Elder Law Handbook

Ninth Edition
(Spring 2020)

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

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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.

FOREWORD

In 1935, the year Social Security was enacted, the 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 ninth edition (Spring 2020), 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 brief legal advice, 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 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. 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 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 with your request or any questions about this service. Advance notice is helpful.

Acknowledgements

This version of the Handbook was revised by the 2019-2020 Elder Law Committee of the Tarrant County Bar Association. The Association gratefully acknowledges the contributions of the committee: Lori Varnell, Chair; and contributing Committee Members William Catterton, Karen Telschow Johnson, Kathy Kelly, Charles Kennedy, Katherine Kim, Thomas Mastin, Kathy Roux, Elaine Ryan, and Cary Schroeder. The Committee thanks Megan Cooley and the Tarrant County Bar Association staff for their assistance in shepherding the Handbook through publication.

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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 with right of survivorship, 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 if rights of survivorship are designated. 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 decedent, the deceased person; 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 l 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 presumed to be community property. On the other hand, income earned on a spouse's separate property while married, such as accrual in value, income or interest earned, may be separate property or community property, depending on the type of asset; i.e., real property, stocks, bonds, trust funds, business interests, etc. For more detail, please consult a Family Law attorney.

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 by tracing). 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 lost earnings resulting from a personal injury; 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?

Jointly owned 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.

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 2017 was $5,490,000; and for tax year 2018 under the Tax Jobs and Cuts Act of 2017 signed into law in December 2017, it was $11,180,000. For 2019, the exemption amount was $11,400,000, and for 2020, it is $11,580,000. If the value of the decedent's estate exceeded the exempt amount in 2017 through 2020, the top estate tax rate was 40%. If the value of decedent's estate exceeds the exempt amount in 2020, 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 ($11,580,000 for 2020), 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 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 deceased, 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 [2018-2020]), 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 2020 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 $11,580,000 in 2020. 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 are property taxes?

If you own real estate and that property is your principal residence (your "homestead"), here are several property tax exemptions you may want to consider. Generally, qualifying for an exemption does not eliminate your liability for tax on the property, but it may provide a reduction in the amount of tax owed. For example, if you qualify for over 65 exemptions on your principal residence, you would be entitled to a tax ceiling on school and locally adopted city, county and special district assessments.

The valuation on your property may increase year over year, but the exemption would work to limit amount of the tax.

2. What is an exemption?

In order to take advantage of exemptions from property tax on your residence, you must establish the facts supporting your exemption by filing a form with your local taxing authority, for example, the Tarrant Appraisal District.

If you claim that your property is your residential homestead, you must establish that with a filing. Further, if you believe that you are entitled to an age 65-or-older exemption, you must also establish that with a filing. The correct form is available online at **www.TAD.org**. The correct form must be completed correctly and filed in paper form.

One good way to evaluate whether you may be entitled to tax exemption is to obtain the exemption form and read through the requirements. There is no fee to file an exemption application.

Here is a list of circumstances that may apply to you and your property and result in entitlement to an exemption:

-Principal residence (homestead)
-Age 65 or older
-Disabled person
-100% disabled veteran
-Surviving spouse of disabled veteran who qualified or would have qualified for the 100% disabled veteran exemption
-Over-55 surviving spouse of a person who received the over-65 or disabled person exemption
-Donated residence homestead of partially disabled veteran
-Surviving spouse of a disabled veteran who qualified for the donated residence homestead
-Surviving spouse of member of armed forces killed in action
-Surviving spouse of a first responded killed while on duty

3. What is Tax Deferral?

Under state law, homeowners may defer a portion of the tax on their residence homestead if the value of the home was raised more than 5% above the previous year. Although the tax collection is deferred, the deferred tax accrues with interest on the unpaid portion of tax at a rate of 5% per year and constitutes a lien on the property.

For those over 65, disabled, or disabled veterans: a deferral option is available on the entire residential homestead property tax. The taxes continue to accrue on the property while in the taxpayer's ownership with an interest rate of 5%, but no attempt will be made by the taxing authority to force payment during the deferral. Generally, the homeowner satisfies the tax lien with proceeds from the sale of the property—when it ceases to be the owner's homestead.

Your local taxing authority, such as Tarrant Appraisal District maintains a website (www.TAD.org) with resources on exemptions, deadlines and forms. You will receive a property value notice each year, which will provide details about your property, applicable taxing units, taxable values, estimated tax rates by taxing unit and estimated amounts. If you have been granted exemptions, those will be reflected on the notice.

Since the property tax system is established under state law, you can also obtain information on the Texas State Comptroller's website, https://comptroller.texas.gov/taxes/property-tax/.

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. With a reverse mortgage, no payments have to be made to the lender until the homeowner sells or vacates the property or dies. However, this will encumber your home should you need to liquidate it for example to pay medical expenses or for long-term care.

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.

7. How do I protect my home from a fraudulent second mortgage?

According to the FBI, property and mortgage fraud is the fastest growing white-collar crime in the United States. Seniors are particularly vulnerable to this crime because a large majority own their home. In addition, seniors' homes are more likely to be free of pre-existing mortgages. When someone illegally uses your home as collateral for a second mortgage, that is a crime. You may not know about the second mortgage until it is time to sell your home.

The Tarrant County Clerk's office is the repository for filing deeds associated with second mortgages and reverse mortgages. The TCC has a property alert system in place that will notify you if a deed or filing affects the ownership of your home. In order to receive notices regarding your home, you may subscribe to this free service by visiting the website: https://pfa.fidlar.com/TXTarrant or by completing a written form personally in the Tarrant County Clerk's office located at 100 W. Weatherford Street, Suite 130, Fort Worth, Texas.

GOVERNMENT BENEFITS

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. 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.

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 2020 is $18,240, 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 2020 is $48,600.

13. Are there any exceptions to the means test for disabled individuals?

Yes, Able Accounts are a new legally authorized way to permit disabled persons to hold cash that would otherwise disqualify a person from SSI. A person who was disabled prior to reaching the age of 26 may set aside up to $15,000.00 per year in one bank account. Family members may place funds in the account for the beneficiary.

There are three methods to prove qualification:

1) Social Security Administration determination; or

2) Physician's Diagnosis – A licensed physician has given a written diagnosis that the person is either:

a) blind (within the meaning of the Social Security Act), or

(b) has a medically determinable physical or mental impairment that results in marked and severe limitations, and which can either be expected to result in death, or has lasted or is expected to last at least 12 months; or

3) Compassionate Allowances Conditions – The person has a condition listed on the Social Security Administration's list of Compassionate Allowances Conditions.

Many of the 50 States have an ABLE Account program. The costs of the program vary by State. You can compare State programs here: https://www.ablenrc.org/compare-states/ A beneficiary may only have one account**. A beneficiary can have an account in any State.** A beneficiary may have up to $100,000.00 in the ABLE account before being disqualified for SSI.

Before the ABLE Account authorization persons on Medicaid, SSI and similar programs would be disqualified from the programs by having $2,000.00 or more in countable resources (such as cash or a bank account). With an ABLE Account, the beneficiary is not disqualified by having more than $2,000.00 in the ABLE account. Some States permit the funds in the ABLE account to be invested.

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 50% of the assets owned by the husband and wife combined, but is limited to a fixed dollar amount, which is adjusted annually for increases in the cost of living. In 2020, the fixed dollar amount is $128,640. If the total combined countable resources are $25,728 or less (as of 2020), then all of the countable resources are protected. In addition, if the spouse at home has less than a specified amount of income, which is $3,216 per month for 2020, then the income from the incapacitated spouse can be allocated to the community spouse when Medicaid qualification is certified. If the community spouse is unable to receive the full spousal monthly allowance after allocation of income from the incapacitated spouse then the Maximum Protected Resource Amount can be expanded. 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.

Normally a gift of property within 60 months of applying for Medicaid will result in a penalty that prevents qualifying for Medicaid, for at least a period of time. There are transfers that do not result in disqualification of the person applying for Medicaid. Most of these rules are complicated and require sophisticated legal advice.

The most common and simplest transfer that does not disqualify a person from Medicaid is a transfer between spouses. Secondly, a person may transfer property to a family member who is disabled. This does not mean that the gift will not disqualify the recipient from Medicaid or SSI. Third, a Ladybird dead can be used to transfer a home because of special rules and not disqualify the owner from Medicaid. A separate article in this handbook explains Ladybird deeds. There are additional situations in which gifting might be useful, but legal advice is greatly suggested before making any such attempt.

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.

A Ladybird deed is also called an Enhanced Life Estate deed. Both Ladybird deeds and Transfer on Death deeds transfer title to real estate outside probate. There are several distinct differences between the two forms of deed.

Both deeds permit the owner to transfer title at the instant of death and change his or her mind at any time prior to death. A Transfer on Death Deed (TODD) is a statutory form, meaning our State Legislature authorized the use of the deed to transfer real estate outside probate. The TODD must be signed by the owner. It does not transfer "warrantable" title. This means a Title Company may require additional steps taken by the recipient before it will issue a warranty title when the recipient tries to sell the land.

A Ladybird deed is a warrantable transfer. A Ladybird deed may be signed by an agent of the owner. A Ladybird deed is frequently used by attorneys representing persons applying for nursing home Medicaid. Because title does not pass until the owners' death there is no

disqualifying gift of the property to prevent qualifying for Medicaid. An owner may sell, lease, mortgage or transfer the land to a different person than the original Ladybird deed states.

7. Will Medicaid pay for home care services for me so I can stay in my home?

Home care services are a necessity for persons who want to stay in their home while disabled. When it comes to home care services for persons over age 65, there are two broad categories available through Medicaid and there are several different programs available within each category. Some of these programs are more popular than others, so it's important to understand your options.

a. Home and Community-Based Services Waiver Programs

Patients qualifying for Home and Community-Based Services (HCBS) programs are entitled to the same services as nursing home Medicaid patients. These are the programs that provide skilled nursing care**.** If you need a nurse to provide services this category is used.

The qualifications that must be met are essentially the same as for long-term care, over 65. Most beneficiaries are eligible for both Medicare and Medicaid. They will receive Medicaid services through a program called Star+ Plus Waiver. Most acute services will be provided through Medicare providers. The long-term care services are provided through the Managed Care Organization (MCO).

If you are hoping to qualify for home care services through Medicaid HCBS Waiver programs, the first thing that you need to do is get onto the "Interest" list.

b. Non-Waiver "Community Care" Programs

"Community Care" programs provide assistance with activities of daily living such as bathing, dressing, toileting, food preparation and housekeeping. Older clients are mostly served through Community Attendant Services. Typically, these services do not have extremely long wait lists. These tasks do not require nursing services. Many more people could stay at home if they sought help through these programs.

The requirements to qualify vary by program, but generally are: U.S. citizenship, residence in State of Texas, meet "Medical Necessity", have income of $2,349.00 a month or less and less than $2,000.00 in "countable assets" as of 2020. The income and asset test varies by program. The last two qualifications are subjects of many statutes, regulations, state handbooks, court cases and can be exceedingly complicated.

The programs that commonly have long waiting lists are:

- Medically Dependent Child: 4-5 years
- Community Living Assistance and Support Service: 10-11 years
- Home and Community Based Services:11-12 years
- Star + Plus Waiver (Formerly Community Based Alternatives): Varies

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 2020, it is $458 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, $144.60 per month for most people in 2020, 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 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 $123,000 or $80,000 for a single individual. 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.

A. 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.

B. 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.

C. 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.

HEALTH PLANNING

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 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
1000 12th Avenue, Fort Worth, Texas 76104
(817) 870-0060
www.lifegift.org

You can also go online at http://www.dmv.org/tx-texas/organ-donor.php or 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, charitable remainder trusts, insurance trusts, children's trusts, and charitable lead trusts. 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 "pour-over will"). A pour-over 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.

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:

1. The incapacitated person's spouse;
2. The person's next of kin; or
3. 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, and if a guardian of the estate is appointed, an attorney will be required to represent the guardian of the estate as long as the incapacitated person has an estate.

12. 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, a copy of the Bill of Rights, and to explain those documents to the Ward.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. Notice of the Application and of the time of the hearing must be provided to the proposed incapacitated person. An attorney *ad litem* will be present at the temporary guardianship hearing to represent the proposed incapacitated person.

18. 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.

19. 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.

20. 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 12:00 noon.

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. However, a patient may have access to their own mental health records. If a person is found to be mentally ill and an order of commitment is issued, it is accessible to law enforcement and may affect a person's ability to purchase 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

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

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 long-term care facilities. There are a number of intermediate alternatives. There are also other services available, such as senior centers and adult day care centers.

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 or private pay is also available.

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 long-term care facility. 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 memory care units?

Memory care units provide closer monitoring and care of residents suffering from memory deficiencies. Memory care units are typically secured units to prevent residents from wandering off, offer services more tailored to persons with memory issues, but typically do not offer skilled nursing or rehabilitation services. They may offer additional services at additional cost, in an a la carte approach, but their base costs are often less than skilled nursing facilities.

9. What are nursing homes and/or long-term care facilities?

Nursing homes and/or long-term care facilities provide the highest level of nursing care short of hospitalization. They 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. They also 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").

10. 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.

11. How should I decide which type of facility is best for me or my loved one? Is there anyone who specializes in this field to help during this process?

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. For specialists in this area, an Aging Life Care Expert, formerly known as a Geriatric Care Manager, should be contacted for a comprehensive evaluation of the needs of the patient. (www.aginglifecare.org.)

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 in the last year of their life. 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 and 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 individual has the right to die pain-free and with dignity and that our families will receive the necessary support to allow that to happen. 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. 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.

9. 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.

10. 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. Hospice is a service that is provided wherever the patient is located.

11. 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.

12. Is hospice care covered by insurance?

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

13. 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.)

14. 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.

15. Who can obtain Medicare hospice benefits?

Medicare hospice benefits require 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.

16. 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.

17. 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?

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.

DEALING WITH HUMAN REMAINS

1. What are human remains?

"Human remains" means the body of a decedent. "Remains" means either human remains or cremated remains. "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

2. Who determines the disposition of human remains?

The Texas Health and Safety Code provides that a decedent may leave written instructions appointing an agent to control the disposition of his or her remains, expressing in writing his or her wishes as to how the remains shall be disposed, and stating any special

directions limiting the power granted to the agent. The instrument must be signed by the decedent, the signature of the decedent must be acknowledged, and the agent or successor agent must sign the instrument before acting as the decedent's agent. The Texas Health and Safety Code provides a form titled “Appointment for Disposition of Remains” that may be used to provide written instructions. Any written instrument in substantially the same form as the statutory form is acceptable.

3. What happens if a written instruction for disposition of remains is in the decedent’s will?

If the written instruction is in decedent’s will, the instruction shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

4. What happens if a decedent does not leave written instructions regarding the disposition of human remains?

Unless a decedent has left directions in writing for the disposition of the decedent's remains, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:

A. the person designated in a written instrument signed by the decedent;

B. the decedent's surviving spouse;

C. any one of the decedent's surviving adult children;

D. either one of the decedent's surviving parents;

E. any one of the decedent's surviving adult siblings;

F. any one or more of the duly qualified executors or administrators of the decedent's estate; or

G. any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

A. the person's right to control the disposition is terminated; and

B. the right to control the disposition is passed to any other person in the same priority listed above; or a person in a different priority class, in the priority listed above.

A person exercising the right to control the disposition of remains, other than an executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate.

A written instrument is legally sufficient if it complies with the statutory form and if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent.

5. What is the liability of a person who disposes of a decedent's remains?

A person representing that they know the identity of a decedent must sign a statement to this fact in order to procure the disposition, including cremation, of the decedent's remains, other than a death certificate. This person must insure the identity of the decedent and is liable for all damages that result, directly or indirectly, from that statement.

A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract.

A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

A person listed above in Number 4 may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime that involves family violence against the decedent. An embalmer, funeral director, or provisional license holder who knowingly allows the person charged with a crime to control the disposition of the decedent's remains commits a prohibited practice, and the Texas Funeral Service Commission may take disciplinary action or assess an administrative penalty against the regulated person.

6. How is a written instruction disposing of remains revoked?

Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death.

Such written instrument may be modified or revoked only by a subsequent written instrument signed and acknowledged by the decedent that substantially complies with the statutory form.

7. May the decedent's agent change the decedent's written instruction in a prepaid funeral contract?

No. A contract for prepaid funeral services may provide for the final disposition of an individual's remains. "Disposition" includes burial, cremation, or other method by which a person's remains attain their final resting place.

Where an individual specifies the method of disposition of his or her remains in a fully paid funeral contract of which he or she is the purchaser and beneficiary, and afterwards has become incapacitated, the individual's agent under a statutory durable power of attorney may not change the method of disposition.

If the agent under a statutory durable power of attorney cancels a prepaid funeral contract purchased by the principal for him or herself, the principal's written directive in the contract regarding disposition of his or her remains is not canceled.

When a decedent leaves written instructions as described in Number 2, above, the agent shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

8. What happens if there is a conflict over how to dispose of a decedent's remains?

Any dispute among any of the persons listed above in Number 4 concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court with jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding has been initiated.

A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

9. What happens if there is no person with a duty to inter a decedent's remains?

If there is no person with the duty to inter, and an inquest is held, the person conducting the inquest shall inter the remains. If an inquest is not held, the county in which the death occurred shall inter the remains.

10. How may the county dispose of a decedent's remains?

Health and Safety Code section 694.002(a) requires a county commissioners' court to "provide for the disposition" of a deceased pauper's body. The means of disposition and the method by which the county selects a means of disposition are for the county commissioners' court to determine. The Texas Attorney General's office has construed Health and Safety Code section 694.002(a) to authorize a commissioners' court "to dispose of paupers' remains by burial, by donating the body to a medical facility, or by cremation."

Health and Safety Code Section 716.101 prohibits a crematory from accepting unidentified human remains for cremation. Because a crematory establishment cannot accept unidentified remains for cremation, section 716.101 effectively abrogates a county's authority to dispose of an unidentified pauper's remains by cremation under section 694.002(a). Of course, chapter 716 does not affect a county's authority under section 694.002 to have the remains of an identified pauper cremated.

11. May a crematory accept unidentified human remains?

A crematory establishment may not accept unidentified human remains for cremation, except from a county on the order of (a) the county commissioners court; or (b) a court located in the county.

WILLS

1. Do I really need a will?

Yes. Creating a will as part of your estate plan is one of the most important things that you can do for yourself and your family. A will does two things: (1) It protects your

assets, and (2) it states exactly how you want your estate handled after you have passed on.

A.) You decide how your estate will be distributed. A will is a legally binding document that lets you determine how you would like your estate to be handled upon your death. If you die without a will, there is no guarantee that your intended desires will be carried out. Having a will helps minimize any family fights about your estate that may arise, and also determines the "who, what, and when" of your estate.

B.) You decide who will take care of your minor children. A will allows you to make an informed decision about who should take care of your minor children. Absent a will, the court will take it upon itself to choose among family members or a state-appointed guardian. Having a will allows you to appoint the person you want to raise your children or, better, make sure it is not someone you do not want to raise your children.

C.) To avoid a lengthy probate process. Contrary to common belief, all estates must go through the probate process, with or without a will. Having a will, however, speeds up the probate process and informs the court how you'd like your estate divided. Probate courts serve the purpose of "administering your estate." When you die without a will (known as dying "intestate"), the probate court will decide how to divide estate without your input pursuant to statutes, which can also cause unnecessary delays and expense.

D.) Minimize estate taxes if used in conjunction with an entire estate plan.

E.) You decide who will wind up the affairs of your estate. Executors make sure all your affairs are in order, including paying off bills, canceling your credit cards, and notifying the bank and other business establishments. Because executors play the biggest role in the administration of your estate, you'll want to be sure to appoint someone who is honest, trustworthy, and organized (which may or may not always be a family member).

F.) You can disinherit individuals who would otherwise inherit your property as heirs under laws of the State of Texas. Most people do not realize they can disinherit individuals out of their will. Yes, you may wish to disinherit individuals who may otherwise inherit your estate if you die without a will. Because wills specifically outline how you would like your estate distributed, absent a will your estate may end up on the wrong hands or in the hands of someone you did not intend (such as an ex-spouse with whom you had a bitter divorce).

G.) Make gifts and donations. The ability to make gifts is a good reason to have a will because it allows your legacy to live on and reflect your personal values and interests. In addition, gifts up to $13,000 are excluded from estate tax, so you're also increasing the value of your estate for your heirs and beneficiaries to enjoy. Be sure to check the current laws for your year to learn the most up-to-date gift tax exclusions.

H.) Avoid greater legal challenges. If you die without a will, part or all of your estate may pass to someone you did not intend. For example, one case involved the estate of a deceased son who was awarded over $1 million from a wrongful death lawsuit. When the

son died, the son's father – who had not been a part of his son's life for over 32 years – stood to inherit the entire estate, leaving close relatives and siblings out of the picture

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

No. If you do not have a will, then the property in your estate will be distributed according to the law of the State of Texas --- not to the State of Texas. Your assets will pass to those persons listed in the Texas Estates Code as heirs. Under the Texas Estates Code's rules of intestacy (when a person dies without a will), your assets are distributed according to the following system:

- first, descendants (children);
- second, ascendants (parents);
- third, siblings (sisters and brothers);
- fourth, nieces and nephews, and so on.

When the decedent does not have any identifiable or locatable relatives, only then will your property be distributed to the State of Texas Comptroller, and held as Unclaimed Property. If you think that your deceased relative owned property that was never distributed upon his or her death, you may search the decedent's name at the Texas Comptroller's website to determine whether the decedent's estate has unclaimed property. If so, a claim may be made for the decedent's unclaimed property.

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

A computer-generated form will document purchased at a retail store or online may be effective, but great caution should be taken in using such a product. Texas law requires that a will include specific statutory 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. The inclusion of such statutory language in your will makes the probate process simpler and less costly. Likewise, if the form will does not contain the required Texas statutory language, then the probate process will be more complicated and costly.

Also, the computer-generated form will may not properly instruct you on the correct procedure to follow in order to execute the will. Texas law requires that wills are executed with certain formalities in order to make them valid wills. If any of those formalities are not followed, then the probate process will be more complicated and costly. In the worst-case-

scenario, the will may be found to be invalid, and the decedent's estate will be distributed according to Texas law, and not according to the decedent's wishes.

If you purchased a computer-generated form will, you should have a Texas-licensed attorney who is experienced in wills and estates review the will. Some attorneys will provide such a review at their initial consultation for a minimal cost to you, or as a free consultation.

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

Not necessarily. If the will you have from another state is a valid will in the other state, then Texas law recognizes that will as a valid will in Texas. In order for the will to be valid in the other state, it must have been properly prepared according to that state's laws, and executed with the requisite formalities of that state's laws.

The will from another state ("foreign will") may be valid in Texas, but may not comply with Texas' probate process. For example, foreign wills often do not contain Texas statutory language that creates an Independent Executor or an Independent Administration, or it lacks a self-proving affidavit, or the language of the self-proving affidavit is incomplete or insufficient. Under these circumstances, additional steps are necessary to make the foreign will comply with Texas law and probate procedure. These additional steps make probating a foreign will more costly and less efficient.

If you have a foreign will, and you've moved to Texas, you should have an attorney who is licensed to practice law in Texas, and who has experience with wills and probate, review the will. Some attorneys will provide such a review at their initial consultation for a minimal cost to you, or as a free consultation.

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

It is a good idea to review your will every few years to make sure it distributes your estate according to your wishes, and because estate laws and tax laws are constantly changing. How often you need to change your will depends on your life's circumstances. If you experience any of the following life changing events, then you may want to review your will and consult with an attorney about potential changes to your estate:

- divorce;
- marriage or remarriage;
- move to a different state;
- death of someone named in your will, e.g., spouse or child;
- significant change in your health; or
- significant change in the nature or character of your assets.

If, after reviewing your will, you determine that it still distributes your estate according to your wishes, then it may not be necessary to have a new will, even though time has passed since your will was created.

6. How do I make a will?

Generally, there are two (2) ways to make a will. The first way to make a will is to hire an attorney to draft a will for you. This is known as a formal will. There are certain legal requirements that must be followed in drafting a formal will in order for it to be a valid will.

For example, it must be completely typed and cannot contain any handwriting or handwritten notes or marks, and it must be signed and witnessed ("executed") in accordance with Texas law. It must be witnessed and signed by two persons unrelated to the person making the will ("testator"), in the presence of the testator, and in the presence of a notary public, who notarizes the attached self-proving affidavit. The self-proving affidavit appears at the end of the will and states, among other things, that the will was executed in accordance with the formalities required by law. If a self-proving affidavit is attached to your will, then it is not necessary for the witnesses to appear in court when the will is offered for probate.

The second way to make a will is for you to handwrite your will. This is known as a "holographic" will. A holographic will must be written entirely in the testator's own handwriting, and signed by the testator, and dated. It does not have to be notarized or witnessed.

7. Can I hand write my own will?

Yes, you may handwrite your own will. As stated above in Question Number 6, a handwritten will is called a holographic will, and must be written entirely in the testator's own handwriting, and signed by the testator, and dated. It does not have to be notarized or witnessed.

However, handwritten wills are not recommended because (1) it may not adequately dispose of all of your property or provide for the proper administration of your estate; (2) it may omit certain language required by Texas state law, and such omission will increase the complexity and cost of probating the will; and (3) probating the will requires the appearance in court of witnesses who can testify to your handwriting. Despite the risks of a handwritten will, it may be preferable to no will.

8. Can I make a verbal will?

No. Texas law does not recognize a testator's verbal wishes or instructions as a valid will. Therefore, if you verbally tell someone how you want your property distributed upon your death, there is no Texas law that will enforce those wishes or instructions. Your estate will be distributed according to the distribution system set forth by Texas law, and anyone appointed as administrator of your estate must follow the state's distribution system.

10. Does a will dispose of all my property?

Not necessarily. Generally, a will only disposes of your assets that are titled in your name, if you have not disposed of those titled assets by some other method. Assets such as real estate, vehicles, and valuable art are just some examples of assets that transfer by title.

Your will does not dispose of your assets that are created by a contract with a third party, such as a bank account, an insurance policy, or a retirement plan, and that contain a beneficiary designation. These types of assets are distributed according to the beneficiary designation that you complete and sign, which is kept by the third party with the account or contract.

The beneficiary designation on bank accounts depends on the type of account. If it is an individual account, then the beneficiary designation will usually state that the funds are "payable on death" or "POD" to the named beneficiary or beneficiaries. If it is a joint bank

account, then the beneficiary designation will usually state that the funds are "joint tenancy with right of survivorship" or "JTWRS." This means that the funds in the account will pass to the co-owner upon the death of one of the owners. However, there are exceptions to the rule of joint tenancy with right of survivorship so you should seek the advice of legal counsel for any joint bank accounts that exist at the time of someone's passing.

If you do not complete and sign a beneficiary designation, then upon your death, the third party financial institution will distribute the funds in the account to your estate, and the funds will pass according to the terms of your will, that is, according to the residuary clause in your will.

To ensure that your will disposes of all of your titled assets, and any non-probate assets that lack a beneficiary designation, your will should contain a "residuary" clause. A residuary clause states that any property remaining in your estate which you did not specifically name and give away in your will should be distributed according to the terms of the residuary clause. Its purpose is to act as a catch-all for any property that you did not specifically give away in your will, and to prevent such property from being excluded as part of your probate estate. A residuary clause in your will prevents the necessity for a court's determination of heirs in order to distribute estate property that is not governed by the will.

When preparing your will, it is important to obtain copies of your beneficiary designations on all third-party accounts, and to provide copies of such designations to your attorney for review and for coordinating with your estate plan.

When periodically reviewing your will, it is important to also review your beneficiary designations on third-party accounts to make sure that such designations express your wishes.

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

Yes, you may make a new will at any time, if you have the legal capacity to do so. Under Texas law, you have legal capacity if you understand the nature and character of your property and are able to express the members of your family or other people to whom you wish to give your property. You must also use your own independent judgment, separate and apart from family members and other persons so as not to be subject to any undue influence of your family members or other persons. In Texas, a new will revokes all earlier wills.

PROBATING WILLS AND ADMINISTRATION OF ESTATES

1. What is probate?

Probate is the court process by which:

(a) a will is proved (1) to be valid or invalid, (2) to be the last will of the decedent, (3) to never have been revoked, and (4) to have revoked all previous wills, and

(b) the decedent's estate is administered and distributed.

When a will is proven in court to be valid, it is "admitted to probate." Once admitted to probate, the decedent's estate is administered, first, by paying the decedent's debts, and second, by distributing the remainder of the decedent's estate.

The term "probate" includes all proceedings related to the administration of the estate of a deceased person, from the filing of the application for probate and administration, or for

administration, until the decree of final distribution and the discharge of the last personal representative.

The term "probate" also includes proceedings to interpret and administer a testamentary trust created by a decedent whose will has been admitted to probate in the court, or an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

Most probate proceedings are started by filing an application to probate a will and require a hearing and witnesses' testimony in court.

The "decedent" is the deceased person whose will is being probated.

2. Is probate always necessary?

Generally, yes, but it depends on the circumstances of the decedent's estate. If, at the time of decedent's death, there are assets titled to decedent which must be transferred to decedent's heirs, then probate is necessary to transfer such title. Examples of assets titled to decedent are a homestead or vehicle. If decedent left a written will at the time of death, then in order for the will to be recognized as the valid last will of the decedent, it must be probated in court. Otherwise, the will has no legal effect. If the decedent did not leave a written will at the time of death, then decedent's heirs must be determined according to Texas law in order to legally and properly distribute decedent's estate and transfer title from decedent to decedent's heirs.

If there are no assets titled to decedent at the time of death, but decedent has non-probate assets such as a bank account or insurance policy, and there are beneficiary designations on these non-probate assets, then probate is not necessary because the non-probate assets will be distributed according to the beneficiary designations. If there are no beneficiary designations on the non-probate assets, then the non-probate assets will be paid to decedent's estate and probate of decedent's estate is necessary in order to legally and properly distribute the funds.

If decedent owes debts to creditors at the time of death, then it is necessary to probate decedent's estate. Most people will not be able to structure their estates/assets in such a manner as to avoid probate, and for this reason, a will is always the best tool.

3. How do I probate a will?

The first step is to have an attorney review decedent's will to determine whether it is a valid will, and advise you of your legal options to probate decedent's will. The second step is to file an application in probate court to probate the will. The third step is to deposit the original will with the probate clerk's office. The fourth step is to issue the proper citation for a hearing on the will. The fifth step is to appear at the court hearing and provide the necessary testimony from the applicant and witnesses. The sixth step is to obtain a court order determining that the will is valid, and appointing an executor or administrator of decedent's estate. The seventh step is for the executor/administrator to qualify by taking an oath. The eighth step is to gather and protect estate assets. The ninth step is to notify creditors, review and pay valid debts, notify beneficiaries and the public. The tenth step is to file an inventory with court and have it approved. The eleventh step is to distribute the property to the heirs.

4. Is probate expensive?

The cost of probate depends upon several factors: (1) the nature of the decedent's assets, (2) the complexity of administering decedent's estate, (3) the cooperation of the heirs, and (4)

the will. 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. If the will eliminates the necessity for a bond, then probate costs will be greatly reduced. A bond premium can be a costly part of estate administration.

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

Generally, a will must be admitted to probate within four (4) years after the date of decedent's death. There are some limited exceptions to the four-year time limit. If more than four years have passed since death, consult with an attorney to determine whether an exception to the time limit applies.

6. What does the administration of an estate involve?

The administration of an estate generally involves:

a. probate decedent's will or determine decedent's heirs;

b. determine, appoint and swear in personal representative to manage decedent's estate;

c. notify heirs, creditors, and the public that decedent has died;

d. gather and inventory the assets of the decedent;

e. review and, if proper, pay the decedent's debts, pay the expenses of the administering decedent's estate, and pay estate taxes; and

f. distribute the remaining estate assets to decedent's heirs according to either the terms of decedent's will or Texas' laws of intestacy.

8. 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 by taking an oath, he or she will receive letters of administration. The court generally requires only that the independent executor or independent administrator provide proper notice to creditors and file a sworn inventory, appraisement, and list of claims within ninety (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 is unable to recover their inheritance.

9. How is an independent administration created?

An independent administration may be created by language in the decedent's will, or by the probate court with the permission of all the beneficiaries of the estate. Creating an independent administration by language in the decedent's will requires the will to contain special language stating the decedent's intent to limit the court's administration of the

decedent's estate. Absent the required special language in the decedent's will creating an independent administration, the Texas Estate Code provides that the probate court may create an independent administration if all the persons entitled to inherit agree to it in writing.

When the decedent dies without a will (intestate), the Texas Estates Code provides that the court may not appoint an independent administrator to serve in an intestate administration unless and until the decedent's heirs have been determined, through a proceeding to declare heirship.

10. What is a dependent administration?

A dependent administration is the administration of an estate with court supervision. The court appoints an administrator, after which he or she must qualify by taking an oath, and will then receive letters of administration. The court closely supervises and controls the actions of the administrator by requiring that all of the administrator's actions must first be filed with and approved by the court before taken.

The Texas Estates Code provides an order of preference for choosing who is appointed as the administrator of a decedent's estate:

a. first, the decedent's surviving spouse;
b. second, the principal devisee (heir) of the decedent;
c. third, any devisee (heir) of the decedent;
d. fourth, the next of kin of the decedent;
e. fifth, a creditor of the decedent;
f. sixth, any person of good character residing in the county who applies for the letters;
g. seventh, any other person who is not disqualified; and
h. eighth, any appointed public probate administrator.

If persons are equally entitled to letters testamentary or letters of administration, the court:

a. shall grant the letters to the person who, in the judgment of the court, is most likely to administer the estate advantageously; or
b. may grant the letters to two or more of those persons.

11. When is a dependent administration necessary?

A dependent administration is necessary when an estate is insolvent, or potentially insolvent, or where substantial conflicts exist between the named executor and the heirs or legatees. The primary purpose in making this choice is to use the court's supervision powers as a shield for the appointed representative.

12. 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.

13. What are letters testamentary and letters of administration?

Letters testamentary and letters of administration are official court documents issued to the executor/administrator demonstrating that the executor/administrator has legal authority to act on behalf of decedent's estate. These documents are issued by the Probate Clerk or County Clerk after the executor/administrator has been appointed by the court and has qualified for their position by taking an oath and obtaining a bond if required by the court.

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

If a person dies without a will (intestate), the decedent's heirs and their shares of the estate must be determined in an heirship proceeding. An application to determine heirship must be filed with the court, and citation is posted and published. At a court hearing, the judge hears testimony about the identities of the decedent's heirs under the laws of the State of Texas. An attorney *ad litem* is appointed by the court to investigate and determine whether there are any unknown heirs and to represent the interests of any unknown heirs, known heirs who cannot be located, heirs suffering from a legal disability, and minor heirs.

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

A. Community Property

1. All of the decedent's community property (i.e., his or her one-half interest in all of the community property belonging to the married couple) passes to the surviving spouse if

(a) no child or other descendant survives decedent, or

(b) all surviving children or descendants of the decedent are also children or descendants of the surviving spouse (i.e., the surviving children have the same parents).

2. If the circumstances in Number 1, above, does not apply, and decedent dies survived only by descendants, then all of the decedent's community property (i.e., his or her one-half interest in all of the community property belonging to the married couple) passes to all of the decedent's children, divided equally. The surviving spouse retains his or her one-half interest in 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 a fee simple interest in 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 all of the separate property.

4. In the event the Decedent is not survived by a spouse or children (or their 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. See the Section on Community Property and Separate Property.

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

Alternative procedures to the full administration of a decedent's estate are:

A. Muniment of Title;
B. Heirship Determination;
C. Small Estate Affidavit;
D. Affidavit of Heirship; or
E. Community Property Administration.

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

A muniment of title proceeding is used to probate a decedent's will. It is the simplest and quickest way to probate a decedent's will, and it is usually the least expensive type of probate proceeding. The will must be proved to be a valid will at a court hearing. No executor/administrator is appointed because there is no need for an administration of decedent's estate.

The applicant will receive only a court order determining that decedent's will is a valid last will, and ordering any third party who has possession of decedent's assets to turnover or transfer those assets to the persons named as beneficiaries in decedent's will. After the will has been probated as a muniment of title, the beneficiaries of decedent's estate become the owners of the property. In order to transfer the title to real property, the court order and the decedent's last will should be recorded in the deed records where the real property is located. Additional steps are usually needed to transfer title to personal property.

Once the will is admitted to probate as a muniment of title, the applicant for the probate of the will shall file with the court clerk a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled within 180 days after the probate. The court may waive this requirement, for example, if the surviving spouse is the only beneficiary under the will. Or, the court may extend the time for filing the affidavit.

A muniment of title proceeding may be used when all that is needed is legal authority to transfer title to assets (e.g., house, vehicle), or to recover decedent's assets that are held by a third-party (e.g., bank account). 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, or conflict among the beneficiaries (heirs) of the will.

A court may probate a will as a muniment of title only when the decedent had no unpaid debts at the time of death, excluding debts secured by liens on real estate (mortgage), and there is no other need for an administration of decedent's estate.

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

Generally, a proceeding to determine decedent's heirs is used when the decedent died without a will (intestate). If there is no will, then the decedent will not have named an executor/administrator to manage his or her estate. However, the Texas Estates Code permits all of the heirs of decedent's estate to agree in writing, by signed and sworn affidavit, to an independent administration and designate a qualified person, firm, or corporation to serve as independent administrator, and request that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined through an heirship determination proceeding.

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

A small estate affidavit is a simple probate procedure appropriate for small, simple intestate (no will) 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 decedent's assets, not counting the homestead and exempt property and any debts which they secure, must exceed the known liabilities of the decedent;

B. Decedent died without a will;

C. There is no application for a personal representative (executor/administrator) of the estate either pending or granted;

D. Thirty (30) days have passed since the decedent's death;

E. The value of all assets of the estate, not including homestead and exempt property, does not exceed $75,000;

F. An affidavit is filed with the Probate Clerk that is sworn to by two disinterested witnesses, by every adult distribute 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 distribute of the decedent;

G. The affidavit (1) must contain information showing that the requirements of items A-F above are fulfilled, (2) must include a list of all known assets and liabilities of the decedent and which assets are exempt, (3) must include the names and addresses of the distributees (heirs) of the decedent, and (4) must include relevant family history facts concerning heirship that shows the distributees' rights to receive the money or property of the decedent's estate; and

H. The judge reviews the small estate affidavit, and if the affidavit conforms to the requirements, approves the affidavit.

20. What does a small estate affidavit do?

A small estate affidavit allows the decedent's heirs to recover estate property held by another person. A court order approving a small estate affidavit orders any person who:

(1) owes money to the estate,

(2) has custody or possession of estate property, or

(3) acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate

to turnover or transfer those assets to the distributees (heirs) of decedent's estate. The distributees of the estate must provide a copy of the affidavit, certified by the court clerk, to each person.

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.

Persons who pay, deliver, transfer, or issue assets of the decedent to the distributees based upon a small estate affidavit are released to the same extent as if they made the transfer to a personal representative of the decedent's estate.

The distributees to whom payment, delivery, transfer, or issuance is made are:

(1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and

(2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.

Each person who executed the affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit.

Distributees may sue to force delivery of estate property. The distributees are heirs, creditors, or anyone else having a prior right to the property.

21. What is an affidavit of heirship?

An affidavit of heirship is an out-of-court document, signed and sworn to in the presence of a notary public, that states the facts of (A) the identity of decedent's heirs, (B) decedent's family history, and (C) decedent's assets and liabilities. It may be used instead of a court proceeding to identify decedent's heirs and to transfer decedent's assets to the heirs. There is no court action or involvement in preparing, executing or using an affidavit of heirship. Generally, an affidavit of heirship procedure is used for intestate estates, and no will is probated.

The affidavit states the names of the heirs of the decedent, decedent's family history concerning heirship, and shows the heirs' rights to receive the estate property. It is signed and sworn to by two witnesses, one of whom is not an heir (disinterested), and who are familiar with the decedent's family history and the decedent's estate (assets and liabilities).

In order to transfer title to real property, 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 after it has been on record for five years or more in the deed records of the county where the real property is located.

The Texas Department of Motor Vehicles has a separate affidavit of heirship form to transfer title to motor vehicles. Form VTR-262 may be obtained online at https://www.txdmv.gov/motorists/buying-or-selling-a-vehicle. Form VTR-262 may also be obtained from any county tax assessor's office or a county sub-courthouse. Page 2 of Form VTR-262 provides instructions on how to use the form:

A. All heirs must sign the Affidavit;

B. Pay particular attention when there are surviving children whose parent is someone other than the surviving spouse;

C. The Affidavit may be used when a decedent left a will ONLY IF no application for administration or probate has been filed or a court determined that no administration is necessary. If this is the case, then the court document attesting to the same must be attached to the Affidavit;

D. All affiants agree the will shall not be offered for probate;

E. All affiants agree that they are the sole and only known heirs at law of the deceased;

F. All affiants agree that if there is a will, all beneficiaries of the will are authorized under the law to sell, transfer, and assign the ownership to the motor vehicle;

G. All affiants agree that there are no other known heirs who have prior right to the estate of the deceased;

H. All affiants agree that title to the vehicle be issued free and clear of the lien to the named transferee.

Once an heir presents the notarized Affidavit and any required attachments, the dealer will complete a new Form VTR 130-U, Application for Certificate of Texas Title, and apply for title as the dealer normally would for a sale.

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

Each state has jurisdiction and control only over the real property located inside its own geographical borders. The executor/administrator appointed in Texas to probate decedent's estate in Texas does not have legal authority over real property located in any other state ("foreign state").

When a person residing in Texas, dies owning property in Texas, probate court has jurisdiction over that person's estate. Once the decedent's estate is probated in Texas first, then, if the decedent owned real property in a foreign state, the Texas executor/administrator must hire an attorney licensed to practice law in that foreign state to file an "ancillary administration" in each foreign state where the decedent owned real property (including royalties or mineral interests).

The purpose of the ancillary administration is (A) to have the foreign probate court recognize the order rendered by the Texas probate court regarding the decedent's estate; (B) to obtain an order from the foreign probate court that transfers title to the real property located within that foreign state to the proper beneficiaries; and/or (C) to otherwise transact business relating to that property and decedent's estate.

The expense and difficulty of ancillary administrations varies from state to state. Sometimes, this added expense and difficulty may be avoided by having the decedent transfer such real property during the decedent's lifetime, or by having the decedent place the real property in a living revocable trust for the reasons stated in the prior section on Trusts.

PUBLIC PROBATE IN TARRANT COUNTY

1. What is Public Probate?

A public probate administrator may be a person, charitable organization, or any other suitable entity who is appointed by a statutory probate judge to serve all the statutory probate courts in the respective county.

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

The public probate administrator receives notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin. Upon receiving such notice, the public probate administrator shall take prompt possession or control of the decedent's property located in the county that:

A. is subject to loss, injury, waste, or misappropriation; or

B. the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

The public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, shall make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

If the public probate administrator determines the decedent executed a will, the administrator shall file the will with the county clerk. The public probate administrator has all of the powers and duties of a court appointed administrator. The public probate administrator must provide accountings of decedent's estate if accountings are requested by the statutory probate court judge or the county's commissioners court.

The public probate administrator may dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

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

The public probate administrator may receive notice of a decedent's estate in three ways:

A. If a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, the officer or employee may inform the public probate administrator of that fact.

B. If a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, the person in charge of the hospital or facility may give immediate notice of that fact to the public probate administrator of the county in which the hospital or facility is located.

C. A funeral director in control of a decedent's remains may notify the public probate administrator if the following persons (1) cannot be found after a reasonable inquiry or contacted by reasonable means, or (2) refuses to act:

i. the person designated in a written instrument signed by the decedent;

ii. the decedent's surviving spouse;

iii. any one of the decedent's surviving adult children;

iv. either one of the decedent's surviving parents;

v. any one of the decedent's surviving adult siblings;

vi. any one or more of the duly qualified executors or administrators of the decedent's estate; or

vii. any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

4. How does the Public Probate Administrator handle a decedent's estate?

A. Investigation

The public probate administrator shall investigate a decedent's estate and circumstances to determine if the opening of an administration is necessary, if the public probate administrator has reasonable cause to believe that the decedent does not have a personal representative appointed for the decedent's estate.

The public probate administrator shall secure a decedent's estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that:

1. the decedent has an estate that may be subject to loss, injury, waste, or misappropriation; or

2. there are other circumstances relating to the decedent that require action by the public probate administrator.

To establish reasonable cause, the public probate administrator may require an information letter about the decedent that contains the following:

1. the name, address, date of birth, and county of residence of the decedent;

2. a description of the relationship between the interested person and the decedent;

3. a statement of the suspected cause of death of the decedent;

4. the names and telephone numbers of any known friends or relatives of the decedent;

5. a description of any known property of the decedent, including the estimated value of the property; and

6. a statement of whether the property is subject to loss, injury, waste, or misappropriation.

B. Statement & Court Order

Once the public probate administrator has made an investigation, he or she may present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter.

When the statement is presented to the statutory probate court, the judge may issue an order authorizing the public probate administrator to take possession or control of property under this chapter.

A public probate administrator may record the order in any county in which property subject to the order is located.

If the public probate administrator presents the order to a financial institution, governmental or private agency, retirement fund administrator, insurance company, licensed securities dealer, or any other person, that person or entity shall perform the following without requiring a death certificate or letters of administration and without inquiring into the truth of the order:

1. provide the public probate administrator complete information concerning property held in the name of the decedent, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation; and

2. grant the public probate administrator access to a safe deposit box rented in the name of the decedent, without charge, for the purpose of inspection and removal of its contents. Costs and expenses incurred in drilling or forcing a safe deposit box open shall be paid by the decedent's estate.

C. Administration

A public probate administrator shall file an application for letters of administration or administration with will annexed:

1. if gross assets of an estate exceed $75,000.00;

2. if the property of the decedent cannot be disposed of using other methods; or

3. at the discretion of the public probate administrator or on order of the statutory probate court judge.

After issuance of letters of administration, the public probate administrator is considered a personal representative, and has all of the powers and duties of a personal representative under the Texas Estates Code.

5. Must Public Probate Administrator post a bond?

Yes. The public probate administrator must execute an official bond of at least $100,000.00 conditioned as required by law and payable to the statutory probate court judge who appointed the public probate administrator. At any time, for good cause, the statutory probate court judge who appointed the public probate administrator may require the administrator to post an additional corporate surety bond for individual estates. The county may choose to self-insure the public probate administrator for $100,000.00.

6. What is the cost associated with the Public Probate of an estate?

A public probate administrator is entitled to received commissions from decedents' estates to be paid into the county treasury. The public probate administrator's office, including salaries, is funded, in part, by the commissions.

7. What does the public probate administrator do if the decedent has a small estate?

If gross assets of an estate do not exceed $15,000.00, the public probate administrator may act without issuance of letters testamentary or of administration, if the court approves a statement of administration stating the name and domicile of the decedent, the date and place of death of the decedent, and the name, address, and relationship of each known heir or devisee of the decedent.

Once the court approves the statement of administration, the public probate administrator may:

A. take possession of, collect, manage, and secure the personal property of the decedent;

B. sell the decedent's personal property at private or public sale or auction, without a court order;

C. distribute personal property to the estate's personal representative if one is appointed after the statement of administration is filed;

D. distribute personal property to a distributee of the decedent who presents an affidavit of heirship;

E. sell or abandon perishable property of the decedent, if necessary, to preserve the estate;

F. make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets;

G. distribute to a minor heir or devisee for whom a guardian has not been appointed the share of an intestate estate or a devise to which the heir or devisee is entitled; and

H. distribute allowances and exempt property as provided by this title.

On the distribution of property and internment of the decedent, the public probate administrator shall file with the clerk an affidavit, to be approved by the court, detailing the property collected, the property's distribution, the cost of internment, and the place of internment.

8. Must the Public Probate Administrator file for an administration of the decedent's estate?

Not necessarily. If gross assets of an estate do not exceed $15,000.00, the public probate administrator may file a small estate affidavit for approval by the statutory probate court judge.

The public probate administrator may file the small estate affidavit after the public probate administrator has either filed a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter, or prepared and filed the statement of administration.

If the statutory probate court judge approves the affidavit, the affidavit shall be maintained as a local government record or recorded in the clerk's office an appropriate book labeled "Small Estates" with an index that shows the decedent's name and references to any land involved.

The affidavit has the same effect as a small estate affidavit:

Persons who pay, deliver, transfer, or issue assets of the decedent to the distributees based upon a small estate affidavit are released to the same extent as if they made the transfer to a personal representative of the decedent's estate.

The distributees to whom payment, delivery, transfer, or issuance is made are:

(1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and

(2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.

Each person who executed the affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit.

Distributees may sue to force delivery of estate property. The distributees are heirs, creditors, or anyone else having a prior right to the property.

9. What happens if a decedent's relative comes forward to represent the decedent's estate, or if the decedent's will is found?

If a public probate administrator has taken any action on a decedent's estate, such as a small estates affidavit or administration, and a qualified person more entitled to serve as a personal representative comes forward or a will of a decedent is found naming an executor, the public probate administrator may surrender the administration of the estate and the assets of the estate to the person once the person has qualified as administrator.

Before surrendering the administration of the estate, the public probate administrator must file a verified affidavit that shows fully and in detail:

A. the condition of the estate;

B. the charges and claims that have been approved or established by suit or that have been rejected and may be established later;

C. the amount of each claim that has been rejected and may be established later;

D. the property of the estate in the administrator's possession; and

E. any other facts that are necessary in determining the condition of the estate.

The court may require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate under this section.

10. How does the Public Probate Administrator distribute money in a decedent's estate?

The public probate administrator shall deposit all funds coming into the custody of the administrator into the court registry, except for the commissions from such funds that the public probate administrator is entitled to receive pursuant to the provisions of the Texas Estates Code.

Funds deposited in the court registry must be disbursed at the direction of the public probate administrator and according to an order issued by the statutory probate court judge who appointed the administrator.

PROTECTING YOURSELF AND YOUR LOVED ONES

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. There are NO free entries to the lotteries of other states or countries. In addition, if you, personally, did not buy a ticket for the lottery, you did not win the lottery.

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.

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?

G. Is the telemarketer asking me to wire transfer or send money via MoneyGram® or Western Union® money to anyone for any reason?

H. Is the telemarketer asking you to purchase gift cards, i-Tunes® cards, Greendot® cards or any other value cards and provide them with the numbers on the cards?

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. You may use ***67** to prevent your name and number from appearing on a recipient's phone or caller ID device when you place a call. To use this feature, on either your landline or cell phone, you dial ***67** followed by the number you want to call. You may also use ***61** to block individual unwanted inbound calls on your landline telephone the limit is 100 blocked numbers**. *80** turns this feature off. The phone numbers displayed on Caller ID devices have changed due to emerging technology and have no connection to the true originator of phone call. There is no telling where a call is actually coming from based upon caller ID. New technology will even allow a caller to appear to be your own phone number calling you.

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. You may also place a freeze on your credit if you are a victim of identity theft.

D. You can register with the Texas do-not-call list for free at 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. 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, 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 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 and the Federal Trade Commission (FTC) at www.ftc.gov. The PUC has limited jurisdiction over certain telemarketers and the FTC enforces the federal do-not-call list.

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

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

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

B. Contact the business. Contact the salesperson, the manager or the company's customer service representative. If you are still not satisfied, contact the owner or the company's headquarters.

C. File a detailed, written complaint with the Office of the Attorney General of Texas:

Office of the Attorney General
Consumer Protection Division
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 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 regarding a Tax Return Preparer

This form should be completed to file a complaint with the IRS against a tax return preparer or tax preparation business. Each authorized preparer is issued a Preparer Tax Identification Number ("PTIN"). It is useful to include this PTIN when filing a complaint against an authorized preparer. 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, for example if the preparer failed to include their PTIN number on the return or marked it as "self-prepared" when it was not; (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 police department to report a crime.

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; 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.

ELDER ABUSE 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, there are some tell-tale signs that there could be a problem.

Some common signs of physical and emotional abuse include:

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. Bedsores, unattended medical needs, poor hygiene, and unusual weight loss are indicators of possible neglect.

E. Behavior such as belittling, threats and other uses of power and control by spouses are indicators of verbal or emotional abuse.

F. Strained or tense relationships, frequent arguments between the caregiver and elderly person are also signs.

Signs of financial elder abuse and exploitation include:

A. Sudden changes in financial or living situation.

B. Unpaid bills, collection letters, or lack of food in the house.

C. Unusual and unexplainable credit card activity.

D. Missing possessions from the elder's home without explanation.

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. This agency is often referred to as CPS (Child Protective Services) and as APS (Adult Protective Services).

If the victim is a resident of a long-term care facility that receives Medicaid funding, report the criminal abuse, neglect, or exploitation to the Texas Attorney General's Medicaid Fraud Control Unit at (800) 252-8011 or visit https://www.texasattorneygeneral.gov/divisions/law-enforcement/medicaid-fraud-control-unit/medicaid-fraud-control-unit-field-offices to report at your closest field office.

C. Local

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

(1) Tarrant County Criminal District Attorney—Elder Fraud Financial Unit: If you suspect elder financial fraud, you can contact the Elder Fraud Unit at (817) 884-1400 and file a complaint. For more information visit:

http://access.tarrantcounty.com/en/criminal-district-attorney/criminal-division/ElderFraud.html?linklocation=Areas%20of%20Responsibility&linkname=Elder%20Financial%20Fraud

(2) Financial Exploitation Prevention Center of Tarrant County: This center is another local resource if you suspect elder financial exploitation. For more information, call a case manager at (817) 720-6556 or visit:

https://www.financialexploitationpreventioncenter.org/

(3) 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.

(4) 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.

(5) 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.

(6) MHMR of Tarrant County: If there is a perceived mental or emotional impairment of the elder, they may be eligible for a free mental health evaluation. MHMR has resources for low-income or no-income elders to help them get out of an abusive living situation. You can call MHMR at (817) 569-4300 or visit their website to schedule an appointment:

https://www.mhmrtarrant.org/Services/Mental-Health-Services.

CRIMINAL ELDER EXPLOITATION

1. What is Elder Exploitation?

Elder exploitation is the illegal use of an elder person's resources for personal gain. Criminal offenses may occur when someone transfers property without the consent of an elder person. It may also be a crime when someone transfers property belonging to a person without capacity. Finally, transferring property in a harmful way when someone has a duty to protect an elder person may also result in criminal offenses.

2. What are the warning signs of elder exploitation?

Signs of exploitation may include the failure of the elder person to have the ability to keep their utilities running, failure to be able to afford daily expenses, or the receipt past due notices for taxes or other bills. If an elder person has dementia or other memory loss, they will be more susceptible to exploitation. It will also be more difficult for someone affected by memory loss to recognize signs that they are being exploited.

3. Who are the most common offenders?

The most common offenders are adult children of elder persons. The second most common offenders are hired caregivers. Finally, elder persons are the target of organized criminals.

4. How are criminals finding elder persons?

While many criminals meet their elder victims in their own home, they may also target elder persons where they shop or eat. It is a growing trend for elder victims to be targeted on their cell phones, through mail, or through their online social networking profile.

5. Are there criminal penalties for the abusers?

Yes, offenses can range from probation to days in jail to years in the penitentiary depending on the dollar value of loss or the method of exploitation.

6. Is there a time limit on prosecuting exploitation?

Yes, depending on the offense, the limitations on prosecuting exploitation may be as little as two years or as many as 10 years. It is important to contact law enforcement as soon as you discover a criminal offense because the time starts running when the offense occurs, not when it is discovered.

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

The first call should be to 911 to alert your local police. It is also important to notify the Texas Department of Family Services at (800) 252-5400. The Tarrant County Criminal District Attorney ("TCCDA"), Sharen Wilson, created the Elder Financial Fraud Unit in 2017 to assist law enforcement in understanding the intricacies of investigating elder fraud as well as to prosecute those exploiting the elderly. The TCCDA has partnered with local community service organizations to form the Financial Exploitation Prevention Center ("FEPC"). The purpose of the FEPC is to prevent the vulnerable population of elder and disabled Tarrant County adults from becoming a victim of exploitation and to aid victims of elder exploitation in their recovery. To make a referral to the FEPC, you may call (817) 720-6556.

SERVICE DIRECTORY

SERVICES AND RESOURCES	
ELDER ABUSE	
Local Police Department	911
Adult Protective Services (elder abuse and exploitation)	(800) 252-5400
Financial Exploitation Prevention Center of Tarrant County	(817) 720-6556
Texas Health and Human Services (formerly DADS)	(800) 458-9858
Tarrant County Criminal District Attorney's Office Elder Financial Fraud Unit	(817) 884-1400
CAREGIVERS	
Community Living Assistance & Support Services (Easterseals North Texas)	(817) 332-7171
Guardianship Services, Inc.	(817) 921-0499
Texas Health and Human Services office (food stamps and Medicaid)	(817) 625-2161
TEXAS CONSUMER INFORMATION NUMBERS	
Office of the Attorney General, State of Texas: Consumer Protection Division Crime Victim's Compensation Division Constituent Affairs Division	 (800) 621-0508 (800) 983-9933 (800) 806-2092
Texas Department of Insurance (consumer complaints)	(800) 252-3439
COUNSELING	
Catholic Charities, Fort Worth	(817) 289-3809
FINANCIAL ASSISTANCE	
Texas Medicaid client hotline	(800) 252-8263
Medicare	(800) 633-4227
US Veterans Affairs benefits	(800) 827-1000
FOOD SERVICE	
Meals on Wheels, Inc. Tarrant County Johnson and Ellis Counties Northeast Tarrant County (Metroport Meals on Wheels)	 (817) 336-0912 (817) 558-2840 (817) 491-1141
GENERAL INFORMATION	
Tarrant County Area Agency on Aging	(817) 258-8125
Aging and Disability Resource Center	(855) 937-2372
American Association of Retired Persons (AARP) (Dallas)	(866) 227-7443
Tarrant County Probate Clerk's Office	(817) 884-1770

Texas Legal Services Center Hotline		(800) 622-2520, Option 3
Texas Telecommunications for the Deaf		711 or (800) 735-2989
HEALTH ISSUES		
Alzheimer's Association, North Central Texas Chapter Fort Worth		(817) 336-4949
American Cancer Society		(817) 737-9992
Cancer Care Services		(817) 921-0653
American Diabetes Association (Dallas)		(972) 392-1181
LEGAL SERVICES		
Dispute Resolution 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 (United States District Court, Northern District of Texas)		(800) 622-2520
Tarrant County Criminal District Attorney's Office		(817) 884-1400
Tarrant County Bar Legal Line (2nd & 4th Thursday of each month, 6–8 p.m.)		(817) 335-1239
LONG TERM CARE		
Texas Health and Human Services C Long Term Care Services		(817) 625-2161
Long Term Ombudsman AAA of Tarrant County		(817) 258-8102
Texas Long Term Ombudsman (Hotline for complaints or to check on facility)		(800) 252-2412
Texas Health and Human Services Commission, Consumer Rights & Services complaint and incident intake		(800) 458-9858
SENIOR CITIZEN SERVICES		
Sixty and Better, Inc.	www.sixtyandbetter.org	(817) 413-4949
SOCIAL SERVICES		
Social Security Administration Information	www.ssa.gov	(800) 772-1213
Texas Health and Human Services Fort Worth Arlington Jacksboro Highway	hhs.texas.gov/about-hhs/find-us	 (817) 563-3800 (817) 461-8273 (817) 625-2161
Texas Health and Human Services: Mental Health & Substance Abuse	hhs.texas.gov/services/mental-health-substance-use	(866) 378-8440

Texas Health and Human Services Inspector General fraud hotline		(800)-436-6184
Texas Health and Human Services complaint and incident intake for older and disabled	hhs.texas.gov/about-hhs/your-rights/complaint-incident-intake	(800) 458-9858
U. S. Department of Health & Human Services, Eldercare Locator Help Line	https://eldercare.acl.gov/Public/Index.aspx	(800) 677-1116
Tarrant County Financial Exploitation Prevention Center	https://www.financialexploitationpreventioncenter.org/	(817) 720-6556

TRANSPORTATION	
(For medical purposes, to health & social service agencies, weekdays. Call at least two days ahead. Most transportation programs are very busy, so call as far in advance as possible. Donations accepted.)	
Care Corps (Mid-Cities)	(817) 282-0531

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. For anyone seeking legal advice and/or requiring legal assistance, who does not know an attorney, the answer may be as convenient as the telephone. Call (817) 336-4101 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. That number places the caller in direct contact with the Lawyer Referral & Information Service which is the only service in Tarrant County certified as a Lawyer Referral Service as required by the State of Texas under Chapter 952, Occupations Code, Title V. Also, the Tarrant County Bar Association Lawyer Referral & Information Service is one of only four services in the State of Texas that meets the standards contained in the American Bar Association Model Rules.

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 this valuable community service program may continue. LegalLine is answered at the Tarrant County Bar Association offices from 6 p.m. to 8 p.m. on the second and fourth Thursdays of each month (except November and December). LegalLine is a completely free, no strings attached public service.

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.**