

# Elder Law Handbook

**Eighth Edition  
(Spring 2018)**

**A Community Service Project of the  
Elder Law Committee of the Tarrant County Bar Association  
Printing underwritten by the Tarrant County Bar Foundation**



## **DISCLAIMER**

**This Handbook is published by the Tarrant County Bar Foundation & the Tarrant County Bar Association as an aid to the community. This material may not be sold or published in any form. This Handbook is based on Texas law and is only intended to inform and not give legal advice. You should seek legal advice from an attorney of your choice to advise you in your particular situation. Reliance on this information or recommended resources shall be at your sole risk. The Tarrant County Bar Foundation and Tarrant County Bar Association do not control and cannot guarantee the relevance, timeliness, or accuracy of information created and maintained by other organizations utilized herein. The Tarrant County Bar Foundation and the Tarrant County Bar Association make every effort to provide accurate and complete information; however, names, contact information, etc. may change prior to updating.**

**© 2018 Tarrant County Bar Association**

# FOREWORD

In 1935, the year Social Security was enacted, average life expectancy in the U.S. was 61 years. Since then, thanks to many advances, the average has increased to more than 78 years. As the number of individuals over age sixty-five increases, their needs will increase and become more varied.

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

This Handbook is based on Texas State Law and Federal Law (where applicable) and is meant to inform, not to recommend. This is a general summary of the laws as they existed as of the eighth edition (Spring 2018), but there may be changes to the laws by the time you read this. Moreover, to be useful as a summary, the Handbook necessarily omits certain details, which may be relevant to your situation. Situations also differ, sometimes subtly, and what is appropriate for one person or family may not be appropriate for another. You should seek the advice of an attorney about your particular situation. This Handbook is not intended as a substitute for sound legal advice.

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

We hope this Handbook will provide you with helpful information about the law and about resources for services and support organizations in the community. The Tarrant County Bar Association provides other services that may also be of use to you, including a Lawyer Referral & Information Service, LegalLine for asking legal questions, and the People's Law School where you can learn more about a variety of legal topics. See the inside back cover for more information on these services. If you live in another county, you may find other resources in your county.

If you find this Handbook helpful, you can help to ensure it remains available for the benefit of others. While the attorneys who edit this Handbook volunteer their time, the Tarrant County Bar Foundation underwrites printing costs to make the Handbook available to everyone without regard to their ability to access the internet. The Tarrant County Bar Foundation also supports a number of other services benefitting the community. A tax deductible contribution may be made to Tarrant County Bar Foundation, 1315 Calhoun Street, Fort Worth, Texas 76102. It will be greatly appreciated.

You can also help to improve the Handbook for the benefit of others. If you find anything in the Handbook helpful, confusing, missing, or wrong, please let us know. You can reach the committee by email at [tcba@tarrantbar.org](mailto:tcba@tarrantbar.org). We will not be able to respond to every email, but the feedback will be used in future revisions.

The Elder Law Committee of the Tarrant County Bar Association also provides speakers to organizations regarding general elder law legal issues, including wills and estate planning, probate, and guardianships. If interested in having one of our committee members speak to your organization, email [tcba@tarrantbar.org](mailto:tcba@tarrantbar.org) with your request or any questions about this service. Advance notice is helpful.

# Acknowledgements

This version of the Handbook was revised by the 2017-2018 Elder Law Committee of the Tarrant County Bar Association. The Association gratefully acknowledges the contributions of the committee: Nathan Winkler, Chair; and Committee Members Brandy Austin, Brook Bell, Andrea Casanova, William Catterton, Danielle Dulaney, Stacy Fay, Katherine Gardner, Karen Johnson, Bonny Link, Thomas Mastin, Taylor McPherson, Elaine Ryan, Cary Schroeder, Karen Schroeder, Emma Stewart, Will Trevino, and Laurie Weir. The Committee thanks Lauren McKnight and the Tarrant County Bar Association staff for their assistance in shepherding the Handbook through publication.

# Table of Contents

## Personal Finances

Bank Accounts, Brokerage Accounts, and Life Insurance Policies	5
Bankruptcy	7
Safe Deposit Boxes	9
Community and Separate Property	10
Social Security	12
Medicaid	14
Medicare	16
VA Benefits	17
Tax Issues	19
Property Tax	21
Consumer Information for Homeowners	22
Consumer Protection	23
Age Discrimination	29

## Health Planning

Elder Abuse, Exploitation and Neglect	32
Powers of Attorney and Living Wills	35
Trusts	37
Guardianship	40
Mental Illness and Mental Health Commitments	43
Services and Residential Alternatives	44

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

Hospice	47
Funeral Arrangements	50
Wills	51
Probating Wills and Administration of Estates	53
Public Probate In Tarrant County	58

## Service Directory

Services & Resources	59
Useful Websites for Seniors	61
Helpful Periodicals for Seniors	63

# PERSONAL FINANCES

## BANK ACCOUNTS, BROKERAGE ACCOUNTS, AND LIFE INSURANCE POLICIES

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

Using a power of attorney, your agent may be able to make withdrawals or write checks on the account. However, banks and brokerage companies are sometimes reluctant to accept a power of attorney because of concerns about fraud or theft. These institutions may be willing to deal with agents appointed using their own forms. A court-appointed guardian of a mentally incapacitated account owner always has access to the account. Otherwise, no one will have access to your money.

### 2. **How do bank accounts pass after my death?**

Ownership of an account after death is determined by the type of account selected on the signature card. Various types of accounts are described below. Your signature on the signature card creates a legal contract between you and the bank. You should be very careful about the selections you make on signature cards, as many unintended consequences can occur when uninformed choices are made on these cards. Bank employees often do not understand the legal effects of the selections made, so a bank employee's recommendation is no guarantee that the selections made on a signature card are appropriate for you. Additionally, different banks use different names to describe their accounts. If you have any questions, have every document used in establishing or changing the account reviewed by your attorney. (Ask your bank to fax the documents to your attorney.) This also applies to accounts at credit unions and savings and loans. The account titles used here are from the Texas Estates Code, but your bank may use other names.

**Single-party account without Pay on Death (POD) Beneficiary.** The owner of the account is the only person on the account. When the owner dies, the account passes by will or, if there is no will, to the owner's heirs at law.

**Single-party account with Pay on Death (POD) Beneficiary.** Only the owner of the account can withdraw funds. When the owner dies, the account passes to the person(s) named as beneficiary. Note: Neither a will nor Texas inheritance laws control this account as the account is not part of your probate estate. However, if the beneficiary dies before you do, then you need to update your beneficiary designation.

**Multiple-party account without Right of Survivorship.** This is commonly referred to as a joint account. Two or more names are on the account. Each person has an ownership interest in the account equal to the amount each contributed. The bank may pay any sum in the account to anyone named on the account at any time. When one owner dies, his or her rights in the account pass by will or, if there is no will, to the owner's heirs. Note: Creditors or the IRS may seize this account for a debt owed by any owner. In that case, the other owners of the account may need to file suit to recover their funds in the account.

**Multiple-party account with Right of Survivorship.** This is commonly referred to as a joint tenancy with right-of-survivorship account. Two or more names are on the account. Each person has an ownership interest in the account equal to the amount each contributed. The bank may pay any sum in the account to anyone named on the account at any time. When one owner dies, his or her rights in the account pass to the other person named on the account if he or she is living. There is also an option to have a beneficiary or beneficiaries who receive the account upon the death of the last surviving party. This would occur via a signed “transfer on death” card or “pay on death” card your bank will provide upon request. **Note:** Neither a will nor the inheritance laws control this account as the account is not part of your probate estate. If a spouse or relative of a spouse is listed as beneficiary on a pay on death account and the marriage is dissolved by divorce, that designation is void unless it is reaffirmed in writing after the divorce is finalized. Creditors or the IRS may seize this account for a debt owed by any owner. In that case, the other owners of the account may need to file suit to recover their funds in the account. If the account contains community property (See Community and Separate Property , page 10) and is to pass to the surviving spouse, then it is important that both spouses sign the survivorship agreement or the survivorship rights may not be enforceable.

In order for a joint tenant to inherit, the survivor must survive the deceased by at least 120 hours. If this does not occur, then one-half of the property shall be distributed as if one joint owner had survived and the other one-half shall be distributed as if the other joint owner had survived.

**Convenience Account.** Two or more names are on this account, the depositor(s) and the co-signer(s). The co-signer may write checks for the convenience of the depositor as long as the depositor is alive, but when the depositor dies, the money does not pass to the co-signer. Instead, the account passes by will, or if there is no will, to the owner’s heirs at law. The bank may pay funds in the account to the co-signer before the bank receives notice of the depositor’s death. **Note:** Creditors or the IRS may seize this account for a debt owed by any owner on the account. In that case, the other owners of the account may need to file suit to recover funds in the account.

**Trust Account.** A Trust Account is an account with one person named as trustee for the funds, and one or more other persons named as beneficiary of those funds. During the life of the creator of the trust (referred to as grantor or settlor), the funds belong to the trustee and the beneficiary has no rights to the account. Upon the death of the grantor, the funds are distributed to the beneficiary as provided for in the written trust agreement. **Note:** In this case, the account is not part of the probate estate as neither the will of the grantor nor inheritance laws control the distribution of this account. However, if there is no written trust agreement, the account passes by the grantor’s will. If the grantor does not have a will, then the account passes to the grantor’s heirs. But it may be necessary to probate the estate to obtain payment of the funds in the trust account to the beneficiary.

### **3. How do brokerage accounts pass after my death?**

Accounts with stock brokerage companies (for example, Merrill Lynch, Edward Jones, Charles Schwab & Co.) pass after death similarly to bank accounts. The documents you sign with the brokerage company may control ownership after death. Neither Texas inheritance laws nor your will controls your brokerage account. You should be very careful in your selection of account type as many unintended consequences can occur when uninformed choices are made. Brokerage employees often do not understand the legal effects of the selections you make, so an

employee's recommendation is no guarantee that the selections are appropriate for you. You should name a beneficiary or beneficiaries as well as a contingent beneficiary or beneficiaries in the event your primary beneficiary predeceases you. These assets pass directly to your named beneficiary and **not** through probate unless your estate is named as beneficiary.

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

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

To help consumers find a lost life insurance policy or annuity contract, Texas Department of Insurance (TDI) officials offer the "Life Policy Locator Service." This service can help those named as beneficiaries receive benefits that could be owed to them from a life insurance policy or annuity contract purchased in Texas.

To request the locator service, a beneficiary, an executor or legal representative of the deceased person can complete a search request form and submit that form electronically to TDI, which will then forward the completed form to participating insurance companies within 30 days. Insurance company officials have agreed to search their records and contact the requester if that company has a policy in the name of the deceased person. The companies plan to contact a requester only if the company has a policy in the deceased person's name and if the requester is determined to be legally entitled. Not all insurance companies in Texas have agreed to participate. Please check with the TDI: <http://www.tdi.texas.gov/life/life.html>.

## **BANKRUPTCY**



### **1. What is bankruptcy?**

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

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

Chapter 7 is currently designed to permit a person filing for bankruptcy (a debtor) to wipe out (discharge) many types of debt without making further payments on unsecured debts. Chapter 13 requires debtors to make payments to a bankruptcy trustee over a period of time that usually lasts from 36-60 months in order to reorganize their debts in a workable manner. A shorter period of time may be possible in select circumstances.

A debtor files a petition to begin either process. If this is the debtor's first filing, an immediate order is put in place that prohibits creditors from taking any action to collect a debt (automatic stay) without getting prior permission of the bankruptcy court. Accompanying the

petition will be schedules and statements the debtor makes to the bankruptcy court. The schedules must list all debts owed, all assets owned, and reflect an accurate monthly budget. The Statement of Financial Affairs answers many standard questions about the debtor's financial affairs.

There are many reasons a debtor might choose to file Chapter 13 rather than Chapter 7. A debtor might choose Chapter 13 if the debtor meets one of the following qualifications:

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

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

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

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

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

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

Debt arising due to fraud cannot be discharged.

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

The second step is to create an annual budget based on what you actually have available. This may require the advice of an attorney to help you determine what you can legally do. Generally you will plan to pay for your necessities first and then pay for the items that can be taken from you if you do not pay the loan. Items that can be repossessed include: a house if you have a mortgage, a car, and similar assets you may own that also have attached liens. These creditors are called "secured" because you signed a document giving the creditor the right to take back the collateral purchased if you do not pay. The asset is considered the "security." Create a "living expense" budget. Budget for the necessities only so that you know what you have left to pay on your debt after you pay for your living expenses. This should not only include items like

rent, child care, utilities and food, but include items that you do not buy every month. Include in the annual budget items you need every year such as clothing, dental bills, medical bills, insurance, car repairs and similar expenses, and include 1/12th of that total in your monthly budget.

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

#### **4. Exemptions and Homestead**

In bankruptcy, it is possible to have what is referred to as “exempt property.” This is property that your creditors cannot reach. There are two different types of exemptions that an individual debtor can take: federal and state. These two different types of exemptions have different allowed amounts for the total amount a debtor may exempt. Under the Texas exemptions, an individual debtor can exempt all of the equity in his or her homestead. This means that the homestead is beyond the reach of creditors and allows the debtor to stay in his or her home provided that he or she continues to make the required, monthly mortgage payments. Other items that can be exempt include retirement accounts, checking accounts, and motor vehicles. You should always consult with a bankruptcy attorney about which exemptions you may be allowed to take. The law is very complex regarding which exemptions may be taken and the dollar amount a debtor will be entitled to on the amount that he or she can exempt.

### **SAFE DEPOSIT BOXES**



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

Yes. If a safe deposit box is held in the names of two or more persons jointly, any of the named persons are entitled to access the box and may remove the contents at any time. The death of one holder of a jointly held safe deposit box does not affect the right of any other holder to have access to and remove the contents from the safe deposit box. Generally, your safe deposit box is an excellent place to keep your will. Other documents, such as powers of attorney, you will want to have someone able to access the document the moment the need arises, which may be outside banking hours. It is always recommended that one or more trustworthy persons other than the owner(s) be authorized to enter the box.

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

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

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

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

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

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

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

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

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

## COMMUNITY AND SEPARATE PROPERTY



**1. What is community property?**

All property acquired during a marriage that is not either spouse's separate property is community property. A spouse's separate property is: (1) property the spouse owned before marriage; (2) property the spouse acquired during marriage by gift or inheritance; and (3) property the spouse received as recovery for personal injury while married, except for recoveries for loss of earnings. Any property that does not fit into one of these categories is community property. For example, income earned while married is community property even if it is interest or dividends earned on assets that are separate property.

Property is either community or separate at the time it is acquired. For example, a house that one spouse owned before marriage is that spouse's separate property, even if the house is the family's homestead. In the event community property is used to benefit a spouse's separate property (such as a spouse's salary being used to make payments on a house that was purchased prior to marriage), or one spouse's separate property is used to benefit community property (such as a spouse's inheritance being used to make improvements to a community property house), there may be a reimbursement claim between spouses upon dissolution of the marriage by death or divorce.

Property is presumed to be community property unless proven to be separate property by clear and convincing evidence. Therefore, separate property ceases to be separate property when it is co-mingled (as when a spouse does not maintain the records sufficient to prove the property was his or her separate property). Spouses may also convert their separate property into community property by agreement.

Where property is not co-mingled, it retains its character as separate or community despite changes in form. For example, a house purchased with a spouse's cash inheritance is that spouse's separate property. Similarly, the cash proceeds of the later sale of that house would be separate property.

## **2. Are there different types of community property?**

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

- A. Personal earnings;
- B. Revenue from separate property;
- C. Recoveries from personal injuries; and
- D. Any increases in and all revenue from sole management community property.

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

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

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

## **4. What property is subject to claims of my spouse’s creditors?**

Joint community property is subject to claims of creditors of either spouse whether incurred before or during the marriage.

A spouse’s sole management community property is not ordinarily subject to claims of creditors for any debts the other spouse incurred before they married or for any contractual obligations the other spouse independently incurred during the marriage.

Where one spouse joins the other spouse in a contract, each spouse is obligated on the contract, and therefore each spouse’s separate property and sole management community property will be subject to the creditor’s claim. Additionally, each spouse has an obligation to provide necessities for the other spouse. This means that one spouse’s separate property and sole management community property could be subject to claims of a creditor of the other spouse that provided food, shelter, medical treatment, or the like to the other spouse.

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

## **5. How do I make a gift to my spouse?**

One spouse may always give to the other spouse property that is his or her separate property, or his or her interest in sole management or joint community property. The gift the spouse makes is a gift the other spouse receives during marriage, and thus is the recipient spouse’s separate property. A gift from one spouse to another is presumed to include a gift of any future income produced by the gift property, so any income from the gift is also the separate property of the spouse who received the gift. Spouses may also agree to divide community property into separate property of each spouse. Further, spouses may agree to designate property, such as bank accounts, as property with right of survivorship, so that the property will pass to the surviving spouse when one spouse dies. Property can be designated with right of survivorship whether the

property is separate or community. If spouses make such a gift or designation of property, it is advisable to obtain assistance from your attorney.

## **6. Can one spouse manage the community property if the other spouse is incapacitated?**

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

## **SOCIAL SECURITY**



### **1. What is Social Security?**

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

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

Although most people think of Social Security as a retirement program, it is actually much more. Social Security also pays qualifying disabled workers and the minor children and surviving spouses of deceased workers. The disability and survivor parts of Social Security are very important parts of the program because 1 in 3 workers will become disabled, and 1 in 6 will die before retirement age.

### **3. How do I apply for Social Security?**

You can apply either by telephone or in person. It is best to set an appointment first by calling your local Social Security office, or you can call the national SSA information line at 1-800-772-1213 to schedule an appointment to file an application by phone. You can apply up to 3 months before you are first eligible for retirement benefits, or, for disability benefits, after you are no longer working a full-time job or your earnings fall below a certain level known as SGA.

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

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

### **5. How much will I receive from Social Security?**

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

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

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

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

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

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

When a parent who has worked enough calendar quarters dies, Social Security will pay benefits to each child until age 18. A child can continue receiving benefits until age 19 if the child is a full-time high school student or, if the child is disabled, until age 22. In addition, widows and widowers can receive Social Security benefits based on a deceased spouse's work at age 60, or at age 50 if the widow or widower becomes disabled within 7 years of the worker's death. Also, a widow or widower can receive benefits at any age if he or she is caring for a child under 16 who is receiving benefits from the deceased worker.

## **9. What benefits are available if I become disabled?**

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

## **10. What is SSI?**

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

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

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

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

Several years ago, any person who was receiving Social Security retirement benefits could face a reduction in benefits if he or she continued to receive earned income, regardless of whether the person began receiving benefits at early retirement age or at normal retirement age. The reduction in benefits terminated at age 70. The law was modified several years ago, and there is now no reduction for persons who reach full retirement age but continue to work. The reduction does apply if an individual elects to take early retirement benefits. If you elect to receive Social Security benefits before full retirement age you can begin receiving benefits as early as age 62; you will lose \$1 of benefit each month for every \$2 you earn above a base amount. The base amount in 2018 is \$17,040, and it is adjusted annually for the cost of living. In the year you reach full retirement, the reduction is \$1 for every \$3 earned above a different threshold amount, which in 2018 is \$45,360.

## **MEDICAID**

### **1. What is Medicaid?**

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

### **2. What are the income and resources limits?**

To qualify for Medicaid, an individual may not have countable resources valued over \$2,000, or an income above a specified amount. The income limit varies depending on the number of people living in your household and their ages, and the amount changes each year, based upon the cost of living. In determining the countable resources, certain items are not included in that \$2,000 limit: a residence with value of \$560,000 or less in 2018 (in most cases); and with certain qualifications, one automobile; most personal property (other than valuable collectibles or assets); a pre-paid burial policy; term life insurance policies; and certain other life insurance policies. The best way to truly determine your eligibility is to apply.

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

If an individual meets both the income and resource tests, and is determined to be medically eligible (which means the person is unable to perform some or all activities of daily living and in need of skilled nursing care), then that person can qualify for Medicaid assistance at a nursing home that accepts Medicaid patients. Congress has made it possible to qualify for Medicaid even if an individual's income exceeds the income limit, if that person otherwise meets the resource test. In order to qualify under this circumstance, the person must establish a Qualified Income Trust (also known as a "Miller Trust"), under which the trust income does not exceed the

monthly allowance to meet the income test. With such a trust, all of one or more sources of income in excess of the monthly allowance are assigned to the trust; that income must be disbursed in a specific manner within one month of receipt, and can be used first to provide the individual with a personal needs allowance (currently \$60), next for the person's spouse's maintenance if the spouse is not in a nursing home, and finally to pay for supplemental health insurance for the person in the nursing home. The balance must be paid to the nursing home. The trust must provide that, upon the death of the Medicaid recipient, the trust assets are payable to the State of Texas to the extent the state has paid for medical assistance. The monthly income limit for 2018 is \$2,250. If a person applying for Medicaid coverage in a nursing home has gross income above that amount, then a Qualified Income Trust will be necessary in order to qualify for Medicaid.

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

No. Special rules permit a larger amount of income and assets to be used by the spouse remaining at home. Although the rules are somewhat complex, basically a spouse who remains at home may retain the lesser of (a) 50% of the assets owned by the husband and wife combined, or (b) a fixed dollar amount, which is adjusted annually for increases in the cost of living. In 2018, the fixed dollar amount is \$123,600. If the total combined countable resources are \$24,720 or less (as of 2018), the person can immediately qualify. In addition, the spouse at home can retain a specified amount of income, which is \$3,090 per month for 2018. All these dollar amounts are subject to annual cost of living adjustments.

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

If a transfer of property is made during the five-year period immediately before an application for Medicaid, then a penalty will be imposed. The penalty is determined by dividing the amount of the gift by the daily cost of a nursing home in Texas. As of September 2017, this amount is \$172.65 per day. The penalty period does not begin to run until the person is otherwise eligible for Medicaid. This means the person has to meet the income and resource requirements and be in a Medicaid qualified bed at a facility that accepts Medicaid. If gifts have been made, either the gifts will need to be returned, or an alternate means of payment will need to be available during the running of the penalty period.

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

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

# MEDICARE



## 1. What is Medicare?

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

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

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

**Part A** covers hospitalization, skilled nursing facility care and some home health and hospice care. It is available to most American citizens premium free beginning on their 65th birthday or once they have received Social Security disability benefits for 24 months. It is also available immediately to disabled persons with end stage renal failure or ALS (Lou Gehrig's disease). Part A does not require a premium if a person has 40 or more quarters of employment prior to the date of eligibility. If one is not entitled to premium-free Part A, because the person did not work enough calendar quarters, that person can pay a monthly premium for Medicare Part A coverage (in 2018, it is \$422 per month). Part A is necessary to enroll in Part C (private managed care plans) and is also required to enroll in Part D (private prescription drug plans).

**Part B** covers medically necessary services and preventive services, outpatient therapies, durable medical equipment, some outpatient prescription drugs, and ambulance services. Coverage is voluntary and available to beneficiaries at the same time you are eligible for Part A. The monthly premium, \$134 per month for most people in 2018, is generally deducted from your Social Security or Railroad Retirement check. A one-time limited penalty is imposed for late enrollment. Part B is necessary for Part A enrollment for those not entitled to premium free Part A.

**Part C** (Medicare Advantage) is provided through private managed care plans usually organized as HMOs. The providers are required to cover all the services covered under Parts A and B. Enrollment in Part C is voluntary and available at the same time a beneficiary is first entitled to and already enrolled in Parts A and B. General enrollment is from November 15 through December 31 of each year, with benefits starting January 1 of the following year. Beneficiaries are able to change plans once during the first three months of the year. Part C plans can offer a prescription drug plan under Part D. There is no late enrollment penalty for Part C.

**Part D** is provided through private plans offering prescription drug coverage. It is voluntary and available at the same time you enroll in Part A or Part B. General enrollment is from November 15 through December 31 each year. A beneficiary must have either Part A or Part B to enroll in Part D. Otherwise coverable Part D drugs that are covered under Part A or Part B will not be covered under Part D, even if you have Part A or Part B coverage. Failure to enroll when first eligible will cause you to suffer a perpetual late enrollment penalty. More information is available from the Social Security office at [www.medicare.gov](http://www.medicare.gov) or by phone.

## VA BENEFITS



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

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

### **2. What are the VA programs for older adults?**

#### **A. Dependency and Indemnity Compensation**

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

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

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

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

#### **B. VA Aid and Attendance/Housebound Program**

Monthly benefits, in addition to social security and/or disability income, are available for veterans and surviving spouses who require the regular attendance of another person to assist in bathing, dressing, meal preparation, medication monitoring or other various activities of daily living and who are not living in a nursing home. This benefit can help pay for care in the home, skilled nursing facility, personal care home, or an assisted living community. A person who is "permanently housebound," that is, someone who is substantially confined to his or her dwelling (permanent residence) or, if institutionalized, to the ward or clinical areas, and it is reasonably certain the disability or disabilities will continue throughout his or her lifetime (for example they are a ward in a guardianship), may qualify for this benefit.

The individual must qualify both medically and financially. The amount of assets is not a specific amount, but is the amount that is needed to maintain the applicant and his or her spouse for the remainder of their lifetime, which generally cannot exceed \$80,000. However, the home, vehicle, pre-paid funeral expenses, and many other items do not count toward this asset limit. Under current law, a veteran is not penalized for giving away assets to get the assets below the level necessary to qualify. Legislation has been introduced that would impose a penalty for the

transfer of assets, so the advantage of being able to give away assets in order to qualify for the benefit may go away. In addition, the income of the applicant cannot exceed the maximum benefit available to the applicant. For these purposes, “income” is defined as the gross income less incurred medical expenses. The cost of assisted living is considered to be an incurred medical expense.

There is also a specific service requirement to obtain this benefit. The applicant must have been on active duty for a continuous 90-day period, and one of those days of service must have been during a war time period, as defined by the VA. If the veteran did not serve during a war time period, the benefit is not available. In addition, the veteran must not have received a dishonorable discharge.

The maximum amounts a single veteran, a married couple, or surviving spouse may be eligible to receive changes annually based upon cost of living adjustments. The average processing time is 6 months or more. However, the pay is retroactive to the date of the application.

### **C. Death Pension**

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

### **D. Death Gratuity Payment**

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

### **E. Nursing Home Care**

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

1. VA Community Living Care Centers. Community Living Centers (CLC) provide a dynamic array of short stay (less than 90 days) and long stay (91 days or more) services. Short stay services include but are not limited to skilled nursing, respite care, rehabilitation, hospice, and maintenance care for veterans who are enrolled in VA healthcare and require CLC services. Long stay services are available for enrolled veterans who need nursing home care for life or for an extended period of time for a service-connected disability, and those rated 60% service-connected disabled and unemployable; or veterans who have a 70% or greater service-connected disability. All others are based on available resources.
2. State Veterans’ Home Program. State veterans’ homes are owned and operated by the states. The states petition VA for grant dollars for a portion of the construction cost followed by a request for recognition as a state home. Once recognized, VA pays a portion of the per diem if the state meets VA standards. States establish eligibility

criteria and determine services offered for short and long term care. Specialized services offered are dependent upon the capability of the home to render them.

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

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

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



## **TAX ISSUES**

### **1. Will my family have to pay inheritance taxes?**

Generally, no. Most estates pay no federal estate taxes because the fair market value of the decedent's estate on the date of their death does not exceed the exemption amount. The exemption amount for tax year 2016 was \$5,450,000; and for tax year 2017 was \$5,490,000. For 2018 under the Tax Jobs and Cuts Act of 2017 signed into law in December 2017, it will be \$11,200,000. If the value of the decedent's estate exceeded the exempt amount in 2016 and 2017, the top estate rate was 40%. If the value of decedent's estate exceeds the exempt amount in 2018, the top estate tax rate remains at 40%. For married couples, the aggregate exemption will be twice whatever the exempt amount is in the year of the death of the second spouse.

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

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

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

Yes, if the value of the assets exceeds the exempt amount. If a married couple has assets greater than the exempt amount (\$11,200,000 for 2018), special planning is necessary for both spouses to take advantage of the exempt amount. If the first spouse to die leaves all assets to the surviving spouse, all of the property given to the surviving spouse qualifies for the marital deduction. However, there is no benefit obtained from the exempt amount (\$11,200,000) in the estate of the first spouse to die. By creating a Will that provides for assets up to the exempt amount to be subject to tax (although no tax is payable because of the exemption), additional

estate tax benefits can be obtained by having the property pass to a “credit shelter” or “By-pass” trust. Usually, the surviving spouse is entitled to receive income from this trust during life. Upon the death of the surviving spouse the trust assets pass estate tax free to the persons designated by the first spouse that died (i.e. the appreciation of the assets in the trust passes tax free to the beneficiaries).

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

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

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

Generally, no. The estate and gift tax is imposed on the person who gives the bequest or gift, not on the person who receives the bequest or gift. If estate taxes are due, they must be paid by the decedent’s estate, usually within nine months after the death of the decedent. However, in some cases the executor is entitled to recover a portion of the estate taxes from a beneficiary; for example, when life insurance proceeds are included in the decedent’s taxable estate but the beneficiary received the life insurance proceeds. If gift taxes are due, the gift tax must be paid by the individual making the gift. If the value of the gift exceeds the annual exemption amount (\$14,000 [2013-2017]; \$15,000 in 2018), a gift tax return must be filed by the individual who made the gift.

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

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

**7. Can I “gift” property during my life to avoid estate taxes?**

Yes, up to a limited value. While the value is indexed for inflation, an individual in 2018 is able to make gifts of property to individuals up to \$15,000 annually.

**8. What exclusions are available for gifts?**

An annual exclusion amount, a lifetime exclusion amount, and certain unlimited amounts are available. An outright annual gift of money or property (annual exclusion amount) given to an individual in the amount of \$15,000, or \$30,000 if both spouses elect to gift to an individual, is exempt from gift taxes. Gifts in excess of this amount must be reported on a gift tax return (form 709) by April 15 of the year after the gift is made. The Tax Jobs and Cuts Act of 2017 makes a lifetime exclusion amount for gifting of \$11,200,000. Since the gift and estate tax exclusions are unified, amounts “gifted” reduce the estate tax exclusion applicable at death. To

qualify for these annual and lifetime exemptions, the gift must be of a present interest, so gifts to trusts generally do not qualify for either exemption. However, there are techniques that allow gifts to be made to trusts which will qualify for the exemption. You should consult your attorney or accountant to determine whether a gift will qualify for the exemption. Gifts in an unlimited amount may be made for medical expenses and school tuition, if paid directly to the provider.

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

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

## **PROPERTY TAX**



### **1. What is a homestead?**

It's where you live! This applies to property you own, not to property you rent or lease. There are many benefits to having a piece of property characterized as your homestead.

### **2. What are the types of homesteads?**

- A. Urban: An urban homestead may consist of a lot or contiguous lots, not exceeding ten acres, in a city, town or village, together with all improvements.
- B. Rural: A rural homestead, which is a homestead not located in a city, town or village, is limited to 200 acres of land and all improvements for a family and 100 acres of land and all improvements for a single adult.
- C. Business: A business homestead is a homestead used as both a home and as a place of business. Further, a business homestead may consist of a lot or contiguous lots not exceeding 10 acres.

### **3. What about Creditors?**

Texas homestead law protects qualifying real property from forced sale by general creditors.

Property secured by liens for purchase money for the homestead, taxes on the property, IRS tax lien, work and material used in constructing improvements on the property, home equity loans, and owelty of partition are exceptions to this rule.

### **4. What are Property Taxes?**

It is likely you will qualify for a property tax exemption on a property characterized as a homestead.

In Tarrant County, the Tarrant Appraisal District (TAD) handles property tax appraisals and exemptions.

#### **A. Contact Info**

- 1. You can go online at [TAD.org](http://TAD.org)
- 2. You can visit their office located at 2500 Handley-Ederville, Fort Worth, Texas 76118
- 3. You can contact their office by phone at 817-284-0024

#### **B. Exemptions**

- 1. General Residence Homestead Exemption

2. Age 65 or Older Exemption
3. Disabled Person Exemption
4. 100% Disabled Veterans
5. Surviving Spouse of Disabled Veteran who Qualified for Disabled Person Exemption
6. Over 55 Surviving Spouse of a Person Who Received the Over 65 or Disabled Person Exemption
7. Donated Residence Homestead of Partially Disabled Veteran
8. Surviving Spouse of Disabled Veteran Who Qualified for the Donated Residence Homestead Exemption
9. Surviving Spouse of Member of Armed Forces Killed in Action

## **5. What is Tax Abatement?**

A tax abatement is the full or partial exemption from ad valorem taxes on eligible properties for a period of up to ten years and an amount of up to 100% of the increase in appraised value (as reflected on the certified tax roll of the appropriate county appraisal district) resulting from improvements begun after the execution of the tax abatement agreement. Eligible properties must be located in a reinvestment zone.

## **6. What is Tax Deferral?**

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

# **CONSUMER INFORMATION FOR HOMEOWNERS**

## **1. What is a Home Equity Loan?**

A home equity loan or line of credit allows you to borrow money, using your home's equity as collateral. If you do not repay the loan, the lender may foreclose and sell your home. Use caution: you should consider carefully the consequences of borrowing against your home. Do not be pressured to pledge your home for risky business ventures or other endeavors.

## **2. What are the requirements for a Home Equity Loan?**

You may borrow for any purpose by pledging your homestead. That law protects homeowners with the following requirements: (1) the total of all loan balances against your home may not be more than 80% of the fair market value on your home; (2) the lien may be foreclosed only under a court order; (3) fees to make the loan may not exceed 3% of the loan amount; (4) the loan may close only at the office of the lender, a title company or an attorney; and (5) the loan may not close until 12 days after you submit a written application for credit.

## **3. Can I refinance my home?**

When you refinance your mortgage, you are applying for a new loan. By refinancing, you are actually paying off the old loan by obtaining a new one.

Typically, people refinance their mortgage in order to take advantage of lower mortgage interest rates.

#### **4. What is a Reverse Mortgage?**

A reverse mortgage is a special type of home loan for older homeowners at least 62 years of age that allows you to convert the equity in your home to cash.

Borrowers are still responsible for property taxes and homeowner's insurance.

No payments have to be made to the lender until the homeowner sells or vacates the property or dies.

There are many potential pitfalls to taking out a reverse mortgage; it is important to fully discuss the advantages and disadvantages with a trusted financial advisor.

#### **5. What is Foreclosure?**

Foreclosure is the legal right of a mortgage holder or other third-party lien holder to gain ownership of the property and/or the right to sell the property and use the proceeds to pay off the mortgage if the mortgage or lien is in default.

Homestead laws in Texas protect property from foreclosure except in limited circumstances.

#### **6. What about my home and Bankruptcy?**

The homestead exemption in bankruptcy protects your home equity from creditors in a Chapter 7 bankruptcy and helps reduce your payments in a Chapter 13 bankruptcy.

## **CONSUMER PROTECTION**



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

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

A legitimate lottery is a promotional device by which prizes are awarded by chance, but it requires some form of payment in order to participate. Lotteries are illegal except when conducted by states and certain exempt charitable organizations. Credit unions and banks are also permitted to conduct raffles to promote savings by offering their customers prizes drawn at random.

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

**BEWARE** of fraudulent sweepstakes, lotteries, or promotions. Unfortunately, Americans lose about \$40 billion each year due to fraudulent sales. These frauds are frequently perpetrated on the elderly. The telemarketers usually portray themselves as polite, friendly young people who are interested in the well-being of the elderly person. A person may be placed on what is known

as a “mooch list.” A “mooch list” is a list of names and telephone numbers of likely victims of telemarketing fraud. According to Congress, 56% of the names on the “mooch lists” are aged 50 or older. These lists are sold or transferred from one fraudulent group to another. If you receive a call from one group, do not be surprised if your phone soon begins ringing off the wall. Fraudulent companies may also attempt to contact you by mail. They use creative and misleading schemes to make you believe that you have won a great prize or are one of a very few who have a chance to win. They tell you that all you have to do is send money to claim or qualify for the prize.

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

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

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

## **3. How do I protect myself?**

Use your head. Take your time. Before you commit to anything, take 24 hours to think about it. Talk it over with someone you trust. **Read the fine print!** Remember that these people are not your friends. They are trying to get money from you, legally or illegally. Do not buy something merely because you will get a “free gift.” It is not free if you have to pay shipping, handling, tax, or any other fee to receive it. Get all information in writing before you agree to buy. Check out the caller’s record. Do not give your credit card number or checking account number to anyone who calls on the phone or sends you a mailing. Check out charities before you give. Ask the caller how much of your donation actually goes to the charity. Be extremely cautious about investing with an unknown caller who insists you must decide immediately. If the investment is a security, check with state officials to see if it is properly registered. If large amounts of money are involved, check with your legal or financial advisor. Do not send money by messenger or overnight mail. If you use cash rather than a credit card, you may lose your right to dispute fraudulent charges. Make sure you know the per-minute charge for any 900 number you call. Hang up instead of being pressured to buy. If it sounds too good to be true, it probably is.

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

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

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

- B. Get a caller ID box, which the phone company will provide for a small monthly fee, and have all anonymous calls blocked. Keep a list of all these calls and report them to the police or the Attorney General's office.
- C. You can protect a lot of your personal and confidential information by writing letters to the three main credit bureaus and to the companies who maintain, purchase, sell, and operate these lists, requesting that they not sell or disclose your personal information. For a comprehensive list of the credit bureaus and other companies' names and addresses, and for form letters, contact your local United States Post Office, Postal Inspection Service.
- D. You can register with the Texas do-not-call list for free at [www.texasnocall.com](http://www.texasnocall.com). The date of your registration determines the date by which all telemarketing to your number must stop. It takes several weeks after registration for calls to stop. Registration remains in effect for only three years initially but may be renewed, which is also free online.
- E. You can enroll with the federal list at [www.donotcall.gov](http://www.donotcall.gov). Registrations on the National Do Not Call Registry do not expire and do not need to be renewed. You can register your home or mobile telephone number for free. Most telemarketers should not call you once your number has been on the list for 31 days. If they do, you can file a complaint online at the website, [www.donotcall.gov](http://www.donotcall.gov), using the Report Unwanted Calls page. You must provide information about the call including the date that the company called you, the number that was called, and whether the call was a prerecorded message. You also may call the registry's toll-free number 1-888-382-1222 (TTY: 1-866-90-4236).
- F. Contact the Data & Marketing Association at [www.thedma.org](http://www.thedma.org) to remove yourself from many mailing lists for up to ten years.
- G. If any of your credit card companies send random-issue convenience checks, request in writing to be removed from that mailing list. Also, ask your bank if it provides your account information to third parties. If so, ask how to opt out of this practice.
- H. You can file a consumer complaint online with the Attorney General of Texas at <https://texasattorneygeneral.gov/cpd/file-a-consumer-complaint> against a telemarketer you suspect of fraud, deceptive trade practices or violations of the Texas no-call list.
- I. You may also wish to contact the Public Utility Commission (PUC) at [www.puc.texas.gov](http://www.puc.texas.gov) and the Federal Trade Commission (FTC) at [www.ftc.gov](http://www.ftc.gov). The PUC has limited jurisdiction over certain telemarketers and the FTC enforces the federal do-not-call list.

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

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

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

- B. Contact the business. Contact the salesperson, the manager or the company's customer service representative. If you are still not satisfied, contact the owner or the company's headquarters.
- C. File a detailed, written complaint with the Office of the Attorney General of Texas:
  - Office of the Attorney General
  - Consumer Protection Division
  - P. O. Box 12548
  - Austin, Texas 78711-2548

The OAG has on its website both online fillable complaint forms and downloadable forms in English and Spanish.

- D. Contact the Better Business Bureau.
- E. Contact the City of Fort Worth or Tarrant County Consumer Affairs offices.
- F. Attend agreed mediation, privately or through Dispute Resolution Services (see Services and Resources).
- G. Contact the Federal Trade Commission regional office.
- H. Contact your local, state, and federal representatives, and other elected officials.
- I. File a suit in the Justice Court (limit \$10,000.00 in damages).
- J. Contact a lawyer about filing an action for you. The Tarrant County Bar Association has a lawyer referral service (see Services and Resources).

## **6. What is the Texas Deceptive Trade Practices Act?**

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

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

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

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

It is illegal for any creditor to:

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

Try to stop telephone harassment by sending a letter by certified mail asking the creditor to contact you by mail only in the future. If the creditor does not honor this request, it is possible to request all contact be made to your lawyer or that the creditor stop all attempts to contact you.

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

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

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

A credit card holder may refuse to pay off his card balance if he is in a dispute with a local merchant involving more than \$50 and has made a good faith attempt to get satisfaction from the merchant. The issuing bank in such a case may not exercise its common-law right of set-off against the customer's account to force payment of the disputed amount. For disputes less than \$50, check with your credit card provider. Many providers offer the same protections for smaller disputes as a cardholder benefit.

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

*Notify the credit card company immediately!* It is also important to file a police report to document the loss and your response. If you lose your credit card or suspect that it may have been stolen, do not hesitate to notify your credit card company and request that they suspend all charges to that card until further notice. If you subsequently determine that the card has been stolen and used to make fraudulent charges before you could notify your credit card company, notify your local police agency immediately and file a report to document the circumstances under which your card was stolen. You can also protect yourself against someone using your credit card, bank account or personal identify information (e.g. driver's license, social security number) by periodically checking your credit report at the three major credit reporting companies. Checking your credit report will reveal whether someone has used your identity information to obtain credit cards or bank accounts and write checks or make charges that were fraudulent. If you do not check your credit report from time to time, fraudulent use of your identification information may continue over time and make correcting negative credit reports more difficult. You can obtain copies of your credit reports by calling the following reporting agencies: Experian 1-888-397-3742; Trans Union 1-800-888-4213; and Equifax 1-866-349-5191. You can obtain a free copy of your credit report from each reporting agency each year online at <https://www.annualcreditreport.com>.

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

- A. File a report with the police and obtain a copy of the police report.
- B. Request a fraud alert or a credit freeze.

A fraud alert requires businesses to verify your identity before extending credit. Typically fraud alerts will expire after 90 days unless renewed. Identity theft victims are entitled to an extended fraud alert that lasts seven years. When you place a fraud alert with one credit reporting agency, it is required to notify the others. The major credit reporting agencies may be contacted by phone as follows: TransUnion, 1-800-680-7289; Experian, 1-888-397-3742; and Equifax, 1-800-525-6285.

A credit freeze prevents anyone, including you, from opening new credit accounts. It will last until you temporarily lift it or permanently remove it. There may be a fee each time you freeze or unfreeze your account with a credit reporting agency. Credit freezes are not shared between credit reporting agencies, so you must contact each to set up or lift a credit freeze. The major credit reporting agencies may be contacted by phone as follows: Equifax, 1-800-349-9960; Experian, 1-888-397-3742; and TransUnion, 1-888-909-8872.

- C. For any accounts that have been fraudulently opened or accessed, contact the creditor and report the theft to the creditor's fraud unit, then close the account and open a new account with new access information.

## **12. How do I report identity theft to the Internal Revenue Service?**

Identify theft through the use of fraudulent tax returns and misuse of social security numbers is on the rise. If you have been a victim of identity theft, three forms are available from the IRS website at [www.irs.gov](http://www.irs.gov) to report such theft:

### **A. Form 14157-A: Tax Return Preparer Fraud or Misconduct Affidavit**

This form should be completed and filed with the IRS if a tax return preparer or tax preparation business has filed a return without your consent. This usually occurs if: (1) a return was filed using your social security number without your knowledge or consent; (2) a return was altered without your knowledge or consent; (3) a different copy of your return was given to you than was filed with the IRS; (4) a refund was given to the preparer; (5) a refund was deposited into an account that was not your account; (6) a refund was promised by the preparer but never received; (7) a refund was received for a different amount than the amount on the return with no explanation; (8) a return preparer promised a refund but the check bounced.

### **B. Form 14157: Complaint: Tax Return Preparer**

This form should be completed to file a complaint with the IRS against a tax return preparer or tax preparation business. This usually occurs if: (1) there was a theft of a refund; (2) there were e-file violations; (3) there was preparer misconduct; (4) there were PTIN issues; (5) false items/documents were used to prepare your return; or (6) employment tax returns were not filed or employment taxes were not paid. (Usually a form 14157-A is filed with this form.)

### **C. Form 14039: Identify Theft Affidavit**

Complete and submit this form if you are an actual or potential victim of identity theft and would like the IRS to mark your account to identify any questionable activity.

**The instructions and mailing address for each of these forms should be reviewed prior to completing these forms due to the different requirements of information for each form and the different mailing addresses where each form should be sent.**

## **13. Who should I contact if I am a victim of fraud?**

The Texas Attorney General's Consumer Protection Division, with offices in several major Texas cities, works to identify and prosecute those who cheat or deceive the elderly. The Division focuses its efforts on advertising and sale of insurance and retirement-oriented investments, financial planning services, estate planning and legal services directed at senior citizens, home improvements, medical devices, telemarketing and mail fraud. It also seeks to protect Texans from abuse, neglect or exploitation, and to assure quality treatment in nursing

homes, assisted living facilities and home health agencies. A complaint may be filed online or a printable form may be obtained at <https://www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint> and mailed to Office of the Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, TX 78711-2548. In addition, you should call your local District Attorney's Office.

#### **14. What can I do if I suspect Fraudulent Debt Collection?**

A common scam is for debt collectors to call elderly individuals claiming that they have a past due debt and that if they do not pay it immediately a warrant will be issued. Never provide your credit card information over the phone. If they ask you to send payment to a law firm, conduct an internet search on the law firm and make sure that the mailing address the caller provided you with is the same address listed for the law firm online. These scams target at-risk populations and use scare tactics to try and get your money. If in doubt about whether or not a debt is legitimate, consult with an attorney who should be able to send a debt validation letter to the creditor to ensure that there really is a valid debt due and owing.

## **AGE DISCRIMINATION**



### **1. What is age discrimination?**

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

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

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

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

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

Employers are specifically prohibited from denying benefits to older employees. However, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long

as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation.

## **2. Who is covered?**

Texas state law applies to private employers with 15 or more employees, and to all state and local government entities no matter how many employees they have. State law protections include job notices and ads, and pre-employment questions.

Federal law applies to employers with 20 or more employees, including state and local governments. Additionally, it also applies to employment agencies and labor organizations, as well as to the federal government. It also applies to both employees and job applicants. Federal law protections include apprenticeship programs, job notices and advertisements, pre-employment inquiries, and benefits.

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

### **A. Texas Workforce Commission Civil Rights Division (TWCCRD)**

Texas Workforce Commission (TWC) is the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas. If you think that you have been discriminated against at work because of your age (40 or older), you may call the Texas Workforce Commission Civil Rights Division (TWCCRD) office at 1-512-463-2642 (Austin area or out-of-state) or 1-888-452-4778 (in Texas only).

An investigator will discuss what is required to file a complaint, how the complaint will be investigated, and will assist you in preparing the complaint. You must submit your complaint within 180 days from the date of discrimination. For more information on submitting an employment discrimination complaint to TWCCRD, and to obtain a complaint form online, visit <http://www.twc.state.tx.us/jobseekers/how-submit-employment-discrimination-complaint>.

You can submit an employment discrimination complaint to TWCCRD by email to [EEOintake@twc.state.tx.us](mailto:EEOintake@twc.state.tx.us); by postal mail to Texas Workforce Commission, Civil Rights Division, 101 E. 15th Street, Guadalupe CRD, Austin, TX 78778-0001; or in person (not by phone) by visiting the Texas Workforce Commission, Civil Rights Division, 1215 Guadalupe Street, Austin, TX 78701, Monday through Friday, 8:00 a.m. to 5:00 p.m.

Deaf or hard-of-hearing or speech-impaired people may contact Relay Texas, 1-800-735-2989 (TTY) and 711 (Voice).

If you are sending supporting documents, be sure to send copies and keep your originals because TWCCRD cannot return documents to you.

When you submit an employment discrimination complaint with the Civil Rights Division, it is automatically submitted with the EEOC. You cannot submit with both the Civil Rights Division and the EEOC. There are time limits for filing a charge. Therefore, you should contact them promptly if you believe that you have been discriminated against due to age.

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

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

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

You must submit your complaint within 180 days from the date of the discrimination; however, this deadline may be extended by state laws. Federal employees and job applicants have similar protections, but a different complaint process. Federal employees generally must contact an EEOC counselor within 45 days; however, the time limit may be extended in certain circumstances. For more information about the EEOC, or filing an age discrimination charge, you may visit their website at <http://www.eeoc.gov>; or, you may contact the local EEOC District Office at 207 S. Houston Street, 3rd Floor, Dallas, TX 75202. For general information, you may call 1-800-669-4000; or fax 214-253-2720. Their hours are Monday through Friday, 8:00 a.m. to 4:30 p.m. Intake assistance for filing a charge is normally Monday, Tuesday, Thursday, and Friday. Individuals wanting to file a charge of discrimination may walk in from 8:00 a.m. to 2:30 p.m. on those days, and will be seen by intake staff on a first come, first serve basis.

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

### **4. May an employer ask an employee to waive his/her rights or claims?**

Yes, an employer may ask an employee to waive his/her rights or claims under state and federal age discrimination laws. Specific minimum standards must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. If an employer requests a waiver in connection with an exit incentive or other employment termination program, the minimum requirements for a valid waiver are more extensive. Before signing a waiver, you may consult an attorney to review the waiver to make sure it complies with the legal requirements.

# HEALTH PLANNING

## ELDER ABUSE, EXPLOITATION AND NEGLECT



### 1. What is Elder Abuse?

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

- A. “Abuse” means
  - (1) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person’s caretaker, family member, or other individual who has an ongoing relationship with the person; or
  - (2) sexual abuse of an elderly or disabled person, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person’s caretaker, family member, or other individual who has an ongoing relationship with the person.
- B. “Exploitation” means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.
- C. “Neglect” means the failure to provide the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

### 2. What are the warning signs of elder abuse?

While one sign does not necessarily indicate abuse, some tell-tale signs that there could be a problem are:

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

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

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

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

Self-neglect accounts for the majority of cases reported to adult protective services. Oftentimes, the problem is paired with declining health, isolation, Alzheimer's disease or dementia, or drug and alcohol dependency. In some of these cases, elders will be connected to support in the community that can allow them to continue living on their own. Some conditions like depression and malnutrition may be successfully treated through medical intervention.

If the problems are severe enough, a guardian may be appointed.

### **4. What makes an older adult vulnerable to abuse?**

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

### **5. Who are the abusers of older people?**

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

### **6. Are there criminal penalties for the abusers?**

In Texas, criminal penalties vary, depending on the specific charges and circumstances. There are specific laws dealing with abuse of the elderly and more general laws dealing with theft, including misapplication of property, and assault that apply to all persons including the elderly. Sentences may include probation, court supervision, restitution, community service, counseling, or a jail or prison term.

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

Texas law says anyone who thinks a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to the Department of Family and Protective Services (DFPS). A person who reports abuse in good faith is immune from civil or criminal liability. DFPS keeps the name of the person making the report confidential.

If you have been the victim of abuse, exploitation, or neglect, you are not alone. Many people care and can help. Please tell your doctor, a friend, or a family member you trust. Call the police or 9-1-1 immediately if someone you know is in immediate, life-threatening danger.

Help is available from all levels of government:

#### **A. Federal**

Call the US Department of Health and Human Services' Eldercare Locator help line. You can reach the Eldercare Locator by telephone at 1-800-677-1116. Specially trained operators will refer you to a local agency that can help.

#### **B. State**

The Texas Department of Family and Protective Services (DFPS) has a central place to report suspected abuse of children, the elderly or adults with disabilities. The Abuse Hotline is 1-800-252-5400, or a report may be made on the Internet at [www.txabusehotline.org](http://www.txabusehotline.org). This agency is often referred to as CPS (Child Protective Services) and as APS (Adult Protective Services).

#### **C. Local**

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

- (1) Protective Order: A protective order is a civil court order issued by a court with civil jurisdiction to prevent continuing acts of family violence. A protective order can order the abuser to stay away from someone, stop physical and verbal abuse and prohibit the possession of a weapon. There is a separate Protective Order Unit of the Tarrant County District Attorney. The Unit is located on the third floor of the Tarrant County Family Law Center at 200 East Weatherford Street in downtown Fort Worth. Anyone seeking assistance may also call the Protective Order Unit at (817) 884-1623. For more information visit <http://access.tarrantcounty.com/en/criminal-district-attorney/civil-division/protective-orders.html>.
- (2) Criminal Charges
  - a. The Criminal District Attorney's Office joined forces with the Commissioners' Court and concerned citizens to create a misdemeanor court exclusively dedicated to hearing family violence cases. This focused approach allows for more effective and efficient prosecution of these cases. The caseload for this court is handled by Tarrant County Criminal Court No. 5.
  - b. In Texas, any person suspecting abuse and not reporting it can be held liable for a Class B misdemeanor.
  - c. An online complaint is available for economic crimes against any person including the elderly at <http://access.tarrantcounty.com/en/criminal-district-attorney.html>.
- (3) The Family Violence Unit of the Tarrant County Criminal District Attorney's Office exists to help victims of family violence and to hold abusers accountable for their behavior. Helpful information is available online at <http://access.tarrantcounty.com/en/criminal-district-attorney.html>.

# POWERS OF ATTORNEY AND LIVING WILLS



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

## 1. Financial Power of Attorney

### A. What is a Power of Attorney?

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

### B. What are the legal requirements?

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

### C. What is a Statutory Durable Power of Attorney?

A Statutory Durable Power of Attorney (financial) is an important estate planning tool which can be used in a number of situations including possibly avoiding a guardianship of a person’s estate. The Statutory Durable Power of Attorney (“DPOA”) uses language the legislature sets forth in a statute. Banks and other institutions tend to accept a power of attorney that uses the statutory language more readily than one that uses other language. Under new Texas law, a person who is presented with a DPOA is under a duty to accept the power of attorney immediately unless an agent’s certification or an opinion of counsel is requested. Delay of acceptance can occur if the person requests an English translation. Refusal to accept the DPOA must be based on one of the reasons set out in the Estates Code. Normally, a power of attorney becomes invalid upon the incompetency of the principal. However, a DPOA does not terminate if the principal becomes incompetent. Ordinarily, a DPOA includes words such as: “This power of attorney shall not terminate upon the disability or incapacity of the principal.”

## **2. Medical Power of Attorney.**

### **A. What is it?**

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

### **B. What are the statutory requirements?**

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

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

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

### **D. What are the limits on the agent's powers?**

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

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

### **A. What is it?**

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

### **B. What are the statutory requirements?**

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

### **C. When is the Directive used?**

If a Directive to Physicians has been signed by a patient, the patient's physician must determine whether the patient's condition is: (a) a terminal condition which will result in death

within six months even with the application of life-sustaining procedures, or (b) an irreversible condition that is fatal without the application of life-sustaining treatment. If the patient's condition is terminal or irreversible, the Directive will be followed.

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

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

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

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

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

#### **5. Anatomical Gifts**

For information about organ donation, contact:

LifeGift Organ Donation Center  
1701 River Run Road, Suite 300  
Fort Worth, Texas 76107  
(817) 870-0060  
[www.lifegift.org](http://www.lifegift.org)

You can also go online at <http://www.dmv.org/tx-texas/organ-donor.php> or [www.donatelifetexas.org](http://www.donatelifetexas.org). There is information in English & Spanish for you to register there.

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

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

## **TRUSTS**



##### **1. What is a trust?**

In a trust, legal title to property is held by one person or entity, known as the "trustee," and the beneficial ownership belongs to one or more other persons, who are known as

“beneficiaries.” The terms of the trust are in the written “trust agreement,” which defines how the property is to be managed by the trustee and under what circumstances the assets are to be distributed to beneficiaries.

## **2. How is a trust created?**

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

## **3. Who can and should be the trustee?**

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

## **4. Why would I create a testamentary trust?**

Some testamentary trusts provide for reduction or deferral of estate taxes. For example, property can be left in a trust (commonly known as a “bypass” or “credit shelter” trust) to maximize the use of the estate tax exemptions for a married couple.

A testamentary trust further allows you to bridge the gap between life and death, allowing you to care for family and loved ones after your death. Specifically, a testamentary trust can also provide for qualified management when the ultimate beneficiary, such as a minor child or an incapacitated individual, cannot properly manage the assets. The settlor can determine when the beneficiaries shall receive the property.

## **5. What is a living trust?**

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

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

A living trust permits the heirs to avoid probate if title to all assets is transferred to the trustee of the trust. Assets titled in the name of the trustee as trustee of the living trust avoid probate because they are not owned by the person who died. However, if all of the assets are not transferred to the trustee of the living trust before death, the goal of avoiding probate will not be accomplished. Assets not owned by the trustee of the living trust may be subject to probate. To avoid such situations and make certain that all of the property is disposed of in accordance with

the living trust; you should also have a will leaving all assets to the trustee of the living trust (known as a “pourover will”). A pourover will assures that all assets will be disposed of according to the living trust.

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

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

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

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

Avoiding ancillary administration. If you own real property in another state, a probate proceeding may be necessary in that state to clear title to the property. If you establish a revocable trust and transfer title to that out-of-state real property to the trust (whether you transfer any other property to the trust), you will be able to avoid the ancillary administration.

Management of assets. If you want to allow someone else to manage your assets in the future, the living trust can transfer management of property to another person in the case of incapacity. This helps avoid guardianship.

Privacy. A will is a matter of public record. Often, if the estate is subject to full administration, identification of all assets becomes public record. If privacy is important, a revocable trust can keep asset information private.

### **9. How are revocable trusts taxed?**

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

### **10. Do living trusts help reduce estate taxes?**

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

### **11. What is a Special Needs Trust?**

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

# GUARDIANSHIP



## **1. How is a guardianship initiated?**

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

Effective September 1, 2015, the applicant must hire an attorney **certified in guardianship** matters to represent the applicant in filing an application for a guardianship of an incapacitated person.

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

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

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

## **3. Are there different levels of incapacity?**

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

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

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

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

## **5. What types of guardians are there?**

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

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

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

## **7. Who may serve as guardian?**

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

- A. The incapacitated person's spouse;
- B. The person's next of kin; or
- C. Any eligible person who is qualified to serve.

## **8. Who cannot serve as guardian?**

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

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

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

## **10. What are the costs involved in a guardianship?**

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

### **11. What rights does the incapacitated person have?**

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

### **12. How soon can a guardianship hearing be held?**

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

### **13. What happens at the hearing?**

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

### **14. After appointment, how does a guardian qualify?**

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

### **15. Must the guardian report to the court?**

Yes. Within 30 days of qualifying, the guardian of the estate must file an inventory listing all assets of the incapacitated person coming into the guardian's hands and all debts owed to the estate. Additional deadlines must also be met. The guardian of the estate must file an account each year to report all receipts and disbursements. The guardian of the person must file a report each year on the location, condition, and well-being of the incapacitated person. A guardian cannot spend the incapacitated person's money or sell assets without prior approval from the court.

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

A temporary guardian can be appointed for a proposed incapacitated person if his or her person or property is in imminent danger. An Attorney ad litem will be present at the temporary guardianship hearing to represent the proposed incapacitated person.

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

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

### **18. What is the length of a temporary guardianship?**

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

## **19. Can an incapacitated person have their rights restored?**

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

## **MENTAL ILLNESS AND MENTAL HEALTH COMMITMENTS**

### **1. What is mental illness?**

Mental illness is an illness, disease, or condition that substantially impairs a person's thought, perception of reality, emotional process or judgment, or grossly impairs behavior as demonstrated by recent disturbed behavior. For purposes of mental health treatment in Texas, mental illness does not include persons who suffer from epilepsy, senility, alcoholism, or mental deficiency. A person suffering from an intellectual developmental disability (IDD) is not considered mentally ill and should receive assistance through an appropriate organization such as Tarrant County My Health, My Resources Agency (MHMR). The Texas Legislature has adopted the language of professionals in this area and has replaced the term *mentally retarded* with *intellectually developmentally disabled*.

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

Encourage the person to seek voluntary mental health treatment. If the person is unwilling to voluntarily seek treatment for his or her mental illness and is engaging in behavior that endangers self, other persons, or property, you may seek to have a Magistrate's Warrant issued by calling the Tarrant County MHMR Crisis Line at 817-335-3022, or appearing at the office located at 3840 Hulen Street, Fort Worth, TX 76107, Monday through Friday, 8:00 a.m. to 5:00 p.m.

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

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

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

Once a warrant is issued, the person will be taken by mental health deputies to a hospital emergency psychiatric unit to be examined by a doctor. If the doctor finds that the person is mentally ill and as a result is likely to cause serious harm to him/her selves or others, or is experiencing substantial mental or physical deterioration, the doctor will refer the case to the District Attorney who may place the person in protective custody and initiate the commitment process for involuntary treatment. An attorney will be appointed to represent the patient and a hearing will be scheduled. After hearing the evidence, the judge may sign an order committing the patient for in-patient treatment for up to 90 days.

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

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

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

The person requesting the commitment is responsible for paying the filing fee; however, if the application for commitment is filed by the county or the state, the fee is not charged. Also, costs may be incurred when seeking commitment through a private hospital.

## **6. Are mental health records confidential?**

Yes, all mental health records are confidential and are not available to the public. A patient may have access to their mental health records. If a person is found to be mentally ill and an order of commitment is issued, this information will be provided to certain law enforcement agencies conducting background checks of individuals involved in the purchase of firearms.

## **7. Providers of Mental Health Services in Tarrant County**

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

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

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

# **SERVICES AND RESIDENTIAL ALTERNATIVES**

## **1. What services and residential alternatives exist for seniors?**

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

## **2. What are senior centers?**

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

## **3. What is adult day care?**

Adult day care facilities are for seniors who need supervision, but not institutionalization. They provide nursing, therapy, nutritional services, health monitoring, and recreational activities, with an emphasis on permitting the senior to make decisions for himself or herself. An adult day

care facility is a good alternative for a senior who cannot be left alone, but whose caregiver must work during the day.

#### **4. What are in-home services?**

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

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

#### **5. What are retirement centers?**

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

#### **6. What is assisted living?**

Assisted living is an intermediate step between independent living and a nursing home. The resident will reside in his or her own apartment, but there is a range of services and assistance available.

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

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

#### **7. What are personal care homes?**

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

#### **8. What are nursing homes?**

Nursing homes provide the highest level of nursing care short of hospitalization. Nursing homes are appropriate facilities for those who are unable to live independently or require round-the-clock nursing care. All meals are provided, along with full-time nursing care, physical therapy, occupational therapy, and speech therapy. Nursing homes provide for social activities appropriate to the needs and abilities of the residents. Personal care homes, assisted-living

facilities, and nursing homes are licensed and monitored by the Texas Health and Human Services Commission (HHSC).

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

Under some circumstances, HHSC will provide for or subsidize the cost of adult day care services. Home health care services may be paid by Medicare or Medicaid. Nursing home costs may be paid by Medicare or Medicaid. Medicare is available for a person who has moved to a nursing home from a hospital. If certain conditions are met, Medicare will pay entirely for the first twenty days; after that, the patient will pay a co-payment. Medicare benefits are available only if a skilled nursing facility is required. Seniors in financial need (who meet certain other requirements) can have their care subsidized by Medicaid. Also, Medicaid will provide subsidies for certain assisted-living environments under the Community Based Alternative Program (CBA). Contact the Texas Health and Human Services Commission for information about these services.

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

The most important consideration in choosing a facility is that it permits the older adult to have the greatest possible independence. Cost, location, atmosphere, and compliance with licensing requirements must also be taken into account. Visit several facilities.

# PLANNING FOR END OF LIFE/ ADVANCED CARE PLANNING (ACP)

## HOSPICE



### **1. What is Hospice?**

Hospice is both a program and a philosophy of care that is dedicated to improving the quality of life for patients with a terminal illness. Hospice provides a program of palliative care which encompasses the holistic care of patients whose disease is no longer responsive to curative treatment.

Hospice care is considered to be the model for quality, compassionate care at the end of life. It involves a team-oriented approach to expert medical care, pain management, and emotional spiritual support expressly tailored to the patient's needs and wishes. Support is extended to the patient's family and loved ones as well. At the center of hospice is the belief that each of us has the right to die pain-free and with dignity and that our families will receive the necessary support to allow us to do so. The focus is on caring (palliative), not curing. Hospice care may be provided at a free-standing hospice facility, hospital, nursing home, assisted living facilities, or at home. Hospice services are available to patients of any age, religion, race, marital status, gender, or illness.

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

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

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

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

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

Most physicians know about hospice. If your physician wants more information, it is available from the American Academy of Hospice and Palliative Medicine, medical societies, state hospice organizations, local hospices, or the National Hospice Helpline, 1-800-658-8898.

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

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

### **6. What does the hospice admission process involve?**

One of the first things hospice will do is contact the patient's physician to make sure he or she agrees that hospice care is appropriate for this patient at this time. The patient will also be

asked to sign consent forms. The hospice election form states that the patient understands that the care is palliative (aimed at pain relief and symptom control) rather than curative. It also outlines the services available.

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

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

**8. How many family members or friends does it take to care for a patient at home?**

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

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

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

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

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

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

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

**12. Does hospice do anything to make death come sooner?**

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

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

No. Although most hospice services are delivered in a personal residence, some patients live in assisted living, nursing homes or hospice centers.

**14. How does hospice “manage pain?”**

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

**15. Is hospice care covered by insurance?**

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

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

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

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

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

**18. Who can get Medicare hospice benefits?**

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

- A. You are eligible for Medicare Part A (hospital insurance), and
- B. Your hospice doctor and your regular doctor or nurse practitioner (if you have one) certify that you are terminally ill and have six months or less to live if your illness runs its normal course, and
- C. You accept palliative care (for comfort) instead of care to cure your illness, and
- D. You sign a statement choosing hospice care instead of other Medicare-covered benefits to treat your terminal illness, and
- E. You get care from a Medicare-approved hospice program.

**19. What will Medicare pay for?**

Medicare may pay for doctor services, nursing care, medical equipment, medical supplies, drugs for symptom control or pain relief (you may have to pay a small co-payment), social worker services, speech therapy, dietary counseling, grief and loss counseling for you and your family, and short-term in-patient care, among other things.

**20. What benefits are NOT covered by Medicare benefits?**

When you choose hospice care, Medicare will not pay for any of the following:

- A. Treatment intended to cure your terminal illness and/or related conditions. Talk with your doctor if you're thinking about getting treatment to cure your illness. As a hospice patient, you always have the right to stop hospice care at any time.
- B. Prescription drugs to cure your illness (rather than for symptom control or pain relief).
- C. Care from any hospice provider that was not set up by the hospice medical team. You must get hospice care from the hospice provider you chose. All care that you get for your terminal illness must be given by or arranged by the hospice team. You cannot get the same type of hospice care from a different hospice, unless you change your hospice provider. However, you can still see your regular doctor or nurse practitioner if you've

chosen him or her to be the attending medical professional who helps supervise your hospice care.

- D. Room and board. Medicare does not cover room and board if you get hospice care in your home or if you live in a nursing home or a hospice inpatient facility. If the hospice team determines that you need short-term inpatient or respite care services that they arrange, Medicare will cover your stay in the facility. You may have to pay a small co-payment for the respite stay.
- E. Care you get as a hospital outpatient (like in an emergency room), care you get as a hospital inpatient, or ambulance transportation, unless it's either arranged by your hospice team or is unrelated to your terminal illness and related conditions.

## FUNERAL ARRANGEMENTS



### 1. Who is responsible for burial arrangements?

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

### 2. Are there any regulations regarding embalming and cremation?

Yes. Bodies not claimed within 24 hours of death will be embalmed; otherwise, there is no provision in Texas law requiring embalming. There is no right under Texas law to be cremated. A person who wishes to be cremated must make a written directive before death. There is a statutory form which can be found in the Texas Health and Safety Code at § 711.002(b). Without a written directive, the funeral provider probably will not cremate if the next of kin objects. Some Texas counties may have procedures for handling of decedent's remains where the disposition may include cremation.

### 3. Can I make advance arrangements?

Yes, it is encouraged. Anyone can make advance burial arrangements with a funeral home. The provisions of those arrangements will control the details of burial or interment. Some people leave directions about burial in a will, but often such directions are not known until after the burial. It is better to write burial instructions in a separate document and keep them in a place where they are easily found. You should discuss your preferences with the person likely to make the arrangements.

#### **4. What if I want to donate my body or specific organs following my death?**

The Texas Anatomical Gift Act permits anyone over the age of 18, or those under 18 with parental consent, to donate either his or her own body or specific organs. Substantial restrictions have been placed on donations from elderly persons. It is important to check in advance to see if your donation will be accepted and understand the requirements before making this type of gift. The Texas Anatomical Gift Act does allow family members to donate a decedent's body or other acceptable organs.

## **WILLS**



#### **1. Do I really need a will?**

Yes. If you are over the age of 18, or under 18 years of age and married, or you are a member of the U.S. Armed Forces, and want to direct the disposition of your assets, you need a will. A will is an important tool—through it you can make sure that your assets are distributed the way you want, you can designate the persons who are to handle the administration of your estate, and you can arrange for the care of loved ones.

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

Not necessarily. If you do not have a will, the State of Texas has effectively written one for you. Your assets will pass to those persons listed in the Texas Estates Code. Under the rules of intestacy, your assets will pass to your closest family members. (See *Probating Wills and Administration of Estates*, page 53.) Your property will only pass to the State of Texas when you have no surviving close relatives and your distant relatives cannot be located. The problem with letting the State write your will is that the persons who receive your assets under the law may not be those whom you want to receive your assets.

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

Sometimes. Texas law has specific requirements for wills. You should use caution if you choose to use a computer-generated will document purchased online or in a retail store. For example, Texas law requires specific language to appoint an Independent Executor, to appoint an executor without Bond (the appointment of which can significantly reduce the cost of probate), and to provide for a self-proving affidavit, which makes the process simpler and less costly. If the computer-generated or pre-packaged version will omits specific language, the cost of administration may actually be increased, rather than decreased.

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

It is always a good idea to have a will from another state reviewed by an attorney because each state has its own rules concerning the requirements for a valid will. Wills from other states may be valid, but often do not provide for an Independent Executor or have a self-proving affidavit.

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

You should have your will reviewed every time there is a significant change in your life, but at least every few years. It is a good idea to review your will periodically, especially when a significant change occurs in your life, such as marriage, divorce, birth, death of a beneficiary or an executor, or a significant change in your health, or in the nature or character of your assets. It

may not be necessary to have a new will every few years, but it is always a good idea to have someone review it for you.

## **6. How do I make a will?**

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

## **7. Can I hand write my own will?**

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

## **8. Can I make a verbal will?**

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

## **9. Does a will dispose of all my property?**

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

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

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

# PROBATING WILLS AND ADMINISTRATION OF ESTATES



## 1. What is probate?

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

## 2. Is probate always necessary?

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

## 3. How do I probate a will?

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

## 4. Is probate expensive?

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

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

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

## 6. What does the administration of an estate involve?

The administration of an estate involves:

- A. Gathering the assets of the decedent;

- B. Reviewing and, if proper, paying the decedent's debts, and paying expenses of the administration and taxes of the estate; and
- C. Distributing the remaining assets to those entitled to them under the terms of the will or to the heirs determined under the laws of intestacy.

## **7. What is an independent administration?**

An independent administration is the administration of an estate without court supervision. After the independent executor or independent administrator is appointed and qualifies, the court generally requires only that the independent executor or independent administrator provide proper notice to beneficiaries under the will and to creditors and file a sworn inventory, appraisal, and list of claims within 90 days. The advantages of an independent administration are:

- A. Reduced cost of administering the estate, and
- B. Faster, more efficient administration because decisions can be made and actions taken without court permission.

The disadvantages are:

- A. It is difficult and expensive for an heir to force an unwilling independent executor or independent administrator to disclose information, and
- B. Most independent executors and some independent administrators are not required to post a surety bond, so if they steal, lose assets, or mismanage the estate and are not able to pay it back from their personal funds, the heir loses.

## **8. How is an independent administration created?**

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

## **9. What is a dependent administration?**

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

## **10. When is a dependent administration necessary?**

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

## **11. What are executors and administrators?**

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

## **12. What are letters testamentary and letters of administration?**

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

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

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

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

### **A. Community Property**

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

### **B. Separate Property**

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

In the event the decedents are not survived by a spouse or children (or children's descendants), all property goes to the nearest kin as defined by the Texas Estates Code.

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

For information on the characterization of property as community or separate, see the Community and Separate Property section of this Handbook, page 10.

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

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

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

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

A muniment of title is the simplest and quickest type of probate when there is a will, and is usually the least expensive. It is a simplified procedure used when all that is needed is to transfer title to assets. It is especially useful where the surviving spouse is probating the will of a deceased spouse. It may not be appropriate where there are significant assets, assets which must be managed, friction among the devisees of the will, or creditor problems.

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

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

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

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

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

A small estate affidavit is a simple probate procedure appropriate for small, simple estates. A form for a small estate affidavit may be obtained from the Probate Clerk's office. The requirements for a small estate affidavit are:

- A. The assets of the decedent, not counting the homestead and exempt property and any debts secured by those, must exceed the known liabilities of the decedent;
- B. No will is being offered for probate and there is no petition for dependent administration pending;
- C. Thirty days have elapsed since the decedent's death;

- D. The value of all assets of the estate, not including homestead and exempt property, does not exceed \$75,000;
- E. An affidavit is filed with the Probate Clerk, sworn to by two disinterested witnesses, by every adult distributee of the decedent, by the natural guardian or next of kin of a minor distributee of the decedent, and by the guardian of any incapacitated distributee of the decedent;
- F. The affidavit must contain information showing that the requirements of items A–D above are fulfilled, and must include a list of all known assets and liabilities of the decedent, the names and addresses of the distributees of the decedent, and family history concerning heirship that shows the distributees’ rights to receive the money or property of the estate of the decedent; and
- G. The judge reviews the small estate affidavit, and if the affidavit conforms to the requirements, approves the affidavit.

### **19. What does a small estate affidavit do?**

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

### **20. What is an affidavit of heirship?**

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

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

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

Each state has jurisdiction and control over the real property inside its own borders. For that reason, the executor or administrator appointed in Texas to probate the estate in Texas does not have authority over real property located in any other state. When a person dies owning real property (including royalties or other mineral interests) outside of Texas, the Texas executor or administrator of his or her estate usually has to open an “ancillary administration” in each state where the decedent owned real property. The purpose of the ancillary administration is to pass title to the property in that other state to the proper beneficiary or otherwise to transact business

relating to that property. The expense and difficulty of ancillary administrations varies from state to state; however, a person may avoid this added expense and difficulty by disposing of such real property during life or by placing it in a lifetime trust for the reasons stated in the prior section on Trusts.

## **PUBLIC PROBATE IN TARRANT COUNTY**

### **1. What is Public Probate?**

Public Probate is intended to help relatives of a deceased person obtain an inheritance or reimbursement (example, for funeral expenses) when it may not be financially possible or practical to hire an attorney to probate the estate. The procedure is done by the county's Public Probate Administrator (PPA), who is appointed by the probate court and granted special powers and duties to collect small estates.

### **2. When can an estate be managed by the Public Probate Administrator?**

The PPA may manage the decedent's property if no personal representative has been appointed and there are not any known or suitable heirs; and:

- A. The property is subject to loss, injury, waste, or misappropriation; or
- B. The Court orders the possession and control of the property.

### **3. What types of estates are handled by the Public Probate Administrator?**

#### **A. Mini-Estates**

These estates do not exceed \$5,000, excluding homestead and exempt property. Without the issuance of letters or administration, the PPA can collect and secure the decedent's personal property, distribute property, pay reasonable funeral costs, and distribute allowances and exempt property to a spouse or a conservator for a minor heir.

#### **B. Small Estates**

For estates that do not exceed \$50,000, excluding homestead and exempt property, the PPA can file a small estate affidavit. Small estates do not require the appointment of an administrator.

#### **C. Probate Estates**

For estates that exceed the maximum amount allowed for a small estate affidavit, the PPA can file for letters of administration. After issuance of letters of administration, the PPA is considered a personal representative of the estate and has the powers and duties of an administrator to secure and manage the decedent's property, handle claims against the estate and determine heirship.

### **4. What is the cost associated with the Public Probate of an estate?**

The Texas Estates Code provides a standard administrator compensation, for private and PPA estates, of 5% on all amounts the administrator receives or pays out, not to exceed 5% of the total estate. Funds received from financial institutions such as life insurance proceeds and other funds paid to heirs are not included in the commission calculation. There is also a probate filing fee paid to the County Clerk. The commission and filing fee are paid from the decedent's estate.

# SERVICE DIRECTORY

## SERVICES & RESOURCES

<b>ELDER ABUSE</b>	
Local Police Department	911
Adult Protective Services (elderly abuse)	(800) 252-5400
Financial Exploitation Prevention Center of Tarrant County	(817) 720-6556
Texas Department of Health & Human Services (formerly DADS)	(817) 792-3482
Tarrant County Criminal District Attorney's Office, including the Elder Financial Fraud unit	(817) 884-1400
<b>CAREGIVERS</b>	
Community Living Assistance & Support Services (Easter Seals)	(817) 332-7171
Guardianship Services, Inc.	(817) 921-0499
Health & Human Services Office (Food stamps & Medicaid)	(817) 625-2161
<b>TEXAS CONSUMER INFORMATION NUMBERS</b>	
Office of the Attorney General, State of Texas: Consumer Protection Division	(800) 621-0508
Crime Victim's Compensation Division	(800) 983-9933
Public Information & Assistance	(800) 806-2092
Insurance Board (consumer complaints)	(800) 252-3439
<b>COUNSELING</b>	
Catholic Charities, Fort Worth	(817) 921-5381
<b>FINANCIAL ASSISTANCE</b>	
211 Texas (General Information)	211
Texas Medicaid	(800) 252-8263
Medicare	(800) 633-4227
Veteran's Assistance	(800) 827-1000
<b>FOOD SERVICE</b>	
Meals on Wheels, Inc.: Tarrant County	(817) 336-0912
Johnson County	(817) 558-2840
Northeast Tarrant County (Metroport Meals on Wheels)	(817) 491-1141
Sixty & Better, Inc.	(817) 413-4949
<b>GENERAL INFORMATION</b>	
For General information call	211
Area Agencies on Aging	211
American Association of Retired Persons (AARP) (Dallas)	866-227-7443
Tarrant County Probate Clerk's Office	(817) 884-1254

Texas Legal Services Center Hotline		(800) 622-2520
Texas Telecommunications for the Deaf		711 or 800-735-2989
<b>HEALTH ISSUES</b>		
Alzheimer's Association-Main Office		(817) 336-4949
American Cancer Society		(817) 737-9990
American Diabetes Association		(800) 342-2383
<b>LEGAL SERVICES</b>		
Dispute Resolutions Services of North Texas		(817) 877-4554
Lawyer Referral Service of Tarrant County		(817) 336-4101
Legal Aid of Northwest Texas		(817) 336-3943
Legal Hotline for Older Texans		(800) 622-2520
Tarrant County Criminal DA's Office		(817) 884-1623
Tarrant County Bar Legal Line (2nd & 4th Thursday of each month, 6–8 p.m.)		(817) 335-1239
<b>LONG TERM CARE</b>		
Texas Health & Human Services Commission Long Term Care Services		(817) 625-2161
Long Term Ombudsman		(817) 258-8103
Texas Long Term Ombudsman (Hotline for complaints or to check on facility)		(800) 258-8103
Texas Health & Human Services Commission, Consumer Rights & Services		(800) 458-9858
<b>SENIOR CITIZEN SERVICES</b>		
Sixty and Better, Inc.	<a href="http://www.sixtyandbetter.org">www.sixtyandbetter.org</a>	(817) 413-4949
<b>SOCIAL SERVICES</b>		
Social Security Administration Information	<a href="http://www.ssa.gov">www.ssa.gov</a>	(800) 772-1213
Texas Department of Health & Human Services Commission: Fort Worth Arlington Jacksboro Highway		(817) 536-3353 (817) 460-6491 (817) 625-2161
Department of Health Services, Mental Health & Substance Abuse	<a href="http://www.dshs.texas.gov/about-mhsa">www.dshs.texas.gov/about-mhsa</a>	866-378-8440
Department of State Health Services, Licensing and Complaints		(512) 834-6650
Texas Department of Health & Human Services (formerly DADS)	<a href="http://www.hhs.texas.gov/about-hhs/your-rights/consumer-rights-services">www.hhs.texas.gov/about-hhs/your-rights/consumer-rights-services</a>	(800) 458-9858
U. S. Department of Health & Human Services, Eldercare Locator Help Line		800-677-1116

<b>TELEPHONE ASSURANCE</b>	
(Programs designed to provide homebound persons with a telephone call on a regular basis from trained volunteers.)	
Bethlehem Community Center	(817) 332-7911
Maddox Community Center	(817) 926-5329
Mid-Cities Care Corps	(817) 282-0531
Polytechnic Community Center	(817) 531-2803
<b>TRANSPORTATION</b>	
(For medical purposes, to health & social service agencies, weekdays. Call at least two days ahead. Most transportation programs are very busy, so call as far in advance as possible. Donations accepted.)	
Care Corps (Mid-Cities)	(817) 282-0531
Handitran (Arlington)	(817) 459-5390
The T	(817) 215-8600
<b>VETERANS BENEFITS</b>	
VA Benefits	(800) 827-1000
Education Customer Service Office	(888) 442-4551
Headstones and Markers Memorial Programs Service	(800) 697-6947
Insurance Center	(800) 669-8477
National Suicide Prevention Lifeline (Veterans Crisis Line)	(800) 273-8255
Telephone Assistance Service	(800) 749-8387
Telecommunications Device for the Deaf (TDD)	(800) 829-4833
Texas Lawyers for Texas Veterans	(817) 546-4460
<b>VOLUNTEER PROGRAMS</b>	
Volunteer Income Tax Assistance/Tax Counseling for the Elderly (AARP Tax Aid), Drivers Safety Information Line	(888) 227-7669

## USEFUL WEBSITES FOR SENIORS

Administration for Community Living (formerly Administration on Aging)	<a href="http://www.acl.gov">www.acl.gov</a>
AgeNet (Aging Research Network)	<a href="http://www.Agenet.org">www.Agenet.org</a>
Aging with Dignity	<a href="http://www.agingwithdignity.org">www.agingwithdignity.org</a>
Alzheimer's Association	<a href="http://www.alz.org">www.alz.org</a>
American Association of Retired Persons	<a href="http://www.aarp.org">www.aarp.org</a>
Consumer Issues regarding Charities	<a href="http://www.charitynavigator.org">www.charitynavigator.org</a> <a href="http://www.guidestar.org">www.guidestar.org</a>
Federal Department of Health and Human Resources	<a href="http://www.hhs.gov">www.hhs.gov</a>
Environmental Alliance for Senior Involvement	<a href="http://www.easi.org">www.easi.org</a>
Federal Benefits Guide for VA	<a href="http://www.va.gov">www.va.gov</a>
Gerontological Society of America	<a href="http://www.geron.org">www.geron.org</a>
Huffington Center on Aging	<a href="http://www.hcoa.org">www.hcoa.org</a>

Medicare (official government site)	<a href="http://www.medicare.gov">www.medicare.gov</a>
National Aging Information Center	<a href="http://www.womenshealth.gov">www.womenshealth.gov</a>
National Council on Aging	<a href="http://www.ncoa.org">www.ncoa.org</a>
National Council on Aging—Benefits Check-Up	<a href="http://www.benefitscheckup.org">www.benefitscheckup.org</a>
National Institute on Aging	<a href="http://www.nia.nih.gov">www.nia.nih.gov</a>
National Senior Citizens Law Center	<a href="http://www.nslc.org">www.nslc.org</a>
Organ Donations	<a href="http://www.unos.org">www.unos.org</a> <a href="http://www.donatelifetexas.org">www.donatelifetexas.org</a>
Pension and Welfare Benefits Administration	<a href="http://www.dol.gov/ebsa">www.dol.gov/ebsa</a>
Powers of Attorney forms for 2014	<a href="http://www.texasprobate.com">www.texasprobate.com</a>
Senior Law	<a href="http://www.seniorlaw.com">www.seniorlaw.com</a>
SeniorNet	<a href="http://www.seniornet.org">www.seniornet.org</a>
Senior’s Resource Center	<a href="http://www.srcaging.org">www.srcaging.org</a>
Social Security Administration	<a href="http://www.ssa.gov">www.ssa.gov</a>
Social Security Administration (SSI)	<a href="http://www.ssa.gov/ssi/">www.ssa.gov/ssi/</a>
Special Committee on Aging	<a href="http://www.aging.senate.gov">www.aging.senate.gov</a>
Tarrant County Cares	<a href="http://www.tarrantcares.org">www.tarrantcares.org</a>
Tarrant County DA’s Office	<a href="http://www.access.tarrantco.com">www.access.tarrantco.com</a>
Texas Department of Health & Human Services	<a href="http://www.hhs.texas.gov">www.hhs.texas.gov</a>
Texas Department of Insurance	<a href="http://www.tdi.texas.gov">www.tdi.texas.gov</a>
Texas Lawyers for Texas Vets	<a href="http://www.txltxv.org">www.txltxv.org</a>
Texas Medicaid (A Consumer Guide to Better Healthcare)	<a href="http://www.tmhp.com">www.tmhp.com</a>
VA Home Page	<a href="http://www.va.gov">www.va.gov</a>
<b>(For information on Healthcare, Benefits, or anything not listed below, see the main website above)</b>	
VA Health Site for veterans, including prescription refill	<a href="http://www.myhealth.va.gov">www.myhealth.va.gov</a>
VA Burial and Memorial Benefits	<a href="http://www.cem.va.gov">www.cem.va.gov</a>
VA Forms	<a href="http://www.va.gov/vaforms">www.va.gov/vaforms</a>
VA Education Benefits	<a href="http://www.benefits.va.gov">www.benefits.va.gov</a>
VA Home Loan Guaranty	<a href="http://www.benefits.va.gov">www.benefits.va.gov</a>
VA Life Insurance	<a href="http://www.benefits.va.gov/insurance">www.benefits.va.gov/insurance</a>
VA Mental Health	<a href="http://www.mentalhealth.va.gov">www.mentalhealth.va.gov</a>
VA Records	<a href="http://www.archives.gov/st-louis/military-personnel">www.archives.gov/st-louis/military-personnel</a>
Returning Veterans	<a href="http://www.oefoif.va.gov">www.oefoif.va.gov</a>
Veterans Employment and Training	<a href="http://www.dol.gov/vets">www.dol.gov/vets</a>
VA Benefit Payment Rates	<a href="http://www.benefits.va.gov/compensation">www.benefits.va.gov/compensation</a>
Texas Veterans Commission	<a href="http://www.tvc.texas.gov">www.tvc.texas.gov</a>
Links to National Veterans Service Organizations	<a href="http://www.va.gov">www.va.gov</a>

## HELPFUL PERIODICALS FOR SENIORS

### (FREE PUBLICATIONS)

ID Theft: What's It All About Federal Trade Commission 9015 Junction Drive, Suite 2 Annapolis Junction, MD 20701		(877)FTC-HELP or (877)ID-THEFT
Medicare & You (Booklet updated annually) Centers for Medicare & Medicaid Services 7500 Security Blvd. Baltimore, MD 21244	<a href="https://www.medicare.gov">https://www.medicare.gov</a>	(800)633-4227
Seniors & The Law: A Guide for Maturing Texas	<a href="http://www.tyla.org">www.tyla.org</a>	(800)204-2222 x2610
“Take Charge: Fighting Back Against Identity Theft” published by the Federal Trade Commission	<a href="http://www.consumer.gov/idtheft">www.consumer.gov/idtheft</a>	(800)458-9858
Your Guide to the Medicaid Estate Recovery Program		(800) 641-9356
New Lifestyles-The Source for Seniors	<a href="http://www.NewLifeStyles.com">www.NewLifeStyles.com</a>	
Aging with Dignity—Five Wishes Aging with Dignity PO Box 1661 Tallahassee, FL 2303	<a href="http://www.agingwithdignity.org">www.agingwithdignity.org</a>	(800)594-7437

## LAWYER REFERRAL SERVICE

of the Tarrant County Bar Association  
(817) 336-4101

Call (817) 336-4101 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

The Lawyer Referral & Information Service, established and maintained by the Tarrant County Bar Association, is a non-profit community service. Individuals seeking to hire an attorney can call and speak with an operator who will provide them with a referral of an attorney in the particular legal area sought by the caller. The caller will pay \$20 for a 30 minute consultation with the attorney, and can discuss the attorney's legal fees and costs of representation at that time. If the caller and attorney decide to work together after the initial consultation, they can negotiate the terms of representation. The Tarrant County Bar Association Lawyer Referral & Information Service meets the standards contained in the American Bar Association Model Rules, and is a lawyer referral service certified as required by the State of Texas under Chapter 952, Occupations Code.

## LEGALLINE

Free legal advice from the Tarrant County Bar Association  
on 2nd and 4th Thursday of each month, 6 p.m. to 8 p.m.  
(817) 335-1239

Tarrant County attorneys volunteer their time and expertise so that the community can ask legal questions for free from 6 p.m. to 8 p.m. on the second and fourth Thursdays of each month (except November and December). LegalLine is a free community service that is underwritten by the Tarrant County Bar Foundation.

## PEOPLE'S LAW SCHOOL

**Have you ever wished you that you knew more about legal issues and the legal system? The "People's Law School" is your chance to get up to speed!**

This one-day, annual event is open to the public and is FREE! The purpose of this program is to help make the law "user friendly" and to educate consumers about their legal rights. Classes are taught by volunteer local attorneys and judges. Typically the event is held in the spring and organized into multiple 50-minute sessions. **To register, or for more info, visit [tarrantbar.org/community/PLS](http://tarrantbar.org/community/PLS).**