

 San Antonio Estate Planners Council


**ESTATE PLANNING HIGHLIGHTS OF THE
2017 TEXAS LEGISLATURE**

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Official Wedding Capital


- Which of the following cities was designated as the official wedding capital of Texas?
 - Lovelady.
 - Cut and Shoot.
 - Ropesville.
 - Dripping Springs.



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Lighted Poinsettia Capital

- Which one of the following was designed as the Lighted Poinsettia Capital of Texas?
 - San Antonio.
 - Fredericksburg.
 - Big Spring.
 - Dallas.



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Oyster Day

- What day was recognized as Oyster Day?
 - January 24.
 - February 14.
 - June 17.
 - September 12.



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Space Day

- What day was recognized as Space Day?
 - February 10.
 - March 7.
 - April 4.
 - October 5.



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Intestate Succession



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Equitable Adoption

- Adoptive parents of child adopted by adoption have same inheritance rights as adoptive parents of child adopted via adoption proceedings.



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Uniform Partition of Heirs Property Act

- To protect a co-heirs rights, the Act provides due process protections:
 - notice,
 - appraisal,
 - right of first refusal, and
 - if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds.

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Adverse possession against co-heirs

- A co-heir may now adversely possess property against other co-heirs.
 - 10 year period of possession.
 - Affidavits of adverse possession filed.
 - Notice by mail on co-heirs.
 - Notice by publication.
 - Wait 5 more years.
 - If no co-heir files controverting affidavit or sues, title vests.

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Wills



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Self-proving affidavit

- Form changed changing "last will and testament" to "will."



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Posthumous class gift membership

- The beneficiary must be alive or in gestation at the death of the person by whom the class is measured rather than the testator.



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Will reformation

- A will reformation action must be within four years of the date the will was admitted to probate.



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Will deposit

- A person who has possession of a testator's original will and who cannot locate the testator after making a diligent search may deposit the will for \$5 with the county clerk of the county of the testator's last known residence.



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Estate Administration



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Applications

- These applications:
 - Probate a will as a muniment of title,
 - Probate a will with an administration, and
 - Intestate administration
- Must now contain:
 - Last three numbers of driver's license number, and
 - Last three numbers of social security number
- Of:
 - Applicant, and
 - Decedent, if known or reasonably ascertainable

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Time for probate

- Old law = admitted to probate within four years of death.
- New law = application to probate will filed within four years of death.

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Published notice to creditors

- Old law = in newspaper printed in county where letters issued.
- New law = in newspaper which is generally circulated in county where letters issued.

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Affidavit in lieu of inventory

- If executor claims inventory was delivered to beneficiaries when affidavit in lieu of inventory procedure is used, court may fine executor up to \$1,000.



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Dependent administration accountings

- Old law = Annual account due at the end of each year.
- New law = Annual account due 60 days after end of each year.

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Small estate affidavit

- Maximum value of intestate estate (excluding homestead and exempt property) increased from \$50,000 to \$75,000.



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Trusts



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Reformation

- Reformation of trust allowed to:
 - prevent waste or impairment of the trust's administration,
 - achieve tax objectives,
 - qualify a beneficiary for governmental benefits, or
 - correct a scrivener's error, even if the trust is unambiguous, provided the settlor's intent is established by clear and convincing evidence.

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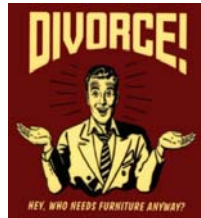
Posthumous class gift members

- A beneficiary must be either (1) alive or (2) in gestation at the death of the person by whom the class is measured unless the trust instrument expressly provides otherwise.

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Divorce

- The divorce of a person who is not the settlor of a trust does not trigger automatic revocation of provisions in favor of that person's former spouse or other ex-relatives.



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In terrorem clauses

- Forfeiture clauses will "not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust."

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Delegation of real property powers

- Trustee may delegate to an agent authority to deal with virtually all aspects of a real property transaction.
 - The trustee's delegation must be in a writing which is properly acknowledged.
 - Authority normally lasts six months.
 - Trustee remains responsible to beneficiaries for all of the agent's actions.

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Access to Digital Assets



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Access to digital assets

- 1. Fiduciaries Covered by TRUFADAA
 - Personal representatives of a decedent's estate
 - Executors
 - Administrators
 - Agents under a power of attorney
 - Trustees
 - Guardians appointed by a court

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Access to digital assets

- 2. Access to contents of electronic communications (e.g., e-mail, text messages, social media accounts) *only if* the person expressly consented to access.
 - Priority order for consent to access:
 1. On-line tool directions.
 2. Directions in will, trust, power of attorney, court order appointing guardian.
 3. Terms of service (they may prohibit access to fiduciaries).

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Access to digital assets

- 3. Access to catalogue of electronic communications and other digital assets is allowed even without express permission.
 - Catalogue information includes:
 - Name of sender
 - E-mail address of sender
 - Date and time the message was sent
 - Does *not* include the subject line

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Access to digital assets

- 4. Method for deceased user's PR to gain access to contents:
 - Send request to custodian including:
 - Certified copy of death certificate.
 - Copy of will showing express consent (unless on-line tool used).
 - Certified copy of document granting authority (letters).
 - Custodian may ask for the following before disclosing:
 - Information identifying the account and linking the deceased user to the account.
 - Court order finding that:
 - Account belonged to decedent.
 - Disclosure would not violate Stored Communications Act, etc.
 - Deceased user consented.
 - Disclosure reasonably necessary for estate administration

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Access to digital assets

- 5. Method for deceased user's PR to gain access to catalogue and other digital assets:
 - Send request to custodian including:
 - Certified copy of death certificate.
 - Certified copy of document granting authority (letters).
 - Custodian may ask for the following before disclosing:
 - Information identifying the account and linking the deceased user to the account.
 - Court order finding that:
 - Account belonged to decedent.
 - Disclosure reasonably necessary for estate administration

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Access to digital assets

■ 6. Important Advice



- Several custodians have indicated that they will *always* require a court order prior to disclosure.
- Thus, prudent practice is to request the court make the necessary findings as early in the estate administration process as is possible.

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Access to digital assets

■ 7. Will

- Do not include user names and passwords as they will become public record.
- Transfer digital asset upon death if transferable.
- Grant executor access to:
 - Contents of electronic communications if client so desires
 - Digital assets generally

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Access to digital assets

- 8. Authorize Agent to Access Digital Assets
 - Contents, if client so desires



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Durable Power of Attorney



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Co-agents

- Co-agents are now expressly authorized.
- By default, each may act independently.
- The principal can specify otherwise in the power of attorney such as:
 - Jointly (all must agree), or
 - Majority vote.

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Agent has no duty until accept

- The agent has no fiduciary duty until the agent actually accepts the appointment and is acting thereunder.



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Agent may appoint own successor

- The principal may give the agent the power to name the agent's successor.



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Compensation

- Agent is now entitled to reasonable compensation if:
 - Power of attorney executed on or after September 1, 2017, and
 - Principal did not provide otherwise.



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Giftling powers -- generally

- An agent may be given the power to:
 - create, amend, revoke, or terminate an inter vivos trust,
 - make gifts,
 - create or change rights of survivorship,
 - create or change a beneficiary designation (e.g., pay on death and right of survivorship designations), or
 - delegate authority granted under the durable power of attorney.

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Giftling powers -- limitations

- Unless principal provides otherwise:
 - No greater than annual exclusion
 - An agent who is not an ancestor, spouse, or descendant of the principal cannot exercise these powers in favor of the agent or anyone the agent has a legal obligation to support.

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Duty to preserve estate plan

- The agent has a duty to preserve the principal's estate plan, to the extent the agent has actual knowledge of the plan, as long as doing so is in the principal's best interest based upon all relevant factors.

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Acceptance and reliance

- Very detailed provisions to encourage third-party reliance and to impose penalties if they do not comply without a good reason.

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Statutory form

- Many changes to the statutory form made by this legislation and other bills.
 - Separate statutory section has form language for the gifting language you may add to normal form.
 - Compensation options.
 - Co-agent options.
 - Digital asset access, including contents, is default power.

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Other Estate Planning Matters



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Medical power of attorney

- New form
 - Effective January 1, 2018.
 - Disclosure statement is now included within the form itself.

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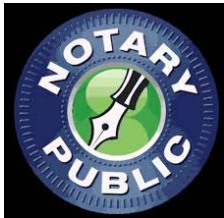
Self-designation of guardian

- If no one is being disqualified, two witnesses are not needed; a notarization is sufficient.

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Mental health treatment declaration

- Permissible to have the declaration notarized rather than two witnesses.



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Transfer on death motor vehicles

- The owner of a motor vehicle may name a beneficiary (co-beneficiaries are not allowed) who will own the vehicle upon the owner's death.
 - Revocable.
 - Cannot be changed by the owner's will.
 - If the vehicle is jointly owned with survivorship rights, both co-owners must agree to the beneficiary designation.
 - The beneficiary must apply for a transfer of the vehicle's title within 180 days of the owner's death.

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Joint account and divorce

- An ex-spouse, as well as the ex-spouse's relatives who are not also relatives of the deceased spouse, are now prevented from taking under provisions of a joint account with survivorship rights unless there has been a reaffirmation of the survivorship agreement.
 - Funds distributed as if ex-spouse or ex-relative predeceased.

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"The Thing[s] That [Will] Not Be"

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Outlawing use of word "Ward"

- SB 498 would have directed the legislature, Legislative Council, and other state agencies to avoid using the term "ward" in any new law.



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Expanding RAP period

- HB 2842 would have extend the Rule Against Perpetuities to 300 years.



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Elimination of bank account types

- HB 1954 would have eliminated Convenience Accounts and Trust Accounts



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15th Court of Appeals

- H.B. 474 would have created a new 15th Court of Appeals by moving Cameron, Hidalgo, and Willacy Counties from the current 13th Court of Appeals.



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Questions?



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