



## WILL & ESTATE PLAN CHECKLIST

### (1) **SELECT** Estate Planning Documents

*Consult Explanation of Documents (see next page)*

- Last Will and Testament
- Financial Power of Attorney
- Medical Power of Attorney
- Directive to Physician
- Declaration of Guardian
- Disposition of Remains
- ALL OF THE ABOVE** (Complete Estate Planning Basic Package)
- Revocable “Living” Trust
- ALL OF THE ABOVE** (Complete Estate Planning with Trust Package)

### (2) **COMPLETE** Estate Planning Worksheet

- Married Couple Estate Planning Worksheet
  - Individual Estate Planning Worksheet
- The Worksheets are available here: <https://estatelawtexas.com/client-forms>

### (3) **RETURN/UPLOAD** Completed Estate Planning Worksheet

- Upload the Completed Worksheet into MyCase: <http://r-dean-davenport.mycase.com/>  
If you need access to the MyCase client portal, please call or email.  
**<OR>**
- Mail the Completed Forms to:  
R Dean Davenport Attorney at Law  
ATTN: Estate Planning Forms  
2150 S. Central Expressway, Suite 200  
McKinney, Texas 75070-4000

### (4) **APPROVE** Document Drafts

- Review and Approve Drafts of Documents.

### (5) **EXECUTE** Final Documents

- Make Appointment to Sign Documents (email or call 469-352-1876)

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## **EXPLANATION OF DOCUMENTS**

### **Last Will and Testament**

The Last Will and Testament directs how your estate will be distributed at your death. Generally, a Will only pertains to the distribution of assets titled in your name at your death; any assets held in joint tenancy will pass to the surviving joint tenant, any assets held in a POA (“payable-on-death”) account will be distributed to the named party on the account. Other assets payable by agreement (such as, life insurance, IRA’s, employee benefits, etc.) will be paid directly to the named beneficiary.

### **Revocable “Living” Trust**

The Revocable “Living” Trust (also commonly referred to as a “probate avoidance” trust) is a separate stand-alone legal document that exists independently from your Last Will and Testament. A Deed to transfer your primary homestead residence into Trust also is included.

### **Financial Power of Attorney**

The Financial Power of Attorney is primarily intended to give your named Agent the power to deal with any non-trust assets in the event of your incapacity. This document can give your agent broad powers to dispose of, sell, convey and encumber your real and personal property.

### **Medical Power of Attorney and Directive to Physician (“Living Will”)**

The Medical Power of Attorney gives your named Agent the power to make medical decisions and to sign consents and/or releases with hospitals and/or doctors. These documents conform to the federal Health Insurance Portability and Accountability Act (known as “HIPAA” Laws) with regard to the release of information. The Directive to Physician is your “living will” for end-of-life decisions.

### **Declaration of Guardianship**

The Declaration of Guardian is a “stand-alone” document that is important when a person becomes incapacitated. Whereas a Will is only effective upon the death of the person, the “stand alone” Declaration of Guardianship is useful in the event of incapacity prior to death.

### **Disposition of Remains**

The Disposition of Remains document gives you the opportunity to specify how you wish your remains to be dealt with (i.e., cremation or burial); to provide information of any prior arrangements; and to designate the persons to carry-out your wishes.

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**WILL & ESTATE PLAN CHECKLIST**

**Six Reasons to Plan Your Estate**

	<b>With a Plan</b>	<b>Without a Plan</b>
<b>1</b>	<b>You decide who receives shares of your assets.</b>	<b>State Law determine who inherits your assets.</b>
<b>2</b>	<b>You decide how and when your beneficiaries will receive their inheritance.</b>	<b>The terms of how and when your estate is distributed is set by State Law.</b>
<b>3</b>	<b>You decide who will manage your estate.</b>	<b>Probate Court appoints an administrator to manage your estate.</b>
<b>4</b>	<b>Reduction in estate taxes and probate expenses.</b>	<b>Costs can be more due to probate and taxes.</b>
<b>5</b>	<b>Select a Guardian for underage children.</b>	<b>Court appoints a Guardian for your children.</b>
<b>6</b>	<b>Provide for the orderly continuance or sale of a family business.</b>	<b>Financial loss and family hardships may result from untimely forced sale.</b>

**REQUEST OUR CURRENT FEE SCHEDULE:**  
**[LEGAL SERVICES FEE SCHEDULE](#)**

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# FREQUENTLY ASKED QUESTION

## WHY WOULD ANYONE NEED A REVOCABLE LIVING TRUST?

There are two very common situations in which establishing a Revocable “Living” Trust is a recommended estate planning strategy:

**(1) CHILDREN UNDER 18 YEARS OF AGE:** When there are minor children under 18 years of age, a trust is necessary as a minor child is not allowed to receive any distributions (assets) from the estate of the deceased parent(s) until the child reaches eighteen years of age unless the estate assets are put into a trust in which the minor child is named as a beneficiary.

**2) HOMESTEAD MARITAL REAL PROPERTY:** If the names of both spouses are on the title of residential-homestead real property and the surviving spouse (surviving co-owner) needed to sell the jointly-owned marital (community) property after the death of the other spouse (deceased co-owner), it usually would not be possible to do so without first going through a Court-supervised probate process. In other words, someone would need to be formally appointed by the Probate Court as the Administrator of the Estate of the deceased (co-owner) spouse in order to have the authority to sell or transfer the decedent’s one-half share of the property. However, it is possible to avoid the probate process by establishing a revocable trust (commonly known as a “probate avoidance” trust) and transferring the title of any residential homestead real property into the revocable “living” trust while both spouses are still living. In this situation, either spouse would be able to sell the property after the death of the other spouse without the necessity of going through probate as the surviving spouse is the trustee of the trust that owns the real property. Thus, transferring ownership of any jointly-owned real property into a revocable living trust **while both spouses (co-owners) are still living** helps to avoid the time and expense of obtaining authority from the Probate Court to sell real property after the death of one of the individual co-owners.

A Revocable Transfer on Death (TOD) Deed also may be used to avoid probate in certain limited circumstances, especially in situations where only one spouse is listed as the sole owner of the property (e.g., one spouse inherited the property during marriage or purchased this property prior to marriage and the title record was never updated to include the name of the other spouse). However, when both spouses are co-owners, the TOD Deed transfer only occurs **after the death of both owners**, therefore a TOD Deed does not help avoid probate when the surviving spouse (still living co-owner) needs to sell real property after the death the other spouse (deceased co-owner).

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### **WHY WOULD ANYONE NEED A REVOCABLE LIVING TRUST?**

Establishing a trust does require a little more time and effort than simply executing a basic Last Will and Testament; however, as establishing a trust is not as time-consuming or costly as going through the probate process after death, setting up a probate avoidance trust usually is the best option for the following persons: (1) anyone (married or single) who owns real property, or (2) anyone (married or single) who has a child under 18 years of age.

Even if a trust is not recommended, everyone still needs a Will because if a person dies **WITHOUT** a valid Will, the legal requirement of going through probate is almost unavoidable and the legal process is always more expensive and time consuming whenever the decedent does not have a valid Will. However, as long as a person has a valid Will, the legal expenses and the other costs associated with probate (at least in Texas) typically is not prohibitive; however, going through probate still can be a time-consuming process (and as they say, “time is money”).



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