued if no improvement is seen after a certain period of time; if you have Alzheimer's, cancer, or a similar condition):
 - a. Cardiopulmonary resuscitation (CPR);
 - b. Ventilator;
 - c. Antibiotics;
 - d. Kidney Dialysis;
 - e. Hospitalization; or
 - f. Hospitalization for correctable injuries, such as a broken bone?
13. Do you want artificial nutrition and hydration? If so, under what conditions?
14. Do you have a thorough understanding of the medical issues that may be involved?
15. Have you considered that your wishes may change over time or as a result of the actual development of a particular condition?
16. Does the proposed agent/decision-maker agree with the principal's wishes?
17. Will the proposed agent/decision-maker carry out the principal's wishes, even if the proposed agent/decision-maker does not share the principal's views?
18. Where do you keep your advance directives? Once it is executed, make enough copies for the agents or agents to have copies and keep several in an easily accessible file in your home. Also, give one to your physician to include in your medical record. If you are experiencing on-going health care problems, keep one with you and give one to all the treating physicians and the places where you are receiving treatment.
19. What if the agent does not know the patient's express wishes? Even in situations where a principal conveyed general wishes to the agent, it is possible that a particular situation was not anticipated. (Under Tex. Health & Safety Code §166.152, the agent is required to make decisions according to the knowledge of the principal's wishes, including religious beliefs if known. If the wishes are not known, then according to the agent's assessment of the principal's best interests.)

Other Issues and Concerns:

20. Will the advance directive be applicable if the principal moves to another state? An out of state directive would likely be honored in Texas. To be safe, an individual may want to re-execute his or her directives if s/he changes state of residence. (Ultimately, however, anything in writing is better than nothing in writing as evidence of the individual's wishes.)
21. How many physicians must certify that the principal is incapacitated before the MPA takes effect? (In Texas, the patient's attending physician must certify in writing that the principal is incompetent.)
22. How often should advance directives be reviewed to see if they still comport with the principal's wishes? There is not a specific timeframe when this must be done under Texas law. It is helpful to review periodically and if the individual develops health problems.
23. Is the agent able to control who visits the principal or access health care information? The agent may limit access to health care information and may be able to control access to visiting the principal. For example, assume that the daughter of a principal is agent and appointed to make healthcare decisions for the principal and that the principal has a good relationship with a stepson, but the daughter does not. Can the daughter, acting as an agent, keep the stepson from visiting the principal? Can the daughter keep the stepson in question from taking the principal out of the healthcare facility for a short leave of absence (e.g., home for Thanksgiving dinner)? Can the stepson receive information about the principal's state of health without permission of the agent?
24. Does the agent have to be a family member, or can this be an unrelated person who shares the principal's beliefs? Under Texas law and most state laws the agent does not have to be a family member. The major reason these laws were adopted was to give an individual the right to appoint someone that the individual trusts without regard to whether that person is a family member (by blood or marriage.)

WHO MAKES DECISIONS IF YOU DON'T HAVE A MEDICAL POWER OF ATTORNEY AND/OR LIVING WILL?

Under Texas law, if an individual has not designated a decision-maker and does not have a guardian, the following individuals may make healthcare decisions. In order of priority:

- a. Spouse
- b. Patient's reasonably available adult children
- c. Parents
- d. Nearest living relative

Considerations:

- Who is likely to make decisions if you do not exercise your right to choose?
- Do they know what you want?
- Are those persons likely to know your wishes for care at the end-of-life or in life-limiting circumstances?
- Will they honor your wishes?
- If your adult children will decide:
 - How well do they get along?
 - Do they know what you want?
 - Will they agree about what needs to be done?
 - Will they follow your wishes?
 - What about the potential for a life-long conflict resulting from having to make this decision?

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT

I, _____ appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

DESIGNATION OF ALTERNATE AGENT

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved, annulled, or declared void unless this document provides otherwise.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone _____

The original of this document is kept at:

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

DISCLOSURE STATEMENT

THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are unable to make the decisions for yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority is effective when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure that you understand the nature and range of decisions

that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing facility, or residential care facility, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not allow a person to serve as both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

- (1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR
- (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that I have read and understand the information contained in the above disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ at

_____.

(Signature)

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on _____ by

_____.

NOTARY PUBLIC, State of Texas

Notary's printed name: _____

My commission expires: _____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ at

_____ (City and State)

_____ (Signature)

_____ (Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____

Print Name: _____ Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____

Print Name: _____ Date: _____

Address: _____

DIRECTIVE TO PHYSICIANS & FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

Directive

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (This selection does not apply to Hospice care.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (This selection does not apply to Hospice care.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration, intravenous antibiotics, etc. Be sure to state whether you do or

do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. _____
2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed _____ Date _____

City, County and State of Residence _____

State of Texas

County of _____

This instrument was acknowledged before me on _____ by _____.

NOTARY PUBLIC, State of Texas

Notary's printed name: _____

My commission expires: _____

OR

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared

for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness (1) _____

Witness (2) _____

Definitions:

"Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent resigns, is removed by court order, or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____, appoint _____ as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- _____ (A) Real property transactions;
- _____ (B) Tangible personal property transactions;
- _____ (C) Stock and bond transactions;
- _____ (D) Commodity and option transactions;
- _____ (E) Banking and other financial institution transactions;
- _____ (F) Business operating transactions;
- _____ (G) Insurance and annuity transactions;
- _____ (H) Estate, trust, and other beneficiary transactions;

- (I) Claims and litigation;
- (J) Personal and family maintenance;
- (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- (L) Retirement plan transactions;
- (M) Tax matters.
- (N) Digital assets and the content of an electronic communication;
- (O) ALL OF THE POWERS LISTED IN (A) THROUGH (N). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O).

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

Each of my co-agents may act independently for me.

My co-agents may act for me only if the co-agents act jointly.

My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination of this durable power of attorney is not effective as to a third party until the third party has actual knowledge of the termination. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated, resigns, refuses to act, or is removed by court order, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Signed this _____ day of _____, _____.

State of _____

County of _____

This document was acknowledged before me on _____ by _____.

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, suspended, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;

(2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and

(3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;

(B) each action taken or decision made by you as agent;

(C) a complete account of receipts, disbursements, and other actions of you as agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;

(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(F) each known liability;

(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or suspends this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

(1) the principal's death;

(2) the principal's revocation of this power of attorney or your authority;

(3) the occurrence of a termination event stated in this power of attorney;

(4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;

(5) the appointment and qualification of a permanent guardian of the principal's estate unless a

court order provides otherwise; or

(6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

LETTER OF INSTRUCTIONS TO SURVIVORS

PROFESSIONAL & ORGANIZATION CONTACTS

Professional	Name and Phone Number	Address/E-Mail/Internet
Funeral home		
Church or minister		
Other Family Members		
Estate planning attorney		
Friends		
Life insurance agent		
Trust officer		
Employee benefits contact		
If active or retired military, survivor assistance office		
Social Security Administration (local office), if receiving benefits		
Financial advisor		
Accountant		

ORGANIZATIONS & CLUBS

Professional, Alumni, Civic, Social, Athletic	Contact Person	Contact Information
		Phone/E-Mail/Internet

ESTATE PLANNING DOCUMENTS

My estate planning attorney is: _____
(name and contact information). (S)He will probate my will and advise you.
Please contact him (her) immediately.

Shown below is the location of important documents you may need in the event of a serious illness or my death.

Item	Location (physical or digital)
Durable Power of Attorney	Prepared by:
Health Care Power of Attorney	Prepared by:
Directive to Physicians (Living Will)	Prepared by:
Declaration of Guardian	Prepared by:
Organ Donor Authorization	Prepared by:
Will and/or Trusts	Prepared by:
Letter to Executor	Prepared by: me
Letter to Trustee(s)	Prepared by: me
Letter to Guardian of Minor Children	Prepared by: me
Letter for Business Owner – how to wrap up my business affairs	Prepared by: me
Letter(s) of Love	Prepared by: me

KEYS, COMBINATIONS, PINS and PASSWORDS

Keys to the desk are located: _____

Keys to the filing cabinets are located: _____

Lock Combinations

Lock Location	Combination
Vault	
Padlock	

Internet

Web Page	User ID	PIN/Password	Access to:

DISPOSITION OF PERSONAL EFFECTS

not transferred by will or by contract

Note to the author: If there are items that the recipient might consider selling that require an expert to value or some assistance in selling, be sure to annotate.

Item e.g., jewelry, special mementos, collections, clothing, etc.	To Whom	History or Importance of Item

BENEFITS & ENTITLEMENTS

I am currently receiving benefits from the following, please contact them to discontinue benefit upon my death and inquire about any survivor benefits that might be due:

Institution	Contact Person & Phone Number

Examples include: Social Security, Civil Service, Veterans Administration, Current or Former Employers

Recent benefit statements are located: _____

I, or my survivors, may be eligible for benefits from the following; therefore, please contact the institution to determine.

Institution	Contact Person & Phone	Reason for Eligibility

Examples include: Social Security, Civil Service, Veterans Administration, Current or Former Employers

Proof of eligibility may be found: _____

BANKING

Bank/Credit Union	Phone	Type of Account	Titled As:	Account Number

Note: The executor should open a separate checking account for the estate.

Bank statements are kept: _____

There is a safety deposit box located at: _____

The key is located at: _____

INVESTMENT ACCOUNTS

Custodian	Investment Name	Account Number	Type of Account*	Balance

* Taxable, Traditional IRA (IRAT), Roth IRA (Roth), SEP-IRA (SEP), KEOGH, Money Purchase Plan (MPP), Profit-Sharing Plan (PSP), 401(k), 403(b), 457, Education Savings Account – previously known as an Education IRA (IRAE), Section 529 College Savings Account

Note: As an alternative to listing all accounts here, file most recent account statements behind this page.

Account statements are located: _____

Stock option grants are located: _____

INSURANCE

Type of Insurance	Insurance Company	Agent/Contact Number	Policy Number	Premium Amount	Premium Frequency	How Paid?*	Policy Location
Medical							
Medical Supplement							
Short Term Disability							
Long Term Disability							
Long Term Care							
Vehicle							
Home/Personal Property							
Excess Liability (Umbrella)							
Life							

* Examples include by: check, automatic draft from checking account, credit card (automatic bill), paid by employer

Note: As an alternative to listing all accounts here, file most recent account statements behind this page.

If not filed here, account statements are located: _____

DEBTORS

I am currently owed or being paid by the following:

Name	Contact Number	Reason for Payment	Principal Amount	Payment Amount	Rate	Start Date	Stop Date

Documents relating to these payments can be found: _____

CREDIT & BANK CARDS

Name(s) on card	Type of card*	Card Number	Exp. Date	PIN	APR %	Credit Limit	Issuer	Issuer Contact Number

* Visa, Mastercard, Discover, Debit

Before canceling any cards, be sure to change payment means for any automatically-billed items charged to it

Credit report last reviewed:

Equifax (www.equifax.com):_____

Experian (www.experian.com):_____

TransUnion (www.transunions.com):_____

LOANS

Lender	Type of Loan*	Amount Borrowed	Rate %	Date of Loan	Length of Loan	Payment Amount	Payment Frequency	Current Balance

* Mortgage, 2nd mortgage, home equity loan, vehicle, education, personal

LOCATION OF OTHER IMPORTANT DOCUMENTS (physical or electronic):

Birth Certificate	Location:
Marriage certificate/license	
Divorce decree	
Military papers	
Tax returns for last three years	

RECURRING EXPENSES

This is a list of the recurring expenses and how they are paid. If you change credit cards or banks, be sure to review this list first and ensure that the payment is arranged for in another way.

Bill	Vendor	Frequency*	How Paid**
Home			
Rent/Mortgage			
Property Taxes			
Home Insurance			
Electricity			
Gas			
Water and Sewage			
Garbage and Recycling			
Cable			
Internet Service Provider			
Telephone			
Cell Phone			
Lawn Service			
Cleaning Service			
Charity			
Insurance			
Health			
Disability			
Long Term Care			
Automobile			
Life			
Liability (Umbrella)			
Vehicles			
Loan – Vehicle #1			
Loan – Vehicle #2			
Registration			
Dues and Subscriptions			
Athletic Club			
Golf Membership			
Newspaper			
Professional Fees			
Financial Advisor			
Accountant			
Attorney			

* W-weekly, M-monthly, Q-quarterly, S-semiannual, A-annual

** Examples:

- Automatic draft from checking account
- Automatically charged to credit card: (which one?)
- Paid online – reminder/invoice is sent to (email address)

HOUSE

My survivors may or may not wish to remain in the current residence. Here is some information that may be helpful:

	Name	Contact Number	Current Arrangements
Lawn Service			
Pool Service			
Cleaning Service			
AC/Heating Service			
Pest Service			
Plumber			
Electrician			
Handyman			
Roofer			
Garbage Collection			
Recycling Collection			

Idiosyncrasies about the house or house care that you should know: _____

Location of deeds, title, closing papers, mortgages, records of capital improvements:

VEHICLES

Year	Make	Model	Title Location	Service Location

Credits

- *Preparing Well for Your Passing* is adapted, in part, from *Planning for a Graceful Exit* by the St. David's Church Foundation.
- Letters of Instruction, pages 40-53, provided by Pauley Financial Services, Inc. www.pauleyfinancial.com, © 2012.
- In addition to the forms in this document from the Texas Department of Aging and Disabilities Services (www.dads.state.tx.us), the American Bar Association (www.abanet.org/aging/) has a “Legal Guide for the Seriously Ill” and videos about the topic. Another resource is www.caringinfo.org.

November 2019