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ATTORNEY DAVID A. ZIPP IS LICENSED TO PRACTICE LAW IN THE STATES OF ILLINOIS AND TEXAS

Please note: this document has direct links, many of them can also be directly accessed from ZippToCourt.com. Just put your cursor on the links in **BLUE and click the link with your mouse. This document also uses Tiny URLs for ease of web navigation. Many of these links are helpful blogs from other Texas attorneys or organizations. I am not endorsing any firm, but the information I found was helpful and I saw no reason to retype what others have already put out there on the web. You may or may not need an attorney. I am here to help, if only by providing this information.**

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You Cannot Take It with You – You Are Going to Die

End of life planning can be intimidating, but the fact is: none of us make it out of this life alive, and you cannot take your wealth and property with you. This guide is an attempt to give an overview of end-of-life situations. Let us start with your after-death affairs. We will conclude with what you can, and should do right now even before you explore a Will of Trust.

Probate vs. Non-Probate (also called Contract Assets)

When discussing your assets, first one needs to start off knowing what is an asset that a Will can take care of, or one that is called non-Probate (also called a Contract) asset. The general rule of thumb is that if the asset has a manager, agent, company, account number or is controlled by a contract, it is more than likely a non-Probate or Contract asset.

Think of it this way, if your account has a number: that account usually has an agent, and thus likely not a probate asset. Here is a link to a good primer on what is and what is likely not a probate asset:

<https://tinyurl.com/ProbateVSNonProbateAssets>

Zipp's Tips #1: Legal Terms Defined

A few terms should also be defined for you. **Real Property** is real estate, meaning property with a physical address, conveyed by a deed, and almost always has a PIN – a property identification number. **Personal property** is all other property (the stuff in your home). **Community property** is property that is jointly owned by spouses or others (such as a car, a boat, etc.). **Real estate is owned through a Deed** which is filed in the County in which that real property is located in. Many people own real estate in other Counties and even other States and they may be married; but the surviving spouse may not automatically inherit that real property if a person dies in Texas without a Will. **Intestate** means a person died without a valid Will. An **Heir** is someone who stands to inherit through a Will (being named in the Will) or is a blood relative (Texas intestacy statutes apply).

Zipp's Tips #2: Think about a Texas Transfer on Death Deed (TODD)

You convey Real Property through a deed, and in many cases, the use of a transfer on death instrument (or transfer on death deed - TODD) can easily transfer your real estate to a desired party at the time of your death without needing a probate court. If you do not convey the property through a trust, right of survivorship (this language should be on your deed if applicable) or Transfer on Death Deed (TODD), your real property will have to go through the probate

process. Real estate, most notably your personal home (again Real Property) is likely the bulk of most estates in terms of monetary value.

Here is a link to an excellent primer on Texas Transfer on Death Deeds:
[https://texaslegalguide.com/Texas Transfer on Death Deed](https://texaslegalguide.com/Texas_Transfer_on_Death_Deed)

Zipp's Tips #3 – Pay on Death/Transfer on Death (POD/TOD)

As you begin to gather your end-of-life documents, take a moment and explore who the beneficiary (the recipient) is on all of your life insurance, retirement, savings, and your various investments. Your agent has, usually when you opened that account or service had you fill out a form saying who gets what in the event of your death. If it's a joint account, the surviving account holder will just take over. If they are not on your account, and you want to avoid probate, you can designate a POD (pay on death) or TOD (transfer on death) document. You can use a TOD or POD for any person, not just blood family. You can even leave accounts to a charity, neighbor, or Church. Ask about these at your convenience when you visit your bank. It is very easy. Again, it avoids Probate!

Filling out a POD or TOD does not give that designee access to your bank account or investment account right now. They cannot take money out, borrow against the account, or even inquire what the balance is. What it does do, is allow your chosen designee to be able to take over that account once proof of your end of life (usually through a copy of a death certificate) and remove the need for a probate judge to have to issue letters ordering this same access. A POD or TOD can be a time saving measure, especially if you expect that loved one to pay for your funeral with your assets.

Zipp's Tips #4: Do Not Order More than Five (5) Death Certificates!

Unless you have a complex estate with lots of out-of-State properties, off shore investment funds, and fifty heirs, you are likely not going to need more than a handful of Death Certificates. Most companies will accept a digital copy (perhaps along with a signed affidavit) of the death of a loved one. You will need more than one Death Certificate in most cases, but you should not need one for every investment account or bank account. In this day and age, it is very easy to

verify the authenticity of a Death Certificate. Funerals are expensive enough as it is; save when you can!

Do I Need a Texas Will? or Dying Intestate (meaning without a Will) in Texas

If a person in Texas dies without having made a will, they are deemed to have died what is called “intestate.” Intestate simply means that a person died without having made a Will. The Great State of Texas has already written a pseudo-Will for those folks for their estate. How the estate will be distributed will fall under Texas’ [succession laws](#). These laws are very strict with a dedicated inheritance hierarchy. No provisions for non-family members are in the succession laws. If you want anyone not related to you (includes your Church, your favorite charity, or a beloved neighbor) to take from your estate: YOU MUST HAVE A VALID WILL!

If you die in Texas without a valid Will, the state of Texas determines who inherits on the basis of familial proximity. This means that a deceased’s spouse, children, parents, and siblings may all be eligible for certain percentages of the estate, depending on what familial configuration existed at the time of the estate holder’s death. Oftentimes the most immediate beneficiary will be the surviving spouse, followed by any adult children. I have a detailed document on Dying Intestate in Texas or directly here: <https://tinyurl.com/Zipp-Dying-No-Will-TEX> The last several pages of this document have graphics which explain various situations for folks without a Will in Texas as to what happens to the estate.

Zipp’s Tips #5: Using a Texas Small Estate’s Affidavit

You may see a common theme going through this document since we have addressed what is and is not even a probate asset; offered thoughts on making accounts a transfer/pay on death (TOD/POD); and touched upon the use of Texas Transfer on Death Deed (TODD); that there are ways to settle the vast plurality of estate without probate. Usually, the home is the largest asset. If you deal with what happens to the home through a TODD, and you have properly identified heirs or recipients through a good use of TOD/POD documents, you can likely make the actual estate that needs to be settled valued at much less than before.

If you can get that estate value to under \$75,000.00, you can avoid the need for Probate entirely through the use of a Texas Small Estates Affidavit.

Even if there is no will, an heir can resolve an estate through a Texas Small Estates Affidavit and usually avoid Probate. You can download a FREE PDF of a Texas Small Estates Affidavit here: <https://tinyurl.com/TexasSmallEstatesAff>

What Happens If There Is No Blood Family?

If the deceased person leaves behind no spouse, no parents, no children, or any siblings, then the state of Texas will continue going down the family tree. That means that, if a suitable heir cannot be found: nieces and nephews, grandparents, or aunts and uncles will be next in line. In the unlikely event that no living relative can be found, the deceased's estate will "escheat" to the state of Texas, meaning that the state takes the assets. The State has already taken a lot of your money: let us not give them a final tip!

Zipp's Tips #6: Give Meaningful Gifts During Life

Now this is anecdotal and from my own personal experience both personally and as an attorney, but I feel that each of us has our own special "treasures." Some of these items are of great financial value, but in my experience, many of the items we have that truly touch us may not have a great financial value per se, but are of deep emotional and perhaps historical value to the family. If you have such a treasure and you want it to go to that special person, ask yourself if this is not a gift you would much rather see given during your life, than hope they treasure after you pass? An old pocket watch with a story from you to that special heir will mean so much more than it coming to that heir as just part of an estate. If you want to share the story of your treasure, there is no better way than to share it while you are alive and well with that special someone. If nothing else: at least share the story as to why this is a special treasure while you can so that they know why it is meaningful in the future.

So, Do I Need a Will or a Trust?

The short answer is likely: YES! However just as you are unique, so are your Will or even Trust needs. The best advice is to first educate yourself as you are doing now and then to call a Texas licensed attorney for further and personal advice.

Plan For Your Living Situations

Zipp's Tips #8: Do No Harm Can Really Hurt! Hospitals are Largely Religious Based

Almost every medical facility has a religious association. All Medical Doctors take the Hippocratic Oath which among other grandiose promises, the underlining pledge is to DO NO HARM. This is often translated to “keep the patient alive at all costs.” You could end up “living” as a vegetable, unable to communicate your desires and wishes if you do not plan ahead.

Living Will

A very easy to understand form that allows you to put into writing now what you want done in the event you are not able to communicate your desires (such as being in a coma, or a victim of stroke, etc. It allows you to speak now on your wishes just in case you cannot speak later.

A downloadable and easy to fill in form for a Living Will is available for free here:
<https://tinyurl.com/TexasLivingWillForm>

ONCE YOU FILL IT OUT, GET IT WITNESSED BY TWO (2) FOLKS AND NOTORIZED! MAKE SEVERAL COPIES AND MAKE SURE YOUR DOCTOR, YOUR LOVED ONES, AND YOUR POWER OF ATTORNEY FOR MEDICAL (IF YOU CHOOSE TO DESIGNATE ONE) KNOWS YOUR WISHES.

Out of Hospital – Do Not Resuscitate Order

This is a form anyone who does not wish to be resuscitated needs to complete. I would advise consulting with your doctor (there is a place on this form for your doctor to complete) at your next check-up. The need for this is slightly more case specific, but read through the form and if you feel it applies to your health and your situation, by all means take the initiative and execute this order.

A downloadable and easy to fill in form for Out of Hospital - DNR is available for free here (again as above, follow the instructions and make copies):

<https://tinyurl.com/TexasDNROrder>

Power of Attorney – Medical

A Power of Attorney for Medical decisions allows someone you trust and who knows you and your medical wishes to speak and direct medical attention on your behalf in the event you are unable to communicate. Make sure that your POA – Medical has copies of this document and it is a great idea to make sure other loved ones knows who is your POA. Doctor’s offices today are largely digital. You may be able to file a copy of your POA-Medical with them and in many cases, once in your digital medical file, this information can be easily shared with other medical providers. POA’s are wholly revokable and you can have different people as your POA for Medical and your Durable Power of Attorney.

A downloadable and easy to fill in form for POA-Medical is available for free here (again as before, follow the instructions and make copies):

<https://tinyurl.com/TexasPOA-Medical>

Power of Attorney – Durable

A Durable Power of Attorney allows someone you trust and who knows you and your financial and property wishes to speak and direct allocation (the spending of) your assets on your behalf in the event you are unable to communicate. Make sure that your Durable POA has copies of this document and it is a great idea to make sure other loved ones knows who is your Durable POA. You can designate different folks to serve as your POA-Medical and for your Durable POA, although there is no reason why one person could no choose to do both.

Zipp’s Tips #9: Caution and Choose Wisely who serves as your Durable POA!

Choose a trust worthy person to serve as your POA as this person may literally control your wealth during the time between you being incapacitated and your passing. Often the person one chooses to be the Executor of their estate will also hold the Durable POA. This can and does avoid major estate issues after a person passes.

A downloadable and easy to fill in form for Durable POA is available for free here (again as before, follow the instructions and make copies):

<https://tinyurl.com/TexasDurablePOA>

OK, so do I *still* need a Will or a Trust?

You are a unique individual, with your own unique family, life situation, properties, assets, pets, etc. No online informational document could ever hope to answer a specific Will or Trust question online. While many attorneys do not even provide the forms that I am giving away for free previously, I want you to be able to do as much for yourself as an empowered adult. After all: this is your life and your choices.

If you do want more information on a Texas Will or to explore if a Trust is right for you, please call or better yet: email me at DavidZipp@lawyer.com for a free consultation.

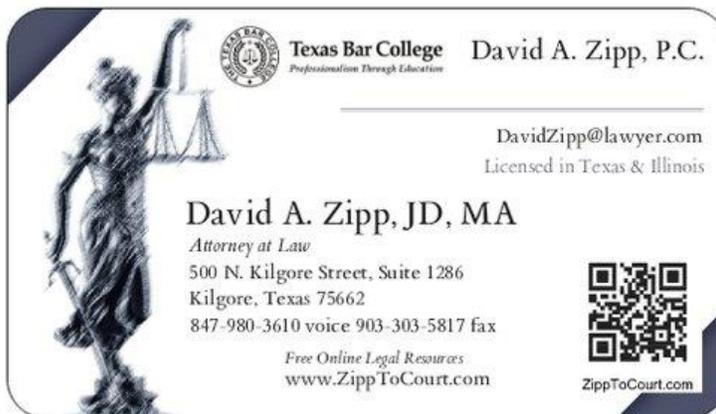
There are many other links that might better help you with your estate planning/end of life planning needs available free here on <https://ziptocourt.com/estate-planning> Again, there are links to work from other attorneys and organizations. I cannot endorse another attorney or organization but did find the work I am sharing to be helpful and insightful. I wish you well in your efforts and would be honored to assist you. Thank you for your time.

THE LAW FIRM OF DAVID A. ZIPP, P.C. HOPES THIS INFORMATION IS HELPFUL AND INFORMATIVE. CALL OR EMAIL FOR MORE INFORMATION.

Regards,



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