

Estate and Succession Planning for College Students

Eighteen. Adulthood! Freedom! Congratulations!

But also, welcome to “adulting.” There are many aspects of life that change when you become a legal “adult.” One such change is that you, generally, have full legal control over, and responsibility for, your assets, personal information, health information, etc.

For those who are college bound, this can be even more complicated. Many students rely heavily on their parents or other adults, whether financially, emotionally, mentally, or otherwise, when pursuing a collegiate education. It is common for parents to remain substantially involved in a student’s decision-making regarding finances, healthcare, etc.

But, since you are now a legal adult, your parent, generally, has no legal right to assist in those decisions, unless you grant those rights to your parent.

This packet is intended to provide you with some helpful information regarding your options for empowering your parent, or another adult, with the authority to assist you with various decisions and aspects of your new, young-adult life, should you choose to do so, as well as some basic estate-planning tools to consider. However, this packet is not comprehensive and will not provide you with the entirety of Texas law on these subjects. You are strongly encouraged to seek Texas-licensed legal counsel.

The means to accomplish these estate-planning goals, if you choose to do so, vary greatly from state-to-state and from one person to another. So, if you are going outside the State of Texas for your collegiate career, the information in this packet may not apply to your circumstances.

Additionally, individual circumstances can greatly impact which options are best in a given case, and not all of these options will either be available to you or provide the benefits you are seeking. Therefore, it is vitally important that you seek Texas-licensed, legal counsel when pursuing any of these options.

This information is provided for educational purposes only. The information is NOT intended to be legal advice for any particular person. Obtaining this information does NOT create an attorney-client relationship. You are encouraged to seek a Texas-licensed attorney to discuss your legal needs. The information provided is based upon laws of the (Great/Lone Star) State of Texas.

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Basic Will (“Will”):

Under Texas law, you may leave your property to whomever you want. If you do not have a Will, the TEXAS ESTATES CODE dictates which property goes to your spouse (if any) and which property goes to your children (if any) and other descendants, depending on the nature of the property. If you do not have any descendants, then the Estates Code specifies in what order your “next of kin” are entitled to receive the property. A Will allows you to designate the beneficiaries of your estate rather than following the plan dictated by state law.

Texas has a simpler probate process than in many states. However, the process is less complicated and less expensive if there is a properly drafted Will, rather than undergoing the administration of an estate where no Will has been provided. One reason is that your Will may designate an “*Independent Executor*” to be the representative of your estate. Once that person has qualified as the Executor in the probate hearing, that Executor can carry out the administration of the estate without being subject to reporting to the court except to file an Inventory of your Estate as it exists at the date of death.

A Will also allows you to name the person or persons you would want to be appointed as *Guardian* of your minor children (if any). Alternatively, you may choose to set up a Trust and name a Trustee to care for the assets of your minor children (if any) in order to avoid the more expensive and cumbersome Guardianships.

More complex Wills may include Trusts and other advanced estate-planning tools which are not discussed in this packet.

Statutory Power of Attorney (Durable) (“POA”):

This document is used by an individual to appoint a spouse (if any) or other family member or trusted individual to act on their behalf in the event that individual is not available or is unable to act on their own behalf. This document generally authorizes the named attorney or agent to act in business or property matters, but does **not** meet the legal requirements to authorize the agent to act on medical or health-care matters.

A special provision must be included in a POA to make it “*durable*” – meaning that the POA is still effective even after the “*Principal*” becomes incapacitated or incompetent. The death of the Principal or the appointment of a Guardian of the Estate of the Principal has the effect of terminating the POA. Most POAs take effect immediately. However, it is possible to create a “*springing*” POA – executed while a Principal is competent, but providing that it becomes exercisable by the agent only when the Principal becomes incompetent.

Medical Power of Attorney (“MPOA”):

This document allows the Principal to appoint an agent, or attorney-in-fact, to make health care or medical treatment decisions on behalf of the Principal when the Principal is unable to make those decisions. Specific language must be included in this MPOA in order to be effective for health care decision purposes. The general POA as described above **does not** include those provisions for health care purposes. Additionally, Texas has a **mandatory, statutory** MPOA.

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Religious or personal beliefs must be considered when drafting an MPOA to ensure the Principal only receives medical care they would approve of if they were capable of communicating with their doctor at the time of treatment.

HIPAA Power of Attorney:

This document is used to appoint an agent called a *“Personal Representative”* for the purposes of the federal *Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)*. This authorizes your agent to access your health care records and to speak with your health care providers, if needed. It does **not** empower that agent to make medical-care decisions for you.

Directive to Physicians (“Living Will”):

This document allows a person to make clear their intention that, in the event death is imminent, the person’s life should not be extended by artificial means. Under Texas law, the document is specifically referred to as a *“Directive to Physician,”* although it is commonly referred to as a *“Living Will.”* The Texas document provides multiple scenarios and you may select in each scenario whether you do or do not wish to have life-sustaining treatment.

Additionally, many religious or personal beliefs may impact your decision regarding life support.

Declaration of Guardian:

If a person should become incapacitated or incompetent, it may be necessary that a Guardian of the Person and/or a Guardian of the Estate might need to be appointed. The TEXAS ESTATES CODE provides that a person may execute a written declaration designating the person to serve as their Guardian if the needs should arise.

If a guardianship application is filed, the court shall appoint the named person as Guardian unless that person fails to qualify or if the court finds that the person would not serve the best interest of the Declarant. A person may also, in the declaration, disqualify persons from serving as Guardian, and the persons named may **not** be appointed Guardian under any circumstances.

There are requirements regarding the signature of the Declarant, witnesses, and notaries.

Guardian of the Person:

Guardian of the Person means a Guardian responsible for taking care of someone who is incapable of caring for themselves because of infancy, incapacity, or disability.

Guardian of the Estate:

Guardian of the Estate means a Guardian responsible for taking care of the property of someone who is incapable of caring for their own property because of infancy, incapacity, or disability.

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Disposition of Remains:

This document allows you to designate an agent who will have the authority to determine how your remains (body) will be managed – burial, cremation, etc. – so long as the applicable health and safety regulations are followed. Additionally, you may limit the authority granted to this agent and more specifically express your wishes regarding the disposition of your remains. This document can also be made a part of your Will, as opposed to a separate document.

There are many non-traditional options that may require specific instructions, including the following: cremation and made into jewelry; planted with a tree sapling; buried at a specific or special location; the type of ceremony to be conducted; religious considerations; etc.

Declaration for Mental Health Treatment:

This document allows you to express which treatments you do or do not approve to receive should you become incapable of giving or withholding informed consent to mental health treatment later in life. ***This document generally will expire on the third anniversary of its execution*** – however there are exceptions. Additionally, it supersedes a MPOA or Guardianship, and acts as **conclusive proof** of your preferences for mental health treatment. This document can be quite important if you have a family history of mental illnesses or a high risk of such illnesses – dementia, Alzheimer's, etc.

Anatomical Gifts (Organ Donations)

Anatomical Gifts a/k/a organ donations can be a difficult subject. In many states registering as a donor is very simple (driver's license renewal, etc.), but the law regarding what that registration means is very complex. Additionally, removing yourself from a donor registration can be quite challenging. For example, in Texas, if you have registered on the state organ donor list, simply removing it from your license does **not** remove you from the list. Finally, religious or personal beliefs must be considered when drafting or registering for an organ donation. Many of the state or public registries have little or no limitations on what your body/organs can be used for. If your faith or personal beliefs places limitations on those uses, you will need to consider a custom organ donation to ensure those wishes are followed.