



THE TEXAS SIX™

An Estate Planning Primer

The Proactive Approach
To Life Planning

Prepared by

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THE TEXAS 6™ (and more)

INTRODUCTION

The term “estate planning” has been defined as the art of designing a plan for the effective enjoyment, management, and disposition of property at the minimum possible legal and tax cost. Perhaps the best definition of the term “estate planning” is the one my clients have taught me over the last 29 years of my professional life. According to my clients, estate planning is defined in this manner:

“We want to control our property while we are alive and well, care for ourselves and our loved ones if we become disabled, and be able to give what we have, to whom we want, the way we want, and when we want, and, if we can, we want to save every last tax dollar, attorney fee, and court cost possible.”

There are six basic, essential estate planning tools that should be used, or at least strongly considered, for every adult living in the state of Texas. This holds true regardless of an individual’s net worth, marital status, age, race, or gender. I call these six tools “The Texas 6”. The Texas 6™ are described in this paper. Remember, the Texas 6™ are only the basic, bedrock tools. Properly trained and educated estate planning attorneys have many estate planning tools they can use over and above the Texas Six tools, to address any number of specific tax, asset protection, and personal family issues.

A surgeon and carpenter have many specific tools designed to be used for specific jobs and situations. An estate planning attorney likewise has many tools for many situations, but an explanation of those advanced estate planning tools is beyond the scope of this article. All of the estate planning tools applicable to your specific estate planning situation will be discussed during your initial estate planning consultation meeting with me.

TOOL NUMBER ONE – WILLS/LIVING TRUSTS

Wills and Living Trusts form the foundation of an estate plan. These two tools are primarily used to:

1. allow you to specify how your assets are to be handled in the event you become incapacitated; and
2. allow you to specify who will receive your property when you die as opposed to the State of Texas making that determination for you; and
3. allow you to specify the terms, conditions, and time frame when your heirs, loved ones, or others will receive your property upon your death; and

4. allow married couples to currently pass up to \$10,980,000 dollars' worth of assets to their heirs without having to pay any federal estate taxes. (*This requires special provisions that might not be in your current will or trust.*); and
5. allow you to make special care provisions for minors, special needs children/adults, or elderly persons you are responsible for in providing care and financial support.

Wills and Living Trusts are two totally different tools. Wills do not provide any lifetime planning options such as disability planning. A Will is a death document and does not make any provisions for you should you become incapacitated during your lifetime due to a stroke, accident or because of the onset of dementia. Additionally, most Wills must go through some type of court proceeding known as probate before they become effective.

Living Trusts, on the other hand, when used as an alternative to a Will, provide both life planning options in the event of either a temporary or permanent incapacity, or death planning. A Living Trust does not require probate on a death if the Living Trust was properly established and maintained during your lifetime. If you own real estate outside of Texas, even if it's just a timeshare, using a Living Trust instead of a Will can often times save a substantial amount in probate costs and fees. Living Trusts are especially useful if you fear that someone will try to contest your Will after you die.

A more detailed explanation of the differences between Wills and Living Trusts is beyond the scope of this paper. If you elect to visit with me for a complimentary estate planning consultation we will discuss the pros and cons of Living Trusts and Wills in detail so you will be able to choose which tool is best for you.

TOOL NUMBER 2 – A STATUTORY DURABLE POWER OF ATTORNEY (Someone to handle my daily business and financial affairs)

A Statutory Durable Power of Attorney or General Durable Power of Attorney (commonly referred to as a “Financial Power of Attorney”) is one of the most important legal documents an individual or couple can have. The Statutory Durable Power of Attorney protects you from the effects of mental and physical disability, or incompetency due to disease, injury, or aging. In essence, this document specifies that if you can no longer take care of your daily business and financial affairs, persons you trust and appoint in advance will have the legal authority to handle your business matters for you.

Never assume that your spouse, relatives, or adult children automatically have the legal right to take care of your business and financial matters for you in the event you are unable to do so for yourself simply because of their relationship to you. *That assumption is simply not true.* If an individual becomes mentally incompetent due to a stroke, accident, illness, or disease, or the aging process, and does not already have a Statutory Durable Power of Attorney in effect, **it is too late** to create one after the incompetency has set in. The only

alternative at that point is to **force your loved ones** to file a lawsuit against you and present evidence in open court that you are incompetent! Not only is this very humiliating for you and your loved ones, **but it is very costly.** In most instances having in place a Statutory Durable Power of Attorney is every bit as important as having a Will or Living Trust. **No one should be without a Statutory Durable Power of Attorney unless you simply have no one you can trust to handle your business affairs for you.**

VERY IMPORTANT NOTE: The Texas Legislature recently enacted a new law that drastically changed the content and the legal impact of the Texas Statutory Durable (Financial) Power of Attorney. This new law goes into effect on September 1, 2017. If you have an existing Statutory Durable Power of Attorney or General Durable Power of Attorney dated prior to September 1, 2017, you must have a new Statutory Durable Power of Attorney that includes the new provisions and powers drafted for you and sign that document as soon as possible.

SPECIAL WARNING FOR SENIORS: Seniors oftentimes are faced with unique and burdensome financial challenges concerning how to pay for the cost of in-home unskilled care, the cost of assisted living centers, or the expense of nursing home care. The standard Texas Statutory Durable Power of Attorney form and many other Power of Attorney Forms, whether prepared by an attorney or obtained online lack the necessary language that grants the power and authority to those you have named as your agents to assist you in qualifying for governmental programs such as Veteran's Aid and Attendance Benefits or Medicaid which is especially important if you do not own a long term care insurance policy, and in many cases, even if you do have long term care insurance.

In these types of situations an "enhanced durable power of attorney" is required. I call this a "Power of Attorney on Steroids". If you are not sure your current Statutory Durable Power of Attorney contains these "enhanced powers" you should contact your attorney immediately to determine whether you need these enhanced powers in your Statutory Durable Power of Attorney.

TOOL NUMBER 3 – MEDICAL POWER OF ATTORNEY (Someone to watch over me in a medical emergency)

The Medical Power of Attorney allows you to appoint someone to make your medical decisions for you concerning care and treatment in the event you are not capable of making those decisions for yourself. In essence, the Medical Power of Attorney is a "care and treatment document", used when there is hope for your recovery. Again, having this simple document in place could save your family, friends, and your estate from unnecessary delays, anguish, and expense.

Note: This form was updated by the Texas Legislature effective January 1, 2014 and additional changes are going into effect on January 1, 2018. If you have this document that was prepared and signed by you prior to January 1, 2018, you should update this form as soon as possible after January 1, 2018.

TOOL NUMBER 4 – DECLARATION OF GUARDIAN (Someone to watch over me if I become incompetent)

Even if you have protected your assets by placing them in a trust and/or by having a Statutory Durable Power of Attorney prepared, there is always the issue as to who will watch over you as an individual if you should become unable to care for yourself. Who will make the decision as to where you are to live? Who will make the decision as to what kind and quality of medical care you will receive? Who will make all of the decisions that affect you as a person on a daily basis that you now make for yourself? This document allows you to pick the individuals that you would want to make these important life decisions for you if you can't make them for yourself, and exclude anyone that you do not feel would be a good fit to serve as your guardian.

(There is also a Declaration of Guardian for Minor Children that parents and/or legal custodians use to appoint someone to care for and raise minors in the event of an untimely death of the parent or custodian)

TOOL NUMBER 5 – THE LIVING WILL/DIRECTIVE TO PHYSICIANS (My instructions for care if I am terminally ill or have an incurable disease)

This document allows you to declare to your friends, physicians, family, and the world at large how you want to be treated and cared for in the event you have a terminal illness, or are suffering from an irreversible condition that will eventually lead to your death. If **Terri Schiavo** had this document it would have prevented years of bitter and costly litigation between her parents and her husband.

Note: This form was updated by the Texas Legislature effective September 1, 2015. If you have this document, but it was prepared prior to September of 2015, you should update this form.

TOOL NUMBER 6 – THE HIPAA RELEASE DOCUMENT

HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996, a federal law. Certain provisions of this law are designed to protect your personal medical information from being improperly disclosed. This law prevents the disclosure of **any** of your personal medical information, whether oral or recorded in any form or medium to anyone other than you. There are certain people you trust and designate that **must** have access to your medical information such as your spouse if you are married, and your Medical Agents (See Tool 3 above). If you sign a HIPAA Release document, you give your doctors your permission to provide your Medical Agents with the information they need to care for you.

As I stated in the Introduction, the Texas 6TM documents are all basic, essential, estate planning tools that are necessary for both singles and couples, regardless of the monetary size of their estate. It is extremely dangerous to assume that your estate is too small to warrant any estate planning. As a practical matter, the lack of planning is often times more financially devastating to a small estate than it is to a large estate due to the fact that the large estate usually has sufficient assets to take care of the problems and legal expenses that arise due to having no or poor planning. In the case of a small estate, one mistake can literally wipe out the small estate's entire assets, leaving nothing to pass to the heirs, or even worse, draining estate assets you might need to support yourself during your remaining years.

The Texas 6TM are tried and proven tools which can save you and your loved ones from the frustration, agony, cost, and despair which generally results from improper estate planning or a total lack of estate planning. Make these six tools a part of your estate plan; put them to work for you today. Good planning is one of the best legacies you can leave for your loved ones.

ADVANCED ESTATE PLANNING TOOLS

In some cases, the six basic estate planning tools described above are not sufficient in and of themselves to address all of the needs or wants of some clients. We offer more advanced planning for clients that are interested in:

1. Asset protection (including Medicaid and Veteran's Pension Benefits Planning for in home and nursing home care)
2. Charitable Gift Planning
3. Divorce proofing a child's/grandchild's inheritance
4. High income tax strategies (annual salary or passive income in excess of one million dollars).
5. Education and Support Trust for Grandchildren
6. Special needs planning
7. IRA and retirement benefits planning including IRA Trusts
8. Business Succession planning

If these are areas of interest to you we will discuss these additional estate planning tools during your initial estate planning meeting.

In closing, I would like to warn you about estate planning's public enemies one and two – **procrastination and denial**. My friend and fellow attorney from San Antonio, Texas, Larry Gibbs, pretty well summed it up when he recently wrote:

“It is said that the road to both heaven and hell is paved with good intentions. Planning to avoid probate and to minimize the estate tax burden to the family is perceived as something done for someone else. It has been said that even the terminally ill believe that they have at least one more year of life remaining. The fact is that many people die without even a Will, including as I recall, a good many probate judges. Procrastination and denial produce big casework for many law firms who must repair damage, which could have, through proper planning, been entirely avoided. Procrastination and denial also produce a source of revenue for a hungry federal government.”