



ESTATE PLANNING

Protecting Your Family, Your Property, and Your Wishes

A practical guide to the documents every Texas adult should consider, and what happens without them.

What Is Estate Planning?

Death Planning

- Will
- Trust
- **Beneficiary Designations:** Transfer on Death (TOD) and Payable on Death (POD)
- **Unique Deeds:** Transfer on Death Deed and Lady Bird Deed

Disability Planning

- Medical Power of Attorney
- Durable “Financial” Power of Attorney
- Advance Directive (“Living Will”)
- HIPAA Release
- Medical Power of Attorney for Minor Children

The Cost of Waiting

Estate planning is always on the backburner. Too often we wait for a motivating “event”: marriage, kids, divorce, retirement, a death in the family, an overseas trip, a medical diagnosis, or even a global pandemic. The problem with waiting:

- We do not know when we are going to need these documents.
- **11th-hour, panic planning:** sometimes it is too late!
- Last-minute documents are more exposed to attack and contest, and more prone to mistakes.

What Happens If You Do Nothing?

Intestate is the legal term for dying without any type of planning. When you die intestate, Texas law will determine:

- Who gets your property and assets when you die (the “heirs”).
- How they get the inheritance, typically in an inefficient manner.
- Who has priority in administering your estate.
- Who will be the guardian for your minor children.

These are Texas’s default rules: a one-size-fits-all plan written by the Legislature, not by you. Sometimes Texas law gets it wrong for your family.

Q: Does every surviving spouse automatically receive everything the deceased spouse owned?

A: No. The Texas default rules say, if the deceased spouse had children from a prior relationship, those children, not the surviving spouse, inherit the deceased spouse’s half of the community property. Separate property is different: if the deceased spouse had any children at all, even children of the marriage, the separate property is divided between the surviving spouse and the children.

Community vs. separate property: Community property is generally anything either spouse acquired during the marriage, no matter whose name it is in. Separate property is what a spouse owned before the marriage, or received during the marriage by gift or inheritance.

What Proper Legal Documents Provide You

- **The right people:** assurance the correct individuals receive the inheritance.
- **The right way:** they receive the inheritance in an efficient manner.

Death Planning: The Legal Tools

Beneficiary Designations

Life insurance; bank accounts (checking, savings, etc.) through Payable on Death (POD); retirement and investment accounts through Transfer on Death (TOD).

Important: these designations override what is in your other legal documents. A Will or Trust is not involved in the transfer.

Unique Deeds	Revocable Transfer on Death Deed and Lady Bird Deed. Both avoid probate. Your real estate passes directly to the people you name at death, while you keep control of it during your lifetime.
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What is probate? Probate is the legal process of transferring a deceased person’s assets to their beneficiaries and paying their final debts. Typically, it involves validating the will, appointing a representative to manage the estate, settling debts and taxes, and distributing the remaining assets.

Will vs. Trust at a Glance

	Will	Trust
Takes effect	Dormant upon signing	Activated upon signing
Probate	Must be probated to be activated (i.e., made enforceable)	Avoids probate
Control after death	No control post-death	Control post-death
Who manages it	Executor	Trustee

Either document can be used to accomplish a client’s goals. A trust is worth considering when you have:

- Minor or young adult children
- Family dynamics (his, her, our children)
- Real estate in different states
- Tax planning needs (high net-worth)
- Medicaid planning (nursing home care)
- A special needs child or adult
- Privacy concerns
- A goal of avoiding probate

Disability Planning

Without planning, there is no protection or guidance on how to handle your financial or medical decisions when you cannot make those decisions yourself. The result may be a **guardianship:** a huge loss of control over a person’s life, intrusion by the court system, loss of privacy, and significant expense.

Document	What it does
Medical Power of Attorney	Names who will make medical decisions for you if you are unable.
HIPAA Release	Names who has access to your medical records in order to make medical decisions for you.
Advance Directive (“Living Will”) — Texas form: Directive to Physicians and Family or Surrogates	Expresses your wishes regarding life support in end-of-life situations.
Medical Power of Attorney for Minor Children	If parents are unavailable or incompetent, names who will make medical decisions for your minor children.
Durable “Financial” Power of Attorney	Names who will make financial decisions (ex: banking transactions) if you are unable.

Good to know: These documents can only be used during your lifetime; they cannot be used when you die. For example, your agent under a financial power of attorney would not have access to your accounts after you pass away. A durable power of attorney is also a better tool than “putting someone on your bank account,” which has legal ramifications: it creates joint ownership.

Final Arrangements

An **Appointment for Disposition of Remains** names an agent and lets you:

- Express your wishes regarding cremation or burial.
- Decide who should oversee funeral arrangements.

There are also big advantages to pre-planning your funeral through a funeral home.

Keep Your Plan Current

Review your estate planning documents:

- **By default, about every 3 years.**
- After any major life event (ex: death, divorce, birth).
- When you acquire new assets.
- **Review your beneficiary designations too.** They override your Will or Trust, and an outdated one can send assets to the wrong person.

Questions? Let’s talk. Call to schedule a consultation: 469.250.4586 • andrewgorelaw.com • andrew@andrewgorelaw.com