TEXAS ESTATE PLANNING CHECKLIST

Everything you need to have in place — and what to do if you don't

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Use this checklist to audit your current estate plan — or identify where to start if you don't have one. Check each box when the item is complete. If you're unsure about any item, that's a conversation worth having with Alex L. Davis, III.

SECTION 1 — Core Legal Documents

■ **Last Will and Testament**

A valid Texas will must be in writing, signed by you, and witnessed by two credible witnesses over age 14 who sign in your presence. Alternatively, a holographic will — entirely handwritten and signed by you — requires no witnesses.

Is your will current? Does it reflect life changes from the past 5 years — marriage, divorce, new children or grandchildren, deaths of named beneficiaries or agents?

■ **Durable Power of Attorney (Financial)**

Authorizes a trusted agent to handle financial matters on your behalf if you become incapacitated. Without this, your family may need a court-supervised guardianship — a slow, expensive, and public process.

Texas-specific: Must comply with Chapter 752 of the Texas Estates Code. 'Durable' means it remains effective even if you become incapacitated.

■ **Medical Power of Attorney**

Designates a healthcare agent to make medical decisions for you when you cannot make them yourself. This is separate from a financial POA — both are needed.

Your healthcare agent should know your wishes before an emergency occurs. Have the conversation now.

■ **Directive to Physicians (Living Will)**

Documents your end-of-life preferences — whether you want life-sustaining treatment continued or withheld in terminal or irreversible conditions. Governed by the Texas Advance Directives Act.

Without this, your family may face agonizing decisions with no guidance from you.

■ **HIPAA Authorization**

Allows named individuals to receive your protected health information from healthcare providers. Without this, even a spouse may be blocked from accessing your medical records.

Frequently overlooked — ensure this is included in your estate planning package.

SECTION 2 — Trusts (If Applicable)

A trust is not required for every Texas family, but it is the right choice in many situations. Review each item below to assess whether a trust belongs in your plan.

■ **Revocable Living Trust**

A legal arrangement where you transfer assets to a trust during your lifetime, remaining in control as trustee. On your death, assets pass to beneficiaries without probate — privately, quickly, and without court involvement.

Best for: people who own real property in multiple states, want to avoid probate, or want privacy. Not always necessary in Texas, where probate can be relatively streamlined.

■ **Special Needs Trust**

Holds assets for a beneficiary with a disability without disqualifying them from government benefits such as Medicaid or SSI. A direct inheritance — even from a will — can eliminate eligibility.

Critical: must be drafted carefully to comply with federal benefit program rules. Do not use a DIY template for this document.

■ **Testamentary Trust (for minor children)**

A trust created inside your will that takes effect upon your death. Holds assets for minor children until a specified age rather than distributing everything at age 18.

Texas default: without a trust, minors receive their full inheritance at 18. Most parents prefer a later distribution age.

■ **Irrevocable Trust (asset protection / Medicaid planning)**

Transfers assets out of your estate for purposes such as long-term care Medicaid planning or creditor protection. Requires careful timing and planning.

Medicaid look-back: Texas Medicaid has a 5-year look-back period on asset transfers. Early planning is essential.

■ **Trust Funding**

A trust is legally meaningless unless your assets are actually transferred into it. This means re-titling real estate deeds, updating account ownership, and coordinating beneficiary designations.

The #1 trust mistake: creating a trust and never funding it. Unfunded assets will still go through probate.

SECTION 3 — Beneficiary Designations & Account Titling

These assets pass OUTSIDE your will, directly to the named beneficiary. Your will has no control over them. Outdated designations are one of the most common — and costly — estate planning mistakes.

- **Life Insurance Policies**
  Confirm primary and contingent beneficiaries are current. An ex-spouse named on a policy may still collect in some circumstances even after divorce.
  Review: pull the actual insurance company records, not just your memory of what you filed years ago.

- **Retirement Accounts (IRA, 401(k), 403(b), TSP)**
  Among your largest assets — and they pass entirely by beneficiary designation, not your will. Primary and contingent beneficiaries must be named and current.
  Spouse rights: Texas law and federal ERISA rules may require spousal consent to name someone other than your spouse as primary beneficiary on certain accounts.

- **Bank and Investment Accounts — TOD / POD**
  Transfer-on-Death (TOD) and Payable-on-Death (POD) designations allow accounts to pass directly to named individuals without probate. Ask your bank or broker whether your accounts have these.
  Without a TOD/POD and no joint owner, accounts may require probate to transfer.

- **Real Property — Survivorship Agreements**
  Texas recognizes community property with right of survivorship agreements for spouses, allowing real property to pass automatically to the surviving spouse without probate.
  Must be in writing and signed by both spouses. Not automatic — requires an affirmative written agreement.

- **Transfer on Death Deed (Real Property)**
  Texas allows a Transfer on Death Deed that conveys real property to a named beneficiary upon death, without probate. Must be recorded before death to be effective.
  A powerful, underused tool for Texans who want to avoid probate on their home without creating a full trust.

SECTION 4 — Texas-Specific Considerations

- **Community Property Rules**
  Texas is a community property state. Property acquired during marriage is generally owned 50/50 by both spouses regardless of whose name is on the title. Understanding this is foundational to estate planning in Texas.
  Separate property (owned before marriage or received by gift/inheritance) follows different rules. Proper documentation and tracing matter.

- **Homestead Protections**
  Texas has some of the strongest homestead protections in the country. Your primary residence may be protected from forced sale by creditors. However, homestead rules also affect how your home can be devised — especially to non-family members.
  Your estate plan must account for homestead designation to avoid unintended consequences on transfer.

- ### Texas Medicaid Planning

  If long-term care is a concern, Texas Medicaid (STAR+PLUS) has a 5-year look-back on asset transfers. A properly structured plan — put in place early — can protect your home and savings.

  One of the most time-sensitive items on this list. The earlier the planning, the more options are available.

- ### Guardian Designation for Minor Children

  Your will should name a guardian for minor children in the event both parents die. Without this, a court decides who raises your children.

  Name both a guardian of the person (who cares for the child) and a guardian of the estate (who manages money) — these can be different people.

- ### Digital Assets

  Texas has adopted the Revised Uniform Fiduciary Access to Digital Assets Act. Your plan should address who can access your email, social media, cryptocurrency, and online accounts.

  Practical step: maintain a secure, updated list of digital accounts and credentials in a location your executor can find.

SECTION 5 — Document Storage & Communication

- ### Original Documents Stored Safely

  Originals — especially wills — should be stored in a fireproof safe, safe deposit box, or with your attorney. Courts require the original will for probate; a copy is generally not sufficient.

  Safe deposit box caution: if only you have access and you die, the family may need a court order to open it. Consider naming a co-owner or successor.

- ### Key People Know Where to Find Everything

  Your executor, healthcare agent, and financial POA agent should know where your documents are, who your attorney is, and how to reach your financial institutions.

  Consider an 'In Case of Emergency' letter summarizing locations, account information, and key contacts.

- ### Plan Reviewed Within the Last 3–5 Years

  Life changes require plan updates. Review triggers: marriage, divorce, birth of child or grandchild, death of a beneficiary or named agent, major asset changes, moving to or from Texas.

Ready to build your Texas estate plan?

This checklist is a starting point — not a substitute for personalized legal advice. Contact The Law Office of Alex L. Davis, III, P.C. to schedule a consultation with Alex L. Davis, III.

■ [Your Phone Number]

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