

Frequently Asked Questions

What is probate?

The word “probate” refers to the court process under which (usually a deceased) person’s assets are administered and distributed to the persons entitled to those assets, after payment of any properly-filed creditor claims. Probate can either be “testate” (when the deceased had a Will) or “intestate” (when the deceased did not have a Will). The cost of administering an intestate estate (no Will) is considerably more expensive and time consuming than administration of an estate in which the deceased had a properly-executed Will.

What is estate planning?

Estate planning is what a person does during the person’s lifetime to provide for disposition of the person’s assets upon death, or if the person becomes incapacitated. The most important document in an estate plan includes a valid Will, properly executed in a formal ceremony typically conducted at an attorney’s office. Estate planning should also include signing documents to provide for handling a person’s assets (Durable Power of Attorney) and medical decisions with access to information (Medical Power of Attorney, Advance Directive, & HIPAA) should that person become incapacitated. Some individuals might want to set up a Revocable Living Trust; however, for Texas residents, the cost and burden of administering a Revocable Living Trust is usually not justified. The streamlined, relatively inexpensive Texas probate process if the person has a properly executed Texas Will is less expensive and often just as private as the costly and cumbersome Revocable Living Trust. For certain high-asset or foreign persons, estate planning might also include setting up trusts or business entities to use in minimizing the impact of estate taxes.

What is a business entity?

A business entity is an organization that the law treats under many circumstances as a “person” separate from the person who owns the business and/or the assets used in the business. This can provide some liability protection and tax advantages. Typical types of business entities include LLC (limited liability company), Series LLC, L.P. (limited partnership), for profit and non-profit corporations, L.L.P. (registered limited liability partnership), R.E.I.T. (real estate investment trust), and cooperative. There are also Professional Associations, Professional Corporations, and Professional LLCs that are owned by licensed professionals. A “business entity” does not have to conduct activities normally associated with the concept of “doing business.” Business entities are often set up for purposes of owning one or more assets (*e.g.*, condominiums, houses or other buildings, property or other assets that will be leased to others, *etc.*)

What is a trust?

A trust is a legal concept – usually reflected in a document – under which one or more persons (the Grantor or Settlor) transfer assets to a Trustee who will administer the assets for the benefit of one or more Beneficiaries of the trust. Certain trusts can provide protection from creditors or lower the impact of estate taxes associated with an asset. Trusts can be revocable and amendable, or irrevocable. There are many different types of trusts. Only some trusts provide liability protection from creditors.

What is involved in setting up a trust?

That depends on the purpose for the trust, and the complexities associated with the creation and administration of the trust.

What is the difference between an entity & a trust?

There are several differences between an entity and a trust, depending on the context and the type of entity and trust. Under Texas state law, what is commonly known as a Revocable Living Trust (used to avoid probate, and usually not necessary for Texas residents, as explained in [“Should I Get a Revocable Living Trust?”](#)) is not treated as an entity separate from the Trustee of the trust.

Do you offer free consultations?

We do not offer free consultations; however, we do offer ½ hour consultations for payment of \$100 to discuss your legal situation and provide further guidance on how to proceed.

Do you offer flat or hourly fees for service?

Yes. For certain deeds, releases, loan documentation, and routine estate planning documents, we may be able to quote a flat fee. Please call us and provide us with information so that we can determine whether we can quote a flat fee and if so, how much.

Do I need a Will?

Your heirs and the other loved ones you leave behind need for you to have a Will. Your failure to properly execute a valid Will likely will result in considerable expense and trouble for the loved ones who remain here after you pass on. Read the article by William D. Pargamon titled [“Estate Planning for People Who Do Not Need Estate Planning”](#)

What happens to my belongings if I die without a will?

That depends. If the only assets you have are assets that can pass outside of probate and you have made appropriate arrangements (read the [“How Assets Pass Upon Death”](#) chart), those assets will pass in accordance with the beneficiary designations, survivorship rights, *etc.* for those assets. For assets that do not pass outside of probate, someone likely needs to (1) file and pursue a probate proceeding in court to determine how your assets will pass, and (2) then distribute those assets. The probate process can be relatively simple and inexpensive if you have a Will. It can be much more complicated and expensive if you do not have a Will.

Do my spouse & I need separate wills?

Yes.

At what age should I begin the estate planning process?

Any time after you turn 18 years of age. It is never too late to do a Will before you die or become incapacitated.