

# PLANNING FOR A GRACEFUL EXIT



A FINAL GIFT TO THOSE WE LOVE



**ST. DAVID'S**  
EPISCOPAL CHURCH  
301 E. 8TH STREET | AUSTIN, TX 78701

## Introduction

Dear Friends in Christ,

One of the privileges of ministry is to be present with people in time of need. As a priest I am aware that there is no greater time of need than that which occurs at the death of a loved one. While, as people of faith, we know that Christ's Easter victory has overcome death, we are still aware of the challenges, difficulties and loss of such times.

This book has been created as a gift that we may leave for those who remain at the time of death. It can be a help when we must make funeral plans of those we love, but it will be of most assistance when we take the opportunity to plan ourselves, making our desires known, as a final gift for those we love.

I invite each member of the Church to make the investment of time to review this book and with a loved one and/or member of the clergy to use it as a resource that will become a gift to those who remain when we die. We also invite you to share a copy of your funeral plan to be filed at St. David's. This will help us in our efforts to be present and supportive of your family and friends.

Faithfully,

A handwritten signature in blue ink, appearing to read 'Chuck Treadwell', with a small cross symbol at the end of the signature.

The Rev. Dr. Chuck Treadwell  
Rector

May 2017

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## **Instructions for the Time of Death**

### **PLANNING YOUR FUNERAL**

The liturgy for the dead is an Easter liturgy. It finds all meaning in the resurrection. Because Jesus was raised from the dead, we too, shall be raised. The liturgy, therefore, is characterized by joy, in the certainty that neither death, nor life, nor angels, nor principalities, nor things present, nor things to come, nor powers, nor height, nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord.

*This joy, however, does not make human grief unchristian. The very love we have for each other in Christ brings deep sorrow when we are parted by death. Jesus himself wept at the grave of his friend. So, while we rejoice that one we love has entered into the nearer presence of our Lord we sorrow in sympathy with those who mourn.*

Book of Common Prayer, pg. 507

### **Cremation and St. David's Columbarium**

With the completion and dedication of St. David's Columbarium in the Spring of 2005 we especially invite our members to consider cremation and interment in our Columbarium as they make their plans.

The practice of cremation is an ancient one and has gained renewed attention in recent decades. One reason for this renewed attention is the opportunity to be buried at one's place of worship during life, the Church. Another is the ecological consideration of using less space for the interment of those who have died thereby making us better stewards of the earth at a time when land use is a growing concern. There is also the practical consideration that cremation and internment in a Columbarium costs a fraction of burial with a casket in a cemetery. While there was a time when some Churches discouraged cremation, most Christian traditions, including our own, now encourage cremation for these reasons and others.

St. David's Columbarium is available to any member of the parish. Costs for interment range from \$1,000 to \$1,300. For information about St. David's Columbarium, please contact the Parish Administrator at 512-610-3500.

## Letter of Instructions: FUNERAL

A funeral is a celebration of thanksgiving for the gift of a human life. For those who remain, the funeral rites are an important part of the process of grieving and saying goodbye. The plans that you make will shape some of the memories they draw on in the future for comfort, and so it is important to design the service with care. Your loved ones will appreciate knowing what your wishes were concerning your service. It will prevent their having to make these decisions hurriedly in a time of stress.

Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Clergy Requested \_\_\_\_\_

Family Contact \_\_\_\_\_ Phone \_\_\_\_\_

I  have  have not pre-arranged for my funeral at the following funeral home, where I'd prefer my remains to be handled: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

### Disposition of Physical Remains

\_\_\_\_ I want my physical remains to be buried (if cremation is preferred, see next page).

- A cemetery plot has (not) been purchased: \_\_ Yes \_\_ No
  - o If yes,  
The deed for the plot can be found: \_\_\_\_\_ The  
contact person for the cemetery is: \_\_\_\_\_,  
Telephone # \_\_\_\_\_  
I purchased the plot from: \_\_\_\_\_ on \_\_\_\_\_ (date).
  - o If no,  
Please purchase a plot for me in \_\_\_\_\_ Cemetery in  
\_\_\_\_\_ (city, state).  
Or, Please contact the military survivor assistance officer to arrange for a plot for  
me in \_\_\_\_\_ Cemetery, located at \_\_\_\_\_.
- I want a \_\_\_\_\_ (metal/wood/name of  
style, if known) casket.  
*Note: there may be savings by buying from a distributor rather than a funeral home.*
- I want to be buried in \_\_\_\_\_. (clothing, jewelry, glasses)
- I want the following items buried with my remains:  
\_\_\_\_\_

- I want a headstone, describe (or provide photo of type):

\_\_\_\_\_

*(Note: Service members and honorably discharged veterans can receive a Veterans Administration headstone, free of charge).*

Flowers \_\_\_\_\_ Florist \_\_\_\_\_

Ushers: \_\_\_\_\_

\_\_\_\_\_

I would like the following to serve as pallbearers if they are able (list up to eight, along with contact information):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_ I want my physical remains to be cremated  
 \_\_\_ Before any service      \_\_\_ After a memorial service

Desired disposition of ashes:

- Spread at \_\_\_\_\_(location)
- Kept by \_\_\_\_\_(name)
- Interred at \_\_\_\_\_(location)

\_\_\_ I would like visiting hours at the funeral home:  
 \_\_\_ Open      \_\_\_ Closed casket

\_\_\_ I would like a reception at St. David’s Episcopal Church after the service.

**THE WORSHIP SERVICE**

Process in?    Y   N

Crucifer: \_\_\_\_\_

Acolytes: \_\_\_\_\_

- Rite I(traditional language) BCP p. 468
- Rite II (contemporary language) BCP p. 491

Eucharist        Y   N

If Eucharist is desired, and you check your preference below:

- Rite I, Eucharistic Prayer I
- Rite I, Eucharistic Prayer II
- Rite II, Eucharistic Prayer A
- Rite II, Eucharistic Prayer B
- Rite II, Eucharistic Prayer C
- Rite II, Eucharistic Prayer D

Eucharistic Ministers: \_\_\_\_\_

Music: Organ Y   N   Other instruments \_\_\_\_\_

Vocal music Y   N        Soloist \_\_\_\_\_

(Musicians will be paid at the time of the service or by funeral home)

Prelude \_\_\_\_\_

Opening Hymn \_\_\_\_\_

First Lesson \_\_\_\_\_ Reader \_\_\_\_\_

Psalm, Canticle, or Hymn \_\_\_\_\_ Reader \_\_\_\_\_

Second Lesson \_\_\_\_\_ Reader \_\_\_\_\_

(Psalm, Canticle, or Hymn \_\_\_\_\_ Reader \_\_\_\_\_)

(Lesson or Gospel [Gospel is required if Eucharist] \_\_\_\_\_)

BCP p. 495 *There may be a homily by the Presider, or a member of the family or a friend.*

Friend or family member to speak \_\_\_\_\_

(We suggest that the presentation be scripted and read, not to exceed five minutes.)

Homily Preacher \_\_\_\_\_

Offertory music \_\_\_\_\_

Anthems BCP p. 500 or Canticle or Closing Hymn \_\_\_\_\_

Postlude \_\_\_\_\_

Will there be military or other honors? \_\_\_\_\_

Additional requests \_\_\_\_\_

Is St David's being named as a recipient of memorial gifts? Y N

Regardless of whether the church is named a recipient, if we receive any memorial gifts, who should receive the donor names?

\_\_\_\_\_

\_\_\_\_\_

The Episcopal tradition is that church members are normally interred (buried or inurned, depending on casket or ashes) immediately after the church service is completed.. The coffin, when present, is closed and is always covered by a pall, which the church provides.

Signed \_\_\_\_\_ Date \_\_\_\_\_

*Please leave a copy of the Funeral Planning pages with the Church and let loved ones know that you have made these choices by sharing this information with them.*



## Scripture Selections for Burial Liturgies

### Old Testament and Apocrypha

*Book of Common Prayer*

Isaiah 25:6-9 (He will swallow up death in victory)

Isaiah 61:1-3 (To comfort all that mourn)

Lamentations 3:22-26, 31-33 (The Lord is good unto them that wait for him)

Wisdom 3:1-5, 9 (The souls of the righteous are in the hand of God)

Job 19:21-27a (I know that my Redeemer liveth)

*Additional selections from the New Zealand Book of Common Prayer*

Proverbs 31:10-31 (A capable wife who can find?)

Ecclesiastes 3:1-14 (Fr everything there is a season)

Isaiah 40:28-31 (Have you not known? Have you not heard?)

Lamentations 3:17-21, 22-26 (my soul is bereft of peace)

2 Esdras 2:42-48 (These are they who have put off mortal clothing)

Wisdom 4:7-15 (The righteous, though they die early, will be at rest)

### Psalms

*Book of Common Prayer*

Psalm 23 (The Lord is my shepherd) Rite I or Rite II version

Psalm 27 (The Lord is my light and my salvation: whom shall I fear?)

Psalm 42 (As a deer longs for flowing streams, so my soul longs for you, O God)

Psalm 90 (Lord, you have been our dwelling place in all generations)

Psalm 116 (I love the Lord, because he has heard my voice and my supplications)

Psalm 121 (I lift up my eyes to the hills – from where will my help come?)

Psalm 130 (out of the depths I cry to you. O Lord)

Psalm 139 (O Lord, you have searched me and known me)

*Additional selections from the New Zealand Book of Common Prayer*

Psalm 25 (To you, O Lord, I lift up my soul)

Psalm 46 (God is our refuge and our strength)

Psalm 103 (Bless the Lord, O my soul)

## **New Testament Readings**

### *Book of Common Prayer*

Romans 8:14-19, 34-35, 37-39 (Neither death, nor life...will be able to separate us from the love of God in Christ Jesus our Lord)

1 Corinthians 15:20-26, 35-38 42-48. 53-58 (Christ has been raised from the dead)

2 Corinthians 4:16-5:9 (So we do not lose heart)

1 John 3:1-2 (See what the father has given us)

Revelations 7:9-17 (there was a great multitude)

Revelation 21:2-7 (And I saw the holy city, the new Jerusalem)

### *Additional selections from the New Zealand Book of Common Prayer*

Romans 6:1-11 (What then are we to say?)

1 Corinthians 13 (If I speak in the tongues of mortals and of angels)

1 Corinthians 15:12-19 (Now if Christ is proclaimed as raised from the dead)

1 Corinthians 15:20-22, 35-38, 42-44, 53-58 (Where, O death, is your sting?)

2 Corinthians 1:3-5 (Blessed be the God and Father of our Lord Jesus Christ)

2 Corinthians 4:7-14 (But we have this treasure in clay jars)

2 Corinthians 4:13-5:10 (But just as we have the same spirit of faith that is in accordance with scripture)

Philippians 3:8-21 (I regard everything as loss because of the surpassing value of knowing Christ Jesus my Lord)

Philippians 3:20-4:1, 4-7 (But our citizenship is in heaven)

1 Thessalonians 4:13, 14, 15-18 (But we do not want you to be uninformed)

1 Peter 1:3-9 (Blessed be the God and Father of our Lord Jesus Christ)

## **Gospel Readings**

### *Book of Common Prayer*

John 5:24-27 (anyone who hears my word and believes him who sent me has eternal life)

John 6:37-40 (Everything that the father gives me will come to me)

John 10:11-16 (I am the good shepherd)

John 11:21-27 (Martha said to Jesus, 'Lord, if you had been here, my brother would not have died)

John 14:1-6 (Do not let your hearts be troubled)

*Additional selections from the New Zealand Book of Common Prayer*

Matthew 5:3-10 (Blessed are the poor in spirit, for theirs is the kingdom of heaven)

Mark 10:13-16 (People were bringing little children to him)

Luke 15:11-32 (Then Jesus said, 'There was a man who had two sons)

Luke 23:44-49, 24:1-7 (It was now about noon, and darkness came over the whole land)

Luke 24:13-35 (Now on that same day two of them were going to a village called Emmaus)

John 15:19-29 (Very truly I tell you the Son can do nothing on his own)

John 6:46-58 (Not that anyone has seen the father except the one who is from God)

John 10:1-15 (Very truly I tell you, anyone who does not enter the sheepfold by the gate)

## **Suggested Hymns for the Liturgy of the Burial of the Dead**

*The Hymnal 1982*

- 151 From Deepest Woe I Cry To Thee (3)
- 194/195 Jesus Lives! The Terrors Now (4)
- 208 Alleluia! The Strife Is O'er The Battle Done (5)
- 287 For All The Saints, Who From Their Labors Rest (8)
- 326 From Glory To Glory Advancing (2)
- 338 Wherefore, O Father, We Thy Humble Servants (2)
- 354 Into Paradise May The Angels Lead You (2)
- 355 Give Rest, O Christ, To Your Servants (1)
- 356 May Choirs of Angels Lead You To Paradise On High (3)
- 357 Jesus, Son of Mary (4)
- 358 Christ The Victorious, Give To Your Servants (4)
- 429 I'll Praise My Maker While I've Breath (4)
- 444 Blessed Be The God Of Israel (3)
- 447 The Christ Who Died But Rose Again (4)
- 455/456 O Love Of God, How Strong And True (4)
- 487 Come My Way, My Truth, My Life
- 499 Lord God, You Now Have Set Your Servant Free (1)
- 517 How Lovely Is Thy Dwelling Place
- 560 Remember Your Servants, Lord (9)
- 620 Jerusalem, My Happy Home
- 621/622 Light's Abode, Celestial Salem (5)
- 623 O What Their Joy And Their Glory Must Be (5)
- 625 Ye Holy Angels Bright
- 635 If Thou But Trust In God To Guide Thee (2)
- 636/637 How Firm A Foundation, Ye Saints Of The Lord (5)
- 645/646 The King of Love, My Shepherd Is (6)
- 658 As Longs The Deer For Cooling Streams (4)
- 663 The Lord My God My Shepherd Is
- 664 My Shepherd Will Supply My Need (3)

- 665 All My Hope On God Is Founded (5)
- 666 Out Of The Depths I Call (4)
- 668 I To The Hills Will Lift Mine Eyes
- 680 O God, Our Help In Ages Past (6)
- 687/688 A Mighty Fortress Is Our God (4)
- 690 Guide Me, O Thou Great Jehovah (3)
- 692 I Heard The Voice Of Jesus Say

*Wonder, Love, and Praise*

- 760 O Wheat Whose Crushing Was For Bread (3)
- 762 I Am The Bread Of Life (4)
- 765 O Blessed Spring, Where Word And Sign Embrace Us (5)
- 770/771 O God Of Gentle Strength (4)
- 775 Give Thanks For Life, The Measure Of Our Days
- 776 No Saint On Earth Lives Life To Self Alone (2)
- 791 Peace Before Us (6)
- 793 Here, O Lord, Your Servants Gather (4)
- 799 Abide With Me: Fast Falls The Eventide (4)
- 801 God Be With You Till We Meet Again (4)
- 810 You Who Dwell In The Shelter Of The Lord (3)
- 811 You Shall Cross The Barren Desert (3)
- 816/817 Christ Is Risen From The Dead (1)
- 828 Beati In Domo Domini (1)

*Lift Every Voice and Sing*

- 103 Steal Away, Steal Away To Jesus
- 106 Precious Lord, Take My Hand
- 180 Ain-A' That Good News
- 181 Amazing Grace, How Sweet The Sound (5)
- 188 When Peace Like A River
- 190 If When You Give The Best Of Your Service (4)
- 204 When Waves Of Affliction Sweep Over The Soul (4)
- 207 We Are Often Tossed And Driv'n
- 213 Children Of The Heav'nly Father

## DEATH CERTIFICATE INFORMATION

Information funeral director will need for death certificate:

Full name	
Residence address	
Marital status, include date and place if possible	
Spouse's name	
Date of birth	
Birthplace	
Social security number	
Occupation	
Father's name and birthplace	
Mother's name, incl maiden, and birthplace	
Length of residence in state	
Military service dates	
Number of copies of death certificates	Need a copy for insurance policies, all assets that require title transfers, VA, some account closings/transfers

## Obituary

It is very helpful to write your obituary or at least to have all the pertinent factual information assembled. The obituary is needed quickly after a death, and it is sometimes hard for those left behind to gather the needed information in a short time.

Please provide the obituary shown below to the following newspapers:

Newspaper	Phone/Fax/E-Mail

Obituary – either write your own (space provided below) or provide bullet points from which a newspaper can craft an obituary. Important items to include:

- Full name: \_\_\_\_\_
- Parents' names: \_\_\_\_\_
- Date of birth: \_\_\_\_\_
- Circumstances of death - to be provided by survivor after death
- Education information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Career information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Community activities: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Dates of military service along with rank achieved: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## ESTATE PLANNING FOR PEOPLE WHO DON'T NEED ESTATE PLANNING

*By William D. Pargaman; Partner, Brown McCarroll, L.L.P.*

*Many people with relatively small estates, when asked whether they have a will, typically reply, "Oh, I really don't need a will. I just don't have enough property." Unfortunately, these may be the very people who most need a will, since without a will, their beneficiaries may have to suffer the consequences of expensive court proceedings to get possession of the small amount of assets remaining after death. In addition, most people do not realize that "estate planning" involves much more than just having a properly drafted will, even for a small estate.*

### **Do I need a will? Yes!**

Even though it is possible to structure the ownership of your assets in such a way to avoid the need for any of these assets to pass "under your will," this method is almost always more cumbersome and expensive than a will. Many people do this in order to try to avoid probate because of the perception that probate is an expensive procedure. In Texas, because of our "independent administration" statutes, probate can be relatively inexpensive if the will is properly drafted (and the attorney handling the estate knows what he or she is doing). No matter how diligent you are in structuring the ownership of your assets to make sure that they pass to your loved ones at your death, almost everyone owns some asset (a car, household goods, or a rent deposit, for example) that does not automatically pass to their loved ones at death.

### **In Texas, a will is the simplest and easiest form of accomplishing the goal of making sure that your property passes to the right people upon your death. Who will get my property if I don't have a will?**

In the absence of a will or other arrangements governing how your property will pass at death, your property passes under the "intestacy" statutes. (Those "other arrangements" are discussed below.) A person is said to die "intestate" if he or she dies without a will. The rules governing community property remained unchanged in Texas for well over 100 years. Any community property (almost all property acquired by spouses during marriage) was divided in half. The surviving spouse kept his or her half, while the deceased spouse's half passed to his or her children. Many people assumed [**incorrectly!**] that the survivor would get all of the community property. However, until 1993, this wasn't the case if the deceased spouse had any descendants (children, grandchildren, etc.). Then, effective September 1, 1993, the intestacy statutes were changed so that all of the community property will pass to the surviving spouse as long as all of the deceased spouse's children are also the children of the surviving spouse. If the deceased spouse has any children who are not the survivor's children, then the old rules apply, and the deceased spouse's half passes to his or her children.

Separate property passes by intestacy under a different set of rules. Separate property consists of any property owned by a person before they were married, and any property that they were given or inherited after marriage (plus the **appreciation** on the separate property). If you are married and have descendants, one-third of your real estate (which includes mineral interests) will pass to your spouse "for life," and the other two-thirds will pass to your descendants. Your spouse will be entitled to the income generated by the portion of the real estate passing to him or her, but the principal will eventually pass to your descendants upon your spouse's death. All of the rest of your property, such as personal effects, bank accounts, stocks, bonds, etc. ("personal property"), passes one-third to your spouse and two-thirds to your descendants.



If you are married but have no descendants, then half of your separate real estate passes to your spouse, while the other half passes to your parents, siblings, or their descendants. All of your separate personal property passes to your spouse. If you are not married, all of your property passes to your descendants, if any. If you have no descendants, your property passes to your parents, siblings, or their descendants.

One “exception” to these rules applies to your homestead. Unless properly waived, your spouse has the right to use and occupy your homestead as his or her home for the rest of her life, regardless of whether the homestead was community property or your separate property, or who inherits the property. Similar rules apply to limited amounts of exempt personal property.

**Isn't probate expensive?** It can be but doesn't have to be. Probate is the process by which an executor or administrator of your estate gathers all of the probate assets, pays all of the debts and expenses that need to be paid, including taxes, if any, and then distributes the property to the persons entitled under your will or the intestacy statutes. With rare exceptions, there are two types of probate in Texas: dependent and independent. In a dependent administration, the executor or administrator, after filing an inventory listing the assets of the estate, must ask for court permission to make sales, compromise claims, or to take most other actions. Usually, the executor or administrator must file a “bond” with the probate court. A bond is an insurance policy that guarantees the executor will be honest and do a good job. The cost of the policy is paid out of your estate. In addition, the executor or administrator must file annual accounts with the court, reporting all receipts and all expenses. This type of administration involves the extensive use of an attorney, and therefore can be quite costly.

Most of the administrations in Texas, however, are “independent.” In 1843, while Texas was still an independent nation, our legislature authorized for the first time in America the settlement of a decedent's estate with virtually no court supervision. When an “independent” executor or administrator is appointed, once the inventory is filed, the executor or administrator can take virtually all steps necessary to gather the assets, pay debts and expenses, and distribute them to the beneficiaries without further court involvement. Usually, bond is waived. The attorney's role is reduced drastically, resulting in a much lower cost.

**What are “probate” assets?** Probate assets, simply put, consist of all of the assets that you own which either pass under your will, if you have one, or pass under the intestacy statutes, if you don't have a will. They are also the assets which may be subject to control or supervision of the probate court and your executor or administrator. This includes all of your property which does not pass by the “other arrangements” mentioned above. These other arrangements include a living trust, which is a trust you create during your lifetime which holds assets for your benefit and provides for the disposition of the property in the trust upon your death; bank accounts and other property held with another person as joint tenants “with right of survivorship;” and insurance proceeds or retirement plan benefits payable to another person directly by virtue of a beneficiary designation. Note that some assets, such as retirement plan benefits and insurance proceeds, are almost never “probate” assets because they almost always pass under their beneficiary designations directly to some other individual, while bank accounts and real estate may or may not be owned as joint tenants with right of survivorship, and therefore can be either probate or nonprobate assets, depending on how they are held. It is very important to coordinate the disposition of any nonprobate assets with the disposition of assets contained in your will.

**Okay, so I need a will. Can I write it myself?** Yes and no. There is certainly no legal requirement that a will be drafted by an attorney. In fact, it does not even have to be witnessed.

Texas law allows anyone to execute a “holographic” will. This is a will that is written entirely in your own handwriting and signed by you. Unfortunately, while a holographic will may be valid to dispose of your property, the money saved by avoiding a lawyer today is usually far less than the extra cost of dealing with the problems associated with most holographic wills, such as property that is not disposed of by the will, the failure to provide for independent administration, or an unfair disposition of your property because you failed to anticipate an unusual order of deaths in your family. In other words, “pay now or pay later.”

**What should my will contain?** There are a number of provisions a will should contain in order to make sure your property ultimately gets to your loved ones at the least cost. Your will should state the county and state of your **residence**. The will should appoint one or more **executors** (with alternates). The executor can be an individual or a bank with trust powers, but need not live in Texas. In order to avoid added expense, you should provide that your executors be “**independent executors**” and **waive bond**. Independent administration eliminates most of the expenses normally associated with probate. A bond is usually unnecessary if you appoint someone you trust.

Many wills begin with **directions that the executor pays all debts, taxes and expenses**. These directions are not necessary, since the executor is under a statutory duty to pay these items even in the absence of any directions in the will. However, if your will makes any specific gifts to particular beneficiaries which you wish them to receive without having to bear the burden of taxes and expenses, your will should say so.

For most people, the most important provisions of their wills deal with **who gets the property**. You need to consider whether to leave all of your property to your spouse, or whether to make some provisions for children or other loved ones. A well drafted will should also contain provisions dealing with the **possibility that your loved ones may not die in the normal order**. You may not get around to executing another will after one of your loved ones dies, so the will should take this possibility into account. After you have made any special gifts that you may wish to make, your will should contain a “**residuary clause**,” which disposes of anything else you may own (whether or not you know you own it). Special **provisions for minor or incapacitated beneficiaries** are discussed below. The will may name **guardians for your minor children**, although that can be done in a separate instrument. Your will should give the executor all necessary **powers to settle your estate and divide up your assets** among the beneficiaries. Your will must be **signed and dated by you** (“the testator”). In addition, the will should be **signed by two witnesses** older than the age of fourteen who are not beneficiaries named in the will (unless the will is “holographic”). Most Texas wills also have a provision called a “**self-proving affidavit**” which makes it much easier (and less expensive) to probate the will following your death.

### **What about the kids?**

There are two different questions which you should consider, and the answers to those two questions may not be the same. First, you need to decide who will take care of your children if you die before they become adults. The person who gets custody of your children is called a “guardian of the person.” You can name a guardian either in your will or in a separate document. You can name two people to serve as guardian for your children, but only if they are married to each other. Again, you should designate alternate guardians in case the people you choose first either cannot or will not act as guardians. Also, you should appoint someone you trust, and waive any bond requirement.

If you fail to name a guardian for your minor children, then their closest ancestor (your parents, for example) is entitled to be appointed. If there is more than one ancestor in the same generation, they are equally entitled, and it is up to the probate court to determine whose appointment would be in the child's best interest. If there are no grandparents (or great-grandparents), then the "nearest of kin" is appointed guardian. This would usually be an uncle or aunt, but could be a sibling if you had an adult child.

The second question you should address is who will take care of any property passing to your children. As minors, the children do not have the legal right to take possession of any property passing to them. If you do not make any other provisions in your will, then someone will be appointed by the court as "guardian of the estate." This type of guardianship (as opposed to a guardianship of the person) can be very expensive.

The guardian of the estate must seek court permission for virtually any action, and must file an "account" annually, listing every receipt, every expense, and the property remaining on hand. Because all of these documents that are filed with the court are prepared by lawyers, the cost of a guardianship can be extremely high. You can **and should** avoid a guardianship of the estate for your children by providing in your will that any property passing to your children will pass instead to a trust for their benefit if they are under the age of eighteen years (you can set a higher age if you wish). The property that would otherwise pass to a minor child will instead pass to one or more trustees whom you select who will then invest the property for the benefit of the child and distribute money to the person having custody of the child as necessary for their health, support and education. The trustee is not subject to court supervision, and therefore the expenses associated with property held in trust are minimal.

The guardian of the person is in charge of raising your children, while the trustee is in charge of managing and spending the property passing to your children wisely. It may be that one person (or one couple) will not be the best person to fill both rolls. Therefore, you may decide to name one person or couple as guardian of the person, and name someone else as trustee.

Your will can also contain a trust similar to the one described above for minor children that would automatically hold any property passing to an incapacitated beneficiary until the beneficiary regained capacity. Again, the benefit of this trust is the avoidance of the high cost usually associated with a guardianship of the estate.

### **What if I get divorced?**

If you are divorced after executing your will, Texas law provides that any provision in your will giving your ex-spouse property or naming the ex-spouse as a fiduciary (executor, trustee, or guardian) is "null and void and of no effect." The same is usually the case with respect to life insurance made payable to the ex-spouse. However, reviewing the provisions of your will and the beneficiary designations for your life insurance and retirement plans should always be done during or immediately following a divorce.

### **What should I do with life insurance proceeds or retirement plan benefits?**

Normally, you would name your spouse as the primary beneficiary of insurance proceeds and retirement benefits upon your death by executing a beneficiary designation provided by the insurance company or the retirement plan administrator. You also need to name a "contingent" beneficiary. This is the person who will receive the proceeds in the event your primary beneficiary dies before you do. Most people name their children. This may not be best. If your children are

minors, then the proceeds or benefits will have to be paid to a guardian of the estate which, as noted above, generates substantial costs. This will be the case even if your will provides for trusts for your children because the beneficiary designations override the provisions of your will. In addition, the beneficiary designation may not make clear what happens to the share of a deceased child (for example, whether it passes to that child's children, or to your other children). You can, however, coordinate these beneficiary designations with the provisions of your will. Your will should contain a provision placing any of these proceeds which are made payable to the trustees named in your will into trusts for your children or their descendants. By naming the trustees in your will as contingent beneficiaries, the proceeds will pass directly to the trusts for your children. One benefit of this arrangement is that your children get the benefit of the proceeds as if they had passed to them under the will, but the proceeds are not subject to your creditors' claims. This can be a problem, however, if you are relying upon these proceeds to pay debts, funeral or other administrative expenses after your death. The best solution is to discuss these questions with an estate planning attorney when your will is drafted.

### **What is a "Living Trust?"**

Living trusts have received a great deal of publicity in the past few years in the national press. Basically, when you create a living trust, you create a trust for your own benefit which you may revoke at any time. All of the property that you convey to the trust will be managed by the trustee of the trust. Usually, you name yourself as the initial trustee. The trust document will contain provisions directing the trustee to distribute whatever amounts you need to live on, while investing the remaining assets of the trust prudently. If you should become incapacitated, then the trust provides for the appointment of a successor trustee to come in and manage the assets for you. Upon your death, the assets pass directly to the beneficiaries named in the trust document, "avoiding probate."

While living trusts can be beneficial in certain circumstances (especially for individuals in states other than Texas where probate procedures are more burdensome and costly), a few misconceptions should be corrected. First, a living trust for a Texas resident will not save a penny in estate or inheritance taxes over a well-drafted, tax-planned will. Second, the cost savings of a living trust versus a will which utilizes an independent administration are minimal. While the trust document itself may cost about the same as a will, in order for the trust to "avoid probate," your assets must be transferred to the trust before your death. This often may involve paying a lawyer an additional amount to prepare deeds to transfer real property or other transfer documents to transfer other property. Third, you should still have a will. There are invariably some assets that are not transferred to the living trust, and therefore, at the very least, you should have a will giving all of those assets to the living trust upon your death. In fact, placing your homestead into a living trust may impair the homestead exemption to which you are entitled for creditor protection purposes. Finally, a living trust itself does nothing to protect the assets in the trust from your creditors. Because Texas probate is relatively simple and inexpensive (if you utilize independent administration), we normally do not recommend living trusts for Texas residents. However, if you own real estate in another state, or you think it would be prudent to set up a mechanism to allow someone else to come in and manage your assets for you (if you become incapacitated and can't manage them yourself), then a living trust may be appropriate. With respect to management of your assets by another, however, see the discussion below relating to powers of attorney.

**If I have a will and I have reviewed all of the other arrangements disposing of my property, have I finished planning my estate?** Not quite. All of those documents may take care of what happens to your property (and how it happens) after your death. However, you also

need to consider what will happen to you and your property during your lifetime if for any reason you become incapacitated.

A “**Durable Power of Attorney**” for financial purposes allows you to name another person, usually your spouse or children, as your agent or “attorney-in-fact.” The agent is given broad powers to manage your assets on your behalf. This way, if something should happen to you, it will be unnecessary to go to court to have a guardian appointed in order to give someone else authority to manage your assets for you. Remember, guardianships can be very expensive because they require a great deal of involvement on the part of attorneys and the probate court. The term “durable” merely means that the power of attorney will not terminate if you should become incapacitated. That is important, because usually you don’t want the power of attorney to be used **until** you become incapacitated. Since September 1, 1993, you can even provide that the power of attorney does not become effective until you become incapacitated.

If you become incapacitated, a guardianship should normally be avoided, if at all possible. However, if for some reason a guardianship is required, then Texas law also allows you to designate in advance the person you would like to act as your guardian, or to designate any person you would not wish to be your guardian.

Texas law also allows you to execute two documents that relate to you, not to your assets. One is called the “**Medical Power of Attorney.**” This document allows you to name someone else who knows your intentions who can make medical decisions for you consistent with your own values and beliefs. The person you designate may only exercise decision-making authority for you if your attending physician certifies in writing that you lack the capacity to make the health care decision for yourself.

A similar, but different, document is a “**Directive to Physicians and Family or Surrogates,**” also known as a “living will.” A living will is limited in scope since it only addresses withholding and withdrawing medical treatment while you suffer from a terminal medical condition. Copies of both of these documents are usually available for free (*see following pages of this booklet*) or at a nominal cost from your local hospital, long-term care facility, physician, attorney, and other state health associations such as the Texas Medical Association, Texas Hospital Association, Texas Health Care Association, and the Texas Association of Homes for the Aging.

Many people often place funeral and burial instructions in their will. This is inappropriate, since it is possible that your family members may not read your will until after the funeral and burial have taken place. There is no formal written document needed to express these desires. You should let your family members know if you have any specific desires, or consider taking care of the funeral and burial arrangements in advance.

Finally, many people wish to allow their bodies to be used to sustain others’ lives after their own deaths through organ donation. Many of you may have seen these forms when your driver’s license was renewed. Various organ procurement organizations can provide you with the forms necessary to make these wishes known.

### **What about taxes?**

**The vast majority of Americans will pay no inheritance or estate taxes.** If the value of your entire estate (including life insurance proceeds and retirement plan benefits) is less than the “tax-free amount,” after deducting debts and expenses, then there should be no federal estate taxes. (There have been no Texas inheritance taxes since the end of 2004.) The “tax-free amount”

was \$600,000 through 1997, but as a result of tax acts passed in 1997, 2001, and 2010, the tax-free amount has increased to \$5.12 million in 2012. However, the 2001 and 2010 tax acts “sunset” at the end of 2012, so without further legislation, in 2013 the estate tax will revert to the changes enacted in 1997, which by then will result in a tax-free amount of \$1 million.

Remember that if a couple’s estate consists of community property, then only the deceased spouse’s half is considered in determining whether he or she is under these limits. In addition, a dollar-for-dollar deduction is allowed for all property given outright to the survivor. Therefore, a will (and other arrangements) leaving all of your property to your spouse should guarantee that no taxes will be due upon your death, no matter how large your estate. However, if your combined estates exceed the tax-free amount, or may exceed that amount upon the death of the survivor, you should see an attorney who is familiar with tax-saving provisions in order to save estate taxes that might otherwise be due upon the survivor’s death.

**Generally, assets received by the beneficiaries of your estate are not taxable as income to them.** Income taxes will have to be paid on any income earned by those assets following your death, and retirement plan benefits will also constitute taxable income to the recipients (although surviving spouses may roll these benefits over into an IRA and defer income taxation). Also, the assets passing to your beneficiaries receive a new “basis” for determining capital gains equal to their value on the date of your death. This means that even if you purchased an asset at a very low price, if your children sell that asset following your death, they will only have to pay capital gains taxes on the appreciation of that asset between the date of your death and the date they sell the asset. **Significant lifetime gifts may be subject to taxes.** If you have a large estate, you cannot escape the effects of potential estate taxes just by giving all of your assets away during your lifetime. “Taxable” gifts count against the \$5.12 million tax-free amount, and if you exceed that aggregate amount of gifts during your lifetime, you will owe gift taxes. Even if you don’t exceed that amount during your lifetime, any taxable gifts will reduce the tax-free amount available to apply to estate taxes at your death. Currently, you may give cash or other property to any number of people you desire, and the gifts will **not** be considered taxable gifts so long as the total value of the property given to any one person during a calendar year does not exceed \$13,000, and the gift is of a “present interest.” This \$13,000 limit is called the “annual exclusion” and may be used each year. A present interest means that the gifts are given outright to the donee or to special qualifying trusts for the donee’s benefit. In addition, any amounts paid on behalf of another (i) as tuition to certain educational organizations or (ii) as a payment for medical care to any person who provides that medical care will not be considered as taxable gifts or count against the annual exclusion limit. The annual exclusion has been indexed for inflation since 1998, moving up in minimum \$1,000 increments. It reached its current value of \$13,000 in 2009, but likely will increase to \$14,000 in 2013.

### **What if I want more information?**

An excellent source of further information is a book entitled “**How to Live — and Die — With Texas Probate,**” edited by Charles A. Saunders in association with the State Bar of Texas (7th ed. 1995). While the estate tax amounts figures in this edition are a bit out-of-date, the basic description of Texas law remains accurate. The Seventh Edition may be found in many local bookstores or websites such as amazon.com and barnesandnoble.com for around \$13.00. (An updated Eighth Edition is still several years away.)

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## BEQUESTS

In making estate plans that reflect our values, many think of bequests to worthy organizations or causes that have been important in their lives.

Those with an interest in leaving a legacy gift to St. David's are encouraged to make that gift to St. David's Episcopal Church Foundation. Distributions from endowment earnings are used help to secure St. David's long-term future, providing resources above and beyond the reach of our annual budget. You may make an unrestricted gift to St. David's Episcopal Church Foundation or you may indicate that you would like your gift to St. David's Episcopal Church Foundation to be directed to one or more of the following endowment funds. Those interested in a legacy of outreach may want to consider directing ten percent of their foundation gift to the Acorn Community Outreach Endowment Fund.

- **St. David's Operating Endowment Fund** makes money available to the Vestry for special needs. At present distributions from this fund are paying for our building loan.
- **The Music Endowment Fund** provides financial resources that enhance the music ministry of the church.
- **The Historic Church Endowment Fund** is for the preservation of St. David's Historic Church.
- **The Building and Maintenance Endowment Fund** is in formation and will assist with capital expenses for buildings used by the parish
- **The Pipe Organ Endowment Fund** will provide a means for maintaining our organs thus offering a specific way to support the music and worship experience at St. David's.
- **Marrow Community Outreach Endowment Fund** provides financial assistance to aid and encourage individuals in need who seek to increase their skills for the benefit of the common good.

For more information about our parish endowment, see the annual report of St. David's Episcopal Church Foundation posted at [www.stdave.org](http://www.stdave.org) or contact April Kerwin, Director of Stewardship and Planned Giving, 512-610-3500 or [april.k@stdave.org](mailto:april.k@stdave.org).

*"For the rendering of this ministry not only supplies the needs of the saints but also overflows with many thanksgivings to God."*

2 Corinthians, 9 verse 12

## LEGAL FORMS

***Legal and Personal Considerations:*** *The matters covered in the next few pages are to be discussed with your attorney, if you have not done so, and with your loved ones.*

### **Difficult Decisions in Advance**

A common fear that many of us share, often based on past observations of friends or loved ones, is that we may come to a point in life where we can no longer make critical decisions about our lives or medical treatments.

Most people, when asked, say that they would like to die a peaceful death surrounded by family and friends. Often this is not the case because these wishes have not been discussed and have not been put in written form.

The forms on the following pages,

- Medical Power of Attorney for Health Care
- Medical Directive/Living Will
- Durable Power of Attorney

when executed, offer a way to clearly convey your wishes about end-of-life support, treatment and handling of your personal and business activities prior to your death .

**Preparing a valid will** and keeping it updated are important elements in end of life planning for families of all ages as well.

*“The Minister of the Congregation is directed to instruct the people, from time to time, about the duty of Christian parents to make prudent provision for the well-being of their families, and of all persons to make wills, while they are in health, arranging for the disposal of their temporal goods, not neglecting, if they are able, to leave bequests for religious and charitable uses.”*

— Book of Common Prayer, 1979 version, page 445  
concluding the chapter “Thanksgiving for Children”



## **CONSIDERATIONS WHEN EXECUTING A MEDICAL POWER OF ATTORNEY OR LIVING WILL**

1. Is the proposed agent/decision-maker aware of your wishes?
2. Is the person willing to speak on your behalf?
3. Does the person live close by or could travel to be by your side if needed?
4. Is this person someone who knows you well and understands what's important to you?
5. Is this person someone you trust with your life?
6. Will this person talk with you now about sensitive issues and will listen to your wishes?
7. Will this person honor your wishes even if he or she does not agree with them?
8. Will this person be available long into the future? (Is the person in good health?)
9. Do you want to consider a successor or alternate decision-maker?
10. Will this person be able to handle conflicting opinions between family members, friends and medical personnel?
11. Can the person be a strong advocate in the face of an unresponsive doctor or institution?
12. Do you desire any of the following, and, if so, under what circumstances and for how long (e.g., immediately after a stroke, but to be discontinued if no improvement is seen after a certain period of time; if you have Alzheimer's, cancer, or a similar condition):
  - a. Cardiopulmonary resuscitation (CPR);
  - b. Ventilator;
  - c. Antibiotics;
  - d. Kidney Dialysis
  - e. Hospitalization; or
  - f. Hospitalization for correctable injuries, such as a broken bone?
13. Do you want artificial nutrition and hydration? If so, under what conditions?
14. Do you have a thorough understanding of the medical issues that may be involved?
15. Have you considered that your wishes may change over time or as a result of the actual development of a particular condition?
16. Does the proposed agent/decision-maker agree with the principal's wishes?
17. Will the proposed agent/decision-maker carry out the principal's wishes, even if the proposed agent/decision-maker does not share the principal's views?
18. Where do you keep your advance directives? Once it is executed, make enough copies for the agents or agents to have copies and keep several in an easily accessible file in your home. Also, give one to your physician to include in your medical record. If you are experiencing on-going health care problems, keep one with you and give one to all the treating physicians and the places where you are receiving treatment.

## Other Issues and Concerns:

19. What if the agent does not know the patient's express wishes? Even in situations where a principal conveyed general wishes to the agent, it is possible that a particular situation was not anticipated. (Under Texas law the agent is required to make decisions according to the knowledge to the principal's wishes, including religious beliefs if known. If the wishes are not known, then according to the agent's assessment of the principal's best interests.\*)
20. Will the advance directive be applicable if the principal moves to another state? (An out of state directive would likely be honored in Texas. To be safe, an individual may want to re-execute his or her directives if s/he changes state of residence. (Ultimately, however, anything in writing is better than nothing in writing as evidence of the individual's wishes.)
21. How many physicians must certify that the principal is incapacitated before the MPA take effect? (In Texas, the patient's attending physician must certify in writing that the principal is incompetent.)
22. How often should advance directives be reviewed to see if they still comport with the principal's wishes? There is not specific timeframe when this must be done under Texas law. It is helpful to review periodically and if the individual develops health problems.
23. Is the agent able to control who visits the principal or access to healthcare information? The agent may limit access to health care information and may be able to control access to visit to the principal. For example, assume that the daughter of a principal is agent and appointed to make healthcare decisions for principal and that the principal has a good relationship with a stepson, but the daughter does not. Can the daughter, acting as an agent, keep the stepson from visiting the principal? Can the daughter keep the stepson in question from taking the principal out of the healthcare facility for a short leave of absence (e.g., home for Thanksgiving dinner)? Can the stepson receive information about the principal's state of health without permission of the agent?
24. Does the agent have to be a family member, or can this be an unrelated person who shares the principal's beliefs? Under Texas laws and most states laws the agent does not have to be a family member. The major reason these laws were adopted were to give an individual the right to appoint someone that the individual trusts without regard to whether that person was a family member (by blood or marriage.)

*\*Tex. Health & Safety Code §166.152.*

## **WHO MAKES DECISIONS IF YOU DON'T HAVE A MEDICAL POWER OF ATTORNEY AND/ OR LIVING WILL?**

Under Texas law, if an individual has not designated a decision-maker and does not have a guardian, the following individuals may make healthcare decisions. In order of priority:

- a. Spouse
- b. Patient's reasonably available adult children
- c. Parents
- d. Nearest living relative

### **Considerations:**

- Who is likely to make decisions if you do not exercise your right to choose?
- Do they know what you want?
- Are those persons likely to know your wishes for care at the end-of-life or in life-limiting circumstances?
- Will they honor your wishes?
- If your adult children will decide:
  - o How do they get along?
  - o Do they know what you want?
  - o Will they agree about what needs to be done?
  - o Will they follow your wishes?
  - o What about the potential for a life-long conflict resulting from having to make this decision?

## **INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

*NOTE: While Texas law requires that you be provided the disclosure statement substantially in the form which appears above, Section 166.154 of the Texas Health and Safety Code was amended in 2009 so that, in lieu of signing in the presence of the witnesses, the principal may sign the medical power of attorney on or after September 1, 2009, and have the signature acknowledged before a notary public. The following medical power of attorney is to be signed and acknowledged before a notary public in lieu of signing in the presence of two witnesses.*

**MEDICAL POWER OF ATTORNEY**

**DESIGNATION OF HEALTH CARE AGENT**

I, \_\_\_\_\_ (insert your name) appoint:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

**LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:**

\_\_\_\_\_  
\_\_\_\_\_

**DESIGNATION OF ALTERNATE AGENT**

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

**A. First Alternate Agent**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**B. Second Alternate Agent**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

The original of this document is kept:

\_\_\_\_\_  
\_\_\_\_\_

The following individuals or institutions have signed copies:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**DURATION**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: \_\_\_\_\_

**PRIOR DESIGNATIONS REVOKED.**

I revoke any prior medical power of attorney.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical power of attorney on \_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_ (City and State).

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

**THE STATE OF TEXAS**

COUNTY OF \_\_\_\_\_

This instrument was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

*Provided by Texas Department of Aging and Disabilities Services, www.dads.state.tx.us*

## DIRECTIVE TO PHYSICIANS & FAMILY OR SURROGATES (“Living Will”)

This is an important legal document known as an **Advance Directive**. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of the document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

### Directive

I \_\_\_\_\_, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;

### OR

I request that I be kept alive in this terminal condition using available life-sustaining treatment. **(This selection does not apply to Hospice care.)**

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of medical care:

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;

### OR

I request that I be kept alive in this irreversible condition using available life-sustaining treatment. **(This selection does not apply to Hospice care.)**



**Additional Requests:** (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

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After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do **not** have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. \_\_\_\_\_
2. \_\_\_\_\_

**(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)**

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me, following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant.

This directive will remain in effect until I revoke it. No other person may do so.

Signed \_\_\_\_\_ Date \_\_\_\_\_

City, County and State of Residence \_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as **Witness (1)** may not be a person designated to make a treatment decision for the patient and may not be related to the declarant by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness (1) \_\_\_\_\_

Witness (2) \_\_\_\_\_

## **Definitions:**

**“Artificial nutrition and hydration”** means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

**“Irreversible condition”** means a condition, injury, or illness:

- a. that may be treated, but is never cured;
- b. that leaves a person unable to care for or make decisions for the person's own self; and
- c. that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care is fatal.

**Explanation:** Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

**“Life-sustaining treatment”** means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

**“Terminal condition”** means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care

**Explanation:** Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

*Provided by Texas Department of Aging and Disabilities Services, [www.dads.state.tx.us](http://www.dads.state.tx.us)*

**STATUTORY DURABLE POWER OF ATTORNEY**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, \_\_\_\_\_ (insert your name and address), appoint  
\_\_\_\_\_ (insert the name and address of the person appointed)  
as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

- Real property transactions;
- Tangible personal property transactions;
- Stock and bond transactions;
- Commodity and option transactions;
- Banking and other financial institution transactions;
- Business operating transactions;
- Insurance and annuity transactions;
- Estate, trust, and other beneficiary transactions;
- Claims and litigation;
- Personal and family maintenance;
- Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- Retirement plan transactions;
- Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

**SPECIAL INSTRUCTIONS:**

Special instructions applicable to gifts (*initial in front of the following sentence to have it apply*):

I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
- (B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

\_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name of principal).

\_\_\_\_\_

(signature of notarial officer)

(Seal, if any, of notary)

\_\_\_\_\_

(printed name)

My commission expires: \_\_\_\_\_

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

*Provided by Texas Department of Aging and Disabilities Services, [www.dads.state.tx.us](http://www.dads.state.tx.us)*

**Letter of Instructions**

**PROFESSIONAL AND ORGANIZATION CONTACTS**

<b>Professional</b>	<b>Name and Phone Number</b>	<b>Address/E-Mail/Internet</b>
Funeral home		
Church or minister		
Other Family Members		
Estate planning attorney		
Friends		
Life insurance agent		
Trust officer		
Employee benefits contact		
If active or retired military, survivor assistance office		
Social Security Administration (local office), if receiving benefits		
Financial advisor		
Accountant		



## ESTATE PLANNING DOCUMENTS

My estate planning attorney is: \_\_\_\_\_ (name and contact information). (S)He will probate my will and advise you. Please contact him (her) immediately.

Shown below is the location of important documents you may need in the event of a serious illness or my death.

Item	Location (physical or digital)
Durable Power of Attorney	Prepared by:
Health Care Power of Attorney	Prepared by:
Directive to Physicians (Living Will)	Prepared by:
Declaration of Guardian	Prepared by:
Organ Donor Authorization	Prepared by:
Will and/or Trusts	Prepared by:
Letter to Executor	Prepared by: me
Letter to Trustee(s)	Prepared by: me
Letter to Guardian of Minor Children	Prepared by: me
Letter for Business Owner – how to wrap up my business affairs	Prepared by: me
Letter(s) of Love	Prepared by: me







**BENEFITS & ENTITLEMENTS**

I am currently receiving benefits from the following, please contact them to discontinue benefit upon my death and inquire about any survivor benefits that might be due:

Institution	Contact Person and Phone Number

Examples include: Social Security, Civil Service, Veterans Administration, Current or Former Employers

Recent benefit statements are located: \_\_\_\_\_

I, or my survivors, may be eligible for benefits from the following, please contact the institution to determine:

Institution	Contact Person & Phone	Reason for Eligibility

Examples include: Social Security, Civil Service, Veterans Administration, Current or Former Employers

Proof of eligibility may be found: \_\_\_\_\_

\_\_\_\_\_

**BANKING**

<b>Bank/Credit Union</b>	<b>Phone</b>	<b>Type of Account</b>	<b>Titled As:</b>	<b>Account Number</b>

Note: The executor should open a separate checking account for the estate.

Bank statements are kept: \_\_\_\_\_

There is a safety deposit box located at: \_\_\_\_\_

The key is located at: \_\_\_\_\_

**INVESTMENT ACCOUNTS**

Custodian	Investment Name	Account Number	Type of Account*	Balance

\* Taxable, Traditional IRA (IRAT), Roth IRA (Roth), SEP-IRA (SEP), KEOGH, Money Purchase Plan (MPP), Profit-Sharing Plan (PSP), 401(k), 403(b), 457, Education Savings Account – previously known as an Education IRA (IRAE), Section 529 College Savings Account

Note: As an alternative to listing all accounts here, file most recent account statements behind this page.

Account statements are located: \_\_\_\_\_

Stock option grants are located: \_\_\_\_\_

**INSURANCE**

Type of Insurance	Insurance Company	Agent/Contact Number	Policy Number	Premium Amount	Premium Frequency	How Paid?*	Policy Location
Medical							
Medical Supplement							
Short Term Disability							
Long Term Disability							
Long Term Care							
Vehicle							
Home/Personal Property							
Excess Liability (Umbrella)							
Life							

\* Examples include by: check, automatic draft from checking account, credit card (automatic bill), paid by employer

Note: As an alternative to listing all accounts here, file most recent account statements behind this page.

If not filed here, account statements are located: \_\_\_\_\_

**DEBTORS**

I am currently owed or being paid by the following:

Name	Contact Number	Reason for Payment	Principal Amount	Payment Amount	Rate	Start Date	Stop Date

Documents relating to these payments can be found: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CREDIT AND BANK CARDS**

Name(s) on card	Type of card*	Card Number	Exp. Date	PIN	APR %	Credit Limit	Issuer	Issuer Contact Number

\* Visa, Mastercard, Discover, Debit

Before canceling any cards, be sure to change payment means for any automatically-billed items charged to it

**Credit report last reviewed:**

Equifax (www.equifax.com): \_\_\_\_\_

Experian (www.experian.com): \_\_\_\_\_

TransUnion (www.transunions.com): \_\_\_\_\_



**LOANS**

Lender	Type of Loan*	Amount Borrowed	Rate %	Date of Loan	Length of Loan	Payment Amount	Payment Frequency	Current Balance

\* Mortgage, 2nd mortgage, home equity loan, vehicle, education, personal

**LOCATION OF OTHER IMPORTANT DOCUMENTS (physical or electronic):**

Birth Certificate	Location:
Marriage certificate/license	
Divorce decree	
Military papers	
Tax returns for last three years	

## RECURRING EXPENSES

This is a list of the recurring expenses and how they are paid. If you change credit cards or banks, be sure to review this list first and ensure that the payment is arranged for in another way.

Bill	Vendor	Frequency*	How Paid**
Home			
Rent/Mortgage			
Property Taxes			
Home Insurance			
Electricity			
Gas			
Water and Sewage			
Garbage and Recycling			
Cable			
Internet Service Provider			
Telephone			
Cell Phone			
Lawn Service			
Cleaning Service			
Charity			
Insurance			
Health			
Disability			
Long Term Care			
Automobile			
Life			
Liability (Umbrella)			
Vehicles			
Loan – Vehicle #1			
Loan – Vehicle #2			
Registration			
Dues and Subscriptions			
Athletic Club			
Golf Membership			
Newspaper			
Professional Fees			
Financial Advisor			
Accountant			
Attorney			

\* W-weekly, M-monthly, Q-quarterly, S-semiannual, A-annual

\*\* Examples:

- Automatic draft from checking account
- Automatically charged to credit card: (which one?)
- Paid online – reminder/invoice is sent to (email address)

**HOUSE**

My survivors may or may not wish to remain in the current residence. Here is some information that may be helpful:

	<b>Name</b>	<b>Contact Number</b>	<b>Current Arrangements</b>
Lawn Service			
Pool Service			
Cleaning Service			
AC/Heating Service			
Pest Service			
Plumber			
Electrician			
Handyman			
Roofer			
Garbage Collection			
Recycling Collection			

Idiosyncrasies about the house or house care that you should know: \_\_\_\_\_

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Location of deeds, title, closing papers, mortgages, records of capital improvements:

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**VEHICLES**

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Title Location</b>	<b>Service Location</b>

## Copyright and Thanks

- *Planning for a Graceful Exit* is compiled and produced by the St. David's Church Foundation. If you have any questions about the document or the Foundation and the endowment funds it manages, please contact April Kerwin, Director of Stewardship and Planned Giving, [stewardship@stdave.org](mailto:stewardship@stdave.org) or 512-610-3500.
- Letters of Instruction, pages 6-7 and 38-51, provided by Pauley Financial Services, Inc. [www.pauleyfinancial.com](http://www.pauleyfinancial.com), © 2012.
- In addition to the forms in this document from the Texas Department of Aging and Disabilities Services, [www.dads.state.tx.us](http://www.dads.state.tx.us), the American Bar Association, [www.abanet.org/aging/](http://www.abanet.org/aging/), has a "Legal Guide for the Seriously Ill" and videos about the topic. Another resource is [www.caringinfo.org](http://www.caringinfo.org).
- Special thanks to Martha Frede for her efforts in collecting and compiling the materials for the original *St. David's Graceful Exits* book in 2005.
- This document is available for download on St. David's website, [www.stdave.org](http://www.stdave.org) under Pastoral Care and then Funerals.

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