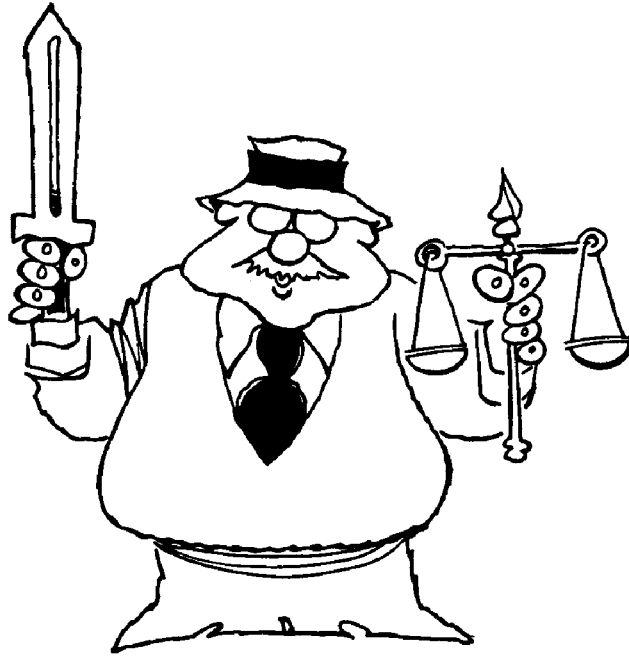


# ELDER LAW



# HANDBOOK

# 2007

HOUSTON BAR ASSOCIATION  
ELDER LAW COMMITTEE

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This handbook was prepared so that senior citizens and their families can become familiar with issues facing seniors. Older adults should be aware of their legal rights and ways to enforce those rights. We tried to address problems of the elderly and how these problems can be remedied through proper planning and/or the legal process.

The handbook is divided into topics affecting the elderly in a question and answer format. All of the issues and rights of senior citizens cannot be addressed in this handbook. We hope this gives a broad overview of your rights and remedies.

This handbook is based on Texas law and is issued to inform and not advise. This is a general summary of the laws as they existed as of September 2007. This is only general and basic information and exceptions may exist. You should seek legal advice from an attorney of your choice to advise you in your particular situation.

ELDER LAW HANDBOOK  
The Elder Law Handbook  
is a project of the Houston Bar Association and the  
Elder Law Section of the HBA.

## FOREWORD

*Virtually all of us have faced tough issues with legal consequences when family members have grown older. Until now, there has not been a ready source to help us plan for these inevitable events or to provide guidance to family members when they occur. To meet these needs, the Houston Bar Association's Elder Law Committee developed this handbook.*

*The issues and the answers are presented in a question and answer format to be more easily understood and applied. We believe you will find the material and information helpful in avoiding problems by planning and in resolving concerns when encountered. While not every situation can be foreseen, or every question answered in a booklet of this scope, we believe this handbook will assist you in your search for answers.*

W. Thomas Proctor  
2007-2008 President,  
Houston Bar Association

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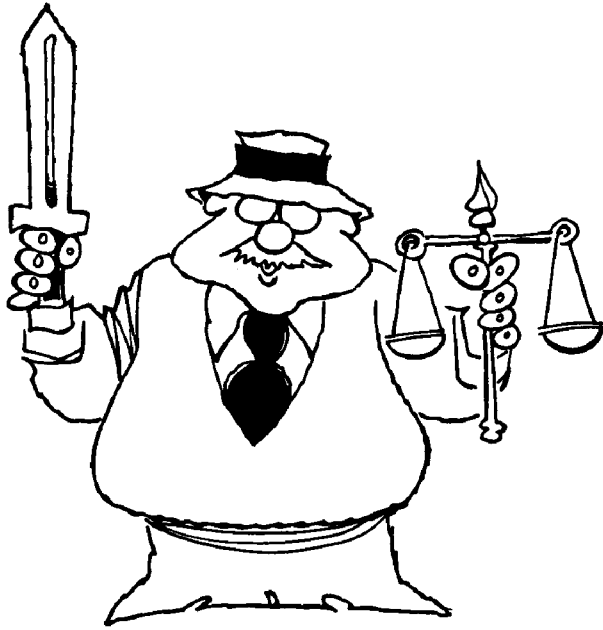
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## **SOCIAL SECURITY**

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

Social Security pays benefits to an eligible individual when he or she reaches retirement age. Social Security also pays about twenty other categories of claimants. The most typical of the other categories are disabled workers, surviving spouses and their minor children.

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

You generally have to apply by calling the social security hotline, 1-800-772-1213. If you visit the office, you are usually given a telephone appointment. You will need certain information and

certified copies of documents in order to apply, such as your Social Security number, your birth certificate, your military discharge papers if you have had military service, and your W-2 forms or self-employment tax return for last year. It takes time to process the application, so you should file at least three months prior to the date you intend to retire.

### ***How much will I receive from Social Security when I retire?***

By submitting form SSA-7004, called Request for Earnings, Social Security will estimate your retirement check. The amount of benefits you receive from Social Security is based on several factors: your age at retirement, your earnings during your lifetime, and the calendar date of your retirement. The average monthly check in January 2007 was \$979, with a maximum of more than \$3,174.

### ***Are the Social Security benefits I receive taxable?***

In some instances, the Social Security benefits of a person will be subject to income tax. The test to determine if your benefits are taxable is somewhat complicated; currently, if a married couple's adjusted gross income combined with 50% of their social security benefits plus any tax-exempt income exceeds \$32,000.00, or \$25,000.00 for an individual, then the benefits will be taxable. The amount of tax that would be due is even more difficult to calculate and the amount of tax increases for married couples with an adjusted gross income above \$44,000.00.

### ***Will my spouse and children be able to collect any benefits after my death?***

Yes. Your spouse is entitled to benefits if he or she was married to you for nine months before your death, or, if he or she is the parent of your natural or adopted child.

Your divorced spouse is entitled to benefits if he or she was married to you for 10 years. They are eligible for benefits at age 60 or over, or at age 50-59 if they are disabled. If he or she is caring for your child who is under age 16 or disabled before reaching age 22, he or she is entitled to benefits at any age. At your death, your child is eligible for benefits if they are under 18, or 19 if in high school, or any age if they became disabled before reaching age 22.

### ***What type of benefits are available if I become disabled?***

Social Security pays cash benefits to the worker, their children under age 18, their spouse if the spouse has minor children or is otherwise eligible, and some benefits for persons on a rehabilitation program usually called PASS. A disabled worker has to prove an impairment equivalent to double amputation. Since Social Security denies 70% of all applications, it typically takes 1.5 years to adjudicate the claim. Half of all claimants who appear before a Social Security judge win their case. If denied, it is advisable to consult an attorney specializing in social security law.

### ***What are Supplemental Security Income Benefits?***

Supplemental Security Income Benefits (SSI) are cash assistance benefits paid to the aged and disabled. The purpose of SSI is to assure a minimum level of income to these individuals who have limited income and resources. It is a welfare payment. There are at least three categories of recipients: persons over age 65, disabled persons under the test above, and some disabled children. SSI entitles claimants to Medicaid. The maximum monthly benefit check in January 2007 was \$979.

### ***What are the resource limits for SSI?***

Supplemental Security Income (SSI) allows a single claimant to have \$2,000 in a bank, another \$1,500 bank account for burial, \$1,500 whole life insurance, and a few other items of any value: a home, a car, and items at the cemetery, among others. See Medicaid section.

### ***How can I appeal a decision of the Social Security Administration?***

Most social security appeals start with a request for the appeal form from the Social Security Office. In only these courts, you may bring in witnesses and have an oral hearing. This hearing is your best chance of winning an appeal; the odds are fifty-fifty. If a Social Security judge makes an error, you can then file an appeal with the appeals council and take the denial to federal court. At this level, the appeal is handled through written briefs. At these higher levels, you do not have the opportunity to appear before the federal judge, bring in witnesses, or make an oral argument.

# **MEDICARE AND MEDICAID**

## ***What is Medicare?***

Medicare is a federal health insurance program administered by the Centers for Medicare and Medicaid Services. Medicare has two parts: part A for hospital, home health, and nursing home care and part B for physician care and some medical equipment and the new Part D for prescription drugs. The benefits paid by Medicare are subject to change at least annually and the amounts are not listed in this book. Any questions regarding Medicare may be addressed to your local Social Security Office. The U.S. Department of Health & Human Services publishes a useful annual Medicare Handbook.

## ***What is Medicare Part D?***

Medicare Part D is the prescription drug program passed by Congress in 2003. It also encourages involvement of private insurance in delivering Medicare and other health services. It increases premiums for recipients of higher income. In 2006, standard coverage includes:

- A monthly premium of approximately \$37 (it may be higher or lower depending on the plan)
- A deductible of \$250
- Coinsurance of 25% up to an initial limit of \$2,250
- Protection from high prescription drug costs once enrollee's out of pocket reaches \$3,600

Those beneficiaries with limited savings and low incomes will receive a more generous benefit package.

## ***What penalties may Medicare participants suffer under the prescription drug plan?***

You may suffer a penalty of about \$.37 per month for each uncovered month caused by late application or by a later loss of a credible prescription drug plan.

In 2007, the enrollment period corresponds to the regular enrollment period for Part B benefits, that being a seven month period starting three months before the beneficiary first becomes eligible for Part B benefits and ending three months after the beneficiary first becomes eligible. For most beneficiaries that is three months before the month of their 65th birthday and three months after. Dual eligibilities for Medicaid and Medicare are automatically enrolled and assigned to a drug plan. However, those who are dually eligible may desire to select a different drug plan.



### ***What does Medicare pay for inpatient hospital services?***

During the first 60 days, Medicare will pay for all covered services after the patient meets the annual deductible. There is a partial payment for the next 30 days and 60 days once in a lifetime reserve days.

### ***What does Medicare pay for nursing home care after a hospitalization?***

Medicare pays for the first 20 days of skilled nursing home care. You can inexpensively insure for the next 80 days with the correct Medicare supplement policy. You must have spent three days in the hospital prior to nursing care and have a need for skilled nursing care or rehabilitative care.

### ***What home health care services does Medicare cover?***

It covers homecare services, skilled nursing care and therapy for nearly homebound patients. Medicare will cover physical therapy and part-time nursing care when prescribed by a doctor. It can pay for up to 35 hours per week. Medicare does not pay for meals. Medicare has tried to limit home health care to no more than \$3,500 per year per patient.

### ***What hospice care does Medicare cover?***

With a terminal diagnosis, Medicare pays for at least two 90 day periods with some extensions without a deductible.

### ***What is a Medigap Policy?***

Medigap policies are also called Medicare supplemental insurance. Medigap insurance is private insurance which will cover a portion of the medical costs not paid by Medicare, usually the 20% difference. Since July 31, 1992, each type of policy is the same and differs only in price, waiting period, and reliability of the insurance company. Perhaps the most important item to cover is skilled nursing care for the extra 80 days of coverage.

### ***What is Medicaid?***

The Texas Health and Human Services Commission administers the Texas Medicaid program along with the Texas Department of Health and funding from the federal government. You may be eligible for Medicaid if you are at least 65 years old, blind or disabled. You must also meet both an income and resource limit test. Medicaid covers most hospital expenses, doctor bills, and home health services. Medicaid pays for most skilled nursing care. Items such as prescription drugs, hearing aids, and eyeglasses are often covered in certain instances.

### ***How do you qualify for Medicaid funds for nursing home care?***

The patient's monthly income cannot be more than a set amount which changes at least annually. Also, the patient's resources cannot be over a certain amount to qualify. Resources include bank accounts, stocks, and other property you own.



The most frequent exceptions to the income cap are Miller trusts and qualified domestic relations orders.

The rules are more generous for couples rather than single individuals for Medicaid qualification. Congress limits impoverishment of the patient's spouse. Spouses can under some circumstances receive a diversion of the patient's income for their own support. This diversion is to compensate for the loss of the patient's income to the community home.

An applicant's countable resources cannot be more than \$2,000. An applicant can own some items that are considered exempt resources and do not count against the \$2,000 limit. An applicant can have a home, one automobile, a pre-need burial plan and burial plots for members of their immediate family. These items will not count against the \$2,000 resource limit.

### ***Is it legal to make gifts to spend down resources for Medicaid nursing home care?***

If someone makes a gift of their assets and later seeks to qualify for Medicaid nursing home care, they will receive a penalty. The penalty is disqualification from Medicaid eligibility for a period or times based on the value of the gift. As of September 2003, Congress penalizes any transfer over \$2,908 per month. Medicaid defines transfers as a monetary gift, including gifts to children. Caseworkers add up all the gifts in the past five years to calculate the penalty months for the transfers. Before gifting assets away for Medicaid planning purposes, consult an attorney. Probate courts, adult protective services and other courts apply different rules for gifts. Beware of fraudulent transfers favoring creditors. For more information contact the Texas Health and Human Services Commission or any other senior advocacy group.

### ***Does the welfare department take a lien on your homestead when you go on Medicaid?***

In 2003, the state legislature amended the state statute to enforce the federal homestead lien. When the last spouse dies in a nursing home or on some other services, the welfare department will make a demand for repayment of what it paid in Medicaid. But it has to file a lien in the county deed records. Forty-eight other states have some medicaid lien. The federal laws allow the gift of a homestead under seven very narrow situations. If the legislature acted legally, some families may want to sell the homestead prior to using Medicaid. But the welfare department can dictate the form and price of that sale. It also exempts homesteads of \$100,000 if there is hardship to all the heirs. None of this is simple. Consult an attorney.

# **RESIDENTIAL SERVICES AND PLACEMENT**

## ***What types of residential services and placement alternatives exist for seniors?***

A wide variety of residential services and placement alternatives exist for seniors within the Houston area. They include senior centers, adult day care, in-home services, retirement centers, assisted living, personal care homes, and nursing homes.

## ***What are senior centers?***

Senior centers offer daily programs (Monday through Friday) for senior citizens, which generally include a hot noon meal and a variety of social and health maintenance services such as information and referral, recreational activities, and exercise programs. Harris County operates over 50 senior centers, most of which are at least partially government funded. Members of the Houston Bar Association Elder Law Committee visit some of the senior centers on a bimonthly basis to interview eligible seniors in need of legal services offered through the Houston Volunteer Lawyers Program.

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

Adult day care facilities exist for dependent seniors who need supervision, but do not need institutionalization. They provide nursing therapy, nutritional services, health monitoring, and recreational activities, with emphasis on giving the senior an opportunity for decision-making on his or her own behalf. Several adult day care facilities exist in the Houston area. They are ideal for seniors who reside with family members who work during the day.

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

In-home services are designed to allow the senior to remain in his or her own home while receiving necessary services. Examples of such services are: primary family and home care which can include assistance with bathing, dressing, eating, cleaning the house, and doing laundry; home delivered meals; nursing services, including medication administration, injections, tube feedings, catheter care, skin care; physical therapy; occupational therapy; speech therapy; medical social work; emergency response services; and telephone visitors. Several in-home service agencies exist in the Houston area including some with programs for low-income seniors.

## ***What are retirement centers?***

Retirement centers generally offer independent living for elderly retirees. Most are apartment complexes or towers which rent exclusively to seniors. The range of services offered by retirement centers varies tremendously, but may include complete meals; laundry; housekeeping; social, recreational, and cultural activities; day trips; transportation; exercise facilities; libraries; beauty/barber shops; and religious programs. Some retirement centers offer subsidized rent for qualified individuals.

### ***What is assisted living?***

Assisted living is a special program offered by some retirement centers, designed specifically for the frail but independent senior. These residents are provided services by such staff members as licensed nurses, personal care assistants, professional nutritionists, and social directors. Such services may include dispensing medication; assistance with bathing, dressing, and personal grooming; and health monitoring.

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

Personal care homes generally consist of residential homes for small groups of elderly or disabled individuals who require supervised living, although at least one personal care apartment facility exists in the Houston area. These facilities have one or more care providers 24 hours a day who prepare meals, dispense medication, and assist the residents with bathing, dressing, personal grooming, and eating. They generally provide furniture, linens, and laundry service. Some facilities also provide transportation to and from doctor appointments. Personal care homes are licensed by the Texas Department of Health. Funding for low income residents of such facilities is available through various programs of the Texas Department of Human Services and the Mental Health and Mental Retardation Authority. You should request to see the home's state license and local health and fire inspections. Personal care homes are an ideal placement alternative for individuals who need supervised living, but do not require the level of care provided by a nursing facility.

### ***What are nursing homes?***

Nursing homes are the most familiar type of residential placement facility for seniors. They offer the most sophisticated level of nursing care, short of hospitalization, but allow their residents to exercise less independence than other types of facilities. Nursing homes are licensed and monitored by the Texas Department of Health. Funding is available for eligible nursing home residents through Medicare and Medicaid.

### ***How should I choose which type of facility is best for me or my loved one?***

The most important consideration should be allowing the senior the greatest independence commensurate with his or her mental and physical abilities in addition to the usual factors to be considered such as cost, location, atmosphere, and violations of licensing requirements.

# **SUBSIDIZED HOUSING**

## ***What is subsidized housing?***

If you are healthy but on limited funds, you may consider applying for subsidized housing, public housing or a subsidy from your landlord. There are many types of subsidized housing, including apartments operated by the Houston Housing Authority, which are not dependent on Congressional appropriations for the number of "slots" that will be available for residents.

## ***What types of housing subsidies exist?***

There are a number of publicly and privately subsidized apartments and homes. Some are identified by federal law section numbers such as "Section 8," "Section 221d3" and "Section 236" housing. Some of these types of subsidized housing depend on Congressional appropriations. The Federal Housing Administration's Housing and Urban Development Office maintains a comprehensive list of subsidized housing. Organizations such as the United Way Information and Referral Service also maintain lists of subsidized housing provided by private and religious charities.

Subsidized housing also is available in the Texas Medical Center area for those who need temporary housing because they are receiving medical treatment. For information, contact your physician or social worker.

## ***How do I apply for subsidized housing?***

It is necessary to have your name placed on a waiting list for most subsidized housing, since the demand is so great. To apply for subsidized housing, call the Houston Housing Authority to find out if a housing program's waiting list is open and ask for an application. Persons with complaints about subsidized housing have the right to a hearing, except in housing developments operated by some private charities.

# **WILLS**

## ***Who needs a Will?***

Anyone who is 18 years of age or over or anyone who is less than 18 years of age and married or is a member of the U.S. armed forces and wants to direct the disposition of his or her assets at his or her death needs a Will.

## ***How often do I need to change my Will?***

Any time a significant change occurs in your life, you need to review your Will to determine if it still fits your needs. A significant change would be considered a marriage, divorce, birth, death, a move, a change of jobs, or a significant change in health or wealth. This also should include any time there is a change in the law regarding estate taxes which may cause your estate to be taxable.



### ***Where does my property go if I do not have a Will?***

The State of Texas has laws that determine how your property passes to family members upon your death. Your property will not pass to the state. However, you may want your property to go to certain family members other than those the state requires to inherit your property. If you have children, your surviving spouse or the children may inherit the property depending on the facts in each case.

### ***How do I make a Will?***

You should consult with an attorney to have him or her prepare a Will for you.

A Will should be signed in front of two witnesses who are not related to you or are named as beneficiaries in your Will.

### ***Does a Will have to be notarized?***

No. However, most Wills prepared by attorneys will be self-proving Wills. That means that the witnesses and the person making the Will swear in front of a notary that the Will was signed properly. If a Will has this self-proving sworn statement attached, the witnesses will not have to attend the probate hearing after the maker of the Will dies.

### ***Can I write my own Will?***

Although we do not recommend that you write your own Will, Texas law does allow it. If you do write your own Will, you must hand write the entire Will and date and sign it. You should state whom you want to receive your money and property after your death. You do not need witnesses if the entire Will is in your handwriting.

### ***If I am very ill, can I still sign a new Will?***

Yes, if you understand that you are making a Will and know what you own. You need to know who are the members of your family or other important people in your life and what each is to receive. You must understand all this at the time you sign your Will.

### ***What should be included in my Will?***

A Will should:

1. state what you want to happen to your money and property after your death;
2. appoint an independent executor without bond to handle your affairs;
3. revoke any prior Wills; and
4. provide for a guardian of any minor children.

A Will should not be used as a primary method for organ donations or burial instructions because the Will may not be reviewed until days after your death.

### ***What property is not controlled by my Will?***

Some property passes outside of your Will and is not subject to probate. Non-probate assets may include certain bank and stock accounts, U.S. Savings Bonds, life insurance, and retirement benefits if they have a named beneficiary other than your estate.

### ***How can I change or cancel my Will?***

1. By making a new Will that states it is revoking all prior Wills;
2. By destroying your Will; or
3. By signing a codicil or an amendment to your Will. A codicil is a document that makes changes to your Will but does not cancel your entire Will. A codicil has to be signed just as a Will is signed.

### ***Why does it matter whether property is classified as separate or community?***

Your Will disposes of all of your separate property and your one-half of the community property you own with your spouse. Your Will does not dispose of your spouse's separate property or your spouse's one-half interest in the community property.

### ***What is community property?***

Community property is all property acquired by a husband or a wife during marriage unless acquired by gift, inheritance, or a personal injury settlement. Income on separate property is also community property. It does not matter who earned the money or whose name appears on the account. Community property is owned one-half by the husband and one-half by the wife.

### ***What is separate property?***

Separate property is any property acquired before the marriage and any property acquired by gift, inheritance, or personal injury settlement during the marriage.

### ***What can I do to make sure my pets will be maintained when I die or become disabled?***

A pet trust can be created to be sure your pet receives proper care after you die or in the event of disability. In your will, you give your pet and enough money or other property to a trusted person or bank (the "trustee") who is under a duty to make

arrangements for the proper care of your pet. The trustee will deliver the pet to your designated caregiver and then use the property you transferred to the trust to pay for your pet's expenses. You may create a pet trust either while you are still alive or when you die by including the trust provisions in your will.

## **BANK ACCOUNTS AND SAFE DEPOSIT BOXES**

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

This depends on what your original signature card stated when you opened the account. Some types of bank accounts pass under the terms of your Will and some accounts override the terms of your Will. The following is a list of common accounts that banks offer and how each passes after death:

1. **Multiple-Party Account Without Right of Survivorship** — This account is established in two names. Each person on the account has an ownership interest in the account equal to the amount each contributed. The bank may pay any sum in the account to a name on the account at any time. Your rights in the account pass under the terms of your Will to your heirs. In other words, your heirs will inherit the amount you owned in the account at the time of the death.
2. **Multiple-Party Account With Right of Survivorship** — This account is established in two names and functions in the same way as the above account. The only difference is that the survivor of the two inherits whatever is left in the account. This type of account overrides your Will.
3. **Payable on Death Account (POD)** — This account will belong to the person establishing the account (the "Depositor") as long as that person is alive. However, when the Depositor dies, the property will pass to the beneficiary named when the account was established. This type of account overrides your Will.
4. **Convenience Account** — This account is established in two names, the Depositor and the Co-signer. The Co-signer may write checks for the convenience of the Depositor as long as that person is alive. However, at the Depositor's death, the money does not pass to the Co-signer. Instead, it will pass to the beneficiaries named in the Depositor's Will. The bank may pay funds in the account to the Co-signor before the bank receives notice of the Depositor's death.



5. **Trust Account** — A trust account is an account in the name of one person as trustee for another person, who is the beneficiary. During the trustee's life the property belongs to the trustee. During this time, the beneficiary has no rights to the account. At the trustee's death, the money passes to the beneficiary.

***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 name of two or more persons jointly, any one of the persons is entitled to access to the box and shall be permitted to 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 I have a safe deposit box in my name only, who can get into the safe deposit box after my death?***

The bank should allow the following persons to examine the safe deposit box, without a Court Order:

1. the surviving spouse;
2. the parents;
3. any adult children or grandchildren; and
4. a person named as executor who presents a copy of a document that appears to be the Will of the box holder.

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

The bank is allowed to deliver the Will to the probate clerk, or to the person named as Executor. Any life insurance policies can be given to the beneficiaries and the deed to a burial plot may be given to the person examining the box. No other items can be removed from the box until court authority is obtained.

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

Only a court appointed guardian of the mentally incapacitated box owner is allowed access to the box.

# **TAX ISSUES**

## ***How do I avoid paying estate taxes?***

If your estate is less than the applicable exclusion amount, no estate taxes will be due upon your death. The applicable exclusion amount is \$2,000,000 in 2007. It then increases as shown in the chart (at right). At the same time, the top estate tax rates are scheduled to decline. Per the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax is "repealed" - but only for one year: 2010. It is doubtful that the provisions of the 2001 tax law will remain intact as passed (and the changes themselves are "repealed" in 2011, absent further action by Congress).

**NOTE:** In determining the size of your estate, all assets in which you own an interest (probate and non-probate) must be taken into account (including life insurance, assets held in a living trust, qualified retirement plan benefits and

<b>Year</b>	<b>Top Rate</b>	<b>Estate Tax Exclusion Amount</b>
2005	47%	\$1,500,000
2006	46%	\$2,000,000
2007	45%	\$2,000,000
2008	45%	\$2,000,000
2009	45%	\$3,500,000
2010	Repealed	Unlimited
2011	55%	\$1,000,000

IRAs). Since Texas is a community property state, only one-half of the community property is included in the estate of the first spouse to die.

If you are married and your estate is larger than the exclusion amount at the time of your death, you can defer estate taxes by leaving your estate either directly to or in a qualified trust for your spouse (special rules apply if your spouse is not a U.S. citizen). The assets you give to your spouse will, however, be subject to estate tax on your spouse's death (if not spent by your spouse), together with your spouse's own property. Thus, married couples should avoid stacking too many assets in the surviving spouse's estate, causing it to exceed the applicable exclusion amount.

Married persons with combined estates larger than the exclusion amount should consider using a "credit shelter" or "bypass" trust to hold the exclusion amount owned by the first spouse to die. The trust is primarily for the benefit of the surviving spouse (and sometimes, also, children and other descendants). By naming the surviving spouse Trustee of the bypass trust, he or she can be in control of the assets. The surviving spouse can use the income and (usually also) principal of the trust for his or her health, support and maintenance. Upon the surviving spouse's death (assuming the trust was properly structured), the remaining trust assets pass free of estate taxes to descendants or other persons designated by the spouse who created the trust.

## ***If I give away my assets before I die, will I avoid the federal estate tax?***

Historically, we have been subject to a unified transfer tax system comprised of the estate tax (applicable to transfers made at death) and the gift tax (applicable to transfers made during life). Under prior law, the exemption amount was the same for

estate and gift tax purposes. Pursuant to recent tax law changes, the gift tax exclusion amount is permanently set at \$1,000,000. The 2001 tax law preserves the gift tax, even in the one year the estate tax is repealed (2010). If you make any transfers to or on behalf of other persons during your life for less than full value, these transfers are gifts, subject to the gift tax, unless they have a value less than the annual gift tax exclusion (currently \$12,000 per recipient per year) or unless they qualify for the medical or tuition exclusions. Gifts made to a spouse during life, either outright or in a qualified trust, are not immediately subject to gift tax because of the marital deduction (again, certain limitations apply to spouses who are not U.S. citizens). Transfer taxes on these assets will not be due until the spouse transfers the assets (either during his or her lifetime or on his or her death). Thus, lifetime transfers which do not qualify for an exclusion or the marital deduction are treated as gifts, and must be reported to the Internal Revenue Service. These reported gifts made by a person during life use up part of that person's estate tax exclusion amount otherwise available at death, and are taken into account in the federal estate tax return. Thus, estate tax is *not* avoided on assets transferred during lifetime to the extent such transfers are reportable as "taxable" gifts.

***Does a beneficiary of my estate or of a gift I make have to pay the estate or gift tax?***

The applicable transfer tax (estate or gift tax) is assessed against the person making the transfer (a decedent's estate or the giver of a lifetime gift). No gift tax is actually due until the total of all lifetime gifts exceeds the applicable exclusion amount (\$1,000,000 beginning in 2002). A person making a taxable gift must timely file a gift tax return and pay any gift tax due. The executor of a decedent's estate must timely file the federal estate tax return (for estates over the applicable exclusion amount) and pay the federal estate tax due, if any. In some cases, the tax is apportioned to (charged against and recovered from) the recipient.

***What will my basis be, for income tax purposes, in assets I receive by gift or inheritance?***

Under current law, a person who receives a lifetime gift takes a "carryover basis" (i.e., maintains the same basis that the giver of the gift had in the asset), while a person who receives a gift under a Will or by inheritance upon another person's death receives a new basis equal to the fair market value of the asset on the person's date of death (or on the alternate valuation date, six months after the date of death, if that applies). Because the value of the asset is frequently higher on the deceased person's date of death than its original basis, this re-valuation is often referred to as a "step up" in basis. Under the 2001 tax law, however, in the year that the estate tax is repealed (2010), a modified carryover basis rule applies. An adjustment in basis to fair market value will be available to estates of decedents dying in 2010 only to the extent of \$1.3 million unless the decedent was married. A married decedent's assets passing outright to or in a qualifying trust for a spouse can receive a \$3 million increase in basis for those assets.

### ***Does the State of Texas have an estate tax?***

During the recent past, the State of Texas has had an inheritance tax regime tied to the federal estate tax system. Historically, if you did not have a taxable estate for federal estate tax purposes, then you would not owe a Texas inheritance tax. If your estate did owe a federal estate tax, the State of Texas would be entitled to all or a portion of the "credit for state death taxes" allowed in the federal estate tax return (based on the percentage of your estate taxable in Texas). This inheritance tax scheme changed because the 2001 tax act shrinks the allowable state death tax credit over the next few years until it was totally repealed in 2005. Thus, to prevent a drop in state revenues, Texas may return to an inheritance tax system independent of the federal estate tax laws. As of July 2007, Texas does not impose an estate or inheritance tax on persons who die domiciled in Texas.

## **IRAs**

### ***Who should be your IRA Beneficiary?***

The only way to ensure that your IRA funds are passed along to whom you want in a tax advantaged manner is to make sure that you put your intentions in writing with your IRA custodian. You may have named an IRA beneficiary many years ago when you opened the account. You should review this information periodically, but especially when your personal circumstances change. On the other hand, if you do not name beneficiary, the default beneficiaries spelled out in your IRA custodian's document will determine who will receive the assets. In some cases, these assets could go to your next of kin or even to an estranged spouse.

IRA beneficiaries are described generally as being a spouse or non-spouse. Furthermore, your IRA beneficiary can be a person, a trust or a charity. Each designation has particular pros and cons that you need to weigh carefully in order to make sure your wishes are executed tax efficiently.

### **Your spouse as Beneficiary**

**Pro:** Your surviving spouse can make a tax-free rollover of your IRA into an IRA in his or her own name. If a rollover is made, distributions from this account are taxed at your spouse's rate and any required minimum distributions are calculated based on the spouse's age.

**Con:** Leaving your IRA to your spouse may mean that your tax-free federal estate tax exclusion amount, up to \$2,000,000 in 2007, is not used. If you have substantial assets, you should speak to an estate tax professional who can offer suggestions on how to reduce the tax liability for your family's current and future generations.

### **Beneficiaries other than your spouse**

**Pro:** If you leave your IRA to your children or grandchildren, your IRA may be given a second life that can provide your heirs with a lifelong stream of income. In addition, the inherited IRA could continue to grow tax-deferred for many additional years, if the transfer of assets is handled properly. All distributions from inherited IRAs are exempt from any 10% premature distribution penalty and, in any given year, the non-spouse beneficiary is allowed to accelerate distributions without penalty.

**Con:** Non-spouse beneficiaries are not allowed to roll inherited IRAs into their own IRA. If the IRA is not passed along correctly, taxes may be due immediately. While your non-spouse beneficiaries have the opportunity to defer income taxes on your IRA for many years, any estate taxes must be paid in cash no later than nine months following your death. Minor children may not inherit an IRA until the age of majority. A trusted custodian must be designated for the child, or else the local probate court will appoint someone to handle the account for the child.

### **A Trust as a Beneficiary**

**Pro:** Having a trust as a beneficiary ensures that the assets will be professionally managed according to your wishes. A trust may provide you and your heirs with asset protection from creditors.

**Con:** In most cases, designating your estate or your trust as a beneficiary entails the expense of professional asset management. Also, your beneficiaries may be locked into the terms of the trust without the ability to manage the assets as they might choose.

### **Charities as Beneficiaries**

**Pro:** Leaving IRA assets to a charitable beneficiary may be more tax-efficient than leaving the assets to a person since these assets are not subject to estate taxes or income taxes.

**Con:** Assets left to a charity will be totally removed from your family.

Selecting the right beneficiary for your IRA can be complicated. Remember to look at your IRA assets in context with the rest of your estate before making any decisions. You should discuss the subjects of beneficiaries, wills and other estate matters with your tax professional to be sure your decisions are appropriate for your situation.

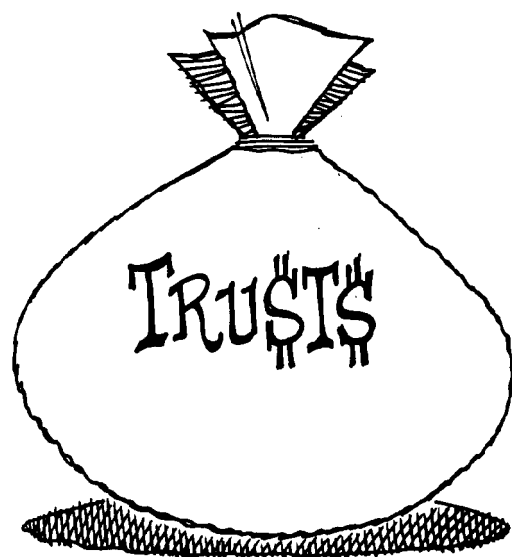
## **TRUSTS**

### ***What is a trust?***

A trust is created when a property owner (Trustor/Grantor/Settlor) transfers legal title of an asset to a person (Trustee) who has the duty to hold and manage the asset for the benefit of one or more persons (Beneficiaries). The terms and provisions of the trust are contained in a document called a Trust Agreement, or in the property owner's Will. The trust relationship imposes "fiduciary" duties on the Trustee to manage the property for the benefit of the Beneficiary (i.e., the Trustee must be loyal and fair to the Beneficiary in handling the trust).

### ***Who can create a trust?***

Any person who has legal capacity can create a trust.



### ***Who can be a Trustee?***

Any person who has legal capacity or any corporation which has powers to act as a Trustee in Texas can be a Trustee. A trust can have more than one Trustee. Sometimes the Trustor also acts as Trustee. As to who should be Trustee, generally, a trustworthy, prudent person with good judgment should be named if a professional trustee is not appropriate or desirable.

### ***What are the various kinds of trusts?***

Trusts can be divided into two major categories based on when and how they are created: testamentary trusts and inter vivos trusts. A testamentary trust is created in a Will and comes into being upon the death of the Testator (or at some future time after that). An inter vivos trust is created during the life of the Trustor. Inter vivos trusts can be revocable or irrevocable. Both testamentary trusts and inter vivos trusts provide for the management of the assets transferred to the trust.

### ***Why would I want to create a testamentary trust?***

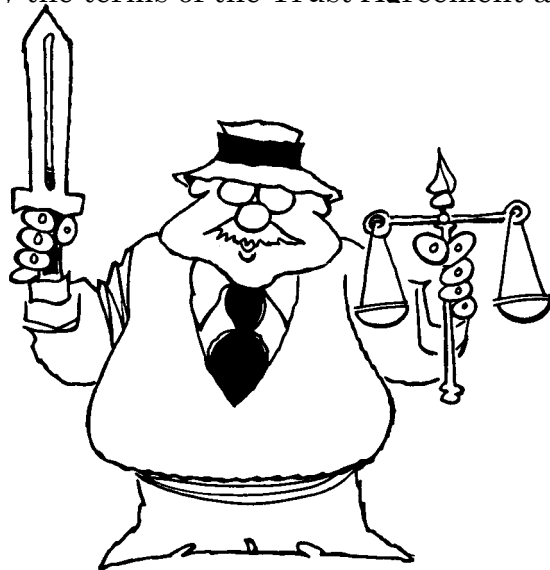
Testamentary trusts are often created to provide for management of assets, creditor protection, ultimate control over the disposition of assets and tax benefits. Providing for assets to pass in trust, rather than outright, may be appropriate for minors, adults suffering from a disability, persons who are spendthrifts, or those perceived by the Testator to lack management skills or good judgment. Substantial estate tax benefits can be achieved by the use of a "bypass" or "credit shelter" trust in the case of a married couple.

### ***Why would I want to create a Living Trust?***

Revocable inter vivos trusts, sometimes called "Living Trusts," provide for asset management during the lifetime of the Trustor and can provide for the disposition of the assets held in trust after the death of the Trustor. One of the principal advantages of a revocable inter vivos trust is that it may avoid the necessity of a guardianship if the Trustor becomes incapacitated. Such a trust may act as a Will substitute for the assets held in trust at the death of the Trustor. The property held in trust passes to the designated beneficiaries at the Trustor's death by the terms of the Trust Agreement and is not part of the probate estate. Revocable inter vivos trusts are also useful if the Trustor owns real property in other states. Once the real estate is transferred to the trust, there is no need for probate proceedings in the other state(s) on the death of the Trustor.

### ***Do Living Trusts avoid probate and is it a good idea to avoid probate?***

Living trusts avoid probate if all of the decedent's assets are transferred to the trust before his or her death. If an asset is not transferred to the trust before death, then the deceased person's Will most likely will have to be probated to pass clear title to the asset. In



Texas, we have a simple probate process that provides for "independent" administration of decedent's estates. If an independent executor is properly named in a Will, the only court involvement in the estate, absent litigation, is to "admit the Will to probate" (i.e., declare it to be valid), to officially appoint the independent executor, and to approve the Inventory and List of Claims. Therefore, probate avoidance alone would not be a compelling reason to create a revocable inter vivos trust.

### ***Do revocable inter vivos trusts save taxes?***

The mere creation of a revocable inter vivos trust (living trust) does not have any income or estate tax advantages. It is, however, possible to structure the provisions of the trust which take effect upon the death of the Trustor to take advantage of certain estate planning techniques (e.g., a bypass trust), just as the Trustor could otherwise do in a Will.

## **PLANNING FOR INCAPACITY**

### ***What does the term "incapacitated" mean?***

A person is incapacitated if, because of a physical or mental condition, the person is substantially unable to provide food, clothing, or shelter for himself or herself, to care for his or her physical health, or to manage his or her financial affairs. Merely advanced age or hospitalization does not automatically mean that a person is incapacitated.

### ***How can I provide in advance for the management of my financial affairs should I become incapacitated?***

As you grow older and the possibility of becoming incapacitated increases, it is wise to consider choosing a trusted friend or family member who will have the legal authority to manage your financial affairs without incurring the expense of a guardianship. This is done by executing a Statutory Durable Power of Attorney. A Power of Attorney is a legal document in which one person (called a principal) appoints another person (called the attorney-in-fact) to manage the principal's financial affairs. A Power of Attorney will automatically terminate upon the principal's incapacity under Texas law unless it is durable, that is, unless it contains language to the effect that "This power of attorney is not affected by subsequent disability or incapacity of the principal."

### ***Who will make medical decisions for me should I become incapacitated?***

By executing a Medical Power of Attorney, you can appoint one or more persons whose judgment you trust to make your medical and health care decisions should you be unable to do so yourself. You can give your agent complete authority to make medical decisions or you can limit his or her authority. Without a Medical Power of Attorney, an adult surrogate can consent to medical treatment on your behalf if you become incapacitated or comatose. The adult surrogate, in the following order of priority, is: your spouse, your adult child, your parents, an individual identified to act on your behalf before incapacity, your nearest living relative, or clergy.

### ***Can any person receive my protected medical records and information?***

You may authorize any person to receive your medical information by executing a HIPPA Authorization form. This form authorizes your health care provider to disclose your medical information to anyone you designate.

### ***What is a Living Will?***

A living will is a common name for a document entitled “Directive to Physicians and Family or Surrogates.” A Directive allows you to direct that life-sustaining procedures such as use of a respirator be withheld or withdrawn if, in the judgement of your physician, you are suffering with a terminal condition from which you are expected to die within six months, or you are suffering from an irreversible condition such that you cannot care for or make decisions for yourself and you are expected to die without life-sustaining treatment.

### ***Why do hospitals always ask whether patients have a Medical Power of Attorney or a Directive to Physicians and Family or Surrogates?***

Federal law requires hospitals and nursing homes to ask whether incoming patients have advance directives. If the patient doesn’t have them, the hospital or nursing home is required to advise about the availability of such documents under local law. The inquiry is meant for the benefit of the patient, and while advance directives are a good idea, they are not required to receive treatment.

### ***What is the difference between a Medical Power of Attorney and a Directive to Physicians and Family or Surrogates?***

A Directive to Physicians and Family or Surrogates has very limited application. It only applies to one medical treatment decision, the decision to withhold or withdraw life support when death is imminent. A Medical Power of Attorney covers all medical treatment decisions.

### ***Can I designate in advance who I wish to serve as my guardian if a guardianship of my person or my estate should become necessary?***

Yes. As long as you are not incapacitated, you can execute a Declaration of Guardian in the event of later incapacity or need of a guardian. You can designate a guardian of your person and of your estate in this form. Additionally, you can disqualify a particular person or persons from serving as your guardian. The designation can be revoked or changed anytime before you become incapacitated.

### ***When should I plan for incapacity?***

The sooner the better. If you become incapacitated without advance planning, it may become necessary for surrogates to make medical decisions for you, as discussed above, or for a guardianship of your person and/or estate to be established as discussed in the next section.

# **GUARDIANSHIP**

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

Any interested person may file an application with the proper court requesting that a guardian be appointed for a person believed to be incapacitated.

## ***For purposes of guardianship, what is an incapacitated person?***

When a person is unable to provide food, clothing or shelter for him or herself, to care for his/her physical needs, or to manage his or her own financial affairs due to a mental or physical condition, he or she may be found to be incapacitated, and placed under guardianship. A minor is also considered incapacitated.

## ***Are there varying levels of incapacity?***

Yes. The doctor treating the person who is incapacitated must specifically set out in his or her letter to the court the mental or physical basis for the incapacity and the extent of incapacity. He or she does so by answering questions concerning that person's ability to drive, vote, enter into a contract, manage money, and other acts.

## ***If a guardian is appointed, can a person retain certain rights and powers?***

Yes. A judge may appoint a guardian for an incapacitated person, but limit the guardian's powers so that all rights and powers except those granted to the guardian are retained by the incapacitated person.

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

Generally, there is a guardian of the person and a guardian of the estate. The guardian of the person has the duty and power to provide the incapacitated person with clothing, food, medical care, and shelter. The guardian of the estate has the duty and power to manage the incapacitated person's financial affairs. One person can fill both positions. And, you may have a guardian of the person only or a guardian of the estate only; you do not have to have both.

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

The court will appoint a guardian for an incapacitated adult person in the following order of priority:

1. the incapacitated person's spouse;
2. the person's nearest of kin;
3. an eligible person who is best qualified to serve.

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

A person may not be appointed guardian if the person is 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.

***Is an alleged incapacitated person represented by an attorney?***

Yes. When a guardianship is filed, the court appoints an attorney ad litem to represent the interests of the alleged incapacitated person. The person may also retain his or her own attorney.

***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 to be paid out of the incapacitated person's estate. If the incapacitated person's estate is insufficient to pay for the cost of the proceeding, such costs may be paid by the county treasury.

***What rights does the incapacitated person have?***

The 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, demand a jury trial and request that the hearing be closed to the public. An incapacitated person retains all legal and civil rights and powers, except those designated by the court's order appointing a guardian.

***How soon can a guardianship hearing be held?***

The soonest date to schedule a hearing is the Monday following the expiration of 10 days after the alleged incapacitated person and certain interested persons have been personally served with the application for guardianship.

***What happens at the hearing?***

The person who filed the application must prove the incapacity through testimony and medical evidence. The alleged incapacitated person has a right to bring his or her own witnesses to court and also the right to speak to the judge. The alleged incapacitated person may also request a jury trial. The judge or jury will determine if the person is incapacitated.

***Upon appointment, how does a guardian qualify?***

The guardian must file an oath and post a bond in the amount set by the court to insure proper performance of his or her duties.

***Does the guardian have reporting requirements to the court?***

Yes. The guardian of the estate must file an inventory within 30 days of qualifying. The inventory must list all assets of the incapacitated person coming into the guardian's hands and all debts owed to the estate. The guardian of the estate must file an investment plan within 120 days of qualification. The guardian of the estate must file an annual account to report all receipts and disbursements. The guardian of the person must file an annual report on the location, condition and well-being of the incapacitated person.

***What if there is an immediate need for the appointment of a guardian?***

A temporary guardian can be appointed if an alleged incapacitated person or his or her property is in imminent danger.

***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, and is entitled to be served with a copy of the temporary guardianship application. The court must appoint an attorney to represent the alleged incapacitated person at the time the application is filed. The court must hold a hearing no later than 10 days after the date of filing the temporary guardianship, unless the hearing is postponed, to determine whether there is a need for a temporary guardianship.

***What is the length of a temporary guardianship?***

Generally, a temporary guardianship may not exceed 60 days. However, if there is a contest or challenge to a permanent guardianship application, the court may appoint a person to serve as temporary guardian until the contest is resolved.



# **MENTAL HEALTH COMMITMENTS**

## ***What is considered mental illness?***

The Texas Mental Health Code defines mental illness as an illness, disease, or condition which either:

1. substantially impairs the person's thought process, perception of reality, emotional process, or judgment; or
2. grossly impairs behavior as manifested by recent disturbed behavior.

## ***On what grounds can a person seek a mental health warrant for involuntary commitment?***

A person may seek a warrant for commitment for someone who:

1. shows signs of mental illness or is a chemically dependent person; and
2. shows a great risk of serious harm to him or herself; or shows a great risk of serious harm to others; or without treatment, will continue to deteriorate to the degree that he or she will pose a danger to him or herself; and
3. that the risk of harm is imminent unless immediately restrained; and
4. that these beliefs are based on recent behavior, acts, attempts, or threats.

## ***Who may seek a mental health commitment?***

Anyone 18 years of age or older with personal knowledge of the person's recent disturbed behavior can sign the affidavit necessary for commitment. The affidavit should be completed and filed at Harris County Psychiatric Center.

## ***What happens after the affidavit is completed?***

A judge reviews the affidavit. If it appears to indicate mental illness, the judge signs an order for emergency detention, which is delivered to the constable's office. This order gives the constable the authority to detain the person.

## ***What happens when a person is detained by the constables?***

The constables will take the person to the mental health hospital where treatment has been arranged. A doctor must examine the person and complete a Certificate of Medical Examination within 24 hours, or if the 24 hour period ends on a Saturday, Sunday or legal holiday, by 4 p.m. of the following business day.

## ***What happens after the doctor's examination?***

Based on the doctor's recommendation in the Certificate, either the person is released or an Order for Protective Custody (OPC), which is the basis for a hospital to hold a patient until the court hearing, is issued.

***What hearings is a person entitled to while under an order for protective custody?***

The first hearing is a probable cause hearing which must be held within 72 hours of the date of the Order for Protective Custody. The second hearing is a final hearing to be held usually within 7 to 10 days of the date of the Order for Protective Custody.

***Does a person who has been detained on a mental health warrant have a right to an attorney?***

Yes. An attorney is automatically appointed to represent him or her, although he or she still has the right to hire his or her own attorney.

***What is a probable cause hearing?***

A probable cause hearing is held before a Judge or magistrate. The purpose is to determine whether or not a person should be held at the facility until the final hearing. The evidence presented generally consists of the Certificate of Medical Examination and the affidavit of the person who applied for the commitment and perhaps personal testimony from the patient.

***What is a final hearing?***

A final hearing is held before a Judge or jury to determine if the person should be committed to a mental health facility for up to 90 days. A second doctor must have examined the patient and completed a second Certificate of Medical Examination prior to the hearing. Both a doctor and either the person who executed the affidavit or someone else who has personal knowledge of the patient's recent behavior must be present and testify at the hearing.

***What happens after the final hearing?***

A person is either released from the mental health facility, or committed to out-patient treatment, or committed for up to 90 days in a mental health facility. Rarely are patients held the entire 90 days before being discharged by the treating physician. Often, discharge after commitment occurs within days or a few weeks. If committed, the patient retains the right to choose his or her treating physician. A patient also retains the right to request a rehearing on the commitment, or a re-examination of their condition, for good cause shown. A patient may also request a preferential appeal of an Order for Mental Health Services.

# **PROBATE AND ESTATE ADMINISTRATION**

## ***What is probate?***

Probate is the court procedure by which a Will is proved to be valid or invalid. When a Will is proven to be valid in court, it is “admitted to probate.” However, the term probate is sometimes used to include generally all proceedings related to the administration of estates. Most probate proceedings are initiated by the filing of an application to probate a Will or for administration and require a hearing in court.

## ***What is the time limit for filing a Will for probate?***

Generally, a Will may not be admitted to probate more than four years after the date of death.

## ***What does the administration of an estate involve?***

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying his or her debts, expenses and taxes of the estate, and (3) distributing the remaining assets to those who are entitled to have them under the terms of the Will or to the heirs determined under the laws of intestacy.

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

An independent administration is the administration of an estate without court supervision and without the extra time and expense required to obtain court permission for each administrative decision. Once an executor or administrator is appointed and qualifies in an independent administration, the court only requires that he or she provide proper notice to creditors and beneficiaries, and file a sworn inventory, appraisal, and list of claims within 90 days.

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

An independent administration may be created in the Will or by the probate court with the permission of all of the beneficiaries of the estate. To create an independent administration by Will, the Will must contain language showing the decedent’s intent that the administration not be subject to court supervision. Under certain circumstances, the probate court can create an independent administration when all the persons entitled to distribution from the estate agree.

## ***What are an executor and an administrator?***

An executor is the person or institution named in a Will to administer the estate. If there is an independent administration, the executor is relatively free of court control in carrying out his or her duties and usually the administration of a simple estate may be completed in a short period of time. An administrator is the person or institution appointed by the probate court to administer an estate when no executor qualified to serve is named in the Will or there is no Will.

### ***What are Letters Testamentary and Letters of Administration?***

Once an executor or administrator has qualified, he or she has authority to act for the estate. Letters Testamentary are issued by the County Clerk's office as evidence of the executor's authority to act on behalf of the estate. Letters of Administration are issued for the same purpose to an administrator appointed by the probate judge.

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

A dependent administration is an administration of the estate in which the court chooses and appoints an administrator and closely supervises and controls the actions of the administrator. In a dependent administration, the administrator must be bonded, file annual and final accounts, and apply for court orders for almost every act performed.

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

A dependent administration is necessary when (1) a person dies without a Will, (2) the Will names no executor, (3) the Will names an executor who predeceased the testator and no successor is named in the Will, or (4) the executor named in the Will fails or ceases to qualify after the Will is admitted to probate or fails to present the Will for probate.

### ***If a person dies without a Will, how are the heirs of the estate determined?***

If a person dies without a Will (intestate), the heirs and their shares of the estate must be determined in an heirship determination proceeding. In this proceeding, all facts concerning the identity of all heirs must be produced at a hearing. An attorney ad litem will be appointed by the court to represent the interests of any unknown heirs, known heirs who cannot be located, and heirs suffering from legal disability.

### ***If a person dies intestate leaving a surviving spouse, what does the surviving spouse inherit?***

1. If the deceased person had no children, his or her surviving spouse inherits all of the deceased person's interest in the community property, all of the decedent's separate personal property and one-half (or sometimes all) of the decedent's separate real property.
2. If the deceased person is survived by children or descendants of children, all of whom were also descendants of the surviving spouse, the surviving spouse would inherit all of the community property, but only one-third of the separate personal property and a one-third interest for life in the decedent's separate real property.
3. If the deceased person is survived by children or descendants and at least one child who was not also a descendant of the surviving spouse, the surviving spouse would inherit none of the deceased person's interest in the community property, one-third of the separate personal property and a one-third interest for life in the decedent's separate real property.

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

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

1. Probate of the Will as a muniment of title.
2. Heirship determination.
3. Application for no administration.
4. Small estate affidavit.
5. Affidavit of heirship.
6. Informal family agreements.

### ***What does probating the Will as a muniment of title mean?***

The Will is admitted to probate, but no executor is appointed, even though one is named in the Will. The Will and the order admitting the Will to probate are filed in the county deed records and constitute a chain of title to real property, showing the new ownership in title to the property.

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

A court can order the probate of a Will as a muniment of title only when there are no unpaid debts, excluding debts secured by liens on real estate, and there is no need for administration. Although the Will must be proved to be a valid will at a probate hearing, no executor will be appointed. The court's order admitting the Will to probate is legal authority to all persons (1) owing any money to the deceased, (2) having custody of any property of the deceased, (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right belonging to the estate or (4) purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the Will as entitled to receive the particular asset, without any administration. After the Will has been probated as a muniment of title, the beneficiaries of the estate become the owners of the property.

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

An order determining heirship when coupled with an order of no necessity for administration constitutes sufficient legal authority to all persons owing money, having custody of property, or acting as transfer agent, of any interest, indebtedness or property belonging to the estate, and for persons purchasing or otherwise dealing with the estate, for payment or transfer to the heirs as determined in the court's order.

### ***What are the requirements for a Small Estate Affidavit?***

The requirements for the collection of a small estate by affidavit are:

1. no will being offered for probate and no petition for dependent administration pending;
2. the value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000;
3. thirty (30) days must have elapsed since the Decedent's death;
4. two disinterested witnesses must file a sworn affidavit concerning heirship.

### ***What is the effect of a Small Estate Affidavit?***

Persons dealing with distributees of assets from the small estate are released to the same extent as if they had dealt with a personal representative of the estate. Distributees can bring action to force delivery of estate property. The distributees will be liable to creditors or anyone else having a prior right to the property. This procedure does not transfer title to real property, except for a homestead.

### ***What happens if I die owning real property outside of Texas?***

Each state has jurisdiction and control over the real property inside its own borders. For that reason, probating an estate in Texas does not give an executor or administrator appointed in Texas any authority over property located in any other state. When a person dies owning real property (including royalties and/or other mineral interests) outside of Texas, the Texas executor or administrator of his or her estate usually has to open an “ancillary administration” in order to pass title to the property in that other state to the proper beneficiary or otherwise to transact business relating to that property. The expense and difficulty of ancillary administrations varies from state to state; however, a person may avoid this added expense and difficulty by disposing of such real property during life or by placing it in a lifetime trust for the reasons stated in the section on Trusts.

## **BURIAL PROVISIONS**

### ***Who has the right and/or obligation to bury a deceased person?***

The family of the deceased has the duty to bury or inter as well as an obligation to pay the burial costs, unless there is a written pre-death directive or a prepaid funeral plan. This directive may be included in a Will and the funeral home is permitted to rely on such directive, even though the Will has not been admitted to probate. In the absence of a written directive, the surviving spouse has the responsibility and obligation to pay for burial costs. If there is no surviving spouse, the order of priority rests next with the adult children, parents, adult brothers and sisters, heirs at law, a guardian, the county of residence, one performing an inquest, and finally with anyone willing to assume responsibility and liability for the decedent’s remains and the costs of burial. When the decedent is indigent, it is necessary to notify the Harris County Social Services Department within 24 hours of death. If this notice requirement is not timely met, the county will not pay any costs of the person’s burial.

### ***Must I make specific provisions if I wish to donate my body or specific organs following my death?***

The Texas Anatomical Gift Act permits anyone over the age of 18, or those under 18 with parental consent, to donate either his or her own body or specific organs. Certain donations can be shown on your drivers license or you may make another type of written designation. Substantial restrictions have been placed on donations from elderly persons. If you want to make a specific purpose gift to a certain organization, it

is important that you check in advance to see if your donation will be accepted. It is important to learn what requirements, if any, must be met before making this type of gift.

***If I should die without making an anatomical gift, can one still be made?***

The Texas Anatomical Gift Act does allow family members to donate a decedent's body or other acceptable organs. This authority to donate rests first with the surviving spouse and then, in order of priority, with the adult children, parents, brothers and sisters, heirs at law, or a guardian. When a family member of the same level of right to consent objects to any gift, it cannot be made without court intervention.

***If I desire to be cremated how should this directive be handled?***

To be certain that this wish is accomplished, you should make a pre-death written directive. There is no statutory right to cremation, and should any family member object, the funeral provider will usually be hesitant to proceed with cremation in the absence of a specific written directive. The person you request to handle the cremation should be told about your wishes and given the directive.

***May I obtain information describing burial services and costs?***

Federal regulations require that funeral home operators make no misrepresentations of the services required for burial. They must also furnish the prices for all services even if a request is made by phone. A written price list of all goods and services must also be furnished before any casket may be shown. In addition, the cost for immediate burial or for cremation must be provided.

***Are there burial services which may not be required?***

Texas law does not require that the body be embalmed unless it has not been claimed within 24 hours of death. Other goods or services that can be eliminated are flowers, police escorts, newspaper articles, and special clothing, if the decedent specifies or the family agrees. A funeral home provider must not represent to a customer that any goods or services may be required when they are not. The funeral home cannot imply that certain services will delay the body's decomposition. If cremation is chosen, the funeral home may not represent that you need a casket of other than unfinished wood, cardboard, or canvas material.

***Can I make funeral arrangements before I die?***

Yes. You may make necessary burial arrangements before they are needed. Several methods are available to set aside the money needed to pay for these services. Many funeral homes provide pre-need burial programs. These programs may be established after the burial services have been selected and may be funded by insurance or annuity payments. The type of plan as well as the services to be provided can be selected at a less stressful time and with more consideration being paid to the costs and needs of the individual.

***What type of death benefits are available to my survivors?***

If you are a veteran of the military, both your surviving spouse and your children may be entitled to veterans benefits. Specific information can be obtained from your regional veterans affairs office. A veteran's benefits can range from as little as \$300.00 for burial and \$150.00 for a plot to as much as \$1,500.00. The family of a veteran may also be entitled to a flag, burial in a national cemetery, transportation of the body to the cemetery and a headstone or marker. Social Security death benefits of \$255.00 may also be available to a surviving spouse, a minor child if there is no surviving spouse, or a surviving parent if there is no surviving spouse or child eligible. An application may only be made by the eligible person to the local Social Security office. The Texas legislature has provided benefits to its citizens under the Texas Criminal Victim's Compensation Act. Specific applications must be completed in a timely manner when a criminal report has been made. The family of a public safety officer who is killed or injured while on duty may seek compensation through a Federal Government program that provides a recovery of up to \$100,000.00.

***Can funds of the decedent be obtained to pay for funeral and burial expenses?***

Yes. The Texas Probate Code does have an emergency burial provision. This procedure permits family members and in some cases even non family members to access the decedent's bank accounts, insurance policies, and even a last pay check to pay for funeral and burial expenses up to a total of \$5,000.00. These payments must be made directly to the funeral home and are limited solely to funeral and burial costs of the decedent. Also, where access to the decedent's rented residence is being denied by the landlord, there is another procedure permitting a person to gain access to the premises to locate a will, insurance policies, bank accounts or other sources from which burial funds can be obtained. In Harris County, the County Clerk's office has available forms that can be completed to obtain a probate court order requiring that funeral and burial payments be made and even permitting access to a rented residence. These procedures can be commenced as soon as the decedent's death is discovered. This procedure cannot be used after the decedent has been dead 90 days. To use this procedure does not always require the assistance of an attorney. It is important to understand that when filing these forms that the probate court and the staff members are not permitted to provide legal assistance or guidance to the public with their completion.

# **HOMESTEADS**

## ***What is a residential homestead?***

A residential homestead is the real property and improvements which, when occupied and maintained as a home by a family or single adult who is not a member of a family, are protected from foreclosure for the payment of debts except for debts secured by liens for 1) purchase money, 2) taxes on the property or an IRS tax lien, 3) work and material used in constructing improvements on the property if contracted for in writing before the work is done or the material is furnished, 4) home equity loans, 5) reverse mortgages and partition liens.

## ***What is an urban homestead?***

An urban homestead may consist of a lot or contiguous lots, not exceeding 10 acres, in a city, town, or village.

## ***What is a rural homestead?***

A rural homestead may consist of not more than 200 acres of land for a family and not more than 100 acres of land for a single adult that is not located in a city, town, or village.

## ***What is a business homestead?***

Urban homesteads may be business homesteads if used both as a residential homestead and as a place of business to provide for a family or single adult. A business homestead may consist of a lot or contiguous lots not exceeding 10 acres. An urban residential homestead and a business homestead must be located within the same contiguous land.

## ***How can I obtain an over 65 or homestead exemption for real property taxes on my residential homestead?***

Cities, counties, and other political subdivisions may exempt not less than \$3,000 of the valuation on residential homesteads for any adult. A school district may exempt not less than \$15,000 of the valuation on residential homesteads for persons over the age of 65, or the surviving spouses of persons who were age 65 or over at the time of death. You can obtain an application for an over 65 exemption and a homestead exemption from your local tax appraisal district.

## ***Can I defer payment of real property taxes on my residential homestead?***

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

### ***How can property lose its homestead character?***

Property loses its homestead character when the homestead claimant dies without any of his or her family members continuing to occupy the property, or when the homestead is abandoned. Abandonment of a homestead occurs when the homestead claimant has a present, definite, and permanent intent to cease use of the property as a homestead, for example, when it is sold or when the homestead claimant designates another homestead.

### ***How can I avoid the payment of capital gains taxes upon the sale of my residence?***

There is an exclusion of gain on the sale of a personal residence for persons of any age. To qualify for the exclusion, you must have lived in and owned the residence for at least two years out of the five years preceding the date of the sale. The exclusion is up to \$250,000.00 of gain if married and filing separately or single, and \$500,000.00 if married and filing jointly.

### ***How does home equity law work and what do I need to know?***

Home equity law allows the homeowner to borrow money pledging their home as collateral. Homeowners can borrow for any reason and use their homes to secure the debt. The law has various requirements to protect the homeowner such as: the total of all loan balances against your home may not be more than 80% of the fair market value on your home; the lien may be foreclosed upon only with a court order; fees to make the loan may not exceed three percent of the loan amount; the loan may close only at the office of the lender, a title company or an attorney; and the loan may not close until 12 days after you submit a written application for credit. **If you do not repay the loan, the lender may foreclose and sell your home.** Caution should be used in getting these loans. Seniors should carefully consider the consequences of borrowing against their homes. Do not be pressured by other members of your family or "friends" in pledging your home for risky business ventures or other endeavors.

### ***How do reverse mortgages work?***

With a reverse mortgage, a homeowner receives a lump sum or regular payments based on the equity of his home. Usually these are used to provide income for retirement. Reverse mortgages



should be looked at closely. The points, fees, and interest rates can be fairly high. Loan programs vary widely, so shopping around is critical. A home equity loan is usually a better method for providing additional retirement income. Alternatively, it may be better to sell the home and move to a less expensive home, and invest the difference to provide income.

## **DRIVER'S LICENSE**

### ***How will I receive notice to renew my driver's license?***

Your license will expire on your birth date four (4) years after the date of application. A renewal notice card should be mailed to you approximately thirty (30) days before your license expires. This notice will be sent to the last address the Department of Public Safety has on file. You are still required to renew your license even if you do not receive the renewal notice.

### ***How do I renew my driver's license?***

Application for renewal must be made in person at any Texas Driver's License office, except for licensees who have received a written notice of renewal authorizing them to renew by mail. Mail renewals will not be issued to: licensees who had a moving traffic conviction within the last four (4) years; licensees whose license is suspended, cancelled, revoked or denied; or licensees whose driver's license reflects restrictions because of driving ability or medical condition that requires periodic reviews of such medical condition. On your renewal application you must answer questions concerning your medical history. You must also show proof of a social security card. You must also furnish evidence of financial responsibility to the Department of Public Safety before your driver's license can be renewed. An insurance identification card, insurance policy, self-insurance document, insurance binder or affidavit of non-ownership are examples of evidence of financial responsibility that you may provide to the Department of Public Safety. You can also renew online at <http://dps.texasonline.state.tx.us/> if you meet the qualifications listed on the web site.

### ***Can my driver's license be suspended or revoked?***

Yes. Your driver's license may be suspended or revoked if you receive four (4) or more moving violations in a 12 month period; cause an accident resulting in death or serious bodily injury; flee from a pursuing police officer; if a guardian is appointed for you and you have been found by a court to be incapacitated to drive a motor vehicle; the Department of Public Safety determines that you are unable to exercise reasonable and ordinary care while driving due to a physical or mental disability or disease; or if the Department of Public Safety finds that you have a chemical dependency likely to cause serious harm to yourself or others.

***How does the Department of Public Safety determine if I am unable to “exercise reasonable and ordinary care” while driving?***

1. The Department of Public Safety may initiate an investigation of your ability to drive if any of the following occur:

- Your doctor forwards notice to the Department of Public Safety of any physical or mental incapacity that would impair your ability to drive. (Note: your doctor is not required by law to forward this information; however, many doctors believe they have an ethical duty to do so);
- A friend or family member reports a disability;
- If when filling out your license renewal application, you indicate some medical condition which may affect your driving; or
- If you have a car accident and the officer on the scene thinks you may not be capable of being a competent driver.

2. After receiving a report from one of the above sources, the Department of Public Safety will contact you to schedule a meeting with an examiner at a local Department of Public Safety office. The examiner will look for any physical problems that may affect your driving ability and ask you questions to determine your mental alertness. If the examiner determines there are no problems, the findings are reported to the Department of Public Safety.

3. If the examiner reports a problem, the Department of Public Safety will send you a letter regarding the general disability. The letter will include forms which you are to have your doctor complete. Either you or your doctor should send the completed forms to the Texas Department of Health. Your license may be revoked if you refuse to return the forms.

Steps two and three are not required if your doctor was the one who initially contacted the Department of Public Safety.

4. The Medical Advisory Board will review the forms and decide whether you should or should not be driving. If they determine there is no problem, a letter is sent to you indicating your license will not be revoked.

5. If the Medical Advisory Board determines you should not be driving, they will schedule a hearing in front of a hearing officer, judge of a municipal court or justice of the peace in the county where you live. A letter will be sent to you indicating the date and time of the hearing. You may present new evidence at the hearing to prove you are competent to drive. The judge then will decide whether you may continue driving. If the judge decides you are not competent to drive, your license will be revoked. If the judge decides there is no problem, you will retain your license.

6. You may appeal the decision by filing a petition in the county court where you reside not later than 30 days after the order was entered. Your license is valid until the judge enters the order to suspend or revoke your license.

The telephone numbers for the Houston Area Office of the Department of Public Safety are listed in the Resource and Referral Numbers section of this handbook on page 44.

***How can I appeal the revocation or suspension of my driver's license?***

You have the right to appeal by filing a petition within fifteen (15) days after the date the order of the Department was entered, requesting a hearing on the matter in the County Court at Law in the county where you reside. In such appeals process, the licensee shall have the right to a jury trial.

***What happens if I continue to drive after my license has been revoked or suspended?***

You would commit the offense of operating a motor vehicle on a highway without a valid driver's license which would be punishable by a fine of not more than \$200 on the first offense.

***How do I get around town if my license has been revoked?***

Metro offers transportation throughout most of the Houston area with bus stops at most major intersections. Call (713) 635-4000 or visit [www.ridemetro.org](http://www.ridemetro.org) for general information regarding routes and schedules. The cost of a ticket is about \$1.00.

If the court revokes your license because of a disability, you may qualify for a MetroLift card. The card enables you to ride the MetroLift bus, which will pick you up at your house and drop you off anywhere in Houston. You must call one day in advance to schedule your travel (713-225-6716), and you still have to pay for the ticket. To qualify for a MetroLift card, you must fill out an application indicating you have a mental or physical disability. You must also include a note from your doctor stating you need access to MetroLift. For further information on how to apply for a MetroLift card, call Metro Customer Service at (713) 225-0119 (the office opens at 10 a.m.) or visit [www.ridemetro.org](http://www.ridemetro.org).

***Can I use my driver's license to make an anatomical gift?***

No. Effective September 1, 1997, a donor card must be used. These are available at the Department of Public Safety Driver's License Offices.

# **CONSUMER PROTECTION**

## ***What if I buy products that don't do what they are supposed to do?***

Generally, when you purchase goods, they will come with a written warranty. Such a warranty will state such things as the length of time during which the manufacturer will replace the item or perform partial or complete repairs. It is always wise to review a written warranty for a particular item before making the purchase. The manufacturer is generally responsible for any promises made in the warranty. The warranty may not be in effect, however, if something has happened to change or damage the product after it has left the manufacturer. Certain damage or tampering with a product can void the warranty.

## ***Can the manufacturer or seller of a product avoid all of the warranties on a product by a written disclaimer of warranty?***

Generally, no. In addition to express warranties (written or spoken warranties), Texas law enforces certain implied warranties (non-written or non-spoken warranties). Implied warranties may be effective to protect consumers against defects in a product, even if no such warranties were expressed by the seller of the product. For most products there is an implied warranty of merchantability, regardless of any written disclaimer. This provision requires that the product be fit for the ordinary purposes for which such products are used. Therefore, the purchaser of a product may have a warranty claim for a product that malfunctions, even though there was no written warranty given by the seller.

However, the Texas Business & Commerce Code allows a modification or exclusion of the implied warranty of merchantability, if such modification mentions merchantability and in the case of a writing, it must be conspicuous. For example, expressions such as "as is" or "with all faults" generally prevent the imposition of an implied warranty. But there may still be a remedy under the Deceptive Trade Practices Act, in spite of such modification or exclusion language.

## ***Do warranties also apply to services, such as automobile or home repair?***

Generally, yes. As with the purchase of goods or products, it is customary for many providers of services to provide written or verbal warranties. If the service is not consistent with these warranties, the purchaser of the service may have a claim based on the express warranties made by the service representative.

## ***Are there implied warranties for the performance of services?***

Yes. Texas law imposes on most services the requirement (or warranty) that the services be provided in a good and workmanlike manner. Just as with implied warranties for products, implied warranties for services may give the dissatisfied purchaser of those services a cause of action for breach of warranty.

### ***What is the Texas Deceptive Trade Practices Act and when does it apply?***

The Texas Deceptive Trade Practices Act is designed to protect purchasers or consumers of goods or services from the harm caused by a misrepresentation made by a seller of the goods or services. Most of the purchases of goods or services that we make in our daily lives are included under the protection of this Act. The Texas Deceptive Trade Practices Act sets forth certain procedures which are designed to encourage the seller to resolve differences with the consumer of his or her goods or services.

Remember, even though you have a valid legal claim against the seller of a product or service, if you can't locate the seller to make your complaint or if it is likely that the seller has no assets, you may have a good legal cause of action, but no way to collect. So, be careful to choose reputable providers of goods and services.

### ***Are there any protections for me against harassment by a creditor?***

Yes, the Texas Debt Collection Act and the federal Fair Debt Collection Practices Act limit the times and manner in which a creditor, or the creditor's representative such as a collection agency, can contact you regarding payment of your debt. For example, you may be protected from subsequent contacts at your place of employment or at your home during certain times. You should send a certified letter to the debt collector requesting that they not call you, your family or friends.

### ***To what information am I entitled if I am denied credit?***

If you are denied credit by a store or other business that regularly transacts business with its customers on credit, the Fair Credit Reporting Act requires that business to give you notice of the reason for the denial of credit. Also, the Equal Credit Opportunity Act states that you may not be denied credit on the basis of gender, marital status, race, or age.

### ***What can I do to stop telephone sales calls?***

Consumers in Texas can now register for the National Do Not Call List by visiting [www.donotcall.gov](http://www.donotcall.gov), or by calling toll free 1-888-382-1222. They can also add their name, address and phone number to a state-sponsored No Call List on the internet at [www.texasnocall.com](http://www.texasnocall.com) or they can request a registration form by calling 1-866-896-6225. There is a charge of \$2.25 for each residential phone number included in the Texas no call list. Your registration on the Texas list lasts for three years. Beginning January 1, 2004, cell phone numbers may be added to the Texas Do Not Call List. Some telephone solicitations are still allowed to be made to those on the do not call list. These include businesses with whom you have an established relationship, debt collectors, and telemarketers that are state licensed, such as insurance or real estate agents, provided the solicitation is not made by automated device, is followed by a face-to-face presentation to complete the transaction, and provided the licensee has not previously been told the customer does not wish to be called. Complaints about telemarketers should be directed to the Texas Public Utility Commission, Customer Protection Division, 1-888-782-8477, or [customer@puc.state.tx.us](mailto:customer@puc.state.tx.us), or P.O. Box 13326, Austin, TX 78711-3326.

To remove your name from mailing lists, write to: Direct Marketing Assoc. Inc. (www.dmaconsumers.org), Box 643, Carmel, NY 10512.

***What should I do if I receive mail-order merchandise that I never ordered?***

If you did not order it, it is considered an unconditional gift and you do not have to pay for it or return it. To document that you did not order the merchandise, you should send the business that sent that merchandise a letter telling them you received merchandise you did not order, and tell them that if they wish to send someone to recover their merchandise, you will deliver the merchandise to their authorized representative. This should be done, for example, if the merchandise is valuable and appears to have been misdirected or delivered to the wrong address through inadvertent error.

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

Notify the credit card company immediately. If someone uses your credit card or your debit card without authorization, you are only liable for up to \$50 if you promptly contact the company. 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 identity 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 - 1-800-916-8800; and Equifax - 1-800-685-1111.

***What should I do when I am contacted by someone seeking donations?***

If you are asked to donate to an entity you are not familiar with, no matter how credible the name of the charity or words of the solicitor sound, tell them you want to check their rating with the Better Business Bureau before you give them any money. The BBB publishes a list of charities and rates them according to standards established by the BBB. It is important for you to know how much of your donation will go to the intended beneficiary, as opposed to paying the promoter and solicitors. There are many well known charities that need your contribution. Don't give a fast talking telephone solicitor money that could be better utilized by a well managed and worthy charity. If the solicitor is reputable, they won't mind if you call the BBB for more information. If they are not reputable, they will press you for an immediate donation. If that happens, tell them not to call you again and terminate the solicitation. This same advice should

be followed in dealing with door-to-door solicitors. If you are solicited for investment opportunities, tell them you want to check them out with the State Securities Board before investing. A good rule-of-thumb is not to buy anything from a telemarketer or door-to-door salesman you do not know well.

***What if I am contacted by a vendor that I have ordered from on the internet requesting verification of personal information?***

This is the latest international scam where the persons copy the logo of a company and ask you to verify your information. Do not respond without checking with the company on a connection you initiate. Be especially suspicious of internet solicitations that ask you to send money or to provide personal information like a bank account or social security number. The internet has become the vehicle of choice for scam artists and thieves because it is international in scope and difficult to police.

***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. The Consumer Protection Division's regional office phone numbers are listed in the government pages of your local telephone directory or you may obtain information on filing a complaint by writing to them at P.O. Box 12548, Austin, Texas 78711-2548 and in the back of this guide. In addition you should call your local District Attorney's Office.

## **LOSING A LOVED ONE**

***What should I do if I lose a loved one?***

You may be overwhelmed with grief right now. You may want to leave the administrative matters for a later day. But there are notifications and legal steps that should not be postponed.

- Make funeral and burial arrangements.
- Obtain several copies of the death certificate.
- Gather relevant documents, such as the will; trusts; stock, bank account, brokerage and annuity statements; and insurance policies.

- Contact Social Security Administration (if the deceased was an eligible recipient).
- Notify any life insurance companies of the death.
- Contact the trustee of any trust and/or the attorney who prepared it.
- Contact the executor of the will and/or the attorney who prepared it.
- Call the administrator of the decedent's pension plan.
- Notify the decedent's banks, financial institution and/or brokerage firms.
- Contact credit card companies.
- Be sure that insurance or Medicare claims have been processed before paying any Medical bills.

This list is only a starting place and may not be a complete list for all estates.

## **ELDER ABUSE**

### ***What should I do if I suspect someone is abusing or exploiting an elderly friend?***

If a person has reasonable cause to believe that an elderly or disabled person has been abused, exploited or neglected, they have the responsibility to report the facts to Adult Protective Agency (1-800-252-5400).

### ***Am I required to report suspected elder abuse?***

The law mandates that all suspicion of elder abuse, exploitation or neglect be reported to Adult Protective Agency (1-800-252-5400).

### ***What will happen if someone finds out that my grown child is hurting me?***

If an individual has been physically abused the law requires that a report be made to the appropriate law enforcement agency.

### ***What can I do to protect myself from an abusive caregiver or spouse?***

You need to file a report with Adult Protective Agency (1-800-252-5400) and the appropriate law enforcement agency.

# **RESOURCE AND REFERRAL NUMBERS**

PHONE NUMBERS MAY CHANGE. THE BASIC RESOURCE FOR REFERRALS IS 211, UNITED WAY.

## **ADULT PROTECTIVE SERVICES**

Texas Department of Adult Protective Services  
of the Protective & Regulatory Services.....(713) 767-2700  
5425 Polk  
Houston, Texas 77023  
[www.dfps.state.tx.us](http://www.dfps.state.tx.us)

Adult Protective Services 24 Hour Hotline (*Report for Abuse*).....(800) 252-5400

## **CONSUMER COMPLAINTS**

Attorney General's Consumer Protection Hotline .....(800) 621-0508  
*You can also download the consumer complaint form from the Main Consumer page at [www.oag.state.tx.us](http://www.oag.state.tx.us). You may also complete an On-Line Consumer Complaint form. [www.oag.state.tx.us](http://www.oag.state.tx.us)*

To complain about a nursing home, assisted living facility, or home Health care agency, call the Texas Department of Aging, Disability, Consumer Rights and Services Hotline at: .....(800) 458-9858  
[www.dads.state.tx.us](http://www.dads.state.tx.us)

To report Medicaid provider fraud, abuse or neglect of a Medicaid recipient, contact the Attorney General's Medicaid Fraud Control Unit: .....(512) 463-2011  
Fax: (512) 320-0974  
Email: [mfcu@oag.state.tx.us](mailto:mfcu@oag.state.tx.us)

Better Business Bureau .....(713) 868-9500  
[www.bbbhou.org](http://www.bbbhou.org)

No call list (*to stop telephone sales calls*) .....(888) 382-1222  
[www.donotcall.gov](http://www.donotcall.gov)

## **EMERGENCY FOOD, SHELTER & MATERIAL ASSISTANCE**

Texas Department of Human Services Office of the Ombudsman (*statewide*)  
.....(877) 787-8999  
Texas Department of Human Services Adult Foster Care (*local*) ..... (713) 696-7118  
[www.hhsc.state.tx.us](http://www.hhsc.state.tx.us)

Medicaid .....(800) 252-8263  
5425 Polk St., Suite 130  
Houston, Texas 77023  
[www.cms.hhs.gov](http://www.cms.hhs.gov)

Harris County Community Development .....(713) 578-2000  
[www.cedd.hctx.net](http://www.cedd.hctx.net)

Harris County Social Services Dept. ....(713) 696-7900  
8410 Lantern Point (hearing impaired).....(713) 695-2395  
Houston, Texas 77054  
*They help with rent, utilities, transportation, burial* [www.ss.hctx.net](http://www.ss.hctx.net)

Interfaith Ministries .....(713) 533-4900  
3217 Montrose  
Houston, Texas 77006  
[www.img.org](http://www.img.org)

Salvation Army, Family Shelter .....(713) 650-6530  
1603 McGowen  
Houston, Texas 77004  
[www.salvationarmyhouston.org](http://www.salvationarmyhouston.org)

Salvation Army - Social Services Department .....(713) 752-0686  
1500 Austin 1st Floor  
Houston, Texas 77002  
[www.salvationarmyhouston.org](http://www.salvationarmyhouston.org)

## FINANCIAL ASSISTANCE/BENEFITS

Food Stamp Program .....(713) 767-2000  
Texas Department of Human Services  
5425 Polk  
Houston, Texas 77023

Texas Department of Human Services Long Term Care Division .....(713) 767-2157  
Texas Department of Human Services Administration  
5425 Polk Street (713) 692-1635  
Houston, Texas 77023 Application  
[www.dhs.state.tx.us](http://www.dhs.state.tx.us)

Medicaid Program ..... (800) 252-8263  
Medicaid (local) For the Elderly and Disabled ....(in-home services)..... (713) 692-1635  
Medicare Program w/SSI ..... (800) 772-1213  
[www.hhsc.state.tx.us/medicaid/index](http://www.hhsc.state.tx.us/medicaid/index)

Catholic Charities (food pantries, social services programs).....(713) 526-4611  
[www.catholiccharities.org](http://www.catholiccharities.org)

## HEALTH SERVICES AND REFERRAL

Quentin Mease Community Hospital ..... (713) 873-3700

Mental Health Association of Greater Houston .....(713) 523-8963  
2211 Norfolk, Suite 810  
Houston, Texas 77098  
[www.mhahouston.org](http://www.mhahouston.org)

Mental Health-Mental Retardation of Harris County (*local*) .....(713) 970-7070  
Authority of Harris County  
7011 SW Frwy.  
Houston, Texas 77074  
[www.mhmrahharris.org](http://www.mhmrahharris.org)

Mental Health-Mental Retardation (*statewide*) ..... 1-800-252-8154  
[www.dshs.state.tx.us - mental health](http://www.dshs.state.tx.us - mental health)  
[www.dads.state.tx.us - mental retardation](http://www.dads.state.tx.us - mental retardation)

Mental Health Information, Referral and Crisis Hotline.....(713) 970-7070  
[www.uth.tmc.edu/local\\_mental\\_health\\_infor.htm](http://www.uth.tmc.edu/local_mental_health_infor.htm)

Harris County Psychiatric Center.....(713) 741-8600

United Way Crisis Hotline .....(713) 468-5463  
[www.unitedwayhouston.org](http://www.unitedwayhouston.org)

Sheltering Arms .....(713) 956-1888  
3838 Aberdeen Way  
Houston, Texas 77025  
[www.shelteringarms.org](http://www.shelteringarms.org)

Alzheimer's Association .....(713) 266-6400  
2242 W. Holcombe Blvd. (800) 272-3900  
Houston, Texas 77030  
[www.alztex.org](http://www.alztex.org)

Houston Area Parkinson Society Parkinson's Disease Information .....(713) 798-5970  
[www.hapsonline.org](http://www.hapsonline.org)

## HOME DELIVERED MEALS

Houston/Harris County Area Agency on Aging .....(713) 794-9001  
[www.houstontx.gov/health/Aging](http://www.houstontx.gov/health/Aging)

Houston/Galveston Area Council Agency on Aging ..... (713) 627-3200  
*For persons outside of Houston/Harris County [www.h-gac.com](http://www.h-gac.com)*

Delivered Meal Services .....(713) 794-9310  
8000 North Stadium Drive  
Houston, Texas 77054

## HOUSING ASSISTANCE

Harris County Housing Authority .....(713) 747-0353  
8410 Lantern Point  
Houston, Texas 77054  
[www.hchatexas.org](http://www.hchatexas.org)

Houston Housing Authority ..... (713) 260-0500  
2640 Fountainview Dr.  
Houston, Texas 77056  
[www.hach.org](http://www.hach.org)

## INFORMATION AND REFERRAL

American Association of Retired Persons (AARP) ..... (800) 424-2277  
Member Hotline ..... (888) 687-2277  
[www.aarp.org](http://www.aarp.org)

Houston-Harris County Area Agency on Aging .....(713) 794-9001  
8000 North Stadium Drive  
Houston, Texas 77054  
[www.houstontx.gov/health/Aging](http://www.houstontx.gov/health/Aging)

Senior Guidance Program .....(2-1-1)  
[www.srguidance.org](http://www.srguidance.org)

Houston Junior Forum Resale Shop.....(713) 868-6970  
1815 Rutland  
Houston, Texas 77008

Texas Department of Aging & Disability Services .....(800) 252-9240  
4900 N. Lamar Blvd., 4th Floor  
Austin, Texas 78751-2316  
[www.dads.state.tx.us](http://www.dads.state.tx.us)

United Way Information (local) .....(713) 957-4357 or 211  
50 Waugh  
Houston, Texas 77007  
[www.unitedwayhouston.org](http://www.unitedwayhouston.org)

## LEGAL SERVICES

Dispute Resolution Center .....(713) 755-8274  
49 San Jacinto, Suite 220  
Houston, Texas 77002  
[www.drchouston.org](http://www.drchouston.org)

Lone Star Legal Aid .....(713) 652-0077  
1415 Fannin, 3rd Floor  
Houston, Texas 77002  
[www.lonestarlegal.org](http://www.lonestarlegal.org)

Houston Bar Association ..... (713) 759-1133  
[www.hba.org](http://www.hba.org)

Houston Lawyer Referral Service, Inc. ....(713) 237-9429  
[www.hlrs.org](http://www.hlrs.org)

Houston Volunteers Lawyers Program .....(713) 228-0732  
[www.hvlp.org](http://www.hvlp.org)

LegalLine .....(713) 759-1133  
*(First and Third Wednesday of every month from 5:00 p.m. to 9:00 p.m.)*

Consejos Legales ..... (713) 759-1133  
*(Spanish language legal advice, first Thursday of every month from 6 p.m. to 8 p.m.)*

Vietnamese LegalLine .....(713) 759-1133  
*(Vietnamese language, third Tuesday of every month from 5 p.m. to 7 p.m.)*

Elder Law Committee .....(713) 759-1133  
*(Speakers Bureau and Legal Advice at Various Senior Centers)*

Legal Hotline for Older Texans ..... (800) 622-2520  
815 Brazos, Suite 1002  
Austin, Texas 78701  
[www.tlsc.org](http://www.tlsc.org)

Texas Attorney General's Office (Consumer Protection Division) ...(713) 223-5886  
808 Travis, Suite 300  
Houston, Texas 77002

## SENIOR CENTER/NUTRITION SITES

There are numerous senior centers in the Houston-Harris County area. For the one nearest you, contact:

Houston-Harris County Agency on Aging .....(713) 794-9001  
8000 North Stadium Drive  
Houston, Texas 77054  
[www.houstontx.gov/health/Aging](http://www.houstontx.gov/health/Aging)

City of Houston Senior Centers [www.houstontx.gov/health/MSA/index.html](http://www.houstontx.gov/health/MSA/index.html)  
Magnolia Multi Service .....(713) 928-9515  
Sunnyside Multi Service .....(713) 732-5000  
West End Multi Service ..... (713) 866-4239

## OTHER HELPFUL NUMBERS

Information and Referral (United Way).....211

Department of Veteran's Affairs Hotline ..... (800) 827-1000

Metro Lift ..... (713) 225-0119  
[www.ridemetro.org](http://www.ridemetro.org)

Relay Texas TDD (*operators who can help relay calls for the hearing impaired*)  
[www.puc.state.tx.us/relay/index.cfm](http://www.puc.state.tx.us/relay/index.cfm)..... (800) 829-4833

Texas Department of Insurance ..... (800) 578-4677  
[www.tdi.state.tx.us](http://www.tdi.state.tx.us)

Senior Services (*Serving West University and surrounding area*) .....(713) 662-5895  
6104 Auden  
Houston, Texas 77005

Social Security Administration Information ..... (800) 772-1213  
[www.ssa.gov](http://www.ssa.gov)

Houston Area Office of the Department of Public Safety

- General Information .....(281) 517-1200
- Driver's License Information .....(281) 517-1333
- Office Hours and Locations .....(281) 517-1200
- [www.txdps.state.tx.us](http://www.txdps.state.tx.us)

Medicaid Program..... (800) 252-9330  
[www.hhsc.state.tx.us/medicaid/index.html](http://www.hhsc.state.tx.us/medicaid/index.html)

**USEFUL PUBLICATIONS**

Senior Guidance Directory .....(713) 529-9991  
[www.srguidance.org](http://www.srguidance.org)

New Lifestyles ..... (800) 869-9549  
*Directory of a variety of residential placement facilities* [www.newlifestyles.com](http://www.newlifestyles.com)

HBA Elder Law Handbook .....(713) 759-1133

For multiple copies, please call the Community Education Department. Individual copies are available from the Houston Bar Association, 1001 Fannin, Suite 1300, Houston, Texas 77002, or by sending a self-addressed, 9x12 envelope with five first class stamps to the address above. Please specify that you would like the Elder Law Handbook. All HBA Legal Handbooks are available online, and some in other languages at [www.hba.org](http://www.hba.org).



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 1001 Fannin, Suite 1300  
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[www.hba.org](http://www.hba.org)





