



# LIVE LONG & PROSPER: AN INTRODUCTION TO ESTATE PLANNING IN TEXAS

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### Education

- LL.M. in Taxation, Southern Methodist University Dedman School of Law, 2004
- J.D., Texas Tech University School of Law, 2002
- M.S., Personal Financial Planning, Texas Tech University, 2002
- B.A., English and Anthropology, with honors, The University of Texas at Austin, 1999

### Bar Admissions

- Texas
- District of Columbia

### Board Certifications

- Board Certified in Tax Law and Estate Planning & Probate Law by the Texas Board of Legal Specialization

# WHAT HAPPENS IF I DON'T DO ANYTHING?



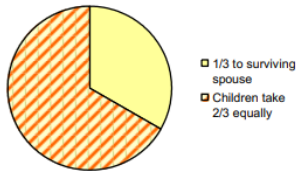
# WHAT HAPPENS IF I DON'T DO ANYTHING?

## Texas Descent and Distribution<sup>1</sup>

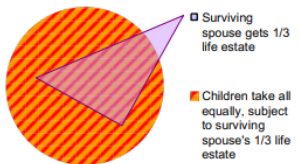
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

### 1. Married Person with Child[ren] or Other Descendants

#### A. Decedent's separate personal property (all that is not real property) (EC § 201.002(b))

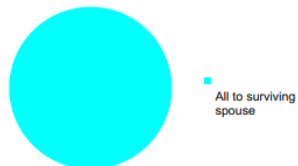


#### B. Decedent's separate real property (EC § 201.002(b))

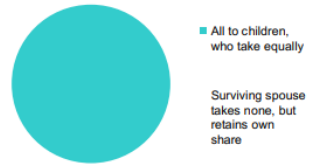


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

#### C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (EC § 201.003(b)(2))



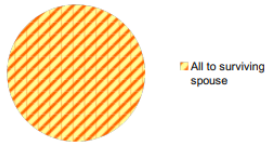
#### C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))



# WHAT HAPPENS IF I DON'T DO ANYTHING?

## 2. Married Person with No Child or Descendant

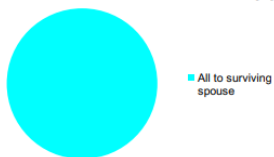
### A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))



### B. Decedent's separate real property (EC § 201.002)

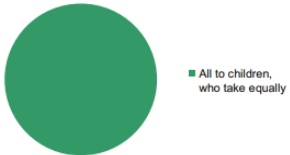
<p>If decedent is survived by <b>both</b> mother and father. EC §§ 201.001(c) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/4 to father</li> <li>■ 1/4 to mother</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived (1) by mother <b>or</b> father <b>and</b> (2) by sibling(s) or their descendants. EC §§ 201.001(d)(1) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/4 to surviving parent</li> <li>■ 1/4 to siblings, etc.</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived by mother <b>or</b> father, <b>but is not</b> survived by any sibling(s) or their descendants. EC §§ 201.001(d)(2) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/2 to surviving parent</li> <li>■ 1/2 to surviving spouse</li> </ul>
<p>If decedent is survived by neither parent, but <b>is</b> survived by sibling(s) or their descendants. EC §§ 201.001(e) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>■ 1/2 to siblings, etc.</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived by no parent, no sibling, and no descendant of a sibling. EC § 201.002(d).</p> <ul style="list-style-type: none"> <li>■ All to surviving spouse</li> </ul>	

### C. Decedent's share of community property (EC § 201.003(b)(1))



# WHAT HAPPENS IF I DON'T DO ANYTHING?

## 3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))



## 4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:<sup>1</sup>

<p>If decedent is survived by <b>both</b> mother and father. EC § 201.001(c).</p> <p>■ 1/2 of all property to father ■ 1/2 of all property to mother</p>	<p>If decedent is survived (1) by mother <b>or</b> father <b>and</b> (2) by sibling(s) or their descendants. EC § 201.001(d)(1).</p> <p>■ 1/2 to siblings or to descendants of deceased siblings ■ 1/2 to surviving parent</p>
<p>If decedent is survived by mother <b>or</b> father, <b>but is not</b> survived by any sibling(s) or their descendants. EC § 201.001(d)(2).</p> <p>■ All to surviving parent</p>	<p>If decedent is survived by <b>neither parent</b>, but <b>is</b> survived by sibling(s) or their descendants. EC § 201.001(e).</p> <p>■ All to siblings or to descendants of deceased siblings</p>



## KEY TERMS TO KNOW

- Estate Planning – The preparation for the distribution and management of a person’s estate at death through the use of wills, trusts, insurance policies, and other arrangements, esp. to reduce administration costs and transfer-tax liability.
- Intestacy - The state or condition of a person’s having died without a valid will.
- Trust - The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor* or *grantor*) for the benefit of a third party (the *beneficiary*).
- Will - The legal expression of an individual’s wishes about the disposition of his or her property after death; esp., a document by which a person directs his or her estate to be distributed upon death.
- Decedent: A deceased person.
- Estate: The property owned by the Decedent upon death.



## KEY TERMS TO KNOW

- Revocable Trust: A trust where the Grantor retains the right to revoke, modify, or amend the trust.
- Irrevocable Trust: A trust where the Grantor does not retain the right to revoke, modify, or amend the trust.
- Simple trust: Trust with terms that require all trust income be distributed to beneficiary annually, does not provide for charitable distributions, and does not permit distributions other than income.
- Complex trust: Any trust that is not a simple trust.
- PR: Personal Representative
  - A court-appointed representative of an Estate.
  - Refers to both Executors and Administrators.





## WHAT DO I NEED?



- Beneficiary Designations
- Will
- Statutory Durable Power of Attorney
- Medical Power of Attorney
- HIPAA Authorization/Release
- Directive to Physicians and Family or Surrogates (Advanced Directive/Living Will)
- Declaration of Guardian for Minor Children

## WHAT MIGHT BE NICE?



- Revocable Living Trust
- Declaration of Guardian
- Do Not Resuscitate Form
- Organ Donation Form
- Appointment of Agent for Disposition of Remains

# PROBATE AND TAX DEADLINES UPON DEATH

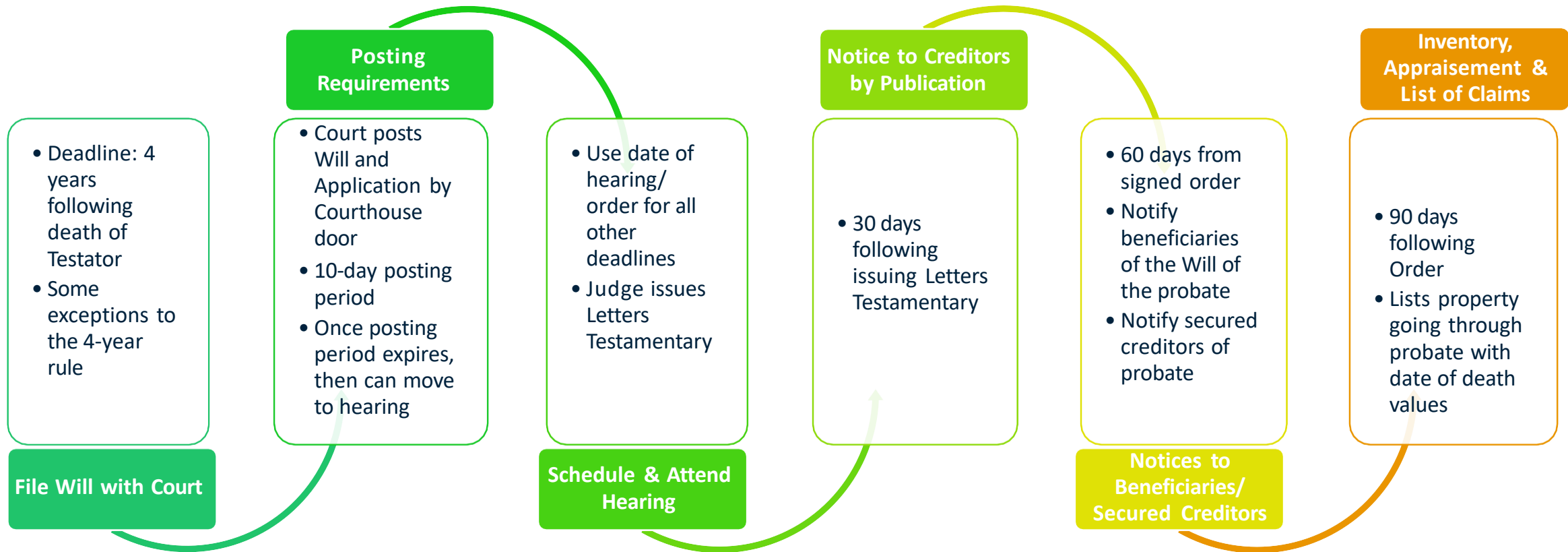


# PROBATE DEFINITION

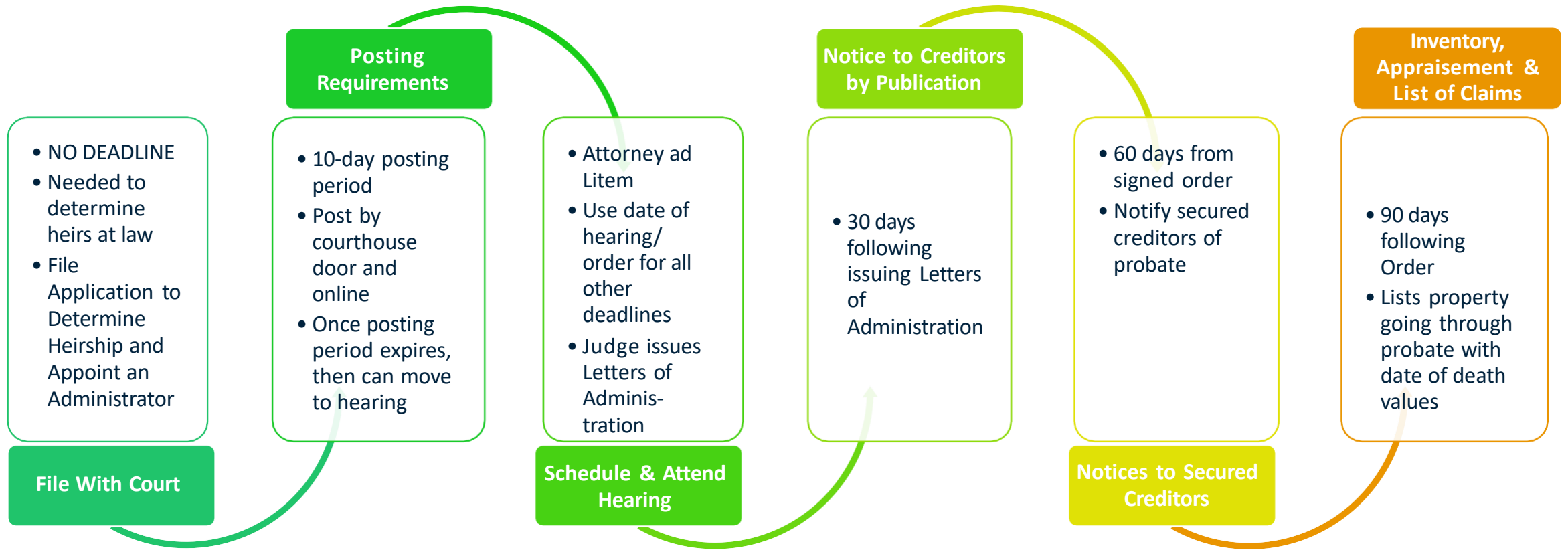
- Probate is the legal process of gathering a Decedent's assets, satisfying the Decedent's debts, and transferring the title of anything left over from the Decedent's name into the names of his or her heirs or beneficiaries.
- Common probate assets:
  - Homestead
  - Vehicles
  - Cash
  - Personal Property
  - Bank accounts (no beneficiary)
  - Oil & Gas royalties



# PROBATE WITH WILL (TEXAS)



# PROBATE WITHOUT WILL (TEXAS)



# TAX FILING DEADLINES

## ■ Final Income Tax Return for Decedent

- Form 1040 covering year of death (January – date of death)
  - Also covers prior years that were not filed
- Use Form 1040SR for seniors (65+)
- Surviving spouse can file a joint return (but this can be revoked by PR within 1 year from due date of original return)

## ■ Estate Income Tax Return

- Form 1041
- Required if Estate income exceeds \$600
- Annual filing if estate administration is more than 1 year
- If Estate receives any interest/dividends, complete and return W9s with Estate EIN and return to payer

## ■ Estate/GST Tax Return

- Form 706
- Must file within 9 months after date of death
- May request extension
- Must be filed for estates over estate tax exemption (currently \$13.61 Million)

# ADDITIONAL TAX DEADLINES

## ■ **Electing Portability**

- For federal estate and gift tax purposes, a portability election allows the surviving spouse to claim and apply the deceased spousal unused exclusion (DSUE) amount to the surviving spouse's own transfers during life and at death. (IRC §2010(c)(2))
- Must elect portability within 9 months of death of spouse.
- May have extension, if requested – Form 4768.

## ■ **Extension of DSUE**

- Up to 5 years after decedent's death (Rev. Proc. 2022-32) only in estates if the PR was not otherwise required to file an estate tax return.
- Only eligible if spouse survived the decedent (who died after 12/31/2010) was a US citizen/resident on date of death and estate was not otherwise required to file estate tax return.
- Extensions are not available to estates with § 6018 Filing Requirement (nonresident noncitizen with taxable estate over \$60,000).



# ADDITIONAL TAX DEADLINES



## Gift Tax and GST Return

- For gifts exceeding annual exclusion amount (currently \$18,000/year/person)
- PR must file Form 709 if donor dies prior to filing
- Must file 709 not later than the earlier of:
- Due date (with extensions) for filing donor's estate tax return or April 15 (or extended date)

## OTHER USEFUL FORMS FOR DECEDENT ESTATES

- **Power of Attorney & Declaration of Representative (Form 2848)**
  - Allows PR's accountant or attorney to communicate directly with IRS
- **Alternate Valuation Date (IRC 2032) – Form 706**
  - Assets are valued as of 6 months after Decedent death
  - Can only be used to reduce taxable estate and related taxes
  - Must be made with estate tax return



## OTHER USEFUL FORMS FOR DECEDENT ESTATES

- **Notice Concerning Fiduciary Relationship (Form 56)**
  - Authorizes another to act as fiduciary on behalf of Decedent/Decedent's Estate
  - Submit along with Form 1040/1041
  - Will need to re-submit with each new fiduciary & when fiduciary relationship terminates
- **Form 8821 Tax Authorization Information**
  - Authorizes PR to request information from IRS on behalf of Decedent
  - Used to gather previous tax transcripts, W2s, 1099s, etc.
  - File with Form 56

## OTHER USEFUL FORMS FOR DECEDENT ESTATES

- **Form 8822 Change of Address**
  - Notifies IRS of change of mailing address for Decedent
- **Form 1310 Statement of Person Claiming Refund Due to Deceased Taxpayer**
  - Required if Form 1040X or 843 is filed
  - Will need to show official court appointment papers
- **Form 5495 Request for Discharge of Personal Liability for PR**



**“How we face death is at least as important as how we deal with life.”**

*Captain James T. Kirk  
Star Trek II: The Wrath of Khan*

