

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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Well, it's such a relief to see our lakes beginning to fill. How appropriate that it would be spring when "Mother Nature" begins to show her colors and we get rain at the same time. Darron Leiker, W.F. City Manager, is in my Southwest Rotary Club and we were visiting this past Monday about what the plans are. He made it clear that W.F. would not be returning to the old days where watering was something we could do whenever we wanted – regardless of how full the lakes get. Rather, he said, we might get back to a Stage 4 where we can water once a week. He also said that the City would continue the reverse osmosis for our water. He also said they were planning on proceeding with Lake Ringold. And he said that they were discontinuing cloud seeding (which will save the City \$48K per month). I like all of these ideas. The folks in California should take lessons!

I want now to address three subjects: (1) Ladybird Deeds (2) Common Mistakes in Estate Planning (3) Gun Trusts.

Ladybird Deeds. I mentioned in the prior newsletter concerns that "Ladybird deeds" might be endangered by a pending state law involving "transfer on death deeds". However, Texas NAELA (of which I am a board member) has sponsored a "companion bill" that would specifically exempt Ladybird Deeds and thereby preserve this very important Medicaid/Asset Protection vehicle (which as we know can be used to protect the Homestead from Medicaid recovery when a single person who was on Medicaid passes away). So, I am cautiously optimistic that Ladybird Deeds will continue to work.

Common mistakes in estate planning. *#1- Failing to plan-* the biggest mistake is failing to create a plan in the first place thereby allowing the State of Texas to determine where your property will pass by the laws of intestate succession – which may not be how you would have wanted your hard earned assets to pass). *#2-Doing it yourself-* a brilliant schoolteacher who had been extremely successful in the stock market came to see me, but decided to do her own Will. When she died, there was a Will contest between her heirs and her deceased husband's heirs over how the Will should be interpreted. Doing your own estate planning is similar to taking our your own tonsils- maybe you can do it, but the results may not be very pretty.*#3 Not planning for disability.* A well

crafted Will is important, but so is a Statutory (financial) Durable Power of Attorney (and if Medicaid may be a concern, special attention needs to be given to having "Medicaid transfer planning" language incorporated into the POA). Also, a Medical Durable Power of Attorney is also very important to allow whomever you choose to make medical decisions if you become incapacitated. You also need a HIPAA Release (medical privacy release) so whomever you designate can get medical information from your doctor or other health care provider if it becomes necessary. And you may want a Directive to Physicians ("living will") if you want to make sure you are not kept alive with artificial life support systems. *#4 Not checking your beneficiary designations.* You may have a great Will (and the other documents above mentioned) but you fail to review how you have your life insurance or retirement accounts set up (you need to make sure who will be the beneficiaries of these assets at your death). Also, if you have "joint accounts with right of survivorship" or "Pay on Death" accounts, you need to keep those accounts in mind--realizing that the assets in those accounts will pass without regard to what your Will states. *#5 Failing to review and update your estate plan.* You should review your Will (and other documents above described) every 3 to 5 years to make sure they still reflect the plan you have for your estate. Also, you should review your Will ANY TIME there is **a significant life change:** a marriage, a birth, an adoption, a death, a divorce, a change in financial condition (*won the lottery? – good for you, now review your estate plan!*) or a change in the tax code.

Gun Trusts. John Lane, an attorney who shares offices with us, has an expertise in "gun trusts". I asked him to contribute the following for your consideration.

What is a Texas Gun Trust? A Texas Gun Trust is a revocable trust that can be changed or ended at any time during the grantor's life. Its formation and operation is governed by the Texas Property Code and applicable Federal Law.

What is the benefit of a Texas Gun Trust? To maintain continuity of ownership of various weapons through multiple generations, thus avoiding unnecessary transfers upon the deaths of the grantor and beneficiaries.

What sort of weaponry can the Texas Gun Trust hold? It can hold Class 3 items, such as semi-automatic weapons and even suppressors, but it also protects a wide variety of weapons, including family legacies.

What sort of issues need to be addressed if I use a Texas Gun Trust? Because the trust can last for multiple generations, it will need to state who will run the trust after the grantor and his spouse have passed away and address record keeping and necessary documentation. The proper construction of these Trusts ensures that everyone involved knows what the Trust can and cannot do, as well as what happens at the Trust's ultimate termination. It is vital for a Texas Gun trust to provide for successor trustees and a process for the selection or appointment of trustees when all of the named trustees die, become incapacitated or fail to serve. In other words, you need to plan for the longevity of your Trust. Because

trust beneficiaries' assets may be subject to claims of creditors or subject to partition in a divorce, it is essential that a Texas gun trust contain a spendthrift clause. Such a provision, permitted by section 112.035 of the Texas Property Code, can be used to shield a beneficiary's interest in a trust from his or her creditors, including a bankruptcy trustee.

There are many different uses for a properly formed Texas Gun Trust. If you would like to know more about them or how they may benefit you, please do not hesitate to contact our office to discuss your needs with John Lane.



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