

Complete Family limited partnership agreement and related forms

**PREVIEW**

**Information & Instructions: What You Need to Know About Asset Protection and Family Limited Partnerships**

1. The term “Asset Protection” is used to denote that practice area that deals with maintaining, preserving and protecting an individual’s or family’s property. Asset protection is an advanced form of estate planning. The goal is to preserve the wealth and protect it from contingent liabilities in order for the owners to be able to use the property and pass it down to their heirs.

2. The assets and their proceeds can be used to provide for a person’s spouse and family, to protect his or her children’s college education fund, reduce income and estate tax burdens, provide for sufficient monies for retirement and to plan for, and minimize, the hardships in the event of severe illness or disability.

3. One key element of asset protection is preventing creditors from attaching the entire family’s assets for the debts of one family member, usually the one who makes the family income. Asset protection is an extension or advanced form of estate planning.

4. Attorneys are using family limited partnerships in order to obtain asset protection. A family limited partnership is a limited partnership that is organized for the purposes of owning, conducting and preserving family assets or wealth.

5. A family limited partnership may own and engage in any lawful business unless a more limited purpose is stated in its limited partnership certificate or agreement.

6. A family limited partnership is generally not liable for the debts, obligations or liabilities of any of its limited partners. Likewise, limited partners are not liable for the limited partnership’s debts unless the limited partners have actively engaged in the partnership’s day to day affairs. The general partner is however liable for the limited partnership’s debts.

7. Events that can jeopardize an estate. There are many contingencies that justify asset protection planning. Some of the contingencies include but are not limited to:

- a. Lawsuits,
- b. Taxes,
- c. Inflation,
- d. Overspending,

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f. Liabilities from other people such as in-laws, children and business partners,

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g. Failure to plan,

h. Failure to keep proper records,

i. Failure to properly supervise investments, and

j. Natural disasters and/or calamities.

8. Ways to protect an estate

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a. Family Limited Partnerships have become a popular estate planning tool for persons whose estate exceeds the federal exemption equivalent amount. Parents may retain control and management of the family assets while transferring the ownership and wealth of the assets to their children. Non exempt real estate, stocks, bonds, other property, may be transferred into a family limited partnership.

b. If the partnership allows one of the parents to act as general partner, that party can thereby control all operations over the family assets including the timing and amount of cash flow from the partnership to the husband and wife and or children.

c. By using the gift tax rules parents can donate or can give \$11,000 a year worth of property to each of their children in order to reduce the parents gross estate for state tax purposes.

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d. The property when transferred to a limited partnership may have a lower value than if the property was owned outright since there are generally restrictions included on transfer or control of property in a limited partnership. There may be no assurance that the limited partners will receive any cash flow from the partnership. Limited partnership interests may be difficult to sale, transfer, or value.

e. Therefore, the benefits of family limited partnership can include:

i. Substantial reductions in estate tax of the donor's interests,

ii. Management and control by a general partner, including the power to determine the cash flow to the limited partners,

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iii. Ability to provide for a management succession on the death or disability of the general partner, and

iv. Protection of family assets from a partner's creditors, and protection of family assets when a partner dies, becomes disabled or divorced.

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v. Many estate planners recommend the use of a family limited partnership as one of the best vehicles for asset protection.

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9. A family limited partnership offers some advantages for use in asset planning:

a. Lawsuit protection. Generally a limited partnership may not be broken up or dissolved when one of the limited partners is involved in litigation or bankruptcy. Texas, along with most states, provides a provision in the limited partnership statute that protects the assets of the partnership from the individual creditors of a limited partner. The creditor's remedy is usually to obtain a charging order rather than liquidate the partnership or take control of its assets.

b. A judgment creditor may obtain the interest and income that is owned by the judgment debtor. The partnership, however, continues with the general partner still in control. Section (c) provides that the remedy in (a), the charging order, is "exclusive of others that may exist, including remedies under Texas law applicable to partnerships without limited partners."

c. Advocates of family limited partnerships contend that the judgment debtor may be able to prevent his or her creditors from attaching his or her assets, since the same are owned by the limited partnership. As long as the partnership is not broken up, the general partner can refuse to pay any money or tender any assets to the judgment creditor. This can mean that the judgment debtor does not lose his or assets to his or her creditors.

d. Estate planning protection. Many of the goals that are desired in estate planning through the use of wills and trusts can be accomplished through the ownership of property in a limited partnership. A limited partnership can continue past the death or bankruptcy of an individual limited partner.

e. Property may be controlled by a general partner who can be a corporation, a limited liability company, or a registered limited liability partnership. The general partner controls the partnership regardless of his or her percentage of ownership. Estate and inheritance taxes are normally taxed in proportion to the percentage ownership interest of the deceased. Therefore if a deceased person has a ten percent ownership in a one hundred thousand dollar valued limited partnership his estate would include only \$11,000. This can be the case, even though the decedent controlled during his lifetime the full assets of the limited partnership as long as he or she did not have a general power of appointment over those assets.

10. Provisions in the family limited partnership agreement to protection the parties from creditors:

a. The limited partnership agreement should be written to prohibit the transfer of a partnership interest without the consent of all other partners or at least some high percentage of the same. This may frustrate efforts by a creditor who holds a judgment against one of the limited partners.

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b. Many limited partnerships provide that in the event of a judgment against a limited partner, the other limited partners have the right to purchase, for a nominal sum, the judgment debtor limited partner's interest in the partnership. That money may then be paid to the creditor rather than a transfer of the limited partnership interest to the creditor.

c. Even if a limited partnership interest is taken and sold at a public sale, it is unlikely that a limited partnership interest will bring a high price at a public sale since the purchaser has little or no control over the assets which are owned by the limited partnership.

d. If the limited partnership interest is owned as separate rather than community property, most asset protection may be afforded. A spouse's separate property is generally not liable for the obligations of the other spouse. See Fam. Code Section 5.61a

e. Under some circumstances a spouse's separate property can become liable for the debt of the other spouse. See Tex. Fam. Code Section 4.02 Cockerham vs. Cockerham 527 SW2d 162 (Tex 1965)

f. Typically a judgment creditor can obtain an assignment of the limited partner's interest in the partnership. Since the creditor may not be able to obtain the necessary consent of the other limited partners to become a partner, the creditor may not be able to force a liquidation of the partnership or require it to make distributions. The rights of an assignee are much less than a limited partner's rights under the partnership agreement.

g. The creditor generally cannot remove the general partner of the limited partnership nor does the creditor have a vote or management role in the affairs of the limited partnership. The creditor can therefore not demand income from the limited partnership, but only receive income if it is distributed. The creditor may even be in the position of receiving a tax statement (K-1) whereby the creditor may have to pay income taxes on income that was earned by the limited partnership even though the creditor did not receive any income.

h. If a judgment creditor obtains a charging order from a court against the limited partnership interest of the debtor partner, the creditor may be stuck with a substantial tax liability. The partnership's taxable income is taxed to its limited partners whether or not any income is distributed. See IRS Revenue Ruling 77-137. Consequently if a judgment creditor takes over the judgment debtor's partnership interest, the creditor is taxed on the income allocated to the debtor, even though no actual cash may have been paid.

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i. Proponents of family limited partnerships hang their hat on the fact that if a creditor may only obtain a charging order, then the creditor may not be able to obtain the assets held in the limited partnership to satisfy the judgment.

**11. Caution: There is no guarantee that the charging order theory will always be upheld to protect limited partners and frustrate creditors.**

a. Creditors may be able to obtain the relief they desire if they can show the limited partnership was created and transfers made to the limited to partnership to defraud or hinder creditors under the uniform fraudulent transfers act. See Tex Bus. & Com. Code Ann § 24 et seq. Under that act the court may be able to dissolve the partnership if the creditor can show that the judgment debtor-limited partner sought to evade creditors and the same was the purpose for the family limited partnership.

12. You should review the act and internal revenue code section 704(e) before forming a family limited partnership.

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Information & Instructions **PREVIEW** Asset Planning and Net Worth Information Form

1. The following form may be helpful in obtaining key information needed to set up an asset protection plan. Review the form and obtain the variables stated in the data form.

**Form: Asset Planning Information Form**

**ASSET PLANNING AND NET WORTH INFORMATION FORM**

Date:

Client's name:

Identity Of Client's Family:

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Client's Spouse:

Address:

Phone No.:

Age:

Birth Date:

Social Security No.:

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Previous Spouses-Deceased And Divorced:

Name:

Address:

Phone No.:

Age:

Birth Date:

Social Security No.:

Date

**THANK YOU**

Location

Cause Number Of Divorce Decree

Children And Stepchildren:

Name:

Address:

Birth Date:

Identity Of Deceased Children:

Name:

Address:

Birth Date:

Disposition Of Property:

Specific Bequests (List):

Property To Spouse (List):

Property To Go To Children If Spouse Is Deceased.

Per Stirpes: Or

Per Capita:

Other Beneficiaries:

Name:

Address:

Independent Executor/Executrix:

1st Choice:

Name:

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Phone No.:

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2nd Choice:

Name:

Address:

Phone No.:

3rd Choice:

Name:

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Address:

Phone No.:

Guardian:

1st Choice:

Name:

Address:

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Phone No.:

2nd Choice:

Name:

Address:

Phone No.:

3rd Choice:

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Name:

Address:

Phone No.:

Date Written/Executed:

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Place Of Execution:

Location Of Original Will:

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Date Client Given Letters Of Instruction

Name Of Notary:

Date Notary's Commission Expires:

Other:

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FAMILY NET WORTH STATEMENT

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**ASSETS:**

List the amount, name of the asset and location of the asset.

**THIS DOCUMENT**

Checking Account \$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Savings Accounts

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\_\_\_\_\_

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Now Accounts

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Credit Union Accounts

\$ \_\_\_\_\_

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Stocks, Bonds

\$ \_\_\_\_\_

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Treasury bills

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Other Cash

\$ \_\_\_\_\_

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Personal Property

\$ \_\_\_\_\_

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Automobiles (Cars, Trucks) \$ \_\_\_\_\_

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Antiques, Coins, Pictures **PLEASE DO NOT COPY** \$ \_\_\_\_\_

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Real Estate (House, Vacation Home, & Real Estate Partnerships) \$ \_\_\_\_\_

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Pension Plan \$ \_\_\_\_\_

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Retirement Plan **THANK YOU** \$ \_\_\_\_\_

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Other Assets

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**TOTAL ASSETS**      \$ \_\_\_\_\_

**DEBTS:**

List in asset and location

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Home Loan (Balance Due)      \$ \_\_\_\_\_

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Car Loans      \$ \_\_\_\_\_

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Other Installment Loans      \$ \_\_\_\_\_

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Credit Cards      **THANK YOU**

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Charge Accounts      **LegalFormsForTexas.Com**

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Insurance Premiums Due \$ \_\_\_\_\_

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Taxes Owed \$ \_\_\_\_\_

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IRS \$ \_\_\_\_\_

State \$ \_\_\_\_\_

School District \$ \_\_\_\_\_

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Property Taxes \$ \_\_\_\_\_

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**TOTAL DEBTS** \$ \_\_\_\_\_

**Total Assets Minus Total Debts = NET WORTH** \$ \_\_\_\_\_

## IRS'S AND KEOGHS

List the asset and location

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Individuals Name: \_\_\_\_\_

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Type of Plan: \_\_\_\_\_

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Account Number: \_\_\_\_\_

Date Opened: \_\_\_\_/\_\_\_\_/\_\_\_\_

Where Opened: \_\_\_\_\_

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Broker/Account Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_/\_\_\_\_/\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_

Amount Invested Periodically: \$ \_\_\_\_\_

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Trustee/Beneficiary: \_\_\_\_\_

Location of Documents: \_\_\_\_\_

Other Information: \_\_\_\_\_

Value as of \_\_\_\_\_ date

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EMPLOYMENT BENEFIT PLANS

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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City/State/Zip Code:

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Employer:

\_\_\_\_\_

Party to Contact:

\_\_\_\_\_

Phone:

(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Location of the Benefit Plan:

\_\_\_\_\_

Type of the Benefit Plan:

\_\_\_\_\_

**SUMMARY OF BENEFITS AVAILABLE THROUGH EMPLOYER:**

Stock Options: \$ \_\_\_\_\_

Life Insurance

\$ \_\_\_\_\_

Deferred Compensation:

\$ \_\_\_\_\_

Salary Compensation:

\$ \_\_\_\_\_

Pension Plan Contribution:

\$ \_\_\_\_\_

Profit-Sharing Plan Contribution:

\$ \_\_\_\_\_

Savings Plan Contribution:

\$ \_\_\_\_\_

Other Benefits: \$ \_\_\_\_\_

**TOTAL VALUE OF EMPLOYMENT BENEFITS**

\$ \_\_\_\_\_

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**HOMESTEAD OWNERSHIP INFORMATION**

Property Located At:

\_\_\_\_\_

Address:

\_\_\_\_\_

City/State/Zip:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Purchase Date:

**THANK YOU**

Purchase Price:

\$ \_\_\_\_\_

Interest Rate:

\_\_\_\_\_ %

Mortgage Term:

\_\_\_\_\_

Unpaid Principle Balance:

\$ \_\_\_\_\_

Assumable (yes or no)

\_\_\_\_\_

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Lender's Name: \_\_\_\_\_

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Lender's Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Lender's Phone Number: \_\_\_\_\_

(\_\_\_\_) \_\_\_\_/\_\_\_\_

Tax Appraisal Value: \$\_\_\_\_\_

\_\_\_\_\_

Tax Appraisal District:

Name: \_\_\_\_\_

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Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Phone Number: \_\_\_\_\_

(\_\_\_\_) \_\_\_\_/\_\_\_\_

Location of Deed: \_\_\_\_\_

Other Information: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**THIS DOCUMENT**

HOME INVENTORY

Name of Item	From	Purchased	Date	Value
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
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_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

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\_\_\_\_\_**PREVIEW**\_\_\_\_\_ \$ \_\_\_\_\_

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\_\_\_\_\_ \$ \_\_\_\_\_

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# PREVIEW

1. The following form explains the concept of asset protection. It covers many topics that are included in the decision to form a family limited partnership. The letter covers the following important topics:

a. The definition of asset protection,

b. The sources of financial disaster,

c. What assets should be protected,

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d. How to own property and the pitfalls of each type of ownership,  
e. Pitfalls and traps in asset protection such as the Fraudulent Transfers to Creditors Act,

f. Types of insurance the client should obtain,

g. What property is exempt from collection by general creditors under the Texas and Federal exemptions,

h. What you should know about bankruptcy,

**THIS DOCUMENT**  
i. What you should know about probate, dying in Texas without a will and important information about trusts, including Living Trusts,

j. Why the family limited partnership should be considered, and

k. Problems in keeping the protection of a corporation's status.

**Form: Asset Protection Concepts Insurance Considerations Exempt Property etc**

[Date]

**THANK YOU**  
ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION

[Client's name]

[Client's address]

Dear [Client's salutation]:

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Thank you for meeting with me and discussing your estate plan and protecting your family's assets. The purpose of this letter is to explain, in detail, the process of asset protection and how a family limited partnership may help protect your estate.

### ASSET PROTECTION DEFINED

"Asset protection" is an advanced form of estate planning. The purpose of asset protection and estate planning is to:

1. protect the assets and property that you have accumulated, and
2. shelter your assets and income from contingent liabilities.

Your assets and their proceeds can be protected to provide for your spouse and family, to provide for your children's college education, reduce income and estate tax burdens, provide sufficient moneys for retirement, and to plan for, and minimize, the hardships in the event of severe illness or disability.

### SOURCES OF FINANCIAL DISASTERS

You may not realize the fact that your assets and property are subject to many contingencies which could cause you to suffer a loss of part or all of your property. Some of the more common financial disasters include the following:

1. Lawsuits,
2. Taxes,
3. Inflation,
4. Overspending,
5. Improper use of borrowing,
6. Liabilities from other people, such as son-in-laws, children, business partners,
7. Failure to plan,
8. Failure to keep proper records, and
9. Failure to properly supervise investments.

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**GOOD INTENTIONS ALONE  
ARE NOT SUFFICIENT TO PRESERVE YOUR ESTATE**

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In order to protect your hard earned assets, you must plan ahead for possible contingencies. Failure to create an estate plan could be subject you or your estate to significant losses or taxes. Good intentions alone cannot substitute for professional estate planning.

The law allows you to protect your family and assets pursuant to a properly adopted estate plan. You must however execute the proper documents before the occurrence of a financial derailment otherwise your actions could be considered by a court to be a fraudulent transfer.

Additionally, the investments and decisions made in asset and estate planning must be shown to have a viable, worthwhile purchase.

For instance, if you are sued tomorrow (before enacting an estate plan) and then took all of your cash assets and paid off your home in order to take advantage of the homestead exemption, a creditor could easily argue that you have violated the Fraudulent Transfers Act and defrauded your creditors.

Paying off your home is a legitimate asset and estate planning protection tool. It is supported most frequently on the reason that the motives for paying off the homestead were to take care of a spouse and family, and to reduce living expenses, and payment of interest. This must be done before, not after the occurrence of a contingency.

Placing money into trust is also a particularly worthwhile and legitimate endeavor. These include irrevocable trusts with a spendthrift provision. A spendthrift clause protects the trust fund from its beneficiaries' creditors and the child's creditors. These trusts can be long-term trusts designed to own insurance on a parent's life, and to provide liquidity upon a parent's death, if ever needed. For legal references applicable to the spendthrift provision, see Texas Property Code Sections 112.035 and 112.035(b).

### SOME COMMON PITFALLS

If you or your spouse has not filed income tax returns, or has income tax levies, then the other spouse (including one from a new marriage) is now liable for the tax deficiency. Your community property is at risk in that situation.

If you are named on a corporation's Board of Directors, or serve as an Officer of a corporation, you may find yourself liable for the corporation's unpaid withholding 941 tax deposits.

Transfers of business property or stock can backfire if not done properly. An owner of a well-established business, for estate planning purposes, transferred stock in his business to his children. Unfortunately, one of the children subsequently became divorced, and all of the stock was awarded to the other party in the divorce. That interest in the business is now owned by strangers.

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~~FRAUDULENT TRANSFERS~~  
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The Texas Uniform Transfers Act is designed to protect creditors from fraudulent transfers when debtors seek to hide their assets, hinder, or defraud a creditor.

The Act prevents hindering, delaying or transferring properties if a court determines that the purpose of a transfer was to defraud a creditor. The Act has a four-year's statute of limitations time period from when the transfer was made, or one-year's statute of limitations time period after a transfer was, or could have been, recently discovered.

The Act protects creditors whose claims arise within a reasonable time before, or after, the transfer was made. Unfortunately, the language of the Act makes it very difficult to ascertain what transfers will be considered a violation of the law, and which ones will not be.

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It may be up to a jury to have each individual transaction determined. In determining the intent of whether a person intended to defraud creditors, the following evidence may be considered:

1. If the transfer was made to an insider, such as another member of the family,
2. If the debtor retained possession or control of the property transferred, even after the transfer was made,
3. If the transfer was concealed or removed from the jurisdiction of the Texas courts,
4. If the transfer was made after the debtor was sued or threatened with a lawsuit, and if the transfer was substantially all of the debtor's assets, and
5. If the debtor is now insolvent as a result of the transfer.

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The Texas Fraudulent Transfers Act does not look at the solvency of the financial condition of the transferor, but rather looks at the intent of the person making the transfer at the time the transfer was made as the basis for determining whether or not the conveyance was fraudulent.

The statute provides that a transfer is deemed fraudulent if a debtor makes a transfer without receiving a reasonably equivalent value for the exchange, and the debtor was:

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1. engaged in, or was about to be engaged in, a business or transaction for which his remaining assets were unreasonably small, or
2. intended to incur or believed to have incurred debts beyond his ability to pay the same.

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A transfer is also fraudulent if a creditor has a pre-existing claim and the debtor transfers property without receiving a reasonably equivalent consideration for the transfer, and the debtor was insolvent at the time, or became insolvent because of the transfer.

In addition to the Texas Fraudulent Transfers Act, Section 528 of the United States Bankruptcy Code prohibits fraudulent transfers. Transfers made by a debtor within 1 year before the date of filing a bankruptcy petition may be overturned if the transfers are made with actual intent to hinder, delay or defraud any creditor, or made for less than fair market value.

Based on the above, you should let us advise you before you make transfers of your property.

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PROTECTING YOUR RETIREMENT PLANS  
AND INSURANCE POLICIES

You should protect your retirement and insurance benefits. These two types of property are often the most valuable assets in your estate. Accordingly creditors have sought to obtain the cash value of those assets and courts have ruled on this matter as follows:

The court ruled In Re: Dyke, 943 F. 2d. 1435 (5th Cir. 1991) that the Employee Retirement Income Security Act (ERISA) does not pre-empt provisions of the Texas Property Code which exempt qualified retirement plans and IRA's from the claims of creditors.

The Supreme Court in *Porter v. Sullivan*, 11 S. Ct. 2242 (1992), ruled that a debtor's interest in an ERISA qualified retirement plan is not property of a bankruptcy estate, and is therefore, exempt from claims of creditors.

The Texas legislature provides classes of property that are exempt from seizure by creditors and that may be considered exempt and kept by debtors when filing bankruptcy, if the debtor elects to choose the Texas exemptions.

Texas Property Code Section 42.0021 exempts qualified retirement plan benefits and insurance benefits from seizure by creditors.

This includes but is not limited to, the cash value of the insurance policy, as well as the death benefit awards or proceeds from the insurance. Therefore insurance enjoys the same protection that the homestead has enjoyed.

Accordingly, permanent life insurance cash values, death benefits and annuity values are protected and may be used as asset protection vehicles. Section 541 of the Bankruptcy Code defines property of the bankruptcy estate to include all legal and equitable interests of the debtor in property as of the date that the bankruptcy is filed.

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This is subject to the exemptions which may be claimed by the debtor. This is also subject to a restriction on the transfer of the interest that a debtor had in a trust.

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Therefore, based on current law, under Section 541, a debtor's interest in a valid, spendthrift trust is not property of the bankruptcy estate, and creditors may not seize the debtor's interest in a trust with a valid spendthrift provision.

In Re: Goff, 706 F. 2d. 574, 1983, the Fifth Circuit ruled that ERISA pre-empted the Texas Property Code, which previously exempted qualified retirement plan benefits from creditor claims. In response to the Goff decision, the Texas legislature enacted Texas Property Code Section 42.0021, which generally exempted benefits of qualified retirement plans and IRA's from creditors.

It was not until the In Re: Duke decision and then the Patterson decision that this Property Code decision became stable and reliable. Creditors still may be able to attach pension or insurance proceeds if a debtor has violated the Texas Uniform Fraudulent Transfers Act.

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The retirement plan at its creation must receive a determination letter from the Internal Revenue Service indicating that the plan is qualified. Unless the plan is audited by the IRS, it will continue to be a qualified plan even though it may have been used for activities that might result in disqualification.

**WHAT TYPES OF INSURANCE SHOULD I HAVE  
IN ORDER TO PROTECT ME AGAINST LAWSUITS?  
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You should consider four types of insurance:

1. Homeowners Insurance:

Your homeowner's policy is absolutely essential to protect the value of your home, and to provide liability coverage for contingencies that may happen at your homestead.

We recommend that you talk to your insurance broker and consider getting the largest liability protection amount that is available. Generally, the cost is quite reasonable.

2. Automobile Insurance :

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Although Texas law requires drivers to have auto insurance, many people do not have insurance or only have the lowest limits of liability.

You should consider discussing your coverage with your agent, and consider purchasing the maximum coverage that is allowed. You should obtain the highest limits that are available for the following types of coverage:

1. **LegalFormsForTexas.Com**  
personal injury protection,

2. uninsured coverage, and
3. underinsured coverage.

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The cost is quite reasonable in exchange for the protection that the above coverage offers.

3. Umbrella insurance:

This is an important insurance product that you should have since your homeowner's, automobile and boat or recreational vehicle policies have limits in the event that you are liable for a judgment that is larger than the policy limits, you would be liable to pay the difference.

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Umbrella insurance covers that liability. It expands the total amount of liability coverage and dollar amount for usually a relatively small premium. It may also increase liability coverage to other areas that are not covered by traditional home, auto or boat policies. For example, liable and slander may be covered.

4. Negligence/Malpractice/Errors and Omissions Insurance:

Most professional business people are aware of this type of insurance and have had the same for quite some time.

This type of insurance has become increasingly expensive in recent years, and due to the large amount of verdicts that have been assessed against professionals, one can not continue to rely on malpractice insurance to protect them from all of the contingencies that may arise in their business.

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One big mistake that people make is relying too heavily on insurance, not realizing that the company may not cover you in a given situation, or the company may go out of business.

### **TYPES OF PROPERTY THAT IS EXEMPT FROM SEIZURE BY GENERAL CREDITORS AND THE TEXAS HOMESTEAD EXEMPTION**

Definitions of property categories. For the purpose of this discussion, property is categorized as follows:

**THANK YOU**

1. Personal Property and Real Property.
2. Exempt and Non-exempt Property.
3. Real property consists of land, buildings, real estate, oil & gas interests, easements and/or personal property.

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4. Personal property consists of property that is not real property. Examples include: furniture, money, tools and **PREVIEW** intellectual property rights including, but not limited to, intellectual property rights, patents, copy rights and other rights.

5. Exempt property is property that a general creditor cannot seize or take in order to satisfy a judgment (unless that property has a valid lien placed on it to secure a debt typically a purchase money debt).

6. Non-exempt property is property which a creditor may seize to satisfy a judgment or a debt.

**EXEMPT REAL PROPERTY IN TEXAS:  
THE TEXAS HOMESTEAD EXEMPTION**

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The following types of property are included under the term "exempt property" in Texas:

1. A homestead:

a. An urban homestead consists of one or more lots that do not exceed more than 10 contiguous acres of land together with any improvements on the land regardless of whether it is a family homestead or a single adult.

b. A rural homestead consists of, for a family, not more than 200 acres which may be in one or more parcel with improvements thereon and 100 acres for a single adult.

c. A homestead and one or more lots used for the place burial of the dead are exempt of seizure for the claims of creditors except for encumbrances or liens properly fixed on the homestead property.

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**EXEMPT PERSONAL PROPERTY IN TEXAS**

Personal properties of various categories are considered exempt up to a total fair market value of \$60,000 per family or \$30,000 per single adult who is not part of a family. (See chapter 42 of the Texas Property Code).

The following personal property is exempt from garnishment, attachment, execution or other seizure as follows:

**THANK YOU**

1. \$ 60,000 (or \$ 30,000 for a single person) exclusive of the amount of any liens, security interests or other charges encumbering the property.

2. If the personal property exceeds the statutory exemption amount, the head of the family or the person entitled to the exemption may designate which property they desire to have the exemption status and which property should be non-exempt.

The property that is exempt includes the following:

**PREVIEW**

1. Current wages for personal services & court ordered child support payments,
2. Professional prescribed health aids of a debtor or a dependent of a debtor,

This section does not prevent seizure by a secured creditor with a contractual landlord's lien for the security and the property to be seized,

3. Unpaid commissions for personal services, not exceed %25 of the aggregate limitations described above,

4. Home furnishings, family heirlooms, provisions for consumption

5. Farming or ranching vehicles and implements,

6. Tools & miscellaneous equipment,

7. Books,

8. Apparatus including boats and motor vehicles used in a trade or profession,

9. Wearing apparel & jewelry not to exceed 25% of the aggregate limitations (the \$60,000, \$30,000 amounts),

10. Two firearms,

11. Athletic and sporting equipment including bicycles, a two wheeled, three wheeled or four wheeled motor vehicle for each member of a family or single adult who have a drivers license or does not hold a drivers license but relies on another person to operate the vehicle for the benefit of the non licensed person,

12. The following animals and foliage on hand for their consumption:

- a. two horses, mules, donkeys and a saddle, blanket and saddle for each,
- b. 12 head of cattle
- c. 60 head of other types of livestock,
- d. 120 cows,
- e. household pets,

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13. The present value of any life insurance policy to the extent that a member of the family of the insured or dependent, single insured adult claiming the exemption as a beneficiary of the policy.

**PREVIEW**

### **RETIREMENT PLANS:**

In addition to the exemptions described above, a person's right to the assets held or to receive payment, whether vested or not, under any:

1. stock, bonus, pension, profit sharing or similar plan,
2. retirement plans for self employed individuals or any annuity or similar contract purchased with assets distributed from that type of plan and under any retirement annuity or account described by Section 403 (b) of the Internal Revenue Code 1996) and under any individual retirement account or any individual retirement annuity including a simplified employee pension plan is also exempt from attachment from any execution and seizure for the satisfaction of debts unless the plan, contract or account does not qualify under the applicable provisions of the Internal Revenue Code.

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### **LIENS ON THE HOMESTEAD**

Encumbrances or liens may be attached on homestead property for the purchase of the property (purchase money), taxes on the property or work and material used in constructing improvements on the property (materialmen & mechanic's liens).

The following must occur before the materialmen & mechanic lien can be effective:

**THIS DOCUMENT**

1. The improvements or work must be contracted for in writing before the material is furnished to the property or the labor performed in constructing or improving the property.
2. The paper work (the materialmen's & mechanics lien deed of trust, note etc.) must be prepared properly. Both spouses should sign the documents if the homestead claimant is married.
3. The sale of one's homestead (the money received from selling your homestead i.e. home) are not subject to seizure by creditors for 6 months after the date of sale.

**THANK YOU**

### **IMPORTANT CONSIDERATIONS APPLICABLE TO YOUR HOMESTEAD**

The temporary renting of a home does not change its homestead character if the homestead claimant has not acquired another homestead.

If the homestead claimant is married the homestead cannot be abandoned without the consent of the spouse.

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## DESIGNATION OF YOUR HOMESTEAD

# PREVIEW

If a rural homestead is part of 4 or more parcels containing a total of more than 200 acres the head of the family if married, may voluntarily designate not more than 200 acres of property as the homestead.

For urban properties, the head of the household may likewise voluntarily designate not more than one acre of the property as the homestead.

To designate the property as a homestead the person must make the designation in an instrument that is signed and acknowledged or approved in a manner required for the recording instruments, i.e. notarized.

A person must file the designation with the county clerk of the county in which all or part of the property is located. The court shall record the designation in the county deed records. The designation must contain a description that identifies the designated property, a statement by the person who executed the instrument that the property is designated as a homestead, the name of the original grantee of the property and for a rural homestead the number of acres and if there is more than one survey, the number of acres in each survey.

## DESIGNATION OF A HOMESTEAD AFTER A JUDGMENT HAS BEEN OBTAINED

If a judgment has been obtained against you, the creditor may take steps to collect or enforce the judgment. Once judgment has been obtained, the creditor can file notice of the judgment 30 days after the judgment becomes final. This filing is called an “Abstract of Judgment”.

If the creditor has requested an execution of judgment to be issued against you (if you are a judgment debtor) and if you own a homestead you must protect your homestead by filing a Voluntary Designation of your homestead under Section 41.005 of the Texas Property Code.

If you have not designated your homestead, the judgment creditor may give you, the judgment debtor, notice to vacate your homestead as defined in Section 41.002 of the Texas Property Code.

The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.002 of the Texas Property Code, the court will appoint a commissioner to make the designation at the expense of the judgment debtor.

At any time before 10:00 am on the Monday next after the expiration of 20 days after the date of the service of the notice to designate (the general time period allowed for answering a writ), the judgment debtor must designate the homestead as defined in Section 41.002 Texas Property Code by filing a written designation, signed by the debtor

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in front of the justice or the clerk of the court from which the writ of execution is issued, together with the legal description of the land designated as your homestead.

**PREVIEW**

### **SALE OF THE EXCESS OF THE HOMESTEAD**

A constable or officer may sell the part of your property that exceeds the homestead exemption, (if your property exceeds the statutory allowance). The sale can be conducted pursuant to the holding an execution (sale of your property).

### **LIABILITY FOR COMMUNITY DEBTS**

Debts, which are incurred during a marriage, are presumed to be on community credit and are presumed to be community obligations unless it is shown that the creditor agreed to look solely to the separate estate of the person who took out the loan. Therefore, the community interest may be subject to satisfaction of the debt.

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### **GARNISHMENT OF BANK ACCOUNT PROCEEDS TO SATISFY A JUDGMENT**

Garnishment involves a legal procedure whereby a person who is owed money, typically in the form of a judgment, is entitled to seize and collect assets that are owed to the judgment debtor.

Garnishment can occur on property owned directly by the debtor or property held by a third person that is owned by the judgment debtor. For instance, if a person, as a defendant in a lawsuit, incurs a judgment for \$100,000 and if that judgment debtor has \$50,000 in a bank account, a creditor may be able to garnish the \$50,000 in the bank account to partially satisfy the judgment debt.

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Bank deposits are the most commonly garnished debt. Bank deposits can be reached regardless of the account name if the funds are owed to the judgment debtor. Of course, community funds likewise can be garnished.

Contents of a safety deposit box can also be garnished. The bank can be sued in a garnishment action to obtain the contents of the safety deposit box.

### **GARNISHMENT OF STOCK CERTIFICATES TO SATISFY A JUDGMENT**

**THANK YOU**

Judgment creditors can obtain your stock through the garnishment process. Creditors can seize certificates held by your or held for you by a third party, i. e. a mutual fund, stock broker, etc.

### **GARNISHMENT of PROMISSORY NOTES TO SATISFY A JUDGMENT**

Monies that are owed to judgment debtors in the form of a promissory note can be garnished.

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## TRUST FUNDS IN WHICH THE DEBTOR IS THE BENEFICIARY

# PREVIEW

Monies from a trust fund can be subject to payment of the beneficiary's debts if the trust fund fails to contain what is known as a "spend thrift clause".

A spend thrift clause prohibits the beneficiary's creditor from attaching the trust and taking the moneys earmarked for the beneficiary out of the trust and then payment of the same to the creditor.

Even if a spend thrift clause is included in a trust, once from the trust are paid to the debtor, they can then be garnished.

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Welfare and social security benefits are generally exempt from garnishment.

There are other methods of collecting a judgment. One is a turnover order. A court can order you to turn over all of your non-exempt property to a court-appointed trustee. The trustee can then take the property and distribute it to creditors.

## BANKRUPTCY CONCERNS

### WHAT IS BANKRUPTCY?

Bankruptcy is a legal procedure whereby an individual or company may be relieved of its debts pursuant to the United States Bankruptcy Statutes/code. You may have to file bankruptcy in the event one or more of the financial disasters occur.

### WHAT TYPES OF BANKRUPTCY APPLY TO ME?

There are several Chapters under which most consumers or business may obtain bankruptcy relief. The typical Chapters are as follows: Chapter 7, 11 and 13.

### CHAPTER SEVEN BANKRUPTCIES

A Chapter 7 bankruptcy liquidates your non-exempt assets to pay your debts. Chapter 7 is the most frequently filed bankruptcy and is the one most commonly used by individual debtors.

A Chapter 7 bankruptcy allows the debtor to list his or her assets and debts; and then depending on the exemptions allowed, emerge from the bankruptcy debt free while retaining his or her property which falls into the category of exempt property.

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A Chapter 11 bankruptcy is used in situations where an on-going enterprise believes that it can propose a plan that will be accepted by its creditors, which will allow the enterprise to reorganize by reducing its debt so that it can continue to stay in business pursuant to the terms of a chapter 11 plan.

The enterprise attempts to emerge as a reorganized entity that will be successful and profitable pursuant to the terms of the chapter 11 plan. The key to a successful Chapter 11 bankruptcy is the ability to generate income in excess of expenses and provide more payment of debt to creditors than would otherwise be realized if the enterprise was liquidated under a Chapter 7 proceeding.

In order for the plan to be approved, certain legal requirements must be met. The plan must either be approved by the requisite number and type of creditors or approved by the court under certain strict guidelines. For the sake of this letter, you should assume that you will be required to obtain your creditor's approval of your chapter 11 plan if you want to have a successful chapter 11 bankruptcy. Chapter 11 bankruptcies are time consuming and expensive. It is not always easy to have the plan confirmed by the court or approved by the creditors.

### **CHAPTER THIRTEEN BANKRUPTCIES**

Chapter 13, the Wage Earner Plan, allows an individual to reorganize pursuant to the terms of a chapter 13 plan. If the plan is approved or confirmed by the court the debtor may retain many of his or her assets. The debtor must then pay his or her debts pursuant to the terms of the chapter 13 plan.

It is important for you to realize that if you cannot obtain confirmation of your chapter 11 or 13 plan, the bankruptcy may be dismissed or converted to a chapter 7. If the case is converted to a chapter 7, you may not be able to keep some non-exempt property that you may have retained under a successful chapter 11 or 13 plan.

### **LOSS OF CONTROL OF YOUR PROPERTY IN A BANKRUPTCY**

Some debtors have filed bankruptcy, only to realize that they no longer control their assets or company, rather the court, trustee and creditors control the same.

You must realize that when you file a bankruptcy, your property - which is called the bankruptcy estate- is completely subject to the court's control. You are only allowed to control or retain your exempt property, if the same is allowed, unless you can navigate through the bankruptcy maze successfully.

There are many traps and obstacles to pass through. We cannot enumerate the complexity of bankruptcy practice in this letter, We can only inform you to consider the risks that are inherent when you file bankruptcy.

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CATEGORIES OF PROPERTY IN A BANKRUPTCY



# PREVIEW

There are two types of property in bankruptcy law, exempt and non-exempt property.

1. Exempt property is the property which the debtor may keep after he or she has filed the bankruptcy if the exemptions are allowed by the trustee or court.
2. Nonexempt property is property that is not subject to a federal or state exemption. This property may be taken by the Trustee or court and sold to pay for the debtor's debts. This is property, or its value, which creditors may eventually be able to obtain.

One of the first considerations in determining whether to file bankruptcy or not, is to analyze your property to ascertain whether or not it is exempt or non-exempt property.

If most of your property is non-exempt property and you, the debtor, desire to keep the property, generally a Chapter 7 bankruptcy would not be advised. You should consider filing a chapter 11 or 13 plan. Under the chapter 11 or 13 filing, it would then be up to your successful management and business skills to propose and fund a successful plan.

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## CATEGORIES OF DEBT IN A BANKRUPTCY

There are two types of debt in bankruptcy, secured and unsecured.

1. A secured debt is the type of bill, loan or expense whereby the creditor retains a security interest in the property or goods sold to the debtor.
2. Unsecured debt does not have a security interest attached to it, consequently the creditor has not contractual and independent right to repossess the specific property that gave rise to the debt.

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In the event the debtor does not pay for the goods, the creditor may repossess the same pursuant to a contractual agreement which is commonly referred to as a security interest. Many Trustees require the security agreement to be "perfected" prior to recognizing the security agreement.

A common example of a secured debt is when a person buys a car and has the same financed at a local bank. The car dealer sells the car to the consumer. In order to pay for the car, the consumer obtains a loan at a bank. The bank advances the money to the car dealer and retains a security interest in the title to the vehicle to assure the bank that in the event the buyer does not pay for the vehicle, the bank can recoup its losses by selling the vehicle after it is repossessed pursuant to the terms of the security agreement and lien which is placed on the vehicle's title.

**THANK YOU**

You should understand that filing bankruptcy generally does not discharge or remove the security interest that a creditor has in a secured debt. Consequently, if most of your debt is secured, then even though the property may be considered exempt property, you will generally have to pay the debt in order to retain the property. If you cannot pay the debt,

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the secured creditor may repossess the property by foreclosing on its secured interest at the appropriate time after the creditor has obtained the court's approval.

**PREVIEW**

If on the other hand, most of your debt is considered unsecured and the majority your assets are in the exempt property category, then you may emerge from the bankruptcy being debt free while retaining the exempt property which was not bound by a security interest.

### **DISCLOSURE OF ALL ASSETS AND DEBTS IN A BANKRUPTCY**

You must disclose all of your assets and make absolutely certain that the bankruptcy filing: the petition, schedules, statement of affairs, affidavits, etc. are totally true and correct.

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DISCHARGEABILITY

Although as a general rule you will be relieved from obligations for any and all debt that is listed in your bankruptcy petition, there are some types of debt that bankruptcy will not discharge.

Discharge means that your bankruptcy frees you from having to pay that debt. Accordingly there are two types of debts from a discharge perspective: dischargeable & non-dischargeable.

Non dischargeable debts are those that you will still owe even if you file bankruptcy. An example of a non-dischargeable debt is money owed to the Internal Revenue Service for current tax years and within the statute of limitation time frame for owed income tax liability. Another example would be student and some government loans. Child support is also non-dischargeable. Furthermore, any debt or obligation that is owed as a result of fraud or intentional wrongful conduct is likewise non-dischargeable.

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Another example, assume that you were involved in a civil conspiracy to defraud someone and a court awarded damages against you for that intentional conduct. Depending upon how the judgment is written, the holder of the Judgment may be able to obtain an objection to your discharge regarding that particular debt. Consequently you would still owe the debt after your bankruptcy was completed.

**THE BANKRUPTCY PROCESS**  
**THANK YOU**

The bankruptcy process begins by meeting with the attorney and ascertaining if you can work out an arrangement with your existing creditors that does not involve the bankruptcy court.

It is sometimes possible to work out a composition with your creditors whereby your creditors will take over nominal payments or reduce the debt in order for them to be paid so that you will not have to file a bankruptcy.

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# PREVIEW

In the event you cannot work out a satisfactory arrangement with your creditors, and you need court protection, the next step in the process is to meet with the attorney and have the attorney review your assets and liabilities.

Generally, the attorney will require you to fill out a bankruptcy questionnaire or information sheet that requires you to list a large amount of information about you and your property.

After the attorney has had a chance to review the questionnaire, he or she can then recommend the most appropriate chapter for your individual situation.

The bankruptcy petition is a very large, lengthy legal document. You must read it very carefully to ascertain that all the questions are answered correctly. You will be asked many important questions regarding your finances, taxes, property, obligations owed to other people, whether or not you have transferred property to others and many other rather detailed areas of questioning.

You must review the information contained in the bankruptcy petition with a fine tooth comb and advise your attorney if there are any errors or omissions. If you fail to list some of your assets, you may inadvertently be in the position of having a creditor assert that you have attempted to defraud the Bankruptcy Court.

Once the bankruptcy petition is filed, you will be given a bankruptcy case number. It is at that point that you have now filed the bankruptcy.

## THIS DOCUMENT RETAINING VS. ABANDONING SECURED PROPERTY

It is important to determine which secured property you want keep and which property you can no longer afford to pay for. You should decide which property to abandon and return to secured creditors and which secured property you desire to retain or keep.

In order to keep or retain property that is subject to a security interest, you must work out an amicable arrangement with the secured creditor. That generally means you must either become current on the payments that are owed and then continue to maintain the payments or agree with the creditor to a new payment schedule.

If a secured creditor believes that you will not be able to pay the debt, he or she may file a Motion to Lift the Automatic Stay, and if successful, will then be entitled to repossess his or her property. ( The automatic stay is discussed in more detail in the next section).

## THANK YOU

### THE AUTOMATIC STAY

As soon as the bankruptcy petition is filed, you receive protection of the bankruptcy statute, in effect, a "stay" which is termed the "Automatic Stay". Under the Automatic Stay, creditors are required to cease and desist collection activities and lawsuits against

you and your property until they have obtained approval from the bankruptcy court to continue their collection efforts.

**PREVIEW**

Many unsecured creditors will be effectively barred from their collection efforts as a result of the Automatic Stay. Certain criminal and other activities are not barred by the Automatic Stay provision including but not limited to the following example: if you have written checks with "insufficient funds", the criminal actions that may be taken against you are not stopped by the bankruptcy automatic stay.

Generally secured creditors may not repossess your property once you have filed your bankruptcy until they have obtained a court order which allows them to repossess your property. This is accomplished by filing a Motion to Lift the Automatic Stay. The creditor obtains the court approval after the motion is ruled upon by either a default on your part by your agreement or through a Court Order after the motion has been argued and ruled upon.

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### **THE CREDITOR'S MEETING**

The Creditor's Meeting is a time when creditors have a right to review your bankruptcy in the presence of a Trustee.

Creditors are entitled to ask you questions about the reasons for your bankruptcy filing, questions concerning your assets and liabilities, and ascertain your intentions regarding the debts owed to the creditors.

**THIS DOCUMENT**  
BOTH you and your spouse, if you are filing jointly, will be required to attend the Creditors Meeting. This means that you and your spouse will have to take off work and budget a morning or an afternoon to be available for questions at the creditors meeting.

At the Creditor's Meeting the Trustee will ask you questions, review the bankruptcy schedules and then make a determination as to whether or not he or she will allow the exemptions which you requested in your bankruptcy filing. The Trustee will also decide what to do with your nonexempt property. The Trustee may keep or abandon the property so that it may be used to pay your debts.

The trustee can abandon his or her interest in nonexempt property. For example, a Trustee may abandon nonexempt property if you own a piece of property, other than your homestead and the same is encumbered by a debt or lien that exceeds its value. A Trustee may decide to abandon any interest in that property since it will not be economical for the Trustee to take the property, pay the debt off and then sell the property since its value is less than the secured debt against the property.

**THANK YOU**

**POST PETITION CHANGES AND REQUESTS FOR INFORMATION OR DEPOSITIONS**

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After the Creditor's Meeting, you may be requested by the Trustee to provide additional information regarding your bankruptcy schedule, debts or assets. The Trustee is entitled to request reasonable information and it is in your best interest to provide said information.

In the event a creditor desires more specific information about your bankruptcy, your debts or assets, the creditor can use a procedure in bankruptcy which allows the creditor to take your deposition and explore whether or not there are grounds to contest your bankruptcy.

### **BANKRUPTCY DISCHARGE**

After the Creditor's Meeting is completed, in the event there are no objections or contested matters, the Court will set a date where you will receive your discharge. This is the time when your bankruptcy case is closed and you receive a release from your dischargeable debts. Generally you will not be required to attend the discharge hearing unless there is a contest or objection, etc.

### **REAFFIRMATION OF PRE-PETITION DEBTS**

In the event you desire to retain either credit with a merchant or property subject to a security agreement, a creditor may insist that you sign a reaffirmation agreement.

A reaffirmation agreement is a contract which states that you agree to pay pre-petition bankruptcy debt and become obligated to pay that debt notwithstanding the bankruptcy filing even though the debt could have been discharged in the bankruptcy proceeding.

This means that you will owe the creditor the money that you owed before you filed your bankruptcy. By signing a reaffirmation agreement you continue to owe that creditor the debt even though the bankruptcy discharge could have wiped out the debt.

### **RE-FILING FOR BANKRUPTCY**

Once you file a bankruptcy, you must wait a certain length of time before you can for bankruptcy protection. Depending upon the type of bankruptcy filed in the past and the type of bankruptcy you desire to file in the future, there are certain time limitations and we will be happy to discuss this with you when the need arises.

For the sake of simplicity, you should be aware that you should not plan to file bankruptcy shortly after being discharged from a prior proceeding.

### **OTHER CONSIDERATIONS & SPECIAL TYPES OF PROPERTY**

In the event that you inherit property or that you may receive or become entitled to you must disclose this to the trustee if this occurs, if only after you file your bankruptcy after the creditor's meeting. Many trustees will give you a letter at the Creditor's Meeting

informing you that you must notify the Trustee if you receive an inheritance within six months after you filed bankruptcy.

**PREVIEW**

You must also provide written notice to the Trustee of or property that you may receive as a result of a Final Divorce Decree, with the exception of child support which occurred either before you filed bankruptcy or within six months after you filed bankruptcy. Likewise you are required to notify the Trustee of any that you may receive as a beneficiary of a life insurance policy or as the result of a death benefit that you acquire or become entitled to receive if received prior to the filing of a bankruptcy or within six months after the date you filed your bankruptcy petition.

You must also advise the Trustee of any transfers, conveyances, and gifts, of the property which have not been scheduled and which have been made within one year prior to the date of the bankruptcy.

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### **INCOME TAXES**

You are still responsible for filing income tax returns and reporting income for items not transferred to the bankruptcy estate. The trustee will generally maintain that he or she is entitled to your income tax refund if one is due after the filing of your bankruptcy. The Internal Revenue Service is a priority creditor in a bankruptcy case.

### **ABSTRACT OF JUDGMENT LIENS**

The Texas Property Code sets forth a procedure to remove abstract of judgment liens. This procedure must be used to remove an abstract of judgment that has been filed against you.

**THIS DOCUMENT**

Contrary to popular belief, the filing of a bankruptcy and obtaining a discharge does not remove abstract of judgments filed of record.

Title companies require the liens to be removed before they will issue "good or clear title" to a person who has abstracts filed against him or her. The filing of an abstract of judgment creates a lien on your property. The above procedure must be used to remove the lien.

You should understand that the discharge that you receive in bankruptcy court will not remove abstract of judgments, consequently you will have to have them removed after the bankruptcy filing. This is a separate procedure and a separate expense. We can discuss this with you in more detail if you have any questions.

**THANK YOU**

### **FEDERAL EXEMPTIONS**

When a person files bankruptcy, they are given an option to claim their exempt property under their state law (which defines exemptions) and exempt property or file for the exemption allowed under the United States Bankruptcy Code, Chapter 11 USC, Section

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522 (d). The code refers to the person claiming the exemption as the "debtor". The exemption may be claimed by property owned by the debtor or a dependent of the debtor.

# PREVIEW

## WHAT ARE SOME OF THE CONSEQUENCES OF DYING WITHOUT A WILL IN TEXAS?

The State Bar of Texas and the American Bar Association, as well as most state bars, recommend that every adult person have a will.

### DEFINITION OF INTESTACY

If you die without a will, you are considered to have died intestate. Consequently, your property will be distributed pursuant to the state's probates code provisions relating to intestacy.

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## HARDSHIPS IMPOSED BY DYING INTESTATE (WITHOUT A WILL)

Perhaps one of the most important reasons for having a will is to streamline and reduce the probate process and to simplify the winding up one's financial affairs.

Intestacy can create hardships for your family and can significantly increase the cost of closing out your financial affairs. It may cost your heirs significantly more money to have your estate administered if you have not executed a valid will which appoints an Independent Executor to serve without the requirement of posting a bond.

If you had a will and the will provided for the appointment of an independent executor to serve without bond, the cost of probating your will and winding up and administering your estate would have been relatively inexpensive compared to what it can cost if the court must appoint an executor to administer the estate.

# THIS DOCUMENT

The court appointed administrator may have to post a bond and have his or her actions approved by the probate court prior to winding the affairs of your estate.

The Texas Probate Code allows a person to name an independent executor in his or her will.

The independent executor can very quickly and inexpensively wind up your affairs, pay your bills, sell unneeded assets, and distribute your property according to the terms of your will.

# THANK YOU

One aspect of this procedure that makes it so quick and cheap, is that the executor does not have to obtain court approval for the above actions.

The executor is only required to file the will for probate, attend the probate hearing, take the oath to serve as the executor or independent executor of estate for the estate and then file an inventory and an appraisalment that lists the property owned by the deceased.

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The executor is entitled to pay the debts and distribute the assets of the estate without court supervision. This saves a lot of time and a lot of attorney's fees!

This is a very cost efficient way of handling probate since your estate only pays for the attorney's time in getting the will approved by the probate court. Thereafter your estate does not have to pay the attorney to obtain court approval every time the executor wants to pay bills, sell property or distribute the assets to the beneficiaries.

You may lose that right if you die without a will because the probate court may supervise the entire distribution of the estate.

The estate can then be eaten up by attorney's fees from court appointed attorneys and receivers as opposed to being paid directly to your heirs and beneficiaries.

The problem in Texas without a will is that you lose your free agency to decide how you want your property and assets distributed and plan for your family. You now defer to the state's intestacy laws, which may or may not be acceptable to you. You also increase the probate process and cost. The moral of the story is that every adult should have a will

## **LIVING TRUSTS AVOIDING PROBATE AND PROTECTING ASSETS**

### **WHAT IS A TRUST?**

A trust is a legal arrangement whereby property may be given by a donor or trustor to a trust for the use and benefit of another person known as the beneficiary.

Trusts are useful for protecting and preserving property and in some instances in reducing tax liability. Trusts may be created and effective while the donor is alive or may take effect at the donor's death. The person who controls the trust property is known as the trustee. The trustee acts for in behalf of the beneficiary named in the trust document.

A common trust, known as the revocable living trust, is used frequently by estate planners. It has some advantages and some disadvantages. A living trust is created while the donor is alive. A trust typically created in a donor's will becomes effective upon the donor's death is known as a testamentary trust.

The donor can also be both beneficiary and the trustee. This means that a donor can have full control over all of the assets placed into the trust. Note there may be some tax considerations which would suggest some third person be named as the trustee, however you should discuss tax consequences of trust and estate planning with a qualified tax advisor such as a CPA (Certified Public Accountant) or tax / estate planning attorney.

### **LIVING TRUSTS**

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A living trust is therefore a trust that is created during the donor's lifetime whereby property is placed into the trust for the use and benefit of the parties named in the trust agreement. The donor can be one of the beneficiaries named in the trust.

**PREVIEW**

In order to create a trust the donor transfers ownership of the assets that he or she would like to place in the trust from himself as an individual to a trustee, who will serve as trustee of the trust.

Trusts should always be memorialized with a written document. Once the donor transfers money from himself to the trust, the assets are no longer in his or her personal name, this gives rise to the ability of a trust to reduce or avoid probate when a person dies. If all of a person's assets are in the name of a trust when a donor dies then obviously there is nothing to probate.

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In a living will the donor transfers his or her property to the trust, then the donor names a trustee. If the donor remains as trustee, then he or she maintains full control over all his or her assets contained in the trust. The donor can manage and use the property, including buying, selling, leasing, giving or spending as he or she sees fit.

#### **WHAT ARE SOME ADVANTAGES OF HAVING A LIVING TRUST?**

The property placed in the living trust does not have to be probated. Those assets would be given directly to the beneficiaries pursuant to the terms of the trust agreement thus avoiding the expense and delay of probating a will.

One advantage of a living trust is the ability to avoid probate. In some states, the probate process is an extremely complicated, expensive and lengthy ordeal.

**THIS DOCUMENT**

Texas, as well as some other states, have a simplified and an inexpensive probate system, therefore a living trust may not be as desirable in Texas as compared to some other states. Since Texas has an efficient probate system, many Texas attorneys still prefer the use of a conventional will and having the will probated instead of setting up a living trust.

One reason for this is that in Texas a person is allowed to name an independent executor who can probate the will and act without posting a bond and act without direct court supervision concerning the administration of the estate. The independent administration—without bond therefore reduces the cost of probate and simplifies the process.

**THANK YOU**

Once a will has been probated, the court issues Letters of Testamentary to the independent executor. That person may then administer the will pay the expenses and bills and then distribute the property without court approval or supervision. The executor is only required to file an inventory and an appraisal for the court listing the assets in the estate as of the date of the person's death.

Avoiding probate costs and expense can be a significant expense if the donor owns real property in more than one state. The use of a living trust can circumvent the need for

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probate proceedings in other states where property is owned. A probate in Texas generally will not transfer title to real estate in one state to the heirs in a state other than Texas, therefore an ancillary or another probate is generally required to transfer property to the named beneficiaries when the property is owned in more than one state.

Ancillary probates are supposed to be simpler and less complicated than a main probate, the difficulty and expense is that attorneys must be consulted in each state where property is owned and the ancillary probate procedures must be complied with; this generally requires paying a filing fee and obtaining an attorney to handle the ancillary probate. Consequently, in this situation, a living trust could avoid some probate expense.

### **MORE FLEXIBILITY WITH A LIVING TRUST**

Another benefit of a living trust is its flexibility. The donor can select himself or another person to be the trustee. The trustee then has full control over the assets in the trust as dictated by the terms of the trust. If the donor is the trustee he or she can change or alter the terms of the trust at anytime.

The donor can revoke or cancel the trust at anytime if he or she is the trustee. When the donor dies, the living trust, which actually is a revocable living trust, states how and when the donor's property shall be distributed. Assets can be distributed to the beneficiaries in the time periods, amounts, and manner as stated in the trust document.

For instance, the donor can specify that a certain amount of money should be used to finance the education of a child or grandchild. Likewise the donor could reserve or specify that from proceeds from the estate could be used for payment of medical expenses or special needs of the beneficiaries such as a disabled or handicapped child.

### **PRIVACY**

The living trust document is generally not filed with the probate court; therefore its terms are not open for inspection by the public. On the other hand a will must be filed with the probate court in order to be admitted to probate. It then becomes a public document. The will may then be inspected and reviewed as any other public document. Therefore, if you are interested in complete privacy, a trust may be preferable to a will.

### **LITIGATION AND CONTEST THANK YOU**

Law books are full of suits where unhappy heirs have sought to contest a deceased person's will. A will can be contested if it can be proved that the person writing the will, the testator, was unduly influenced to make gifts to one person or another or that some one in a position of trust benefited in the will by unduly influencing the testator. The unhappy relatives can argue that some other party inserted their desires in the testator's will due to their position of trust.

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Many of the disadvantages of trusts, probate and wills can be avoided by the use of a family limited partnership!

# PREVIEW

## HOW TO OWN PROPERTY

Property should be owned so that the most protection allowed by law is afforded- that is why you should consider a family limited partnership. What we mean by this is that you should analyze the source of income and the possible consequences or contingencies that may be tied to the receipt and production of said income. The following types of ownership are listed below--most of them offer little or no asset protection. A family limited partnership avoids most of the problems discussed below:

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JOINT TENANCY

Property held jointly with rights of survivorship may provide some asset protection, but at the same time, creates liabilities. If two parties have equal right to control or own property, in the event one party suffers a liability, all of that property may be taken by that party's creditors, and thereby deprive the other owner from his or her ownership in that property.

## FAMILY LIMITED PARTNERSHIP

Limited Partnerships provide a method to own property and control the management, supervision and transferability of the ownership of the property interests.

The advantage of a limited partnership as an asset protection tool is found pursuant to the Texas Revised Limited Partnership Act Section 7.03. This section appears to limit the rights of a judgment creditor to a charging order against only the income produced from that partner's interest in the partnership. The creditor may seek the appointment of a receiver to take the debtor's share of the partnership's profits.

To the extent that a partnership interest is charged in this matter, the judgment creditor only has the rights of an assignee of the partnership interest. Therefore, if the general partner has the right to hold a distribution of income pursuant to the Limited Partnership Agreement, the judgment creditor may receive nothing for his or her interest in the limited partnership that the creditor has obtained.

An example of how limited partnership can be used to shelter assets is as follows:

# THANK YOU

Assume a husband and wife have declared their home, which is paid for and debt-free, as their homestead. Yet, they own substantial real estate that can not be used as their homestead.

Pursuant to a statutory marital partition agreement, the husband and wife divide the property into equal shares. Then, the husband and wife contribute their undivided interest in the land into a family limited partnership.

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# PREVIEW

They donate the land in exchange for a limited partnership interest of 50% each. One party is designated as the general partner. Thereafter, the husband and wife create two spendthrift trusts, each one for their children.

The trustee of each of the trusts may be a partner, such as a financial planner, CPA or attorney. The husband and wife then make a formal gift to each of the two trusts out of the separate property limited partnership interests.

Since the husband and wife are separate donors, by taking advantage of the \$11,000.00 gift exclusion each year, they can give away \$22,000.00 to each trust per year. This is pursuant to Internal Revenue Code Section 2503(b).

At the conclusion of the limited partnership creation and transfer, the husband and wife no longer own a real estate community asset which is 100% subject to the claims of the husband and wife's creditors. Instead, the limited partners own an interest in a limited partnership which owns the land.

The limited partnership interests are owned by a husband and a wife. In this situation, the limited partnership provides that 85% in interests of the limited partners must consent to an amendment, change or dissolution of the limited partnership. Therefore, a creditor cannot force a dissolution of a partnership and a sale of the property.

The creditor, therefore, may own an interest in the limited partnership, but effectively, cannot do anything with the land. The limited partnership must be designed for strict ownership in order to preclude assets from being transferred to third parties. Rights of first refusal and buy-sell provisions are required. The above is also appropriate in order to continue the management and control of the family assets in the limited partnership.

Generally, the person with the most liabilities should own the least amount of property. Therefore, consider this example:

A business that has the ability to produce a large amount of income, but at the same time may have substantial risks, can be set up as a limited liability company. This could be the initial shock-absorber from a lawsuit. That company should own the minimal equipment necessary to do some of its business functions, as long as that equipment does not have large values.

# THANK YOU

If the equipment is readily expendable and has a short useful life, then it would be appropriate to keep that equipment in the company. Certainly, office supplies and miscellaneous day-to-day items should be owned by the company. Large-ticket items, such as buildings, heavy machinery, or expensive pieces of personal property or equipment that have long useful life can be owned by another entity and leased to limited liability company. This way, those assets may be protected and may be used by the business to generate money. If the owners of the said equipment, or the equipment, can be protected from liabilities incurred with the business.

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# PREVIEW

A children's trust may own the equipment and then lease the equipment to the limited liability company. The assets of the children's trust are generally protected from lawsuits against the business.

An irrevocable trust may also be set up to hold life insurance on the business owners so that the death of the surviving spouse, the insurance will not be subject to federal or state taxes.

Since the trust is irrevocable, a tremendous asset protection is available for the assets and the irrevocable trust. The trust can own more than one life insurance policy. It can own more than just life insurance.

For assets owned and operated by a business corporation, you should consider family limited partnerships for these other assets that are not involved or related to the production of your primary income or any potentials, such as your medical practice, dental practice, or corporation that you work for.

Since a judgment creditor only gets a charging order against the limited partnership interest, investment properties and assets can be owned and maintained in a limited partnership. The creditors may not be able to remove the general partner of the limited partnership. Therefore, the creditor has no say-so in how the property is managed or income distributed therefrom.

# THIS DOCUMENT

Subchapter "S" Corporation

A corporation may be considered to be an "S" or a "C" corporation for purposes of Internal Revenue taxation purposes.

When a corporation is formed, the taxpayer has a right to have the corporation taxed as a Subchapter "S" corporation by filing an election with the Internal Revenue Service.

An "S" corporation, although a corporation for all intensive purposes, is taxed as though it was a partnership rather than a corporation. Accordingly, all incomes, deductions and credits flow directly to the individual shareholders rather than to the corporation.

Significant changes were made under the Internal Revenue Code pursuant to the Tax Reform Act of 1986.

"S" corporations had a unique status prior to 1986 concerning liquidation of the corporation and the taxation of the receipts to its shareholders. Under current tax law, liquidation of corporations and its taxation issues is complex and requires the assistance of tax and legal professionals. You should not attempt to do this on your own.

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You should contact your tax attorney and/or Certified Public Accountant. The scope of this paper is not to discuss the complicated tax aspects, but practical business applications that most individuals should consider when deciding whether to have their corporation taxed as a "C" or an "S" corporation.

Due the passive loss limitation rules of the Internal Revenue Code, an attorney and an accountant should be consulted prior to choosing an "S" or a "C" corporation.

### **SOME ADVANTAGES OF AN "S" CORPORATION**

Income losses/credits flow directly to the shareholders in the percentages of their stock ownership of the corporation.

This "pass-through" of income/losses eliminates the double-taxation feature applicable to corporate profits. If a "C" corporation has \$100,000.00 income and pays \$60,000.00 of that income to a shareholder as an employee, the shareholder pays personal income tax on the \$60,000.00 that he or she received. The remaining \$40,000.00 would be taxed to the corporation, so that the corporation would pay income tax on the \$40,000.00 that it received.

In the next tax year, if the corporation paid that \$40,000.00 to the shareholder who previously received the \$60,000.00, that individual shareholder would now have to pay income tax as a dividend on the \$40,000.00 he or she received in the new year. Therefore, the shareholder has had to pay two income taxes on the \$100,000.00, and the corporation also had to pay tax on the \$40,000.00.

Income that is distributed to the corporate shareholders retains the character that the income had at the corporation's level; and,

### **SOME DISADVANTAGES OF "S" CORPORATIONS:**

The corporation may have no more than 70 shareholders in order to elect Subchapter "S" status;

The shareholders are taxed on the earnings of the "S" corporation, even if those earnings are not yet distributed to the shareholder and are retained by the corporation;

The corporation can not issue a second class of stock unless the only distinction between the classes relates to voting rights. "C" corporations, on the other hand, can have various classes of stock. This may be important for voting or for control purposes;

Shareholders are limited to individuals or certain trusts. Therefore, non-residents/ aliens of corporations are not allowed to be shareholders in a Subchapter "S" corporation;

Corporations must also meet some specific eligibility requirements which should be discussed with your tax advisor or attorney;

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In most situations, corporations are required to have calendar years, rather than fiscal years; and,

# PREVIEW

Shareholders-employees may not receive certain fringe benefits that may be available to employees in "C" corporations when the employee owns less than 2% of the corporation's stock.

## LOSS OF CORPORATE PROTECTION

In recent years, the trend has been to continue to pierce the corporate veil, and render the owners of the business liable, notwithstanding the corporation. A simple test has been devised that must be followed at a minimum to insure corporate protection.

Failure to observe corporate formalities, such as:

1. failure to hold meetings;
2. failure to keep the property in the name of the corporation;
3. failure to sign as the correct officer of the corporation;
4. failure to have corporate authorizations, ratifications, and
5. resolutions for transactions;
6. failure to have regular Board of Directors meetings;
7. failure to have regular shareholders meetings;
8. failure to have annual shareholders meetings;
9. failure to issue the corporate stock, or maintain the stockholder's ledger;
10. failure to maintain up-to-date corporate records, resolutions and ratifications;
11. failure to have the required initial organizational meeting;
12. failure to adopt corporate by-laws;
13. failure to maintain proper accounting records;
14. failure to advertise and serve notice that the business is operating as a corporation and is no longer a sole proprietorship, partnership or other entity;
15. failure to transfer assets into the corporation and capitalize it properly;

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16. failure to get proper state and local business licenses in the name of the corporation;

17. failure to transfer assets, property, records, etc. into the name of the corporation; and/or

18. failure to file state and federal report forms;

19. Non-payment of dividends;

20. Insolvency of a debtor-corporation at the time of transfer;

21. Siphoning corporate funds by a dominant stockholder;

22. Non-functioning of the other officers or directors;

23. Absence of corporate records;

24. The use of the same business or office location by the corporation and its individual stockholders;

25. The fact that the corporate is merely a facade for the operations of the dominant stockholder;

26. Giving improper guarantees to or on behalf of the corporation;

27. Sale of a controlling interest for less than fair market value;

28. Profiting from inside the corporation;

29. Short swing profits;

30. Failure to disclose material facts, transactions for the companies in which the officers or directors have conflicts of interest and benefit from;

31. Violating the articles or by-laws of the corporation;

32. Failure to file or report corporate taxes;

33. Failure to register the corporation in other states;

34. Loans to officers or directors or stockholders that benefit the individual to the detriment of the corporation, causing the corporation to incur unnecessary expenses, liabilities, or tax liabilities; and

**PREVIEW**

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35. Excessive compensation or dividend payments

# PREVIEW

When one or more of these elements is present, the theory of piercing the corporate veils for purposes of establishing personal liability exists.

Although some practitioners may automatically recommend a Subchapter "S" status for persons desiring to form a corporation, it is best to have a tax attorney and tax advisor to review your individual needs and circumstances to determine whether or not a "C" or "S" status best benefits your corporation.

## CONCLUSION

Asset protection is available, however you must carefully analyze your income and assets. Then you may determine the best entity to hold the assets while still deriving the income.

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Thereafter you must follow all corporate or partnership rules to enjoy the protection that the law affords, failure to follow the tax or state rules can void the protection you would have otherwise received.

I hope this letter illustrates the reasons why you should have your business and personal affairs reviewed or managed by competent tax, financial and legal professionals.

Very truly yours

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[Attorney's Name]

# THANK YOU

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**Information & Instructions: Information about Wills, Trusts, Probate And The Consequences Of Dying Without A Will In Texas**

**PREVIEW**

1. This letter explains common estate planning terms and general techniques.
2. The letter discusses the purpose of a will and defines some of the terms used in estate planning.
3. The letter also discusses the consequences of dying without a will in Texas.

**Form: Letter To A Client Explaining Wills, Trusts, Probate And The Consequences Of Dying Without A Will In Texas.**

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ATTORNEY CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION

**WHAT YOU SHOULD KNOW ABOUT WILLS, TRUSTS & PROBATE AND THE CONSEQUENCES OF DYING IN TEXAS WITHOUT A WILL**

Dear [Salutation]:

[The following discussion should answer some questions you may have regarding wills and probate procedure in Texas.

or

**THIS DOCUMENT**

Since you expressed some interest in revising your will, I have taken the liberty to send you this free information letter that should answer some questions that you may have regarding wills and probate in Texas.]

The State bar of Texas and the American Bar Association, as well as most state bars, recommend that every adult person have a will.

**WHAT IS A WILL?**

A Will is a legal document that allows you to direct the distribution of your property upon death in an economical and efficient manner. Gifts under a Will may pass either directly or in trust to a beneficiary.

**THANK YOU**

A will is a legal document that is signed in accordance with state laws that pertain to testamentary transfers. Testamentary transfers pass title of your property pursuant to the terms of the Will to your beneficiaries upon your death.

**WHAT IS A TRUST?**

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A Trust is a legal entity in which legal title and management of the property are vested in a Trustee who administers the property for a designated beneficiary(s).

**PREVIEW**

Property may be put into a trust while the donor is alive or the trust may take effect and property transferred to it after a person dies ( a testamentary trust). A trust may be included in a will.

### WHAT IS ESTATE PLANNING?

Estate Planning is the process of ascertaining the appropriate legal document, i.e. Will or Trust for your estate, and what pertinent provisions to insert in the documents. You may desire to obtain the most favorable tax and other benefits available for your estate.

You may also desire to provide an efficient means to manage and pass your property to your heirs upon your death. In the course of assembling the various requested information, you should decide the way you desire your estate to be distributed.

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Naturally, there are many factors that should be considered when arriving at a comprehensive estate plan, such as Federal Estate and Income Tax consequences; these may differ with each situation.

### WHY SHOULD YOU HAVE A WILL OR A TRUST?

If you die without a Will, the rules of intestate distribution dictate how your property will be passed. In Texas, your estate will be encumbered with significant additional legal expenses and delays in probate court if you do not have a Will. Many states require the posting of a bond. The cost of a bond can be a significant expense.

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There are many tax and non-tax advantages for creating a Trust in your will (Testamentary Trust). For example, a person with a substantial estate may wish to leave a large portion of the estate in trust for his or her beneficiaries to prevent the taxation of such property upon death of the beneficiary. Additionally, if a minor child is a beneficiary of the estate, it is advisable to create a Trust for the benefit of the child.

### WHAT IS PROBATE?

Probate is the process of submitting a Will to the Probate Court, administering an estate, and distributing the property.

**THANK YOU**

A will must be probated as a prerequisite to its ability to transfer property to the intended heirs. A will has no legal right to transfer property until the appropriate court has entered a formal order or decree which admits the will to probate. A probate proceeding can be a contested or an uncontested matter.

An individual executor or family member (who is not in a fiduciary position) can handle the probate of a non-contested will in some states.

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## WHAT IS AN INDEPENDENT EXECUTOR?

An Independent Executor or Executrix is free to administer your estate with a minimum of court supervision and legal expense. It is a streamlined and simplified probate proceeding.

An Independent Executor or Executrix has the duty to settle your estate and distribute your property as designated in your Will.

If the maker of the Will is married, the maker, known as a Testator, if a male, or a Testatrix, if a female, often designates his or her spouse as an Independent Executor. However, if the estate is expected to be substantial, or burdensome for the spouse to manage (for example, when a business or a farm will be an asset of the estate), then the Testator or Testatrix may wish to designate a bank or trust company as the Independent Executor, instead of the spouse. The maker could also consider someone to help the spouse as a Co-Independent Executor.

If you decide to provide for a Trust in your Will, you will designate a Trustee who will manage the Trust for your beneficiaries. If you are married, you may wish to designate your spouse as the Sole Trustee or a Co-trustee. You will also designate a Trustee who will manage any Trusts created for the benefit of your children.

An Independent Executor or Trustee (who is not a parent of your children) is not authorized to personally take custody of your minor children. You may, therefore, want to name a Guardian for your minor children who will be in a position to assume responsibility for the care of your children upon the death of the survivor of you and your spouse.

A Guardian may be designated either in your Will or in a separate written instrument. Sometimes a separate instrument is advisable if you have difficulty deciding upon a Guardian.

You should also designate one or more alternative Independent Executors, Trustees and Guardians who will act in the event your first choice predeceases you or is otherwise unable or unwilling to serve.

### OTHER CONSIDERATIONS:

If you move to a different state or county, have your Will reviewed by an attorney licensed in that jurisdiction to determine if the Will is valid in such state or country and whether or not probate of the Will may be complicated by the use of an out-of-state Will.

We advise our clients to place the original Will in a safe place such as a safe deposit box and keep a copy of their Will at home. It is also a good idea to give a copy of the Will to the Executor named the will.

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The Will should be reviewed periodically so that it may be kept current. You should revise your Will whenever your personal circumstances change significantly, such as with a birth, death, remarriage or divorce, or if your assets change substantially.

Since your Will is a legal document, it cannot be changed unless formal procedures are complied with. Accordingly, please do not attempt to alter, write on your Will or change your Will yourself. You should call your attorney.

### WHAT ARE SOME OF THE CONSEQUENCES OF DYING WITHOUT A WILL IN TEXAS?

If you die without a will, you are considered to have died intestate. Consequently, your property will be distributed pursuant to the state's probate code provisions relating to intestacy.

Perhaps one of the most important reasons for having a will is to streamline and reduce the probate process and to simplify the winding up one's financial affairs.

Intestacy can create hardships for your family and can significantly increase the cost of closing out your financial affairs. It may cost your heirs significantly more money to have your estate administered if you have not executed a valid will which appoints an Independent Executor to serve without the requirement of posting a bond.

If you had a will and the will provided for the appointment of an Independent Executor to serve without bond, the cost of probating your will and winding up and administering your estate would have been relatively inexpensive compared to what it can cost if the court must appoint an executor to administer the estate.

The court appointed administrator may have to post a bond and have his or her actions approved by the probate court prior to winding the affairs of your estate.

The Independent Executor can very quickly and inexpensively wind up your affairs, pay your bills, sell unneeded assets, and distribute your property according to the terms of your will. One aspect of this procedure that makes it so quick and cheap, is that the executor does not have to obtain court approval for the above actions. The executor is only required to file the will for probate, attend the probate hearing, take the oath to serve as the executor, obtain letters of testamentary (to act for the estate) and then file an inventory and an appraisal that lists the property owned by the deceased.

The executor is entitled to pay the debts and distribute the assets of the estate without court supervision. This saves a lot of time and a lot of attorney's fees! This is a very cost efficient way of handling probate since your estate only pays for the attorney's time in getting the will approved by the probate court. Thereafter your estate does not have to pay the attorney to obtain court approval every time the executor wants to pay bills, sell property or distribute the assets of the estate.

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You may lose that right if you die without a will because the probate court may supervise the entire distribution of the estate. The estate can then be eaten up by attorneys fees from court appointed attorneys and receivers as opposed to the moneys being paid directly to your heirs and beneficiaries.

Your estate is subject to many problems that could have been avoided, if you had executed a valid will. Your spouse and children may have to hire an attorney to allow them to obtain money for their support since funds may be subject to court control or held by banks, stock/mutual fund organizations etc. who are reluctant to release the money until they have received court approval for the release.

Banks commonly freeze accounts until court authorization is obtained to spend funds unless the bank account was set up as joint tenancy with a right of survivorship. An account that is designated a right of survivorship passes pursuant to the terms of the account by contract rather than through probate or through your will.

Many bank accounts are set up as tenants in common and therefore the bank may not allow moneys to be expended from the bank accounts until the proper probate procedure has been completed. The bank does not want to be liable for allowing a person to take funds from an account that he or she is not the correct owner of.

If your children are under the age of 18, a guardianship may be required in order to administer the property that the children inherited pursuant to your dying without a will.

For instance, your spouse may not be able to sell the home or personal property which was owned jointly by you and your spouse. This means that the family home, which was owned jointly by the husband and wife (in the event the husband died), could be owned jointly by the surviving spouse and the minor children. Since the children now own part of the home along with the spouse, the property is encumbered by the need for a court supervised guardianship.

If the surviving spouse desires to sell the property, he or she may be required to open an expensive guardianship. He or she must then obtain court approval before the home can be sold. He or she must then post a bond for acting as guardian and place one half of the net proceeds in a bank account for the use and benefit of the children.

If the home had passed to the surviving spouse as a beneficiary under a valid will, then the surviving spouse would not have to undergo this high cost.

A will should appoint a guardian over your minor children. Frequently in a husband, wife situation with minor children, the husband will designate the wife as guardian in the event he dies and the wife will designate the husband as guardian in the event she dies. If the husband dies without a will, then the wife may still remain guardian of the children. However, she may be required to open a guardianship for and on behalf of the children for any property that he or she may own.

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The guardian may have to hire an attorney to open the guardianship and pay filing fees. The guardian may have to post a bond to safeguard the assets under the guardianship. The guardian may be required to make reports and obtain court approval prior to taking any action with the property subject to the guardianship. Typically, annual accounts are required in a court supervised guardianship. Those forms must be prepared pursuant to the court's requirements. Frequently they are prepared by an attorney and are subject to close scrutiny.

The guardian must also render an accounting of how, why and when moneys were spent out of the guardianship estate.

When the children reach the age of majority and are no longer minors, they have a legal right to receive a complete accounting from the guardian of all of the financial actions taken during the term of the guardianship.

When the children reach legal age they then have the full legal right to spend their money as they please. The surviving parent will have no right to question the children's actions how, when and where they spend their money. If however, moneys that were earmarked for the children were placed into a trust pursuant to a valid will, the trustee could control the amount of money spent, how it should be spent, when it should be spent and for what purposes, such as education, health or maintenance.

An unfortunate nightmare related to this incident can be a situation where the children and wife own a piece of property, personal or real, jointly due to the dying without a will. Now that the children have reached the age majority, if he or she decides to sell his interest in the commonly held property and if there is a disagreement by the other parties whether or not the property should be sold, the child may file a lawsuit in a district court to force a partition, a division, or sale of the property.

The surviving spouse may have desired to keep the property. He or she may be dependent on some of that property of his or her livelihood.

Another horror story that can be caused by dying without a will is if the spouse remarries and thereafter dies without a legal and valid will, the subsequent or second spouse may be entitled to a homestead interest or an interest in some of the deceased's personal property.

Your natural children may need some of that property for their support, the second spouse may not be required to spend any of those moneys on your children's behalf.

If a proper will had been made which included a trust, the first husband could have provided in the trust that all of the property would be used to help, support, educate and provide for the welfare of the surviving spouse for life. Then the trust could have provided that the funds could be used to help educate, support and provide for the welfare of the children. After the children have completed their education, then the trust could have distributed the remaining money to the children.

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Accordingly, a valid will with a trust provision may have succeeded in passing property to the husband's children and prevented a second or subsequent spouse, i.e. stepfather from obtaining the property.

**PREVIEW**

In the event both the husband and wife die together and die without a will, then the natural parents have no say so as to who will take care of their minor children. At that point relatives and friends of the family may select a guardian by mutual agreement and in the event they fail to agree on a guardian, the probate court could make the selection.

There can be circumstances when a probate court may appoint a stranger or agency to be guardian of your children. If you die without a will, in some circumstances, your estate may pay more estate taxes than it would have if proper estate planning procedures had been used.

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Your attorney can prepare a will which includes a trust that takes advantage of estate planning techniques designed to reduce the payment of the estate taxes. This can be significant, if you have a large estate.

#### CONCLUSION

If you die without a will you lose your free agency to decide how you want your property and assets distributed. You give up your right to plan for your family. You defer to the state's intestacy laws, which may or may not be acceptable to you. You also increase the probate cost. Accordingly every adult should have a will. If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me.

**THIS DOCUMENT**  
Very truly yours,

[Attorney's name]

**THANK YOU**

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**Information & Instructions Certificate Of Formation For A Family Limited Partnership And Filing Letter With The Secretary Of State's Office**

1. In order for the family limited partnership to be effective, a certificate of formation for a limited partnership must be prepared and then filed with the Secretary of States office and the filing fee paid.
2. The family limited partnership agreement is not filed with the secretary of state's office.
2. The following letter may be used to file the certificate of formation document with the Secretary of States office and transmit the filing fee.

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Form: Certificate Of Formation For A Family Limited Partnership

**PREVIEW**

**CERTIFICATE OF FORMATION OF  
[LIMITED PARTNERSHIP'S NAME]  
A TEXAS LIMITED PARTNERSHIP**

1. The name of the Partnership is:

[Limited Partnership's Name].

2. The type of filing is a Texas Limited Partnership; it is submitted per the Texas Business Organizations Code.

3. The name of the initial registered agent is:

[Name of the initial registered agent]

4. The location of the initial registered office of the Partnership is:

[Address for the initial registered agent]

5. The location of the Partnership's principal office where records are to be kept or made available is:

[Address for the Partnership]

6. The name, mailing and street address of each General Partner of the Partnership is/are:

[Name, mailing and street address of each General Partner]

7. This document becomes effective [when the document is filed by the secretary of state, at a later date, which is not more than ninety (90) days from the date of signing, the following date \_\_\_\_\_, upon the occurrence of a future event or fact, other than the passage of time or The following event or fact will cause the document to take effect in the manner described below:]

I have signed this Certificate of Formation subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument on \_\_\_\_\_.

GENERAL PARTNER

**LegalFormsForTexas.Com**  
By: \_\_\_\_\_

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

President  
**PREVIEW**

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**THANK YOU**

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Form: Filing the Certificate of Formation with the Secretary of State's Office

**PREVIEW**

[Date]

Office of the Secretary of State  
Statutory Filings Division  
Corporations Section  
P. O. Box 13697  
Austin, Texas 78711-3697

Regarding: [Name] Family Limited Partnership

Dear Intake Division

**PLEASE DO NOT COPY**

Enclosed please find the original Certificate of Limited Partnership and a copy of the Certificate (so marked) for the above-named Partnership as well as check in the required amount of \$[Amount] for the filing fee.

Please file the Certificate, time-stamp the copy and mail the copy back to me in the enclosed self-addressed, stamped envelope.

Thanking you in advance for your assistance and cooperation.

Very truly yours,

**THIS DOCUMENT**

[Name of attorney]

**THANK YOU**

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**Information & Instructions: Family limited partnership agreement**

**PREVIEW**

1. This limited partnership agreement is designed to provide protection to the family members while still giving management control to the general partner.

**Form: Family limited partnership agreement**

**AGREEMENT OF LIMITED PARTNERSHIP**

**OF [NAME]**

**FAMILY LIMITED PARTNERSHIP**

This agreement is made and entered into on \_\_\_\_\_ by and between **PLEASE DO NOT COPY** NAME OF GENERAL PARTNER], a resident of [COUNTY] County, Texas, (hereinafter referred to as "general partner"), who shall also be the registered agent for service of process, and whose business address and registered office is [ADDRESS], a Texas corporation, as General Partner and those parties whose names are set forth in Exhibit 1 hereto, as initial Limited Partners.

In consideration of the mutual terms, covenants and considerations herein contained, the parties hereto agree to form a limited partnership under the Texas Revised Limited Partnership Act and agree to the following terms and conditions:

**1. NAME AND PARTNERSHIP ADDRESS**

**THIS DOCUMENT**

1.1 Name.

The limited partnership's name is: [Name] and all business of the limited partnership shall be conducted in such name.

1.2 Principal Place of Business.

a. The limited partnership's principal office and place of business shall be at [Address] or such other location as the general partner may select.

b. The general partner shall promptly notify the limited partners of any change in location.

**THANK YOU**

**2. PURPOSE AND POWERS**

2.1 Purpose.

a. The limited partnership's purpose is to hold and manage property for the family members who are a party to this agreement.

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b. The family members desire to provide for the health, education, maintenance and welfare of each one and their children.

**PREVIEW**

## 2.2 Powers of the limited partnership.

a. The limited partnership and its general partner(s) shall have any and all powers allowed by law to transact its business.

## 3. TERM

### 3.1 Term.

a. The limited partnership shall become effective upon the date that the Certificate of Limited Partnership is filed as required by law.

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b. The limited partnership shall continue until the close of business on [Date partnership to terminate i. e. 20 years], or upon the happening of anyone of the following events:

(i) By written agreement of the partners then owning, in the aggregate, at least seventy-five percent (75%) of the percentages of ownership in the partnership;

(ii) Upon the death, withdrawal or removal of the general partner or the transfer by the general partner of his entire interest in the partnership;

(iii) In the event of the disability of the general partner lasting for six months or more, upon the end of the six month of such disability (disability for the purpose of this Agreement shall mean physical or mental incapacity of the general partner resulting in the inability to perform the normal duties required of the general partner);

(iv) Upon the partnership becoming insolvent or bankrupt;

(v) Upon the general partner becoming insolvent or bankrupt;

(vi) Upon the sale of all partnership Property and the disbursement of all sales proceeds, including the receipts of all funds to liquidate all evidences of indebtedness, derived therefrom; or

(vii) Any other act that occurs which, by law, would require that the partnership be terminated.

c. The partnership shall not be dissolved because any of the limited partners: become involved in litigation, a felony, death, bankruptcy or become legally disabled.

**THIS DOCUMENT**

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**PREVIEW**

d. If one the general partner(s) withdraws, is dismissed or becomes disqualified to serve as a general partner, then the remaining general partner(s), if any, may elect to continue this partnership as either co-general partners or sole general partner.

e. If no general partner survive, then a majority of the limited partners may reconstitute the partnership and elect a successor general partner which election(s) shall be exercised by written notice to or confirmation from each limited partner within ninety (90) days following the occurrence of any of the events above.

f. No general partner shall have the right to retire or withdraw from the partnership without the written consent, which consent shall not be unreasonably withheld of seventy-five percent (75%) of the Percentage of ownership then held by all the limited partners.

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g. In the event the general partner withdraws from the partnership, with or without the consent of seventy-five percent (75%) of the Percentage of ownership then held by all the limited partners, his interest shall be converted into that of a limited partner, subject to this Agreement in the same way as all other limited partner interests.

#### 4. GENERAL PARTNER

4.1 Management of the limited partnership.

a. The general partner shall manage the business and affairs of the limited partnership. The limited partners shall not be involved in the day to day business or other decisions.

**THIS DOCUMENT**

b. The general partner shall have the sole right to decide when and how much, if any, money shall be distributed to the limited partners.

c. The general partner shall have the sole right to decide what properties shall be sold and what properties shall be kept. No limited partner has the right to force a liquidation of the partnership or a sale or liquidation of any of the limited partnership's assets.

**THANK YOU**

d. The general partner shall be entitled to receive reasonable compensation for his efforts on behalf of the partnership. He or she may decline to take such compensation in his or her sole discretion.

e. The limited partners shall have the right to dismiss the general partner upon written agreement of those limited partners owning ninety-five (95%) of percentage of ownership then held by all the limited partners.

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4.2 Withdrawal, Death, Disability, Dissolution, Bankruptcy or Removal of the general partner.

**PREVIEW**

a. In the event of the withdrawal, dissolution, death, legal disability, bankruptcy or removal of a general partner, upon the written approval of the majority of Percentages of Ownership then held by all of the limited partners, a successor general partner shall be elected and appointed to serve in said capacity.

b. The successor general partner shall have the same duties, responsibilities and obligations as the original general partner.

4.3 Indemnification and Reimbursement of the general partner.

a. The general partner shall have the right to charge to the partnership and pay out of partnership funds any all costs or expenses that he or she believes are reasonably related to the partnership's business or expenses including reimbursement for all expenses which the general partner may incur in the course of his or her duties for the partnership.

b. The general partner shall be and is hereby indemnified and held harmless by the partnership from and against any and all claims, demands, liabilities, costs, damages, suits, proceedings, actions, administrative or investigative, of any nature whatsoever, in which the general partner may become involved, in the course of serving the partnership as its general partner.

4.4 Non-exclusive Activity.

a. The general partner shall be free to enter into any other activities which he or she may choose to do so as long as those activities are not harmful to the limited partnership's interests or conflict of interest.

**THIS DOCUMENT**

## 5. LIMITED PARTNERS

5.1 Rights and Obligations of the limited partners.

a. Except for those partnership debts which a partner may choose to voluntarily guarantee, assume or be a co-maker of, the limited partners shall not be personally liable for any of the debts of the partnership or for any of the losses thereof beyond the amounts of their respective Capital Accounts in the partnership.

b. The limited partners shall not have the power to sign for or to bind the partnership. The limited partners shall not be paid any salary, have a drawing account or be entitled to the return of their capital contributions, except as determined by the general partner in accordance with the provisions hereof.

5.2 Assignment.

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**THANK YOU**

a. A limited partner may not sell or assign his or her interest in the partnership unless he first obtains the written approval of the general partner and all other limited partners.

b. The general and limited partners have the first right of refusal to purchase the interest of any partner to this agreement. The purchase amount shall be the amount of money that the selling partner contributed to the partnership's capital account.

c. All costs and expenses to the partnership resulting from such sale or assignment must be paid by the selling limited partner.

### 5.3 Substituted limited partner.

a. No assignee or transferee of the whole or any portion of a limited partner's interest in this limited partnership shall have the right to become a substituted limited partner in place of his or her assignor unless all of the general and limited partners agree to the substitution.

b. Upon the death or legal incompetency of an individual limited partner, his Personal Representative shall have all of the rights of allowed by law for the sole purpose of settling or managing his or her estate.

c. The other limited partners and general partner have the right to purchase the decedent's partnership share in accordance with this agreement at whatever price the general partner shall request. Said price shall be a number that benefits the limited partnership and does not cause any income tax consequence to the limited partnership.

d. No limited partner or other person who has become the holder of any interest in this limited partnership shall transfer, assign or encumber all or any portion of his or her interests in the limited partnership during any fiscal year if such transfer, assignment or encumbrance would (in the sole and unreviewable opinion of the general partner) result in the termination of the partnership for purposes of the then applicable provisions of the Internal Revenue Code of 1986, as amended.

e. Any assignee to any limited partnership interests herein may not vote on any issue unless all of the limited partners and general partner agree.

f. Any assignee to any limited partnership interests herein shall remain liable to the partnership for any of the assignor's promised contributions or excessive distributions.

### 5.4 Bankruptcy.

a. In the event of a filing of a petition in bankruptcy by or on behalf of a limited partner, the appointment of a receiver to handle his or her affairs, or the



execution of an assignment for the benefit of his or her creditors, the partners shall have the option on a pro rata basis to purchase such limited partner's interest as stated above.

**PREVIEW**

#### 5.5 Transfers by Spouses.

a. The respective spouses of the partners join in the execution of this Agreement to evidence that any interest such spouse may have in this Agreement and in the partnership shall be subject to the terms and provisions of this Agreement in all respects as if the partners were the sole owners of the partnership, and as if each spouse was a partner hereunder with respect to such interest.

b. Any option to purchase the Percentage of Ownership of a partner pursuant to this Agreement shall include any interest therein owned by the spouse of such partner.

c. In the event of the death or divorce of a spouse of a partner or transfer by operation of law by divorce decree or otherwise of any interest in the Percentage of Ownership, then such partner shall have the option to purchase his or her spouse's interest in the Percentage of Ownership to which he does not succeed for the amount that the partner originally contributed to the partnership.

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### 6. CAPITAL CONTRIBUTIONS

#### 6.1 Initial Capital Contributions.

a. The partners shall make the capital contributions as stated in "Exhibit A" hereto. The partners' percentage of ownership is also stated in "Exhibit A" hereto.

**THIS DOCUMENT**

#### 6.2 Additional Capital Contributions.

a. No additional capital contributions shall be required of the partners unless all of the partners agree to such contribution in writing.

#### 6.3 Return of Capital Contributions.

a. Each partner irrevocably waives any rights that he or she may have to a return of his or her capital contributions, except as provided in this agreement.

#### 6.4 Capital Contributions - Miscellaneous Provisions.

**THANK YOU**

a. No partner is entitled to interest on his or her capital contributions.

b. All property owned by the partnership is deemed for all purposes to be owned by the partnership and not the individual partners.

Each partner shall own in the partnership's profits and losses according to his or her percentage share of capital.

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# PREVIEW

## 7.1 Method of Accounting.

a. The partnership shall keep accounts on the cash basis. The accounts shall readily disclose all items which the partners are requested to include separately for income tax purposes.

## 7.2 Accounting Year.

a. The fiscal year of the partnership shall commence on January 1st of each year and end on December 31st of each year.

## 7.3 Books and Records.

a. The general partner shall keep or cause to be kept, true, and correct and complete separate books and records pertaining to the partnership's business showing all of its assets and liabilities, receipts and disbursements realized, profits and losses, the partner's capital accounts and all transactions entered into by the partnership.

b. The books, records and files of the partnership required by the Act shall be kept at the partnership's principal office and all partners and/or their duly authorized representatives shall, at all reasonable times, have access thereto for the purposes of inspecting or copying same.

## 7.4 Statements and Tax Returns.

a. The general partner shall cause to be prepared and furnished to each of the partners by March 1 after the close of each calendar year an unaudited statement, showing the operation of the partnership for such year, the balance of each partner's capital account, the unpaid balance due under all obligations of the partnership and all other information reasonably requested by a partner.

b. No election shall be made by the partnership, or by any partner to be excluded from the application and the provisions of Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended.

# THANK YOU

## 8. SALE OF A PARTNER'S INTEREST

8.01 No partner may sell, assign, pledge or in any way encumber, by any means, his or her share in the partnership unless he or she obtains the consent of all the other partners and the general partner in this partnership.

8.02 Any sale of a partnership interest as provided as described above shall be as follows:

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a. The sale of all interests is restricted to the current limited partners. If the current limited partners do not desire to purchase the interests, then the partnership shall purchase it.

## 9. TERMINATION OF A PARTNERSHIP

9.1 In the event the partnership is terminated by the expiration of its term or upon the occurrence of any of the events specified in paragraph 3 above, the general partner shall, unless the partnership is reconstituted proceed to wind up and terminate the partnership's affairs.

a. He or she shall have full power and authority to do all acts necessary in accordance with the terms hereof, and shall, for the purposes of distribution and of this Agreement, be referred to as the Liquidating partner.

9.2 Accounting Upon Dissolution.

a. Upon a dissolution or termination, an accounting shall be made of the books of the limited partnership.

9.3 Winding Up and Liquidation.

a. Upon dissolution of the partnership, its business and affairs shall be wound up and liquidated as rapidly as business circumstances will permit, unless the partnership has been reconstituted.

b. If the partnership is reconstituted, it shall not be wound up. To the extent feasible, all assets of the partnership will be sold or otherwise reduced to cash. Upon liquidation, the funds and assets of the partnership shall be distributed to the creditors of the partnership and to the partners in the order and manner as set forth in Section 8.05 of the Texas Revised limited partnership Act.

c. After such distributions are made, this Agreement shall terminate and none of the parties shall have any further rights or obligations hereunder.

d. The general partner shall file a Certificate of Cancellation in accordance with the Act. Prior to final distribution, all the terms and provisions of this Agreement shall be binding upon each of the parties hereto.

9.4 Selection of Substitute Liquidating Trustee.

a. In the event the partnership is terminated by the death, dissolution, retirement an/or insolvency of the general partners, or an attempt by the general partners to transfer their interest in the partnership, the limited partners owning a majority in interest of the partnership shall select one of their members, or any person, firm or

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corporation, to act as Liquidating Trustee in the liquidation of the partnership assets with all of the rights, duties and obligations hereinafter granted or imposed.

**PREVIEW**

## 10. INVESTMENT REPRESENTATIONS

### 10.01 No Registration.

a. Each partner, by the execution of this Agreement (or any counterpart thereof), acknowledges that he or she is acquiring his or her partnership interest for the purposes stated above and not for a view to, or for, resale or distribution.

b. He or she understands that the offering of the partnership Interest has not been registered under The Securities Act of 1933 or qualified under The Texas Securities Act.

c. He or she understands that the nature and financial risk of the investment represented by the partnership Interest and that the partnership Interests are being sold only in the State of Texas to bona fide residents of Texas pursuant to the exemption contained in Section 3(a)(11) of the Securities Act of 1933.

**PLEASE DO NOT COPY**

## 11. GENERAL AND ADMINISTRATIVE

### 11.1 Notices, reports and Statements.

a. All notices, reports and statements hereunder shall be mailed to the limited partner's address which is stated in "Exhibit A" hereto.

**THIS DOCUMENT**

### 11.2 Applicable to Successors.

a. This Agreement and each provision herein (including the provisions relating to purchase rights) shall be binding upon and applicable to, and shall inure to the benefit of, the parties hereto and their respective heirs, legatees, devisees, successors, assigns, and legal representatives, except as otherwise expressly provided herein.

### 11.3 Counterparts.

a. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

**THANK YOU**

### 12.4 Governing Law.

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a. Any matter which may arise hereunder which is not herein specifically provided for shall be determined in accordance with and governed by the Laws of the State of Texas.

**PREVIEW**

Signed on \_\_\_\_\_.

**General Partner**

\_\_\_\_\_  
[NAME]

**PLEASE DO NOT COPY**

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Federal I. D. # \_\_\_\_\_

**Limited Partner**

**THIS DOCUMENT**

\_\_\_\_\_  
[NAME]

ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THANK YOU**

Limited Partner's Initial Cash Capital Contribution Partnership % Interest

\_\_\_\_\_  
[NAME]

ADDRESS

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**PREVIEW**

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# **PREVIEW**

EXHIBIT 1

Limited Partner's Name

Limited Partner's Address

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**Information & Instructions: How To Operate A Family Limited Partnership**

**PREVIEW**

1. The following letter explains how a trust or family limited partnership should be operated for a estate planning purposes.
2. The letter is given to the client to help the client administer his/her trust or family limited partnership

**Form: How to operate a family limited partnership**

[Date]

**ATTORNEY-CLIENT COMMUNICATION. THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION.  
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[Client's name]  
[Client's address]

Dear [Client's salutation]:

**FUNDING YOUR TRUST OR FAMILY LIMITED PARTNERSHIP**

Once your Life Insurance Trust, Irrevocable Investment Trust, Revocable Living Trust or Family Limited Partnership has been created, it is necessary to transfer ownership of your assets to the Trust or Partnership. This is called "Funding". It is equivalent to pre-settling your Estate.

**THIS DOCUMENT**

We charge for the time we spend on funding for you and the reasonable expenses we incur in this work, such as postage, long distance tolls and filing fees, etc. This cost is in addition to the cost to prepare the legal documents. Because it is so important that funding be done accurately and because we want to help you minimize the cost of funding, we have set forth below some information to expedite the process and reduce your costs.

**LIFE INSURANCE TRUST OR  
IRREVOCABLE INVESTMENT TRUST**

New life insurance policies purchased by you to fund these Trusts should have the Trust designated as the owner and beneficiary of the policy. For example:

**THANK YOU**

"The [Name] Irrevocable Investment Trust,

[Name], Trustee [Date]

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Also, if you intend to set up a banking account for your Life Insurance Trust or Irrevocable Investment trust you will need to obtain the appropriate form from your banking institution in setting up an account.

**PREVIEW**

If you wish to fund the Trust with existing insurance policies, complete the appropriate insurance form and send it to your insurance agent. Have a copy of the acknowledgment of the change sent to our office for verification that the changes have been completed.

### **REVOCABLE LIVING TRUST**

As a general rule the ownership of all of your principal assets should be transferred to this Trust. If you have questions concerning specific assets, please call the Firm for guidance. The following will explain how to transfer different kinds of assets

**PLEASE DO NOT COPY**

**REAL PROPERTY**

Copies of your most recent deeds and deeds of trust if any should be copied and sent to the Firm.

### **LIFE INSURANCE**

The trust should be added as a Contingent or Secondary Beneficiary to life insurance policies. Form #5 will aid you and your insurance company to accomplish this change.

**ANNUITIES**

**THIS DOCUMENT**

Due to the complexity of annuities and the different types on the market, please copy your policy and mail it to the Firm for review, so that we may decide whether funding of this asset is advisable and if so, how it should be handled.

### **LIQUID ASSETS**

We also advise that Liquid Assets be placed into the Trust. Liquid Assets include Savings accounts, CD's Money Market Accounts, Stocks, Bonds and Mutual Funds.

To transfer stocks, bonds and mutual funds, sign the appropriate form which your stockbroker or insurance company will give you to transfer ownership to the Trust.

**THANK YOU**

**PENSION PLANS**

We also advise having the Trust added as a Contingent or Secondary Beneficiary to pension plans. Pension Plans include: IRA's, Profit Sharing Plans, Pension Plans, KEOGH (HR 10) and 401K Plans.

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**ELDERLY AND BUSINESS INTERESTS**

It is usually beneficial to transfer closely held business interests into the Trust. If you have any questions about this, call the Firm. Closely held business interests include common stock (not Sub Chapter S stock) and units of a Family Limited Partnership.

## **FAMILY LIMITED PARTNERSHIP**

If you have established a Family Limited Partnership, it is generally advisable to transfer the following assets into the Partnership:

### **REAL PROPERTY**

Please copy the most recent deeds and send them to the Firm.

## **PLEASE DO NOT COPY**

Liquid Assets include: Savings accounts, CD's, Money Market Accounts, Stocks, Bonds and Mutual Funds.

### **ANNUITIES**

Due to the complexity of annuities and the different types on the market, please copy your policy and mail it to the Firm for review, so that we may decide how the funding should be handled.

**THIS DOCUMENT**  
COSTS OF FUNDING  
THE TRUST AND LIMITED PARTNERSHIP DOCUMENTS WE HAVE PREPARED FOR YOU ARE ONLY EFFECTIVE WHEN YOU HAVE TRANSFERRED YOUR PRINCIPAL ASSETS INTO THEM.

We will help you with the transfer of your assets as little or as much as you desire. The more you do yourself, however, the less we charge.

Our fees for preparation of your real estate documents and assignments are set forth on the attached Exhibit A. All other funding including liquid assets, stocks, bonds, pension plans, annuities and life insurance policies will be \$ \_\_\_\_\_ per letter transfer and will be due and payable upon completion of the asset transfers into your Trust of Partnership.

## **THANK YOU**

### **CONCLUSION**

If you have any questions, please feel free to call. Thank you for your immediate attention to this matter as funding of your Trust or Partnership is very important to you and your family, and again, thank you for your business.

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Very truly yours,

**PREVIEW**  
[Name of attorney]

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**THANK YOU**

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