

How to avoid *probate in Texas.*

The five tools that actually work — and what most Texas families don't need.

Most Texas families do not need to fear probate. Texas is, by a wide margin, one of the most efficient probate states in the country — but "efficient" is not the same as "free," and "minimal supervision" is not the same as "private." There are reasonable reasons to want assets to pass without probate, and Texas law provides several straightforward tools for doing it.

Texas probate is more manageable than the horror stories you've heard from California, Florida, or New York. *Independent administration*, available when a will so provides or all beneficiaries agree, removes most of the court supervision; an independent executor can sell property, pay debts, and distribute assets without seeking court approval for each step. Most Texas probate cases close within six to twelve months. But "more manageable" is not the same as "preferable." Probate filings are public records, the process takes months, and the fees are not trivial.

The reality of how Texas families handle this is that those with few assets typically do nothing — and those with meaningful assets typically already use one or more probate-avoidance tools, whether by design or by accident. Joint titling on a house. A payable-on-death designation on a bank account. A retirement account that already names a beneficiary. A Lady Bird deed signed years ago and forgotten. By the time a Texas family is sitting in an estate planning conversation, the question is usually not "should we avoid probate" — most of the avoidance is already in motion. The question is whether the existing pieces fit together coherently or whether they are working against each other.

It is also worth saying what probate avoidance is *not*. It is not a way to avoid estate taxes (probate and estate-tax planning are different problems with different tools). It is not a way to defeat creditors (claims still attach to assets that pass outside probate, with narrow exceptions). It is not a way to disinherit a spouse (Texas spousal rights apply regardless of titling). And it is not a substitute for a will. The first decision is not "trust or probate" but "what specifically am I trying to accomplish?"

TOOL ONE

The *revocable living trust*.

The revocable living trust is the most comprehensive probate-avoidance tool and the most commonly recommended — sometimes correctly, sometimes not.

Mechanically, the trust is a separate legal entity. The grantor (usually the client) creates the trust, names themselves as initial trustee, and transfers assets into the trust by retitling them. While the grantor is alive and competent, they control the trust entirely — buying, selling, distributing, even revoking the trust at will. On death or incapacity, a named successor trustee takes over and distributes the trust's assets to beneficiaries according to the document, without court involvement.

The key word in that paragraph is "transfers." A trust that has been drafted but not funded — meaning the grantor never actually retitled their house, bank accounts, and brokerage holdings into the trust's name — is a piece of paper. The assets still pass through probate. This is the single most common defect in Texas estate plans. A trust drafted by an attorney who follows the work through funding is a different product than a trust drafted by a document service that hands the client a binder and disappears.

When is a revocable trust the right answer? Real estate in multiple states. A high desire for privacy. Complex distribution wishes — staggered distributions to children, trusts for grandchildren, charitable bequests. Concern about incapacity planning that goes beyond what a power of attorney provides. When is it not? A married Texas couple whose assets are community property, who have a residence in one state, and whose retirement accounts already direct beneficiaries correctly. For that family, a properly drafted will with a pour-over provision and updated beneficiary designations may accomplish everything a trust would — at less cost, with less ongoing administration. A competent estate-planning attorney should be able to recommend against a trust as readily as recommend for one. (Texas Trust Code, Property Code Chapter 111 et seq.)

TOOL TWO

Transfer-on-death and *payable-on-death designations*.

Texas allows several categories of financial asset to pass directly to named beneficiaries by designation, bypassing probate entirely.

For bank accounts, the tool is the **Payable-on-Death (POD) designation**. The account holder files a form with the bank naming one or more beneficiaries. On death, the beneficiary presents a death certificate and the bank releases the funds. No court involvement.

For brokerage accounts, stocks, bonds, and mutual funds, the equivalent is the Transfer-on-Death (TOD) registration, authorized in Texas under the Uniform TOD Security Registration Act (Estates Code §§ 113.001–113.110).

These tools are simple and inexpensive. They are also limited. A POD or TOD designation names a beneficiary outright — no conditions, no trust for minors, no contingency planning. If the named beneficiary predeceases the account holder without an alternate listed, the asset typically falls back into the probate estate. For straightforward estates with clear intent, POD/TOD designations are often the right tool. For estates with minor children, blended families, or beneficiaries with specific risk profiles, the simplicity becomes a liability.

TOOL THREE

Real estate: *Transfer-on-Death deeds and Lady Bird deeds.*

Real estate is the largest single asset in most Texas estates and the asset most likely to drive a family into probate. Texas provides two distinct tools that allow a homeowner to pass real property to designated beneficiaries at death without probate, with different mechanics and different practical use cases.

The Transfer-on-Death Deed (Estates Code §§ 114.001–114.107) is the statutory tool, available in Texas since September 2015. A homeowner executes and records a deed designating one or more beneficiaries who automatically inherit the property at death. The grantor retains full ownership and control during life — the deed can be revoked, the property sold, mortgaged, or leased without the beneficiary's consent. The transfer happens only at death, and only if the deed is on record at that time.

The Lady Bird deed, also called an enhanced life estate deed, is the older common-law instrument that produces a similar result through a different structure. To understand it requires understanding what a *life estate* is. A life estate is a form of property ownership where one person — the *life tenant* — owns and uses the property during their lifetime, and ownership automatically transfers to named beneficiaries — the *remainder beneficiaries* — when the life tenant dies. A Lady Bird deed creates that arrangement with one important enhancement: the life tenant retains the power to sell, mortgage, lease, or revoke the deed entirely without the remainder beneficiaries' consent or signature. On the life tenant's death, the property passes to the named beneficiaries automatically.

Practically, the two instruments achieve the same outcome for most clients. The Transfer-on-Death Deed is the cleaner statutory path, with a defined form and clear revocation procedure. The Lady Bird deed predates the TODD statute and is still preferred by some Texas estate planners — particularly when the grantor may want

flexibility on Medicaid estate recovery planning, an area where the two instruments are not treated identically. Either tool keeps the homestead out of probate and out of the public record. Neither tool protects the property from the grantor's creditors during life, and neither tool affects the grantor's homestead exemption while living.

For a single-property estate where the goal is simply to pass the family home to one or more children without probate, one of these two deeds is often all the planning required.

TOOL FOUR

Joint ownership with *right of survivorship*.

Property owned by two or more people "with right of survivorship" automatically transfers to the surviving owner at death. No probate, no court involvement, no delay. Two specific forms matter in Texas.

Joint Tenancy with Right of Survivorship applies when ownership is taken by two or more parties with explicit survivorship language. The language matters: Texas presumes that jointly held property is tenancy in common — which does require probate — unless the deed or account documentation specifically expresses the survivorship intent.

Community Property with Right of Survivorship, authorized by Estates Code § 112.052, allows married couples to hold community property with survivorship rights while preserving the federal income-tax basis step-up on the entire property at the first death (rather than only the deceased spouse's half, as occurs with joint tenancy between non-spouses). This is a meaningful tax advantage on appreciated assets and one of the simpler estate-planning moves available to a Texas married couple.

The trade-off with joint ownership of any kind is loss of control. Both owners must consent to a sale or encumbrance. A co-owner's creditors can attach a lien to the property. Adding a non-spouse joint owner to an asset is technically a gift of half the asset's value — which triggers gift-tax reporting requirements and can complicate Medicaid planning. Joint ownership added casually as a probate-avoidance shortcut has produced more litigation among adult children of elderly parents than any other single estate-planning tool.

TOOL FIVE

Beneficiary designations on *retirement accounts and life insurance*.

Retirement accounts (IRAs, 401(k)s, 403(b)s, employer plans) and life insurance policies transfer at death by beneficiary designation. They pass outside probate regardless of

what the will says. A will provision attempting to redirect a retirement account away from its named beneficiary will lose.

This means two things. First, beneficiary designations should be reviewed every three to five years — and after any major life event, including marriage, divorce, birth of a child, or death of a previously named beneficiary. The single most common cause of unintended estate outcomes in Texas is a beneficiary designation that has not been updated since before a divorce or remarriage. Second, retirement-account inheritance rules changed substantially under the SECURE Act of 2019 and SECURE 2.0 of 2022. Most non-spouse beneficiaries are now required to withdraw inherited IRAs within ten years, eliminating the "stretch IRA" strategy that prior generations relied on. A non-spouse beneficiary on a large traditional IRA is now looking at concentrated taxable distributions during what are often their highest-earning working years.

For estates where retirement accounts represent a significant portion of total wealth, designating a trust as beneficiary — rather than naming individuals directly — can provide control over the distribution schedule, protection for minor or special-needs beneficiaries, and continuity if a beneficiary predeceases the account holder. The trust drafting must satisfy IRS requirements for "see-through" status; a trust drafted without those requirements in mind can convert favorable distribution rules into adverse ones overnight. This is technical work that benefits from attorney coordination across the estate-plan and retirement-account documents.

TOOL SIX

The small estate affidavit.

For estates that do not benefit from advance planning — or where the planning was incomplete — Texas provides a streamlined post-death procedure under Estates Code § 205.001.

The Small Estate Affidavit is available when the total estate value, excluding the homestead and statutorily exempt property, is under \$75,000; at least thirty days have passed since the decedent's death; no probate application is pending or has been granted; and all heirs agree to the proposed distribution. The affidavit lists the assets, debts, and heirs, is signed by all heirs before a notary, and is presented to asset holders (banks, brokerages, and similar) in lieu of letters testamentary.

The Small Estate Affidavit is not a probate-avoidance tool a person uses while alive. It is a post-death tool used by surviving family. But it is worth understanding because it lowers the stakes for an estate that has not been comprehensively pre-planned. For many smaller Texas estates, the family will not need a probate proceeding at all — the affidavit is sufficient.

THE ACTUAL APPROACH

What *most Texas families actually need*.

The recommendations that follow the heading "comprehensive estate plan" in most estate-planning literature inflate the work most Texas families actually need. Three layers, distinguished by complexity rather than aspiration.

Foundation. Suitable for most working-age Texas families with a single-state residence and straightforward distribution wishes. A properly drafted will with a self-proving affidavit. Powers of attorney (durable, medical) and advance directives. Updated beneficiary designations on every retirement account and life insurance policy. POD/TOD designations on bank and brokerage accounts. A community-property-with-right-of-survivorship designation on the home, if both spouses agree to it. No trust required.

Intermediate. Suitable for families with real estate in more than one state, blended-family complexity, or substantial brokerage assets outside retirement accounts. Everything in foundation, plus a revocable living trust to hold the out-of-state property and to provide a private mechanism for the more complex distribution wishes. A pour-over will catches anything not transferred into the trust during life.

Comprehensive. Suitable for taxable estates (those approaching or exceeding the federal estate tax exemption), business owners, or families with specific generational-wealth-preservation goals. A coordinated combination of revocable and irrevocable trusts, possible business-succession structures, possibly retirement accounts paid to trust beneficiaries. This is work that requires attorney judgment from the start — not a document package.

Texas families in the foundation tier often overpay for a trust they do not need and underinvest in the document discipline they do need — the beneficiary designations, the POD/TOD setups, the updated powers of attorney. Texas families in the comprehensive tier often build a trust correctly but never coordinate it with their retirement accounts, defeating the trust's purpose. The work is rarely about which tier you're in. The work is about whether the documents inside that tier actually function together.

A simple test: pull up your last beneficiary designation form for your largest retirement account. If you cannot find it, or if the named beneficiary is your ex-spouse, your minor child without a contingent designation, or your parents who are no longer living, the foundation tier is not yet in place.

PRACTICAL SEQUENCE

What to do *this week*.

If you do not have an estate plan at all, or if the one you have is more than five years old, the practical sequence is straightforward.

Today. Locate any existing documents — wills, trusts, powers of attorney, advance directives, beneficiary designation copies. Note the dates on each. If the most recent document predates a marriage, divorce, the birth of a child, the death of a previously named beneficiary, or a substantial change in assets, the document is out of date by definition.

This week. Make a list of every asset by type: real property (with addresses), bank accounts (with institution names), brokerage accounts, retirement accounts (with current beneficiary designations if you can locate them), life insurance, business interests, and any property in another state. Rough estimates of value are sufficient at this stage; exact valuations come later.

Within thirty days. Schedule a consultation with a Texas estate-planning attorney to review the existing documents (if any), review the asset list, and identify which probate-avoidance tools fit your situation and which are unnecessary. The work itself, once decisions are made, typically takes two to four weeks to draft and execute. The funding step — actually retitling assets into a trust, recording TOD deeds, updating beneficiary designations — takes longer, and is where most estate plans break down.

[Schedule an Estate Planning Consultation](#)

A NOTE ON THIS FIRM

Who is signing *the documents*.

Lozano Legal Advisors PLLC is a single-attorney Dallas firm. Norris Lozano is a licensed Texas attorney with 30+ years in practice, admitted to the State Bar of Texas, the United States Tax Court, and the United States District Court for the Northern District of Texas. He spent eighteen years as a Downtown Dallas law partner representing the largest financial institutions in Texas, served as Chief Executive Officer and General Counsel of the Portland Family of Funds (which secured \$180 million in New Markets Tax Credits from the U.S. Treasury and closed transactions exceeding \$1.1 billion), and was a Harvard University Innovations in American Government Award semifinalist. His practice covers tax resolution and litigation, federal tax credit finance, estate planning, real estate, business entities, and corporate and partnership work.

The firm is built on AI-augmented infrastructure that Norris designs and operates himself. The document work and follow-through that slows other firms is handled by the system — including the funding-step coordination that determines whether an estate plan actually accomplishes its purpose. When you call the firm number, the licensed Texas attorney is the person who answers. (214) 531-3014.



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