



# ESTATE PLANNING

A Family's Guide to Estate  
Planning, Administration,  
and Long-Term Care

BY STEVEN C. HOLMAN

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# ABOUT THE AUTHOR

Steven C. Holman is an estate planning and elder law attorney licensed in both Texas and California with over fifteen years experience. Steven received his law degree from Whittier Law School and an LLM in Taxation with a Certificate in Estate Planning from Boston University. He received an undergraduate degree in Economics from Willamette University. He is a member of the Texas chapter of the National Academy of Elder Law Attorneys (NAELA).

## A NOTE FROM STEVEN C. HOLMAN

If you're reading this book, you're likely in one of two situations – planning in advance or planning to resolve a crisis.

This book will help compartmentalize the issues you face with estate planning, allowing you to tackle them in a thoughtful way - solving both your immediate and future needs.

[Click here to read more about Steve Holman.](#)



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# PLANNING IN ADVANCE

If you are planning in advance, your estate plan is probably on your list of things to do and you're anxious to check it off. Maybe a dinner conversation revealed your friends just completed their will or trust. They share they now feel better, that their assets are protected or that their children will be cared for by trusted individuals. Or you've heard of a painful family situation where the children fought over their parent's estate assets in court. You're in the information

gathering stage, seeking education on the best documents to use, the right products to purchase and the most trustworthy advisers to hire. If you've been conducting your research online, you're likely feeling overwhelmed. Hopefully this e-book introduces you to concepts that will help you make informed decisions for not only the legal documents but for the other decisions in-front of you.

If you're reading this book, you're likely in one of two situations —  
—  
planning in advance  
or planning to resolve  
a crisis.





The goals and wishes of each individual and family are different and identifying those is the starting point of an estate plan.

## PLANNING IN A CRISIS

If you're in the second situation, it means you have a crisis on your hands.

A real sense of urgency to get things done, organized, and protected before it's too late. A sudden health emergency or changing family dynamic may have created this situation. We understand your urgency and believe this book will help compartmentalize the issues you face, allowing you to tackle them in a thoughtful way – solving both your immediate and future needs.

I hope this e-book offers you the most value and understanding how your goals and wishes fit into an estate plan.

Just about every goal, wish, concern, issue, and question that you have falls into three estate planning categories:

1. Planning for incapacity
2. Planning for the administration of your estate
3. Planning for the caregiving of a family member and the costs associated with long-term care

We'll show you how to achieve your goals within these categories.





# PLANNING FOR INCAPACITY

**I**f ever a medical doctor determined you were unable to make independent decisions, this is where your incapacity plan would come into play. There are two distinct areas where decisions are made: financial decisions and medical/personal care decisions.



Read about the financial decisions you may want to consider in your estate planning journey.

- [Estate Planning](#)
- [What to Consider in Retirement Planning](#)
- [Pros and Cons of having more than one Agent under a Financial Power of Attorney](#)
- [Legal Trusts and Estate Planning: It's Not Just For the Rich](#)
- [What Are Letters Testamentary and Letters of Administration?](#)

## FINANCIAL DECISION-MAKING

You have an initial choice about financial decision making, do you delegate some or all of this responsibility now – even when you are still capable of decision making. Or will you indicate in your estate plan that such responsibilities will be assumed once the incapacity plan comes into effect. If you delegate this authority now, before you are incapacitated, this doesn't mean that you can no longer make financial decisions, it means you are allowing a trusted person to assist in handling financial affairs. This could serve to delegate some responsibilities that you no longer wish to assume.

Delegating now could also be a strategy to protect yourself from scams. Financial elder abuse is on the rise – a new scam seems to pop up every day. Consider that many banks are training their tellers to screen requests for cashier's checks that are to be sent out of country. The banks action is due to a scheme connected with scammers identifying the name of a grandchild or other relative through social media and messaging the grandparent, claiming that this relative is in jail, in another country, and the only way to get them out is to send funds. Once those funds are out of the account – they're gone.

**A significant health condition is not only a huge strain on family harmony, but also the biggest risk to an estate plan.**



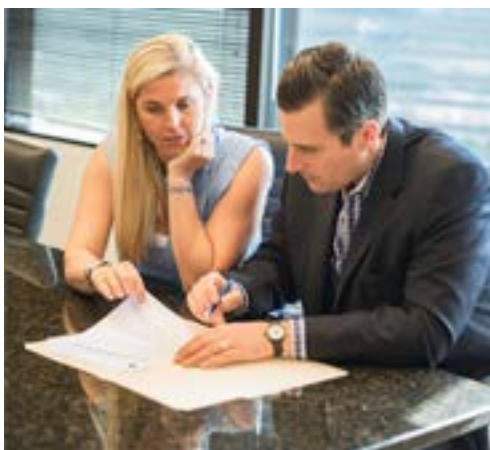


# FOUR OPTIONS FOR FINANCIAL DECISION-MAKING DELEGATION

01

## STATUTORY DURABLE POWER OF ATTORNEY (POA)

If you're looking to delegate financial responsibly, this document is a good option. This POA creates fiduciary and contractual responsibilities with the family member or trusted individual you're delegating to. As estate planning attorneys we like those incentives and duties owed. This document can be customized to provide the exact scope of authority you want to convey.



02

## LIVING TRUST

The trust document is most effective at crafting specific expectations for the management of financial affairs. It offers all the pros of the POA plus it has additional protections that aren't easily revoked by a court, if a dispute arises. It's important to note that in a guardianship case, a POA can be revoked by the court.

# Common ways you and your family can set up shared financial decision-making delegation.

03

## JOINTLY HELD ACCOUNTS

There is real value in having a child or trusted person named as a joint owner or signatory on a bank account. They have direct access to funds in order to pay bills, expenses and the unexpected. There are downsides to be considered, there is no real check and balance on this setup. Joint owners or signatories have unfettered access to your funds. Consider this, does your child have money problems of their own? If so, the account could be reachable by their creditors. Will they get too comfortable and make assumptions as to what you intended this money for? If you have other children who are not on these accounts what dynamics could develop between siblings?



04

## JOINTLY HELD REAL ESTATE

Naming the person who you intend to inherit your real estate may seem like an easy way to delegate the bill-paying and maintenance connected with home ownership. However, there are issues with jointly held real estate that should be considered. The property can be reachable by creditors. If it was gifted to someone who would have inherited the property, then they have lost their stepped up in basis to avoid capital gains taxes.



# PLANNING FOR INCAPACITY

## Medical/Personal Care Decision-Making

Your medical and personal care decisions are considered separate from a financial POA but both documents are needed to be able to make personal and financial decisions. An important distinction from financial decision making is that health care directives are all effective upon incapacity. You are making your own health decisions until you are no longer able, as determined by a doctor. Even when you are no longer able, we have advance directives that let your family

and doctors know your wishes. In addition to your own wishes, you're also protecting your family from situations that may be difficult, given the circumstances. Consider a young adult child who may be forced into a situation where he or she must make a life and death decision about a parent. Are they ready for that responsibility? Does the parent want to take steps to avoid that scenario? An advance directive can potentially help you avoid this type of unwanted situation.





## CONSEQUENCES OF FAILING TO PLAN: GUARDIANSHIP

If you lose the ability to make decisions and don't have the financial and medical/ personal care documents in place, a guardianship may be court-ordered. Unfortunately for families a guardianship proceeding is very expensive and time consuming – especially compared to the cost of a typical POA.

Guardianship proceedings typically require the appointment of third parties to investigate the condition of the individual and ensure that the individual's rights are protected. It can be an intrusive process on the family and should be avoided by taking proactive measures like executing POA. Read more about [why a guardianship and how to avoid it](#).

## MAKING DIFFICULT DECISIONS

Sometimes difficult decisions are unavoidable, so you need to consider who may best fill that role. Is it an immediate family member or treated friend? You know your family better than anyone, so this is really a personal decision. Another consideration is how accessible is this person to your health care providers? If your agent is out of state, are they easily accessible? There is something to be said for someone who is local. If a local agent isn't possible, consider naming a local person on your HIPAA. This document does not grant decision making authority, but could be useful for this person to communicate with the agent, whether they are out of town or need some help with decision making.





# ESTATE ADMINISTRATION

Estate administration is the process of managing and distributing estate assets as well as resolving debts and liabilities. Upon your death, your POAs are no longer effective. Instead, your personal representative, executor or trustee is responsible for the administration of your estate.



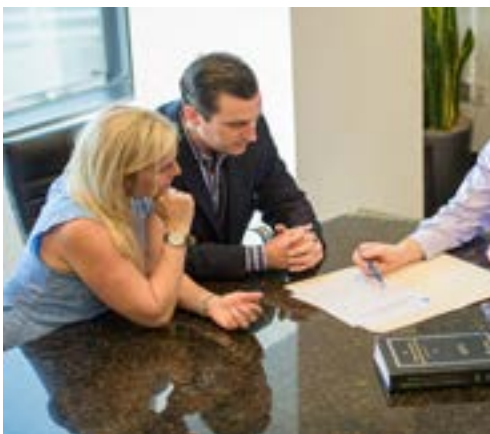
## Within the estate administration there are three basic options.



Option 1: Do nothing – allowing the law of the state you live in to guide how your estate will be administered.



Option 2: Simplify probate – make it easier for your executor to administer and distribute your assets to your heirs with limited court involvement.



Option 3: Avoid probate – strategically manage assets to avoid court involvement all together and ensure that assets are distributed as soon as possible to beneficiaries.

# ADMINISTRATION OPTIONS EXPLAINED

## Option 1: Do nothing (Intestacy)

The state of Texas will take care of your estate plan for you under their laws. If you have any assets of consequence, this is usually the most expensive and time consuming strategy. A petition must be filed in the probate court. The court determines who are beneficiaries and everyone gets a share according to Texas law. Inevitably, there can be wheeling/dealing of assets between the beneficiaries that is usually an inefficient process. Most assets are sold at a fire sale price. The court approves essentially all the actions taken by the estate. This process can eat up a good percentage of the estate assets in just legal and administrative costs. Additionally, the timing to distribute assets to heirs can range from many months to years.



## Option 2: Simplify probate

Creating a will generally allows for the probate process to run much smoother than dying without a will (assuming the validity of the will is not in question). Texas has a probate process known as independent administration which, so long as the will specifically authorizes this type of probate, means you typically only need to go to court once and do not need court approval to manage and distribute assets. This can reduce legal fees and lessen the likelihood that disputes will arise during probate.

## Option 3: Avoid probate

Avoiding probate can be accomplished by placing assets in a trust, named beneficiaries on accounts and transfer on death deeds for real property.

Avoiding probate saves significant time, legal costs and keeps your estate assets out of the public record. If privacy is important to you, then avoiding probate should be a priority in your estate plan. This is also a good strategy to avoid a MERP claim if you are a Medicaid recipient.

# WHO WILL MANAGE YOUR ESTATE?

As you decide on these options you must also consider who you want to name as the administrator of your estate.

This person has a fiduciary responsibility to the beneficiaries of the will. This responsibility includes distributing specific gifts and acting prudently when selling estate property and distributing proceeds to the beneficiaries. The executor may also have to make court appearances and submit reports to the court. This role can be time consuming and require an attention to detail (but, an executor can also utilize the assistance of an attorney to navigate their duties). You'll want to consider a person who is capable and willing to serve in this role when the time comes. Even though you may have family available to perform these duties, a third party individual or company may be a better fit. Third-party trustees, for example, tend to eliminate family issues that get in the way of administration, since they are generally not influenced by sentimental pasts. However, third parties also receive compensation for their services where a family representative may not. This is just an example of a consideration.

- [Modern Families – Caring for our Aging Parents and Adult Children](#)



# HOW TO PROTECT YOUR BENEFICIARIES

**M**any folks simply name their beneficiaries in their will or trust and stop there. Without more planning, these individuals may be doing a disservice to those they intend to help, honor, and protect. Consider minor children or young adults. If a child received an inheritance without thoughtful estate planning, they would obtain the right to use their inheritance at 18 years old. Are they mature enough to make wise decisions with these assets? Instead of giving assets to a child or young adult outright, a contingent trust can be instructed to protect assets for the child until they reach a certain age (the age of your choice). These assets will be used for the best interest of the child (health, education, etc) and creditors of the child or young adult

cannot reach them to pay off a debt or liability. Then, when the child or young adult has matured, they will receive the assets in the trust outright to use as they please.

Also, for any beneficiary who may, now or in the future, be receiving certain, needs-based benefits for a disability, an inheritance could create a disqualification situation for that person. In other words, an inheritance that was intended to benefit the individual could inadvertently cause a significant financial hardship. Like the minor trust, a supplemental needs trust could be created, if needed. However without proper planning and documentation, this contingency cannot be addressed if the need arises.

- [How Children Influence your Estate Plan](#)
- [Individuals You Need to Consider Naming in Your Estate Plan](#)





# LONG-TERM CARE

Who is going to serve as caregiver and  
who will pay for long-term care?



## THREE IMPORTANT CONSIDERATIONS FOR LONG-TERM CARE

1. The impact on the designated caregiver. Families without a plan usually ask one family member to take on a significant caregiving role – a role that they may be untrained to perform and a role where they must sacrifice time, money, and energy from their own lives and families.
2. Long-term care is expensive. Consider that a married couple over 65 has a better than 3 in 4 chance that one of them will need long-term during their lifetime. The average long-term care stay is over 20 months. The average cost is over \$200,000.
3. There are only three ways to pay for long-term care – out-of-pocket, insurance and government benefits. In many cases family assets are limited to a home and retirement asset. A long-term care stay could force the liquidation of these assets. Where will a healthy spouse live then? How will they afford to live? What assets are left for the healthy spouse after a long-term care stay?

Do not underestimate the toll a caregiving responsibility can have on the extended family. This role has a tendency to create a ripple effect amongst the immediate family as well as the caregiver's family, because of the responsibility it requires.





## QUESTIONS FOR CAREGIVERS

Long-term care impacts the family dynamic, not only can a long-term care deplete a life savings quickly, but the role and responsibility of caregiver can have a tremendous effect on the family. Consider the following questions:

1. What level of care can a healthy spouse be expected to provide for the sick spouse? For example, could they physically transfer their spouse from the bed each morning if they had to?
2. How does an adult child stop their own life and devote their time and energy to the care of a parent? What impact does this have on the adult child's family?
3. How is the relationship between siblings impacted when one sibling takes on the primary caregiving role? Is this role rewarded in a revised estate plan? How would the other siblings feel about this?

## A LONG-TERM CARE STRATEGY

Since the level of care and the length of care is always an unknown, planning for long-term care requires a safety net approach – meaning contingency plans are put in place to meet the care requirements and preserve estate assets for the healthy spouse, children and beneficiaries.

Without planning for long-term care, you spend everything you own and then go on Medicaid. That's usually an inefficient solution, because you're forced to fire sale assets and incur fees and expenses in a rushed effort.

With planning, you identify your income sources and what you might be able to pay out-of-pocket or whether a long-term care insurance policy is an option. If those options are not foolproof, spend time understanding how to qualify for government benefits that can help cover the costs of long term care. Don't wait – to maximize the benefits and minimize the loss of assets, planning years in advance is required.

Read more information on our website:

- [Medicaid Planning](#)
- [VA Benefits: Can They Help Pay for Long-Term Care for My Spouse or Parent?](#)

# NEXT STEPS



So first things first – initiate a conversation with a trusted family member or friend. At the very least jot down a few notes about your goals and wishes. These initial steps will make your first meeting with an attorney a productive one to ensure your goals and wishes are met and protected. Feel free to reach out to our office to discuss any of these topics in further detail.

You'll be glad you did.

## OUR ESTATE PLANNING SERVICES

- [Last Will and Testament](#)
- [Power of Attorney](#)
- [Trusts](#)
- [Probate](#)
- [Medicaid Planning](#)
- [Veteran Benefits](#)
- [Incapacity Planning](#)
- [Long-Term Care](#)

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Contact me if you have any questions

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