TEXAS ESTATE PLAN

Roles & Responsibilities Reference Guide

State of Texas — Governing Law: Texas Estates Code, Texas Health & Safety Code, Texas Property Code

Introduction

A comprehensive Texas estate plan involves multiple documents and multiple named individuals, each carrying distinct legal roles, duties, and limitations. Understanding who does what — and when their authority begins and ends — is essential for every person named in an estate plan, as well as for the individual creating it.

This reference guide defines each role clearly, identifies the document(s) that create or govern that role, explains when and how authority activates, and highlights key responsibilities and limitations under Texas law.

PART ONE: ROLES CREATED BY A WILL

1. Testator

Aspect	Details
Definition	The person who creates and signs a Last Will and Testament. The testator is always a living individual — the will is their legal voice for distributing property and expressing wishes after death.
Governing Law	Texas Estates Code §§ 251.001–251.011
Requirements	Must be at least 18 years of age (or legally married, or a member of the armed forces), of sound mind, and sign the will voluntarily.
Authority	The testator's authority is exercised through the will document itself. Once signed, the will becomes effective upon the testator's death.
When Role Ends	The role effectively concludes at death, when the will is submitted to probate. The testator may amend or revoke the will at any time while living and competent.
Key Powers	Names an executor; designates beneficiaries; nominates a guardian for minor children; directs distribution of probate assets; may establish a testamentary trust.
Limitations	A will only controls 'probate assets' — assets that do not pass by beneficiary designation, joint ownership, or trust. Life insurance, IRAs, and jointly-owned property pass outside the will.

2. Executor (Independent Executor)

Aspect	Details
Definition	The person named in the will to administer the decedent's estate through probate. Texas favors the 'Independent Executor' model, which requires minimal court supervision.
Governing Law	Texas Estates Code §§ 308.001–309.151
Appointed By	Named by the testator in the will; formally appointed by the probate court after death.
When Authority Begins	Upon issuance of Letters Testamentary by the probate court — not at the moment of death.
When Authority Ends	Upon filing a final accounting and formal discharge by the probate court.
Core Duties	Locate and file the will; petition for probate; notify beneficiaries and creditors; inventory and appraise estate assets; pay valid debts and taxes; distribute remaining assets to beneficiaries per the will.
Fiduciary Duty	The executor owes a fiduciary duty to beneficiaries — acting with loyalty, prudence, and impartiality. Self-dealing is prohibited.
Compensation	Entitled to reasonable compensation from the estate, typically 5% of cash handled, unless waived or otherwise agreed.
If None Named	The probate court will appoint an Administrator (see below).

3. Administrator

Aspect	Details
Definition	A court-appointed individual who performs the same functions as an executor when a person dies intestate (without a valid will), or when the named executor is unable or unwilling to serve.
Governing Law	Texas Estates Code §§ 401.001–404.005
Appointed By	The probate court, following the statutory priority order: surviving spouse, then heirs.
Key Difference from Executor	An administrator is appointed by the court, not chosen by the decedent. The estate is typically subject to greater court oversight (Dependent Administration) unless the court grants independent status.
When Authority Begins	Upon issuance of Letters of Administration by the probate court.
Fiduciary Duty	Same fiduciary standard as an executor — loyalty, prudence, and impartiality toward all heirs.
Bond Requirement	Generally required to post a surety bond unless waived by the court or all heirs.

PART TWO: ROLES CREATED BY A TRUST

4. Grantor (Settlor / Trustor)

Aspect	Details
Definition	The individual who creates a trust by transferring assets into it and establishing its terms. Also called the 'Settlor' or 'Trustor.'
Governing Law	Texas Property Code §§ 111.001–115.015
Document	The Trust Agreement or Declaration of Trust.
Key Authority	Defines the trust's purpose, terms, beneficiaries, and rules for asset management and distribution. In a revocable living trust, the grantor typically also serves as the initial trustee and beneficiary.
Revocable vs. Irrevocable	A revocable trust may be amended or revoked by the grantor at any time while competent. An irrevocable trust generally cannot be changed after creation without court approval or consent of all beneficiaries.
When Role Ends	In a revocable trust, the grantor's control ceases upon death or incapacity, at which point the successor trustee assumes control. In an irrevocable trust, control is relinquished upon signing.
Tax Implication	In a revocable trust, the grantor is treated as the owner for income tax purposes during their lifetime. Assets in a revocable trust are included in the grantor's taxable estate.

5. Trustee

Aspect	Details
Definition	The individual or institution responsible for managing trust assets in accordance with the trust agreement and for the benefit of the beneficiaries.
Governing Law	Texas Property Code §§ 113.001–117.011
Appointed By	Named in the trust agreement by the grantor; successor trustees named to serve upon the initial trustee's death, resignation, or incapacity.
When Authority Begins	Immediately upon the trust becoming effective; for a successor trustee, upon the triggering event (death or incapacity of prior trustee).
Core Duties	Hold title to trust assets; invest prudently (Texas Uniform Prudent Investor Act); keep accurate records; file trust tax returns; distribute income and principal per trust terms; account to beneficiaries.
Fiduciary Duty	The highest fiduciary duty under Texas law — loyalty (no self-dealing), prudence, impartiality among beneficiaries, and duty to inform and account.
Compensation	Entitled to reasonable compensation from the trust estate unless the trust document specifies otherwise.

Aspect	Details
Removal	May be removed by a court for breach of fiduciary duty, incapacity, or other cause. Some trust documents allow beneficiaries to remove and replace trustees.

6. Successor Trustee

Aspect	Details
Definition	The individual or institution named to assume trustee duties when the original (or current) trustee is unable to continue due to death, resignation, or incapacity.
Authority	Identical to that of the original trustee once the succession event is established — typically documented by a death certificate, physician's letter, or resignation letter.
Practical Role	Often a trusted family member, close friend, or corporate trustee (bank or trust company). The successor should be familiar with the trust's terms before assuming duties.
Key Consideration	A successor trustee who discovers the prior trustee committed a breach of fiduciary duty has an obligation to take reasonable steps to remedy the breach and protect beneficiaries.

PART THREE: ROLES COMMON TO WILLS AND TRUSTS

8. Beneficiary

Aspect	Details
Definition	Any individual or entity entitled to receive assets, income, or other benefits from a will, trust, life insurance policy, retirement account, or other estate planning instrument.
Types	Primary Beneficiary: first in line to receive assets. Contingent Beneficiary: receives assets if the primary beneficiary predeceases or disclaims. Remainder Beneficiary: receives assets remaining after prior interests terminate.
Rights Under Texas Law	Right to receive timely accountings from the trustee; right to be notified of trust existence and terms; right to petition the court if the trustee breaches fiduciary duty.
Minor Beneficiaries	Cannot directly receive significant assets. A guardian of the estate, custodian under UTMA, or trustee must manage assets on their behalf until majority.

Aspect	Details
Disclaimer	A beneficiary may disclaim (refuse) an inheritance within 9 months of the transfer event under Texas Property Code § 112.010, causing the asset to pass as if the disclaiming beneficiary predeceased.
Creditor Exposure	Assets received from an estate or distributed from a trust are generally subject to the beneficiary's creditors, unless a spendthrift clause in the trust protects them prior to distribution.

PART FOUR: ROLES CREATED BY POWER OF ATTORNEY

9. Principal

Aspect	Details
Definition	The individual who creates a Power of Attorney document and grants authority to another person (the agent) to act on their behalf. The principal must be an adult with legal capacity at the time of signing.
Governing Law	Texas Estates Code §§ 751.001–751.651 (Durable Power of Attorney Act)
Document	Statutory Durable Power of Attorney (financial); Medical Power of Attorney; or other specific POA documents.
Capacity Requirement	Must have legal capacity — understanding the nature and consequences of the document — at the time of execution.
Right to Revoke	The principal may revoke a Power of Attorney at any time while competent by providing written notice to the agent and any third parties relying on the POA.
Key Consideration	The principal retains all authority and does not give up their own right to act — the agent's authority runs concurrently unless the document specifies otherwise.

10. Agent (Attorney-in-Fact) — Financial Power of Attorney

Aspect	Details
Definition	The individual authorized by the principal under a Financial (Durable) Power of Attorney to manage financial, legal, and business matters on the principal's behalf.
Governing Law	Texas Estates Code §§ 751.001–751.651
Scope of Authority	As defined in the POA document: may include banking, investing, real estate transactions, tax filings, business operations, benefits claims, and legal proceedings.
Durable vs. Springing	A 'Durable' POA remains effective if the principal becomes incapacitated. A 'Springing' POA only activates upon incapacity (as defined in the document, typically by physician certification).

Aspect	Details
Fiduciary Duty	Owes a strict fiduciary duty to the principal: act in good faith, within the scope of authority, and in the principal's best interest. Must keep personal funds separate from principal's funds.
Prohibited Acts	Without explicit written authorization: cannot make gifts to themselves, create or change beneficiary designations, or exercise rights under survivorship agreements.
When Authority Ends	Upon the principal's death (authority ceases immediately); revocation by the principal; or expiration date stated in the document.
Liability	An agent who breaches fiduciary duty is personally liable to the principal or the principal's estate for damages.

11. Agent — Medical Power of Attorney

Aspect	Details
Definition	The individual authorized to make medical and healthcare decisions for the principal when the principal lacks the capacity to make or communicate those decisions.
Governing Law	Texas Health & Safety Code §§ 166.151–166.166
Activation	Authority activates only when a physician certifies in writing that the principal lacks decision-making capacity. The principal retains full authority when competent.
Scope of Authority	Broad healthcare decision-making authority: consent to or refuse treatment, select providers and facilities, access medical records, authorize surgery or procedures — subject to the principal's known wishes and best interests.
Limitations	Cannot authorize euthanasia or assisted suicide. Cannot override the principal's own contemporaneous wishes if the principal regains capacity. Subject to Texas pregnancy restriction (HSC § 166.049).
Relationship to Advance Directive	Operates alongside (not instead of) a Living Will / Directive to Physicians. When both exist, the agent is expected to honor the written directive.
Choosing an Agent	Should be someone who knows the principal's values, can make difficult decisions under pressure, and is available to act promptly. Cannot be the principal's treating physician.
Successor Agent	A successor medical POA agent may be named to serve if the primary agent is unable or unwilling to serve.

PART FIVE: ROLES RELATED TO HEALTHCARE DIRECTIVES

12. HIPAA Agent (Authorized Representative)

Aspect	Details
Definition	An individual designated in a written HIPAA Authorization to access, receive, and discuss the principal's Protected Health Information (PHI) with covered entities.
Governing Law	45 CFR § 164.508 (federal); Texas Health & Safety Code § 181.004
Scope	May access medical records, discuss diagnoses and treatment plans, and receive disclosures of PHI from any covered entity specified in the authorization.
Not the Same as Medical POA	A HIPAA agent has information access rights only — they do not have authority to make medical decisions unless they also hold Medical POA. These are two separate documents serving different purposes.
When Active	Generally active immediately upon signing unless the authorization specifies otherwise. Does not require incapacity.
Redisclosure Risk	Once PHI is in the HIPAA agent's possession, it is no longer governed by HIPAA. The agent (as a private individual, not a covered entity) may redisclose it without federal penalty, though state law or contractual restrictions may apply.
Duration	Remains in effect until the expiration date stated in the authorization, or until revoked in writing by the individual.
Cannot Be Coerced	Under 45 CFR § 164.508(b)(4), no covered entity may condition treatment, payment, or enrollment on whether an individual signs a HIPAA authorization.

13. Declarant (Directive to Physicians / Living Will)

Aspect	Details
Definition	The individual who signs a Directive to Physicians (Living Will) expressing their wishes regarding life-sustaining treatment in the event of a terminal or irreversible condition.
Governing Law	Texas Health & Safety Code §§ 166.031–166.051
Purpose	Provides legally binding written instructions to healthcare providers regarding the use or withdrawal of life-sustaining treatment when the declarant lacks capacity to communicate.
Effect During Pregnancy	Under Texas Health & Safety Code § 166.049, the directive may not be carried out during pregnancy if it is reasonably probable the fetus could develop to live birth with continued treatment.
Revocation	May be revoked at any time by the declarant through written revocation, physical destruction of the document, or verbal revocation to a healthcare provider.

Aspect	Details
Distinction from Medical POA	The Directive speaks for the declarant directly. The Medical POA agent speaks for the declarant when the declarant cannot. Both should be executed and consistent with each other.

PART SIX: ROLES CREATED BY COURT ORDER

14. Guardian of the Person

Aspect	Details
Definition	A court-appointed individual responsible for the personal care, welfare, and living arrangements of an incapacitated adult or minor child.
Governing Law	Texas Estates Code §§ 1101.001–1202.001
Appointed By	The probate court following a formal guardianship proceeding.
Who May Be Subject	An adult who is substantially unable to care for their own physical health, safety, or personal needs due to a mental, physical, or developmental condition; or a minor child whose parents are deceased or unable to serve.
Core Duties	Determine the ward's place of residence; consent to medical treatment; ensure appropriate food, clothing, and shelter; file annual personal status reports with the court.
Least Restrictive Principle	Texas law requires that guardianship be the least restrictive alternative. Supported decision-making agreements and other less restrictive options must be considered first.
Nominated Guardian	A testator may nominate a guardian for minor children in their will. The court gives strong weight to this nomination but retains authority to appoint in the child's best interest.
Fiduciary Duty	Owes a fiduciary duty to the ward. Subject to court oversight and annual reporting requirements.

15. Guardian of the Estate

Aspect	Details
Definition	A court-appointed individual responsible for managing the financial assets and property of an incapacitated adult or minor who lacks capacity to manage their own affairs.
Governing Law	Texas Estates Code §§ 1151.001–1163.001
Distinction from Guardian of Person	These roles may be held by the same individual or by different individuals. The guardian of the estate manages money and property; the guardian of the person manages daily life and healthcare.

Aspect	Details
Core Duties	File an inventory of the ward's assets; manage and invest assets prudently; file annual financial accountings with the court; obtain court approval for significant transactions.
Court Oversight	Subject to substantial court supervision — most significant financial decisions require prior court approval. This distinguishes the role from a trustee, who has more independent authority.
Bond Requirement	Generally required to post a surety bond to protect the ward's assets.
Termination	Guardianship of the estate terminates upon the ward's death, restoration of capacity, majority of a minor ward, or exhaustion of the estate's assets.

PART SEVEN: SUMMARY COMPARISON TABLE

The following table provides a quick-reference comparison of all roles covered in this guide:

Role	Document	Who Appoints	Authority Type	Active When
Testator	Will / Testament	Self (by signing)	Directive	Upon death
Grantor	Trust	Self (by signing)	Directive	Per trust terms
Executor	Will	Testator / Court	Fiduciary	After death
Administrator	Court Order	Probate Court	Fiduciary	After death (no will)
Trustee	Trust Agreement	Grantor / Successor	Fiduciary	Per trust terms
Beneficiary	Will / Trust / Policy	Testator / Grantor	Recipient	Per document terms
Principal	POA Documents	Self (by signing)	Directive	Per POA terms
Agent / Attorney-in-Fact	Financial POA	Principal	Fiduciary	Per POA terms
Medical POA Agent	Medical POA	Principal	Fiduciary	Incapacity / as specified
HIPAA Agent	HIPAA Authorization	Individual	Authorization	Immediately upon signing
Guardian (Person)	Court Order	Court	Fiduciary	Upon incapacity / minority
Guardian (Estate)	Court Order	Court	Fiduciary	Upon incapacity / minority
Successor Trustee	Trust Agreement	Grantor	Fiduciary	Upon trustee incapacity/death

PART EIGHT: KEY PRINCIPLES & PRACTICAL GUIDANCE

Overlapping Roles

One individual may hold multiple roles simultaneously or sequentially. Common combinations in Texas estate plans include:

- Grantor + Trustee + Beneficiary: common in a revocable living trust during the grantor's lifetime.
- Executor + Successor Trustee: the same trusted person administers both the probate estate and the trust.
- Medical POA Agent + HIPAA Agent: named in separate documents but the same person serves both functions.
- Guardian of Person + Guardian of Estate: one individual appointed to manage both personal care and finances.

When Authority Activates

Understanding when each role's authority begins is critical to avoiding gaps in decision-making:

- Executor / Administrator: authority begins only after court appointment — not at the moment of death.
- Successor Trustee: authority begins upon the triggering event (death, incapacity, or resignation of prior trustee) — typically evidenced by documentation.
- Medical POA Agent: authority begins only upon physician certification of incapacity — the principal retains authority when competent.
- Financial POA Agent (Durable): authority may be immediate or springing depending on document terms.
- HIPAA Agent: authority is generally immediate upon signing of the authorization.
- Guardian: authority begins only upon court order — there is no self-activation.

Fiduciary Standards

Several of these roles carry a fiduciary duty — the highest legal duty of loyalty, care, and good faith. Fiduciary roles in a Texas estate plan include:

- Executor and Administrator
- Trustee and Successor Trustee
- Agent under Financial Power of Attorney
- Agent under Medical Power of Attorney (with respect to the principal's best interest)
- Guardian of the Person and Guardian of the Estate

Breach of fiduciary duty may result in personal liability, removal from the role, surcharge (financial penalty), and in egregious cases, criminal prosecution.

Choosing the Right People

Selecting the right individuals for each role is as important as executing the documents correctly. Consider the following when making appointments:

- Trustworthiness and integrity above all other qualifications.
- Organizational ability and willingness to handle administrative tasks and deadlines.
- Availability — a busy or distant person may not be able to serve effectively.
- Emotional stability — particularly for Medical POA agents who may face end-of-life decisions.
- Absence of conflicts of interest with other beneficiaries or heirs.
- Always name at least one successor or alternate for every role to prevent gaps.

Texas-Specific Considerations

- Texas is a community property state. Estate planning must account for the distinction between community property (owned equally by spouses) and separate property (owned individually).
- Texas does not impose a state estate tax or inheritance tax. Federal estate tax applies to estates exceeding the federal exemption threshold.
- Texas Homestead Law provides significant protection for a surviving spouse and minor children and affects how real property may be devised in a will.
- The Texas Uniform Prudent Investor Act (Texas Property Code §§ 117.001–117.011) governs the investment standard for trustees.
- Texas allows Independent Administration of estates, minimizing court involvement and costs compared to many other states.

DISCLAIMER

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