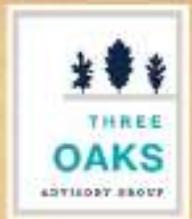


# ESTATE PLANNING BASICS

By: Ana M. Hernandez-Pace

Shutt Law Firm, PLLC

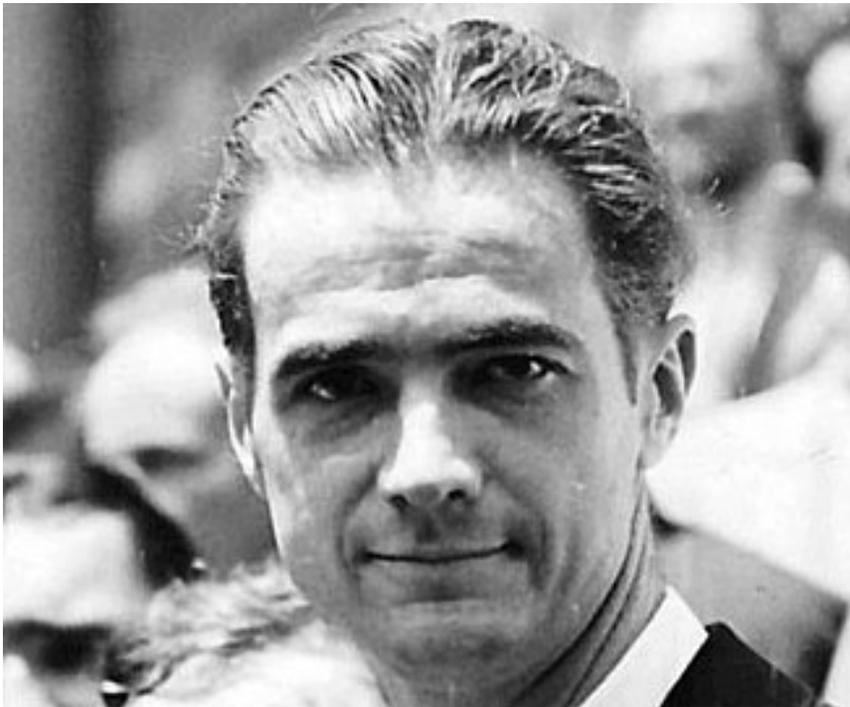
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# Howard Hughes Jr. (1905 -1976)

investor, pilot, engineer, film director, and philanthropist

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*Howard left behind an estate valued at \$2.5 billion. That's the same as \$11 billion in today's dollars. After several angry lawsuits, a judge finally declared that Howard died without a valid will and therefore split his fortune up among 22 cousins.*

I've always told my people, "You can't take it with you",  
but Harry must not have been listening.





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Ana earned her doctor of jurisprudence from the University of Houston Law Center. She was awarded the Clinical Legal Education Association Outstanding Clinical Student Award based on her excellence in casework, client interaction, and her contribution to the clinical community at her law school.



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January of 2005 marked the beginning of Adam's career in financial planning, and since then he's earned his Certified Financial Planner and Accredited Estate Planner designations.

Adam earned his B.B.A in International Business with a minor in Spanish from the University of Texas at Austin.



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- The information provided in this presentation does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational and educational purposes only.

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# Why is Estate Planning Important?

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- To plan for incapacity.
- To protect your loved ones.
- To protect minor children.
- The less you have the more important estate planning is.
- To protect what you have worked for.

## What is Estate Planning?

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Estate planning is the process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during the person's life, in the event the person becomes incapacitated and after death.

# Components of Estate Planning

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- Beneficiary Designations (TODD, JTROS, and POD)
- Will
- Trust
- Medical Power of Attorney
- Financial Power of Attorney
- HIPAA Authorization
- Appointment of Agent for Disposition of Remains
- Directive to Physician and Family Members

# Beneficiary Designations (TODD, JTROS, and POD)

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## **Transfer on Death Deed (TODD)**

The Texas Real Property Transfer on Death Act allows an owner to name a beneficiary to receive the property. The property passes to the beneficiary outside the regular probate process by means of a transfer on death deed (TODD). It is important individuals consult an attorney and do not attempt to make these deeds on their own.

# Beneficiary Designations (TODD, JTROS, and POD)

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## **Paid on Death Beneficiary (POD)**

A bank account with a named beneficiary is called a payable on death (POD) account. If an individual names a beneficiary on an account that beneficiary will receive the funds after the account holder's death. The funds distributed to the beneficiary will be owned by the beneficiary and will not become part of the account holder's "estate." It is important to check beneficiary designations and keep them up to date.

# Declaration of Guardian

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A guardian is a person who has the legal ability and responsibility to take care of another person (a “ward”). A guardian has much the same rights a parent has over a minor child. In Texas, if you become incapacitated at some point in life, the Probate Court may institute a guardianship so that you’ll have a guardian to make decisions on your behalf (where you’ll live, etc.). A Declaration of Guardian gives you the power to tell the court your preferences on who you’d like to be your guardian well before the need arises.

# Living Will / Advance Directives

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A Living Will in Texas (often called an *Advance Physicians Directive* or *Advance Directive*) tells your doctor and hospital what kind of medical treatment you want in the event you are very ill and likely to die soon. The Living Will relieves stress for family members who may not feel comfortable making decisions about your medical treatment when, for example, the doctor thinks you are suffering from a terminal condition.

# Financial Power of Attorney

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## **Durable General Power of Attorney**

A power of attorney is a document that gives someone you trust the ability to make legal decisions on your behalf. A power of attorney is “durable” when it remains in effect even if you have been declared incapacitated. This document is helpful when you want to give someone the authority to, for example, pay your bills or make transactions for you if you are unable in the future. Many people think of the Durable General Power of Attorney as the “financial power of attorney.”

# HIPAA Authorization

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The Federal government created a law called the Health Insurance Portability and Accountability Act (“HIPAA”). Part of HIPAA is a restriction on which individuals hospitals can give patients’ medical information to. Essentially, the hospital can only give your medical information to the people you specifically authorize. The HIPAA Authorization is an approved way of giving the hospital the ability to share your medical records with the people you designate.

# Medical Power of Attorney

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A medical power of attorney is a document in which you (the “principal”) name someone you trust (your “agent” or “attorney-in-fact”) to make medical decisions on your behalf should you become unable to make medical decisions in the future. For example, if you are seriously ill and the doctors want to know which surgery you want, you may be unconscious and unable to speak with doctors. In this situation, your medical agent would be able to tell the doctors which surgery you’d want.

## Appointment of Agent for Disposition of Remains

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Texas law allows an individual (“Decedent”) to appoint someone to make decisions about how to handle the Decedent's funeral and burial or cremation. If the individual does not appoint an agent, then the law of Texas dictates who has authority to handle the individual's remains.

# College Student

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- Bobby turned 18 and left home for college at UTD. Bobby is having a hard time adjusting. Bobby's parents find out that Bobby has been admitted against his will into a mental institution.
- The hospital will not disclose any information to Bobby's parents.

# Incapacitation

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- Dan lives with his girlfriend of 15 years he has 3 siblings who live outside of Texas. Dan does not have a medical or financial power of attorney. Dan has medical insurance through his employer. Dan owns a home with a mortgage, he is the main breadwinner and has \$40,000 in his savings account?
- Dan has a stroke

# Does the State of Texas Keep My Money?

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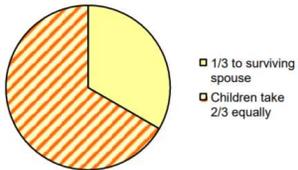
- Common Misconception
- If you do not have a Will state law states who keeps your property.

# Texas Descent and Distribution<sup>1</sup>

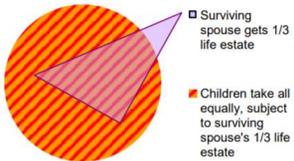
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

## 1. Married Person with Child[ren] or Other Descendants

### A. Decedent's separate personal property (all that is not real property) (EC § 201.002(b))

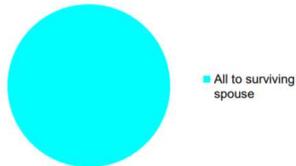


### B. Decedent's separate real property (EC § 201.002(b))

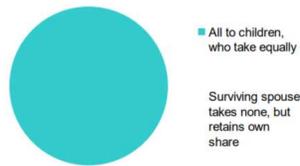


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

### C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (EC § 201.003(b)(2))



### C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))



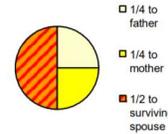
## 2. Married Person with No Child or Descendant

### A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))

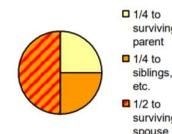


### B. Decedent's separate real property (EC § 201.002)

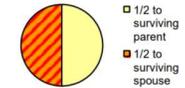
If decedent is survived by **both** mother and father.  
EC §§ 201.001(c) & 201.002(c)(2) & (3).



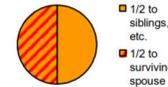
If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants.  
EC §§ 201.001(d)(1) & 201.002(c)(2) & (3).



If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants.  
EC §§ 201.001(d)(2) & 201.002(c)(2) & (3).



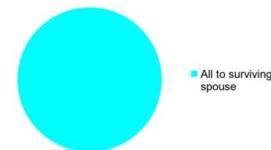
If decedent is survived by neither parent, but **is** survived by sibling(s) or their descendants.  
EC §§ 201.001(e) & 201.002(c)(2) & (3).



If decedent is survived by no parent, no sibling, and no descendant of a sibling.  
EC § 201.002(d).



### C. Decedent's share of community property (EC § 201.003(b)(1))



# Small Estates

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- Susan is not married and has 2 living siblings.
- Susan lives in an apartment and has \$4,000 in a bank account without a beneficiary designation.
- Susan lives in Dallas County.
- Susan's siblings call the Shutt Law Firm for help.

# Married Couple

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- No Children
  - Jon and his wife have \$20,000 in a Bank Account and own a home
  - Jon does not have any children
  - Wife has been locked out of her bank account
- Children from a prior marriage
  - Jon has two children from a prior marriage

# Claim of Common Law Spouse

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- Jim owns a home and has a father and 5 siblings.
- Jim has a girlfriend
- Jim passed away and his girlfriend declares to the funeral home that she is the spouse of Jim.

# Passing Away Without a Will

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- Jack has a wife and two sons. Jack owns a 401k and has bank accounts with and without beneficiary designations. Jack owns a home in Dallas County.
- Jack does not have a will and passes away
  - Dallas, Denton, Tarrant Counties 6-8 months, Collin 2-3 months
- Jack dies with a will
  - Dallas, Denton, Tarrant Counties 2-4 months, Collin 2-5 weeks

# When do attorneys recommend trusts?

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- Children from prior marriages
- Real estate in different states
- Family history of incapacity
- Centralization of control of assets
- Privacy
- Disinheritance
- Have more than \$11M

# High Net Worth

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- Consult a knowledgeable estate planning attorney
- Consider addressing issues/goals such as:
  - Asset Protection – the use of irrevocable trusts and entities (e.g. Family Limited Partnerships) in addition to portability.
  - Charitable Goals – the use of tools such as Donor Advised Funds, Charitable
  - Remainder Trusts, and Charitable Lead Trusts may align well with your goals.
  - Minimization of Estate Tax: Formulating a plan to understand the estate and income tax consequences of retaining assets in your gross estate and the control or loss thereof that results from utilizing different estate planning tools/techniques will enable you to tailor your plan to best suit your unique goals.

## Family Limited Partnership (FLP) or Limited Liability Company (FLLC)

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If you own and operate a family business, a family limited partnership (FLP) or family limited liability company (FLLC) could become a vital component of your estate plan. A properly formed and maintained FLP or FLLC can facilitate the transfer of your business to the next generation, protect assets from potential creditors, and minimize income, gift, and estate taxes.

## What is a donor-advised fund (DAF)?

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A donor-advised fund (DAF) offers an easy way for a donor to make significant charitable gifts over a long period of time. A DAF is similar to a private foundation but requires less money, time, legal assistance, and administration to establish and maintain. A DAF also enjoys greater tax advantages than a private foundation.