

The Legal Strategist

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TEXAS ESOTERIC FACTS

- * Brazoria County has more species of birds than any other area in North America.
- * If you dig straight down from Austin, you will reach Iraq, not China.
- * The State Mascot is the Armadillo - interesting bit of trivia about the armadillo is they always have four babies. They have one egg, which splits into four, and they either have four males or four females.
- * In Texas, two categories of men are exempt from peeping tom charges: men over 50 and men with only one eye.

WE HAVE A NEW LOOK! *The Legal Strategist* now has a style that reflects our updated web site. As reported last quarter, all back issues of the *Strategist* may be viewed on our web site under [The Legal Strategist](#) tab.

This quarter's feature deals with simple Estate Planning techniques that will ensure your wishes and desires will be met upon your death. There is no better time than the start of a new year to create an Estate Plan if you do not have one and to review your plan if one is already in place. An Estate Plan can run the gamut of being simple - containing only a will; to more encompassing - by including a testamentary or living trust as well as other ancillary documents such as guardianships, powers of attorney, and physician directives; to more complex - featuring such items as a Family Limited Partnership, Generation Skipping Trusts and Insurance Trusts, just to name a few of the myriad of planning options available. *SBA* offers a full service non tax based estate planning practice for individuals and married couples who are looking to create peace of mind for themselves, their spouse, and for the care for their children. For a more in-depth analysis of the Estate Planning process, visit our web site and click on the link under the [Estate Planning](#) tab.

As with all of our "Featured Topics" we are only presenting a highlighted overview; if you would like more information on this or any other topic previously covered in our newsletter, please contact our office to set up a consultation.

Please take a few minutes to browse the newsletter. We invite all comments and suggestions; let us know how we can improve or offer up a topic that you would like to see in an upcoming issue. Enjoy!

Scott Barrett

FEATURE TOPIC: SIMPLE ESTATE PLANNING THAT CREATES PEACE OF MIND



No one wants to ponder their own death. At some point, we all feel invincible or use the excuse that we do not have the time or want to expend the funds to plan for our demise. However, simple planning today can save heartache and misery for your loved ones at the time of your death or incapacity. After all, you spend a lifetime acquiring your assets and caring for your family; isn't it logical that you would spend a few hours planning how your family and assets will be treated after your passing? This article will touch on the basics I use when developing an Estate Plan for my clients. Please note there are many, many other planning tools available, however for most of us, a simple plan that carries out our wishes, protects our family and loved ones and plans for the inevitable unknown is sufficient to provide that all important peace of mind we all seek.

The term "Estate Planning" has different meanings to different people. However, in the context of planning for someone's estate at death, the term involves not only the creation of a Will and possible Trust, but also the creation of Medical and Durable Powers of Attorney, Physician Directives (commonly known as a Living Will), and Designation of Guardianship for yourself in the case of later incapacity and for your minor children in the event of your death.

It is estimated that less than 30% of Americans have a Will. This lack of planning can wreak havoc on a family at a tumultuous time such as death or incapacity. With relatively few documents, you can create a comprehensive plan that will serve your needs, save you or your loved ones time and money and create a sense of tranquility in knowing that your final wishes and your family will be cared for. Here is an overview of the documents I feel are essential for a well devised Estate Plan:

- * **Will** - Your Will serves as instructions to your executor as to how to distribute your estate upon your death. In the simple form, a Will does not contemplate tax planning. With few exceptions, your Will must be witnessed by two non-interested parties whom possess the capacity to act as witnesses and be notarized. It is a good practice to include a Self Proving Affidavit so the witnesses will not have to appear in court to attest to the signing of the Will if the necessity ever arises
- * **Medical Power of Attorney** - The first of two essential Powers of Attorney. The MPOA allows you to designate a family member or friend to make medical decisions for you in the event that you are not able to do so. The MPOA does not become effective until such time as you require medical care but cannot make decisions for yourself.
- * **Durable Power of Attorney** - The second essential Power of Attorney, the DPOA allows you to designate someone to make some or all of your financial decisions for you in the event of your incapacity.
- * **Guardianships** - The Texas Guardianship Association defines the term Guardianship as "a legal process designed to protect vulnerable persons from abuse, neglect, and exploitation." There are two basic forms of Guardianship I devise for an Estate Plan, depending on the client situation:
 - * Guardianship in the event of later incapacity which allows you to designate a guardian for your person and estate in the event you become incapacitated, and
 - * Guardianship for minor children in the event of your death, and if married your and your spouses death. This Guardianship will allow for both the physical care of your minor children and their estates.
- * **HIPPA / Medical Record Release Authorization**- allows for the immediate release of your health care records to your designee under a Medical Power of Attorney without waiting until the principal's physician determines incapacity.
- * **Physician Directives (Living Will)** - In the wake of the Terry Schiavo controversy, Physician Directives have taken center stage. The Physician Directives convey your desires regarding life-support treatment in the event that you are not able to communicate these decisions to a doctor.
- * **Trusts** - There are a number of different types of Trusts designed to meet particularized needs, whether it be for tax planning, special needs beneficiaries, income sheltering or credit protection. However, for the vast majority of my clients, the most important goal of a Trust is to provide for the care for their children's ongoing needs. This is most often accomplished by the use of a Testamentary Trust. This Trust does not come into existence until the death of one or both spouses.

There you have it. With a few documents, you can rest easy that your wishes at death will be fulfilled, your family will be cared for and if incapacity arises, you have taken the necessary steps to ensure your needs are met. If you would like to discuss the creation or review of an Estate Plan, please contact our office.