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THE ESTATE PLANNING ESSENTIALS GUIDE

written by

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TABLE OF CONTENTS

- 01 **About the Author**
- 02 **Why Estate Planning is Essential**
- 03 **What are the Estate Planning Essentials**
- 04 **Wills: The First Pillar**
- 05 **Will FAQs**
- 06 **Trusts: The Second Pillar**
- 07 **Specialized Trusts**
- 08 **Agents & Guardians: The Third Pillar**
- 09 **Agent & Guardian FAQs**
- 10 **“Loose Ends” Documents: The Final Pillar**
- 11 **The Estate Planning Process**
- 12 **Key Takeaways**
- 13 **A Final Thought from the Author**
- 14 **Disclaimer and Contact Information**

About The Author

" Life has taught me time and time again that it is unpredictable and that the most important part of it is those we love. I've taken those lessons to heart. They now motivate me to help my clients plan for those uncertainties, protect their loved ones, and leave a lasting legacy. "



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Taylor Mohr's academic career and professional success started at an early age, when she attended Baylor University on the Presidential Scholarship at 17 years old. She continued that trend when she entered Baylor Law school at 20 on a full-tuition academic scholarship. Her commitment to excellence has only grown, earning her numerous professional awards and accolades and the experience and skill required to become board certified in family law, something that only 1% of attorneys in Texas can claim.

What really sets Taylor apart, though, is her personal experiences that are the driving force behind her passion to help her clients protect their loved ones and leave a lasting legacy. Taylor was adopted as a young child, then she later lived through her parents' divorce. Watching her mother struggle to provide for her family motivated Taylor's battle to put herself through law school and build a different life for her children. As an adult, Taylor and her husband brought two biological children into the world and adopted two children through the foster system, cementing her belief that family is stronger than blood. Finally, the tragic loss of a dear friend in the prime of life while on vacation reminded Taylor that tomorrow is never promised and one is never too young to plan ahead to ensure that those we love are provided for.

Why Estate Planning Is Essential



Estate planning is an invaluable process that ensures your assets are managed and distributed according to your wishes upon your death or incapacity. In Texas, having a solid estate plan in place is not just for the wealthy; it's a crucial step for anyone seeking to protect their family's future and financial stability.

Everyone Needs an Estate Plan. Yes, EVERYONE.

- **Young Parents: Securing Your Children's Future.** For young parents, estate planning is not just a financial decision—it's an act of love. It provides critical **protection for your minor children**, ensuring they are cared for by trusted guardians of your choice should something happen to you, setting up trusts to manage finances until children are of age, and detailing instructions for healthcare and education.
- **Mid-life Adults: Protecting Assets and Preparing for Tomorrow.** As you progress through life, accumulate assets, and watch your children grow, estate planning helps **manage and protect your assets** and ensures that your wealth is passed on to the next generation according to your wishes. This includes planning for potential grandchildren and possibly supporting aging parents by creating or updating wills, establishing family trusts, and considering charitable gifts, which can also provide tax benefits and contribute to a lasting legacy.
- **Retirees: Streamlining Transfers and Reducing Taxes.** For those nearing or in retirement, estate planning becomes focused on **streamlining the transfer of assets, reducing taxes, and planning for end-of-life care**. This stage often involves revising your estate plan to reflect changes in your financial situation and family dynamics to ensure that your assets are distributed smoothly, without legal complications, and with minimal tax implications. It also typically involves appointing agents to make medical and financial decisions for you if you become incapacitated.
- **Everyone: Leaving a Legacy.** Beyond the practical benefits, estate planning allows individuals of all ages to **leave a meaningful legacy**. This legacy might be financial, ensuring the economic well-being of future generations, or ethical, passing on values and lessons to loved ones. Estate planning also offers everyone the opportunity to make thoughtful decisions about their impact, from charitable donations to personal messages left for loved ones.

What are the *Estate Planning Essentials*



Estate planning isn't just for the wealthy or elderly; it's a fundamental aspect of financial health and personal care that provides essential protection for your loved ones and peace of mind for yourself. While every family is unique, most estate plans involve several essential documents, each serving unique purposes to ensure your wishes are honored and your loved ones are protected. Wills, trusts, designations of guardians and agents, and other "loose ends" documents are vital to making sure you plan functions as you intend.

Main Categories of Estate Planning Essentials

01

Wills

The most basic estate planning document is the will, which appoints a person to manage your estate, elects an "independent probate" to reduce the time and cost involved, and outlines the desired distribution of your estate. For parents with minor children, your will also designates the person you want to raise your children if both parents are gone.

02

Trusts

Trust can be created in your will ("Testamentary") or now ("Living"), and each serves a different purpose. Testamentary trusts protect assets if certain contingencies occur, while living trusts are funded during life to avoid probate, reduce taxes, protect assets from creditors, make charitable donations, and accomplish many other goals.

03

Agent/ Guardian Designations

While wills and some trusts govern what happens when you die, powers of attorney and guardian designations govern what happen if you are alive but incapacitated. Having an agent appointed to make decisions and handle your affairs can prevent the need for a guardianship managed by the probate court.

04

"Loose Ends" Documents

Many other documents can make your incapacitation or death significantly easier and less expensive or, in other words, help "tie up loose ends." This group of documents includes physician's directives, deeds, funeral/memorial instructions, personal property memoranda and much more.

Wills: The first pillar of the *Estate Planning Essentials*



A will is an essential legal document that specifies your wishes regarding the distribution of your assets after your death. It is a fundamental tool that ensures your estate is settled according to your desires rather than state laws. In Texas, the significance of having a will becomes particularly evident when considering the specifics of intestacy laws, probate processes, and the protection of minor children.

Yes, you need a will, even if you have a small estate.

01

Avoid Intestacy and Control Who Receives Your Property

In Texas, if you die without a will (intestate), your assets are distributed according to state intestacy laws, which might not reflect your personal wishes, especially if you have a blended family. **Did you know** that if you die without a will and have children from a previous marriage, your current spouse will retain their 50% of any community property but will only receive one-third of your personal property and the right to use your real estate? The remainder of your estate, including two-thirds of your personal property (including your money) and ownership of your real estate, will be distributed equally among your children, **leaving your spouse out of the majority of your estate**, regardless of the length of your marriage or your intentions.

02

Avoid Dependent Probate to Reduce Cost and Time

In Texas, probate can be handled in two primary ways depending on whether you have a will:

- **Independent Administration:** In this process, after being appointed by the court, the executor named in the will can administer the estate without significant court supervision. This means they can pay debts, settle disputes, and distribute assets with minimal oversight, making the process smoother, faster, and far less expensive. This process generally takes 3-9 months to complete.
- **Dependent Administration:** If a will does not specify or if there is no will, the probate may be a dependent administration. This requires the executor to seek court approval for nearly every step of the estate settlement process, from listing assets, to paying bills, to distributing the estate. This method is far more time-consuming and expensive, often draining estate resources.

One of the most critical functions of a will is the ability to appoint a guardian for your minor children in the event of your death. **Did you know** that without a will, **the court decides who will care for your children**, potentially choosing someone you might not have selected or someone who will parent your children fundamentally differently than you would? Furthermore, a will allows you to appoint a trustee to manage any assets left to minor children to ensure that the children's financial needs are met responsibly until they reach an age where they can manage the assets themselves (and you get to select that age, not the court). This can be particularly important in blended families where ensuring the fair treatment of children from different relationships is crucial or where you do not want your ex-spouse "managing" the children's funds. Without a trust like this, it is also **possible that the court appoints a bank, professional trustee, or attorney to manage your children's funds under a court-supervised guardianship or management trust**, which will increase the cost and decrease the amount of your assets your children actually receive.



Will FAQs

01

Can I just print a will from the internet? It's so much cheaper.

Yes, but you get what you pay for. While it's possible to print a will from the internet, and it may seem like a cost-effective option, there are significant risks involved. Generic online wills may not be tailored to your specific needs, may not comply with the unique legal requirements of Texas law, or may be outdated. An improperly prepared will could potentially lead to costly legal battles for your loved ones or even result in your wishes not being honored.

02

How often should I update my will?

You should review and possibly update your will **after any major life event**—such as a marriage, divorce, birth of a child, or significant change in financial status—**or every three to five years**. This ensures that your will always reflects your current situation and intentions.

03

How does divorce affect my will?

In Texas, if you get divorced after creating a will, **any provisions in your will that favor your ex-spouse are automatically nullified** upon the finalization of the divorce unless the will explicitly states otherwise. With that said, it's wise to update your will after a divorce to reflect your current wishes and ensure that your ex-spouse does not regain any control of your assets through your children.

Did you know that you can handwrite a valid will in Texas if time, circumstance, or convenience prevent the formal signing ceremony? Be careful, though. There are still legal requirements. Talk to an attorney about how to do this correctly.

Trusts: The second pillar of the *Estate Planning Essentials*



Trusts are incredibly versatile and essential tools within estate planning. They can provide significant advantages, such as avoiding probate, asset protection, tax benefits, and privacy. This section will cover the basics of Testamentary Trusts and Revocable Living Trusts, as well as introduce more specialized trust options that cater to specific needs.

01 Testamentary Trusts

A Testamentary Trust is created by the provisions in your will and comes into effect upon your death. This type of trust does not avoid probate; instead, it is part of your will and is funded after your will is admitted to probate. The benefits of a Testamentary Trust include **the ability to control the distribution of your estate to your beneficiaries over time rather than in a single lump sum**. This is particularly beneficial if you have **minor children** or beneficiaries who might not be financially savvy, as the trust can specify at what age or under what conditions the beneficiaries will receive their inheritance. It is also beneficial if you have a child, grandchild, or spouse who is receiving **governmental benefits** that would be lost if they received all of their inheritance at once.

02 Revocable Living Trusts

When most people want to talk about a trust, they are thinking of a Revocable Living Trust, which is created during your lifetime and can be altered or revoked as long as you are alive and competent. One of the primary benefits of this type of trust is that it allows your estate to **avoid the costly and time-consuming probate process**. Assets in a Revocable Living Trust can pass directly to your beneficiaries upon your death, providing privacy and quicker access to funds, and can include rules for your beneficiaries' access to the funds after your death. This type of trust also allows you to **maintain control over the assets during your lifetime**, as you can act as the trustee and manage the property as you see fit, and to ensure that your financial affairs can be managed with no delay or court involvement if you become incapacitated.

Specialized Trusts



There are many other kinds of trusts that can be created to address a multitude of other needs. One of the benefits of a trust is the flexibility to create a tool that is exactly what you need it to be. Some examples of these trusts include:

- **Supplemental Needs Trust:** This trust is designed to **benefit individuals with disabilities** by providing financial support without jeopardizing their eligibility for public assistance benefits such as Medicaid or Supplemental Security Income (SSI).
- **Irrevocable Trust:** Unlike a revocable trust, an Irrevocable Trust cannot be modified or terminated without the permission of the trust's beneficiaries. This type of trust is useful for **estate tax reduction and asset protection** from creditors, though it can have major downsides as well, like the loss of ownership and control over your assets.
- **Charitable Remainder Trust (CRT):** A CRT allows you to receive income for a period of time, with the **remainder of the trust assets going to a charity**. This setup provides immediate tax benefits and supports charitable causes.
- **Gun Trust:** Designed specifically for the ownership, transfer, and possession of **firearms**, this trust can help ensure compliance with federal laws, especially important for regulated items like suppressors or automatic weapons.
- **Pet Trust:** A Pet Trust ensures that your **pets are cared for** after you pass away or become incapacitated. It sets aside funds to be used for the pet's benefit and can specify care instructions.
- **Irrevocable Life Insurance Trust (ILIT):** An ILIT allows you to **exclude life insurance proceeds from your estate**, potentially saving on estate taxes and providing liquidity to heirs for immediate expenses like estate taxes or debts without having to wait for probate.
- **Land Trust:** The primary advantage of using a land trust in Texas is privacy. The trust owns the real estate, so the identity of the actual owners can remain confidential. Additionally, a land trust can **simplify the management and disposition of the property** since decisions can be managed by the trustee according to the terms set forth in the trust agreement.
- **Spendthrift Trust:** A Spendthrift Trust is particularly useful for beneficiaries who may not be prudent with financial management or those who might face potential creditor issues. This type of trust includes a spendthrift clause that restricts the beneficiary's access to the trust funds, except through the scheduled distributions made by the trustee. This setup **protects the trust assets from being claimed by creditors** of the beneficiary

And many more...

Agents & Guardians: The third pillar of the *Estate Planning Essentials*



While wills and trusts determine what happens upon your death, appointing agents and guardians is a critical step to ensure that your affairs, both personal and financial, are managed according to your wishes should you become incapacitated or unable to make decisions on your own. Texas law provides for various mechanisms through which you can appoint these representatives. Here, we'll discuss the roles and importance of Medical Powers of Attorney, Durable Powers of Attorney, and Designations of Guardian in the event of later incapacity.

01 Medical Power of Attorney

A Medical Power of Attorney in Texas allows you to **designate an agent to make healthcare decisions on your behalf if you become unable to do so yourself**. This document is activated only under the conditions specified, generally when you are deemed unable to make your own medical decisions by a healthcare professional. The person you choose will have the authority to make decisions about medical treatments, surgical procedures, artificial nutrition and hydration, and other health care measures. Selecting a trusted individual who understands your medical preferences and values is crucial, as this person could be making life-saving decisions on your behalf.

02 Durable (Financial) Power of Attorney

A Durable Power of Attorney is essential for **managing your financial affairs if you become incapacitated**. Unlike a standard power of attorney, which automatically ends if you become mentally incapacitated, a durable power of attorney remains in effect throughout your incapacity and only terminates upon your death or a specified revocation. This document grants your appointed agent the authority to manage your financial tasks, such as paying bills, managing investments, handling transactions, and making other financial decisions according to your best interests.

Did you know that Texas now has a law that requires institutions to accept a Durable Power of Attorney as long as it meets certain requirements?

03 Designation of Guardian

While powers of attorney allow you to appoint agents to make decisions on your behalf, a Designation of Guardian in the Event of Incapacity lets you **proactively choose a guardian who will manage your personal and estate affairs if you ever become legally incapacitated** and if a court decides a guardianship is necessary because a power of attorney isn't in effect and other options aren't available. This preemptive measure is important because it provides you the opportunity to select someone you trust, rather than leaving the decision to a court. This designation also allows you to *disqualify* someone from acting as your guardian if you have a family member that you would not trust to manage your finances or personal affairs.



04 Designation of Burial Agent

In Texas, the Designation of Burial Agent allows you to appoint a specific individual who will be responsible for **handling your final arrangements**, such as burial or cremation, after your death. This designation is particularly important if you have specific wishes regarding how you want your body to be handled or if you anticipate disagreements among family members about your final arrangements.

Agent FAQs

01 Is this really necessary? Won't my spouse be able to do this?

Yes, it is. And not necessarily. While it's a common assumption that a spouse can automatically handle your legal and financial affairs if you become incapacitated, this is not always the case. Without formal documents like a Durable Power of Attorney or Medical Power of Attorney your spouse might face restrictions when trying to access your individual bank accounts, manage properties that are only in your name, or make specific healthcare decisions.

02 Can I appoint more than one agent?

Yes, you can appoint multiple agents under a Power of Attorney. You can specify whether these agents must act jointly (making decisions together) or severally (acting independently of each other), depending on your preferences. Appointing more than one agent can provide checks and balances, **but it can also potentially lead to conflicts, so choose carefully.**

03 Who can I appoint as my agent?

You can appoint **any competent adult**, such as a family member, close friend, or anyone else you trust to make decisions on your behalf, as long as it someone you trust to know and honor you, your property, and your wishes.

Loose Ends: The final pillar of the *Estate Planning Essentials*



While wills, trusts, and powers of attorney are the cornerstones of a robust estate plan, a comprehensive approach includes several other key documents that address specific aspects of your legacy and end-of-life wishes and make your will, trust, and agent designations work like they're supposed to. These documents can also aid in avoiding probate, reducing cost and stress, and minimizing the emotional burden on your loved ones.

01 Physician's Directive

A Physician's Directive is crucial for specifying your **preferences regarding life-sustaining medical treatments**. By clearly outlining your wishes regarding life support, you can relieve your loved ones of the burden of making these difficult decisions and ensure that your healthcare preferences are respected.

03 Personal Property Memo

Personal Property Memoranda can be attached to your will to specify whom you wish to **receive smaller, personal items** like jewelry, art, collectibles, or even specific books. This document can often be changed **without formal amendments** to your will, offering flexibility to alter your list as circumstances or relationships change.

02 Transfer on Death Deed

A Transfer on Death Deed allows you to designate a beneficiary who will receive specific **real estate property upon your death without the need for probate**. This document is a simple yet effective estate planning tool that can ensure a smooth transition of your real estate assets, minimizing potential disputes and delays.

04 Funeral/Memorial Instructions

Funeral/Memorial Instructions are vital for detailing **how you wish your life to be celebrated** and how your remains should be handled. These instructions can specify whether you prefer burial or cremation, the type of ceremony you desire, and many other details to **alleviate the emotional and logistical burdens on your family** during a time of grief.

And many more...

The Estate Planning Essentials Process



01

Initial Consultation:

During the **Initial Consultation**, we will review the concerns you outlined on your intake form and discuss your overall financial situation, your family dynamics, and your long-term wishes. This meeting is crucial for understanding your specific needs and objectives. We will explain the different estate planning tools available and how they can be utilized to meet your goals, ensuring you have all the information needed to make informed decisions.

02

Client Worksheet:

After our initial meeting, we will provide you with a **Client Worksheet** to gather detailed information about your assets, liabilities, family members, and any special considerations for your estate plan. This worksheet is essential for capturing all relevant data that will influence the design of your estate planning documents, including beneficiary designations, guardian nominations for any minor children, and any specific bequests you wish to make.

03

Drafting and Review:

With the information from the client worksheet, our team will prepare a **draft** of your estate planning documents, which may include a will, trusts, powers of attorney, and other relevant documents tailored to your situation. We will then **review** these drafts with you to ensure they accurately reflect your wishes and provide the necessary protections. You will have the opportunity to request revisions or clarifications, ensuring that every detail is as you intend.

04

Execution and Instructions:

The final step is the **execution** of your estate planning documents. This involves a formal signing ceremony where all documents are executed in accordance with state laws, often requiring notarization and witnesses. After the documents are legally binding, we will provide you with copies and offer **guidance** on safely storing these documents. Additionally, we discuss the importance of communicating with your appointed executors, trustees, and other relevant parties about their roles and provide **instructions** on funding any trusts and changing any beneficiary designations.

Key Takeaways about your *Estate Planning* Essentials



01. Estate Planning is for Everyone

No matter the size of your estate or the stage of life you're in, estate planning is crucial. It ensures that your assets are distributed according to your wishes, provides for your loved ones, and can significantly reduce the stress and burden on your family during a difficult time.

02. Understand the Tools Available

Familiarize yourself with the **various estate planning tools**, including wills, trusts, powers of attorney, and specialized documents like Physician's Directives and Transfer on Death Deeds. Each plays a unique role in a comprehensive estate plan.

03. Communication is Key

Openly discussing your estate planning decisions with family members and other involved parties is vital. **Clear communication can prevent misunderstandings** and disputes, ensuring that your wishes are carried out as intended.

04. Regular Updates are Necessary

Life changes such as marriage, divorce, the birth of children, or significant financial shifts **necessitate updates** to your estate plan. Regular reviews—at least every three to five years or after major life events—ensure that your documents remain accurate and relevant.

05. Professional Guidance is Invaluable

While DIY options are available, **professional legal guidance is invaluable** in navigating the complexities of estate law. An experienced estate planning attorney can offer tailored advice that prevents your loved ones from being burdened with fixing something done improperly or, even worse, having to live with the outcome if it's too late to fix it.

06. The cost of Procrastination is too High

It's natural to shy away from estate planning because it involves contemplating difficult decisions and can seem costly and complex. However, postponing your estate planning can have far-reaching consequences, potentially leading to unnecessary legal complications, financial burdens on your family, and even the mishandling of your personal wishes. **No one is promised tomorrow. Take care of this today.**



13

“Securing your family’s future is the ultimate act of love - plan wisely, then live fully.”

Taylor Mohr



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