

# **SO YOU WANT TO TAKE THE SPECIALIZATION EXAM**

Presented by:

## **CARL A. WERNER**

Cox Smith Matthews Incorporated  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
(210) 554-5500

## **BARBARA McCOMAS ANDERSON**

Law Office Of Barbara McComas Anderson  
P.O. Box 181147  
Dallas, Texas 75218-1147  
214/367-8090  
214/367-8091 (Fax)  
[bmcanderson@msn.com](mailto:bmcanderson@msn.com)

Written and presented by:

## **RUSSELL W. HALL**

Russell W. Hall & Associates, P.C.  
6750 West Loop So. Ste. 920  
Bellaire, Texas 77401-4117  
713-662-3853  
Fax 713-662-3854  
[rwhall@rwhpc.com](mailto:rwhall@rwhpc.com)  
[www.rwhpc.com](http://www.rwhpc.com)

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**31<sup>ST</sup> ANNUAL ADVANCED ESTATE  
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**EARLY BIRD SESSION**



RUSSELL W. HALL  
Russell W. Hall & Associates, P.C.  
6750 West Loop So. Ste. 920  
Bellaire, Texas 77401-4117  
713-662-3853 · rwhall@rwhpc.com  
Fax 713-662-3854 · www.rwhpc.com

## EDUCATION

B.A., Rice University  
J.D., University of Houston Law Center  
LL.M. (Tax), University of Houston Law Center

## PROFESSIONAL ACTIVITIES

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization  
State Bar of Texas. Member, Sections on: Antitrust/Business Litigation; Business Law; Construction Law; Corporate Counsel, General Practice, Solos, and Small Firm; Litigation; Real Estate Probate and Trust Law; Taxation Law.  
State Bar College  
Houston Bar Association. Member, Sections on: Attorneys in Tax and Probate; Commercial and Consumer Law; Construction Law; Corporate Counsel, Litigation, Probate, Trusts & Estate, Real Estate, Taxation.  
American Bar Association. Member, General Practice, Solo and Small Firm Division, Law Practice Management Section, Section of Real Property, Probate and Trust Law.  
National Academy of Elder Law Attorneys

## PROFESSIONAL HISTORY

Former staff attorney, Gulf Coast Legal Foundation, Housing & Consumer Unit  
Licensed to practice in Texas and before the U.S. District Court for the Southern District of Texas, Tax Court, the U.S. Court of Appeals for the Fifth Circuit, and the United States Supreme Court

## LAW RELATED PUBLICATIONS, ACADEMIC APPOINTMENTS AND HONORS

Author/Speaker for the State Bar of Texas 2006 Building Blocks of Wills, Estates and Probate Course  
*I.R.C. § 103 and Exclusion of Interest on Texas Lottery Prize Installments*, presented September 26, 2006 to the Wednesday Tax Forum, Houston, Texas  
Planning Committee for the State Bar of Texas 2007 Building Blocks of Wills, Estates and Probate Course  
Author/Speaker for the State Bar of Texas 2007 Building Blocks of Wills, Estates and Probate Course  
Appointed to editorial board of *The Advocate*, the quarterly journal of the Litigation Section of the State Bar of Texas

## LANGUAGES

Spanish

## REPORTED CASES

*Hardy v. 11702 Memorial, Ltd.*, 176 S.W.3d 266 (Tex. App.—Houston [1st Dist.] Jul. 15, 2004, no pet.)



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## SO YOU WANT TO TAKE THE SPECIALIZATION EXAM

ALL TBLS DOCUMENTS AND SCHEDULES ARE SUBJECT TO CHANGE BEFORE THE 2007 EXAM AND ARE PUBLISHED HERE MERELY FOR DISCUSSION. TBLS HAS NOT REVIEWED OR APPROVED THIS ARTICLE.

### I. FORWARD

This paper introduces the certification process, and offers my personal thoughts and resources. The intended audience includes prospective applicants for certification in Estate Planning and Probate by the Texas Board of Legal Specialization, as well as candidates who have been approved to take the examination.

By way of background, I am a dilettante. After a brief stint doing legal aid, I went solo, and built a general business practice, including real estate and commercial litigation. Long before estate planning and probate became a major practice area for me, board certification became a goal.

A chicken-and-egg problem soon became obvious: certification requires tax experience, but clients with taxable estates avoid attorneys who are not certified. To make matters worse, the exemption amounts have risen steadily, shrinking the pool of taxable estates ever smaller.

My solution: begin my tax education before I had tax clients. I started with State Bar and other continuing legal education, and eventually returned to school for an LL.M. in taxation. The dividends were two-fold: first, I recognized more tax issues, which is critical to the experience requirements of board certification. Even "simple" estates can be mined for estate and gift tax issues.

Second, my tax experience was just too thin to provide on the job training. I would not have passed the certification exam but for two academic courses at the University of Houston Law Center: Estate Planning (Prof. Johnny Rex Buckles used Kathryn G. Henkel's text and his own problem sets) and Income Taxation of Trusts and Estates (Adj. Prof. Mickey R. Davis used his own materials and excerpts from a Jeffrey N. Pennell book). Other law school courses and CLE were also helpful, especially for issue-spotting in my own practice, but these two courses provided a basic tax education I simply was not going to acquire otherwise.

I found State Bar CLE indispensable for probate, guardianship, and elder law issues, but, with notable exceptions, it was just not basic or comprehensive enough to introduce a tax novice to the fundamentals of gift, estate, and generation-skipping transfer taxes.

My ultimate conclusions: i) estate planning boutiques and large firms generate enough tax experience for their attorneys to qualify for and pass the certification exam, but solo and small firm candidates are at a disadvantage if no one is referring them clients with taxable estates, ii) tax education can be a practical substitute for tax experience, and iii) State Bar CLE alone is not an adequate tax education.

For the record, State Bar CLE is an excellent practice resource, and it was indispensable in my exam preparations, but anyone who relies exclusively on it does so at their peril.

### II. INTRODUCTION

The Texas Board of Legal Specialization (TBLS) certifies attorneys in 20 specific areas of law and legal assistants in six specific areas (<http://www.tbls.org/>). Certification in Estate Planning and Probate is available to both attorneys and legal assistants. The attorney certification process is described at <http://www.tbls.org/Cert/AttGetStarted.asp> and the legal assistant process at <http://www.tbls.org/Cert/LasGetStarted.asp>.

The TBLS operates on an annual cycle, generally beginning with an application in April, an exam in October, and results in December ([www.tbls.org/Cert/FeeSchedule.asp](http://www.tbls.org/Cert/FeeSchedule.asp)). The schedule varies each year. As this paper goes to press, the 2008 schedule has not yet been published, and even the 2007 schedule remains subject to revision.

The TBLS takes a hub-and-spoke approach to administration: a common set of requirements applies to candidates in all 20 areas, with additional procedures and instructions specific to individual areas. Thus, general standards for attorney certification are published at <http://www.tbls.org/Cert/general.pdf>. App. A. Specific requirements for estate planning and probate law are found at <http://www.tbls.org/Cert/attstdep.pdf>. App. B. TBLS Attorney Rules and Regulations (Rules) are available at <http://www.tbls.org/Cert/attrul.pdf>.

An application may be requested from <http://www.tbls.org/Cert/AttAppReq.asp>. Applications may also be submitted online.

Exams are confidential, and exam contents may not be disclosed by certification applicants on pain of denial, suspension, or revocation of certification. Rule V.D. App. C. The legal assistant rule is identical.

Certification is public record, and TBLS maintains an online search engine at <http://www.tbls.org/Directory/Index.asp> to locate attorneys and legal assistants by name, by certification, and by location.

Kathy Logue is currently the certification analyst for Estate Planning and Probate Law, among other specialty areas. Her contact information is published at <http://www.tbls.org/Contact/>.

### III. APPLICATION

The rules prescribe numerous requirements, but peer review, continuing legal education, and “substantial involvement” require the most planning. Many candidates begin planning two or three years before they actually sit for an exam. A sample application is attached. App. D.

The application should be read together with the Rules, general standards, and specific requirements: there are opportunities for CLE and experience credit that are not obvious from the application itself.

#### A. Peer Review

TBLS requires at least five references. The Estate Planning and Probate application requests ten, perhaps allowing for references who fail to respond or who do not endorse the applicant.

Adverse references alone are enough to deny an application. Ask permission of prospective references; some will want to review workproduct. At least one judicial reference is required. I know of one judge who felt ambushed by the TBLS Statement of Reference form, and wrote, “No, absolutely not. Under no circumstances should this application be approved.” The applicant was ultimately certified anyway, and the judge now refuses to respond to TBLS inquiries.

References need not be board certified, though certified references presumably carry more weight.

#### B. Continuing Legal Education

Applicants must complete 60 hours of CLE in the specialty area within the three years including the year of application. Credit is often available on request for education not previously approved within the specialty. Many relevant courses are not approved for specialization credit, but logically qualify, e.g., marital property education approved for family law alone is a good candidate for estate planning and probate credit, because community and separate property is on the list of tested topics. Requests for credit are directed to the certification analyst.

#### C. Substantial Involvement

Applicants must devote 25% of their practice (by time, not revenue) to estate planning and probate each of the three years preceding the year of application. The Specific Area requirements has a 7-point definition of estate planning and probate. The application itself parses the experience requirements differently, so that is the better guide to maintaining your own records of clients counseled and documents prepared.

Section VI.C.2 of the General Standards for Attorney Certification permit substitution of unusual or exceptional experience for one or more of the specific area requirements. This is another reason to maintain detailed experience records.

### IV. EXAMINATION

The Estate Planning and Probate specialization exam is a closed-book, code-level, treetop flight through tax statutes and regulations, the Texas Probate Code, and related state and federal law. The Texas Board of Legalization identifies twenty-two broad subject areas for testing, but provides no study aids and publishes no prior exams. There are no review courses, and the rules prohibit discussion of exam questions. *See* app. C (Rule V.D; Confidentiality). The only information provided is the Estate Planning and Probate Law Exam Specifications, <http://www.tbbs.org/Cert/attexmep.pdf>. App. E.

### V. RUSSELL’S RESOURCES

#### A. Application

##### 1. Peer review

I used the TBLS online search engine, <http://www.tbbs.org/Directory/Index.asp>, to search my ZIP Code. I discovered more than a few attorneys I already knew, but that I did not know were board certified. They proved to be enthusiastic references and generous with study advice.

##### 2. Continuing Legal Education

I requested CLE credit for law school courses and non-State Bar CLE. My letter to certification analyst Kathy Logue is attached. App. F.

##### 3. Substantial involvement

The application does not request support, but I kept an Excel workbook anyway for my own records. My estate planning and probate experience was only twenty-five percent of my practice, and my tax experience was even more limited. I thought if anyone’s application would be audited, mine would. Also, I found it helpful in articulating why I qualified notwithstanding any more tax experience. Sample worksheets of clients counseled and documents prepared are attached that can serve as templates for your own records. Apps. G, H.

#### B. Examination

##### 1. Tax agonies.

I was exasperated at how few tax questions I could answer from my State Bar CLE studies.

A review of the successful 2005 candidates revealed that most solo and small firm certificants already had an LL.M. in taxation. Mid- to large firm attorneys did not seem to need that edge.



On reflection, i) the tax questions are fair, ii) the more estate and gift tax returns you have prepared, the better, and iii) law school and CPE (continuing professional education for CPAs and enrolled agents) is a practical substitute for tax experience, but State Bar CLE generally is not. The State Bar simply does not teach all the tax material they test. Instead, the Advanced CLE usually presumes you already know the basics before presenting material building on that foundation. Tax “basics,” though, are so broad and deep as to defy self-study.

## 2. Study notebook

In the months before the exam I assembled a study notebook with sections for each of the 22 areas tested. As the exam approached, I reviewed the material evenings and weekends, and then shut down my office the week before the exam, allowing myself nine uninterrupted days, including a full day in Austin, locked in a hotel room, just before the exam. The final week was a grim necessity, but the real work involved the right CLE and law school courses in prior years, and the outlining done over several months in 2005.

### a. What’s included

My table of contents and personal outlines are attached as Appendix I. The contents inventory the items I took to Austin for my final day of study.

CAVEAT: The attached outlines are not what I studied, they are how I studied. Each outline or chart took hours of study. Even when copied from another source, I’d work my way through the underlying code or authority until I understood the material. Rote memorization is a waste of time, and you will fail.

FURTHER CAVEAT: My notes and bibliography seemed adequate to me in 2005, until I took the exam. They clearly were not a model then, and much has changed since. For example, the 2005 Bankruptcy Reform Act changed the entire asset protection landscape, but is not even mentioned by the articles in the bibliography. Also, the legislature is in session this year, and that will generate a flurry of last-minute legislative update articles. Finally, this bibliography is completely uninformed by anyone else’s efforts, so I have no idea what good material elsewhere I missed.

### b. What’s omitted

My law school outlines are omitted, including Estate Planning, Post Mortem Estate Planning, Income Taxation of Trusts and Estates, International Taxation, and Tax Ethics.

My outline of Kathryn Henkel’s text for my Estate Planning class was a particularly valuable exercise, but just too cryptic and too long to reproduce here.

Finally, the entire Building Blocks course was

excellent, but it has a low profile in these materials because it was so good it did not need outlining. It was the one text I profitably read and re-read. It bears special note because missing it would be such a tragedy.

## 3. Bibliography

To refresh this bibliography, start with a TexasBarCLE online library subscription. The best articles are often updated from year to year.

For upcoming CLE, check TexasBarCLE, <http://www.texasbarcle.com/CLE/HOME.ASP>. In years the legislature meets, look for Glenn Karisch or Stanley Johanson updates.

If your own tax return experience is limited, buy PESI’s workshop materials. See Other CLE, below. I would also open the checkbook for the Building Blocks course, Henkel’s treatise, and Pennell’s book. The rest is available online or at most law libraries.

### i. Statutes

Texas Property Code chapter 42 (personal property exemptions).

### ii. Books and treatises

James E. Brill, *Texas Probate System* SI 49, 51, 52, 72 (St. B. of Tex. 2003) (Marital Property Rights; Family Allowance; Exempt Property, Setting Aside Exempt Property, and Allowance in Lieu of Exempt Property; Spousal Liability).

Kathryn G. Henkel, *Estate Planning and Wealth Preservation: Strategies and Solutions* (WG&L 2003 & Supp. 2006).

O’Connor’s *Texas Rules \* Civil Trials* ch. 2-F at 110 (2007) (Choosing the Court—Jurisdiction).

Jeffrey N. Pennell & Alan Newman, *Estate and Trust Planning* (ABA 2005)<sup>1</sup>.

2 State Bar of Texas, *Texas Collections Manual* §§ 14.31–14.42 (Part III. Property Subject and Exempt from Execution).

2 State Bar of Texas, *Texas Collections Manual* §§ 16.71–16.84 (Part VI. Nonprobate Assets; VII. Special Situations).

7 *Texas Transaction Guide* § 40A.29 (Texas Uniform Transfers to Minors Act).

### iii. State Bar CLE

1.8 Barbara McComas Anderson, *Drafting Marital Property Agreements: “The Devil is in the Details,”* in 11<sup>th</sup> Annual Advanced Estate Planning

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<sup>1</sup> Stephen Akers recommended this text at a 2007 presentation, and I was not aware of it previously. Chapters 19 and 20 are a good introduction to gift, estate, and GST taxes, and Subchapter J. I’ve found other chapters helpful enough in my own practice to justify the purchase.

Strategies (2005).

16 Michael J. Baldwin, *Foreign Estate and Income Tax Issues for Individuals: Advising Resident Aliens, Non-Resident Aliens and U.S. Citizens*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

1 Gerry W. Beyer, *Case Law Update*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

30 Santo Bisagno, Jr., *et al.*, *When the Music's Over, Turn Out the Lights? Estate Planning in a Zero Estate Tax Environment*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

16 Debbie Cox, *et al.*, *Drafting for the UPIA Twins—A Practical Guide*, in 15<sup>th</sup> Annual Advanced Drafting: Estate Planning and Probate Course (2004).

24 Karen S. Gerstner, *Planning Challenges: Retirement Plan/IRA Beneficiary Designations in Second Marriage Situations*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005)<sup>2</sup>.

13 Michael L. Graham & Nancy Ippolito, *A Big Helping of HIPAA Drafting in the Dark: What Every Trusts and Estates Attorney Should Know about the Release and Agency Issues Created by the Health Insurance Portability and Accountability Act of 1996*, in 15<sup>th</sup> Annual Advanced Drafting: Estate Planning and Probate Course (2004).

11 Deborah A. Green, *Oh No! I Think I Need an SNT! Drafting Options and Choosing Between Alternative Planning Devices for Persons with Disabilities*, in 15<sup>th</sup> Annual Advanced Drafting: Estate Planning and Probate Course (2004).

Mickey R. Davis, *Estate Planning for the "Moderately Wealthy" Client*, in 6<sup>th</sup> Annual Building Blocks of Wills, Trusts and Estate Planning (2005).

Randy E. Drewett, *Introducing Elder Law Through F.A.Q.'s*, in 6<sup>th</sup> Annual Building Blocks of Wills, Trusts and Estate Planning (2005).

1.7 Thomas M. Featherston, Jr., *Premarital and Marital Agreements in Texas*, in 11<sup>th</sup> Annual Advanced Estate Planning Strategies (2005).

1.12 Thomas M. Featherston, Jr., *Multiple-Party Accounts and Other Non-Probate Dispositions: The Use, Misuse and Abuse of Community Property Management*, in 11<sup>th</sup> Annual Advanced Estate Planning Strategies (2005).

9 Thomas M. Featherston, Jr., *A Trusts and Estates Lawyer's View of Texas Marital Property Law*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

12 T. Randall Grove, *Designing, Implementing and Operating the Family Limited Partnership to Avoid a Successful IRS Attack*, in *Advanced Drafting:*

*Estate Planning and Probate* (2005).

Lisa H. Jamieson, *Creditors' Claims and Allowances in Decedents' Estates*, in 6<sup>th</sup> Annual Building Blocks of Wills, Estates and Probate Course (2005).

29 Renée Colwill Lovelace, *The Aftermath of Catastrophic Medical Events*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

26 Renée Colwill Lovelace, *Texas Elder Law*, in 26<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2002).

23 Sarah Patel Pacheco & Mickey R. Davis, *Tax Considerations in Settlements & Judgments*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

6 Patricia F. Sitchler, *Medical Powers—What Do They Mean? Who Can Act? What Works in the Real World?*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

7 Hon. Ruth Ann Stiles, *"There Has Got To Be an Easier Way!" Alternatives to Probate*, in 15<sup>th</sup> Annual Advanced Drafting: Estate Planning and Probate Course (2004).

4 Lewis D. Wall III, *Beneficiary Designations that Really Work*, in 15<sup>th</sup> Annual Advanced Drafting: Estate Planning and Probate Course (2004).

24 Glen A. Yale, *Preparing and Filing the Form 706: Who, What, How, When and Where*, in 29<sup>th</sup> Annual Advanced Estate Planning & Probate Course (2005).

#### iv. Other CLE

5<sup>th</sup> Annual Intermediate Estate Planning, Guardianship and Elder Law Conference (UT CLE 2003).

Mickey R. Davis, *State/Federal Estate & Gift Tax Workshop*, PESI (2001).

#### v. Other resources

Hon. Russell Austin, *Probate Papers for Probate Court No. 1*, <http://www.co.harris.tx.us/probate/Crt1/Papers.aspx> <last accessed Apr. 27, 2007> (Alternatives To Formal Probate, Creditor Claims Procedures, Dependent Administration and Heirship, Jurisdictional Issues and Litigation in the Probate Arena).

Hon. Russell Austin, *Forms/Handouts/Orders for Probate Court No. 1*, <http://www.co.harris.tx.us/probate/Crt1/Forms.aspx> <last accessed Apr. 27, 2007> (Alternatives To A Guardianship, Descent and Distribution Chart).

Mickey R. Davis, *Learn More*, <http://www.mrd-law.com/more.htm> <last accessed Apr. 27, 2007>

Stanley M. Johanson, *Recent Developments in Estate Planning*, presented Sep. 9, 2005 to Houston Estate and Financial Forum.

<sup>2</sup> TexasBarCLE online library publishes this article as three files. The diagram at file 3, page 43 is excellent.

Glenn M. Karisch, *2005 Texas Legislative Update*, [www.texasprobate.com](http://www.texasprobate.com) <last accessed Apr. 30, 2007>.

Glenn M. Karisch, *The Two UPIAs -- How They Will Change the World*, [www.texasprobate.com](http://www.texasprobate.com) <last accessed Apr. 30, 2007>.



# TEXAS BOARD OF LEGAL SPECIALIZATION

## STANDARDS FOR ATTORNEY CERTIFICATION

These Standards for Attorney Certification are established by the Texas Board of Legal Specialization after approval of the Supreme Court of Texas.

**The Standards for Attorney Certification are divided into two parts.**

**PART I, GENERAL REQUIREMENTS:** These requirements apply to all specialty areas.

**PART II, SPECIFIC AREA REQUIREMENTS:** These are specific requirements that apply to the individual specialty areas. Included are the definitions, substantial involvement, and other requirements for certification and recertification. For example, "Specific Area Requirements for Criminal Law" refers to the specific requirements for certification and recertification in criminal law.

### **Definitions as used in these Standards:**

"**TBLS**" refers to the Texas Board of Legal Specialization.

"**SBOT**" refers to the State Bar of Texas.

"**CLE**" refers to continuing legal education.

"**Plan**" refers to the Texas Plan for Recognition and Regulation of Specialization in the Law.

"**Rules**" refers to the Attorney Rules and Regulations of TBLS.

"**Applicant**" refers to either a certification or recertification applicant unless otherwise specifically stated.

"**Standards**" refers to the Standards for Attorney Certification. The Standards are composed of both the General Requirements and the Specific Area Requirements.

## **PART I**

### **GENERAL REQUIREMENTS**

#### **SECTION I**

##### **PREFACE**

The Supreme Court of Texas has prescribed the following requirements for board certification pursuant to the recommendation of TBLS.

- A. The purpose of these Standards is to recognize those attorneys having special competence in one or more of the specialty areas included in these Standards. In making the determination of special competence, TBLS will consider the following:
  - 1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;

2. The professional accomplishments of the attorney in the specialty area;
  3. The skill and ability of an attorney in the specialty area;
  4. The knowledge of the attorney as shown on the specialty area examination; and
  5. The character and fitness of the attorney.
- B.** No standard shall in any way limit the right of a board certified attorney to practice in all areas of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though board certified in a specific area of law.
- C.** No attorney shall be required to obtain board certification before practicing in any area of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in any area of law, even though not board certified in that area.
- D.** Board certification is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm of which a board certified attorney is a member.

## SECTION II GENERAL REQUIREMENTS

**A. Membership and Practice.**

1. SBOT Membership. An applicant and board certified attorney must be an active member in good standing of the SBOT.
2. Texas Office and Practice.
  - a. Certification Applicant. For the 3 years immediately preceding application, a certification applicant must have maintained a Texas office from which he or she personally conducts business an average of at least 3 days per week, until certification is achieved. Failure to meet this requirement will result in denial of application. TBLS may waive this requirement upon a showing of good cause.
  - b. Board Certified Attorney and Recertification Applicant. A board certified attorney and recertification applicant must continue to meet the substantial involvement requirements pertinent to the specialty area whether or not an office is maintained in Texas. For other recertification qualifications, refer to the applicable Specific Area Requirements.

- B. Forms.** Documents, applications, questionnaires, and examinations involved in the certification and recertification process shall be prescribed and approved by TBLS.
- C. Fees.** An applicant and board certified attorney shall timely pay the required fees established by TBLS.
- D. Expiration of Certification.** Certification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by TBLS.

- E. **Revocation of Certification.** A certificate of special competence issued by TBLS may be revoked for good cause as determined by TBLS.
- F. **Failure to Furnish Information and Misrepresentation.** Certification or recertification may be denied, revoked, or other appropriate action taken because of an applicant's or board certified attorney's failure to furnish the information requested by TBLS or because of his or her misrepresentation of any material fact to TBLS.
- G. **Required Period of Law Practice.** An applicant for certification shall have been engaged in the practice of law for a period of at least 5 years on a full-time basis. Years of practice need not be consecutive.
- H. **Definition of the Practice of Law.** "Practice of law" means full-time legal work done primarily for the purpose of providing legal advice or representation. After admission to the bar of any state of the District of Columbia, service as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of providing legal advice to, or representation of, the corporation or government agency or individuals connected therewith. TBLS may allow other legal work, such as teaching law or writing legal publications, to be combined with the part-time practice of law to satisfy this requirement.

### SECTION III DISCLOSURE OF CONDUCT

- A. **Disciplinary Sanctions.**
1. At the time of filing an application, a certification applicant shall disclose whether he or she has ever been sanctioned for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court, and shall also disclose whether he or she has a pending investigation for professional misconduct. During the application process, the applicant has a continuing duty to promptly report to TBLS the institution of a disciplinary investigation and the receipt of a disciplinary sanction as described above and to provide additional information TBLS may request on such matters.
  2. A board certified attorney has a continuing duty to report any sanction for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct, by any authorized disciplinary authority, including a court, and shall provide additional information TBLS may request on such matters.

3. TBLS may deny certification or recertification, revoke certification, or take other appropriate action upon a finding that an applicant or board certified attorney has engaged in professional misconduct as defined above or upon notice of a pending disciplinary investigation concerning the applicant or board certified attorney. In deciding what action is appropriate, TBLS will consider the seriousness of the underlying facts included in the findings, the passage of time since the sanction, and the conduct of an applicant or board certified attorney since the findings were made.
4. Failure to disclose an investigation or sanction or the failure to respond to a request for information from TBLS on such matters will be considered a material misrepresentation and may be cause for denial, revocation, or other appropriate action by TBLS.

**B. Criminal Conviction.**

1. An applicant or board certified attorney shall disclose whether he or she has ever been convicted of, or given probation or fined for, a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term “serious crime” includes barratry; any felony; any lesser offense involving dishonesty, misappropriation of money or other property or conduct that adversely affects the administration of justice; and any attempt, conspiracy or solicitation of another to commit any of the foregoing crimes.
2. TBLS may deny certification or recertification, revoke certification, or take other appropriate action if an applicant or board certified attorney has been convicted, given probation or fined for a serious crime as defined in this Section.

**SECTION IV  
PEER REVIEW**

**A. Reference Requirements.**

1. An applicant shall submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in the specialty area. For the types of references required for each specialty area, refer to the appropriate Specific Area Requirements. These persons shall be:
  - a. Substantially involved in the specialty area in which the applicant is seeking certification or recertification.
  - b. Individuals who are not partners or associates of the applicant.
  - c. With respect to a certification applicant, peers with whom the applicant has had dealings in the 3 years immediately preceding application.
  - d. With respect to a recertification applicant, peers with whom the applicant has had dealings since certification or the most recent recertification.
2. TBLS may, at its option, request references from other attorneys and/or judges.
3. A Confidential Statement of Reference Form approved by TBLS will be submitted by TBLS directly to the selected peer and shall be returned directly to TBLS.



- B. **Evaluation of Peer Review Information.** In evaluating peer review information on an applicant, TBLS shall consider the knowledge and experience of the references in the applicant's specialty area and the nature of the dealings between the references and the applicant.
- C. **Confidentiality.** All Statements of Reference received by TBLS shall be confidential.
- D. **Denial.** TBLS may deny certification or recertification based on information received through the peer review process. General information concerning the denial shall be provided to the applicant subject to the confidentiality rule.

## SECTION V CONTINUING LEGAL EDUCATION

- A. **CLE Requirement.**
1. **Certification.** A certification applicant must complete 60 hours of CLE in the specialty area within the 3 years immediately preceding application, through December 31 of the year of application.
  2. **Recertification.** A recertification applicant must complete 100 hours of CLE in the specialty area by December 31 of each 5th year of certification.
- B. **Qualifying CLE.** An applicant or board certified attorney must obtain CLE credit in the specialty area in which certification or recertification is sought by the following methods:
1. Attendance at a live CLE program, including live video conferences;
  2. Viewing or listening to an on-line CLE program;
  3. Participating in a CLE teleconference;
  4. Attendance at a showing of a CLE video;
  5. Self-study such as reading cases or legal periodicals, subject to the limitation of 5 hours credit each calendar year; and
  6. Other activity in the specialty area, to be determined on an individual basis, such as:
    - a. Teaching a CLE course for attorneys or paralegals;
    - b. Participation as a panelist or speaking on a symposium or similar program;
    - c. Attendance at a lecture series or similar program sponsored by a qualified education institution or bar group;
    - d. Authorship of a book or article published in a professional publication or journal; and
    - e. Active participation in the work of a professional committee dealing with a specific problem in the specialty area.

## SECTION VI SUBSTANTIAL INVOLVEMENT

- A. **Percentage of Practice Requirement in the Specialty Area.** An applicant or board certified attorney must devote a minimum required percentage of time practicing in a specialty area each year as set forth in the Specific Area Requirements unique to each specialty area.
1. A certification applicant must devote the required percentage during each year of the 3 years immediately preceding application.
  2. A board certified attorney must devote the required percentage during each year of certification. Refer to the Recertification Requirements in the Specific Area Requirements.
  3. Failure to meet the required percentage of practice may be grounds for denial or revocation.
- B. **Specific Tasks Requirements.** An applicant must provide information as required by TBLS concerning specific tasks he or she has performed in the applicable specialty area. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by an applicant in the specialty area.
- C. **Exceptions.** A certification applicant is expected to meet the tasks requirements listed in the Specific Area Requirements in the specialty area. TBLS may permit exceptions for an applicant who does not meet the task requirements specified in an individual specialty area. For the substantial involvement required for each specialty area, please refer to the appropriate Specific Area Requirements.
1. **Judicial Experience.**
    - a. **Certification Applicant.** TBLS may permit a certification applicant to substitute judicial experience appropriate to each specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters the certification applicant has handled in the specialty area. The judicial experience shall be at least equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of TBLS.
    - b. **Board Certified Attorney and Recertification Applicant.** TBLS may permit a board certified attorney or recertification applicant who is serving as a full-time county, state or federal trial, appellate, probate, family, or bankruptcy judge (including a U.S. magistrate judge or Texas associate judge) to remain certified during his or her judicial service subject to the following conditions:
      - (1) A board certified attorney or recertification applicant who is affected by this provision shall continue to pay the annual fee.

- (2) If a board certified attorney desires to continue certification after December 31 of the calendar year which he or she ceases to serve as a full-time judge, he or she shall timely complete the recertification process with TBLS and shall comply with the TBLS Rules. A board certified attorney whose certification was extended by reason of service as a full-time judge must satisfy all the requirements for recertification except that, for purposes of the initial recertification only, the substantial involvement requirement shall be waived and the CLE requirement shall be prorated based on the year in which the board certified attorney ceased judicial service.
2. Unusual or Exceptional Experience. TBLS may permit a certification applicant to substitute unusual or exceptional experience for one or more of the specific area requirements in the specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters that the certification applicant has handled in the specialty area. The unusual or exceptional experience shall at least be equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of TBLS.

## **SECTION VII EXAMINATION**

- A. Passing of an Examination. A certification applicant must pass a written examination applied uniformly to all certification applicants to demonstrate sufficient knowledge, proficiency, and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public.
- B. Failure of an Examination. After a certification applicant has taken and failed an examination 3 times in a specialty area, the applicant is ineligible to apply for the next 3 years' examination in that specialty area.

**PART II**  
**SPECIFIC AREA REQUIREMENTS**  
**FOR**  
**ESTATE PLANNING AND PROBATE LAW**

**SECTION I**  
**SUBSTANTIAL INVOLVEMENT AND SPECIAL COMPETENCE**

- A. **Definition.** The practice of estate planning and probate law means practice within the area of law involving the Texas Probate Code, the Internal Revenue Code and other federal, state and local statutes and interpretive material in connection with matters in which issues of estate planning and probate are significant factors. The practice of estate planning and probate law includes, but is not limited to,
1. consulting with clients and giving advice regarding estate planning, probate and guardianship law;
  2. analyzing, planning and making recommendations for the conservation and disposition of clients' estates in accordance with the clients' expressed desires, including tax effects and consequences;
  3. drafting legal instruments to effectuate the clients' estate plans, e.g., wills, trusts and other legal documents;
  4. representing clients before courts which hear and decide cases involving decedent's estates and guardianships;
  5. representing clients by litigating contested probate and guardianship issues in trial and appellate courts;
  6. representing clients in cases before the Internal Revenue Service and other taxing authorities and courts with respect to proposed, completed and ongoing transactions and other matters involving tax issues which are related to estate planning and probate law; and
  7. representing clients in the administrative appeal and litigation of tax issues involving transfers of assets during lifetime and at death.

For the specific area requirements please refer to the sections below.

B. **Substantial Involvement for Certification**

Certification applicants must show substantial involvement and special competence in estate planning and probate law practice during each of the 3 years immediately preceding application by providing such information as may be required by the TBLS.

1. Certification applicants must show that during each of the 3 years immediately preceding application they have devoted a minimum of 25% of their time practicing estate planning and probate law as defined in Section I,A of the Specific Area Requirements for Estate Planning and Probate Law.
2. Certification applicants must show their substantial involvement and special competence in estate planning and probate law during each of the 3 years immediately preceding application by providing such information as may be required by the TBLS regarding both of the following categories. This requires an adequate involvement in a substantial portion of the activities described in both I,B,2,a (1-2) and I,B,2,b.

a. **Estate Planning**

- (1) Counseled persons in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters.
- (2) Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, marital deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney and other estate planning instruments; and gift and generation-skipping transfer tax returns including representation before the Internal Revenue Service in connection with such tax returns.

b. **Estate Administration**

Handled or advised with respect to the probate and/or administration of decedents' estates and trusts, including dependent and independent administration and muniments of title, guardianships, determinations of heirships, and will and trust litigation; preparation, review or supervision of the preparation of federal estate tax returns, Texas inheritance tax returns, and U.S. Fiduciary income tax returns; and representation before the Internal Revenue Service, state taxing authorities, or the courts, in connection with such tax returns and related controversies.

C. **Substantial Involvement for Recertification**

1. Except as provided for in I,C,2 below, recertification applicants must show substantial involvement and special competence in estate planning and probate law by providing such information as may be required by the TBLS, including confirmation that during each year of the five years of certification they have devoted a minimum of 25% of their time practicing estate planning and probate law as defined in Section I,A of the Specific Area Requirements for Estate Planning and Probate Law.
2. A certified attorney whose certification was extended by reason of service as a full-time judge (as detailed in Part I, Section VI,C,1,b) must satisfy all requirements for recertification except that, for initial recertification only, the substantial involvement requirement shall be waived.

**SECTION II  
REFERENCES**

Applicants should refer to Section IV of the General Requirements before choosing references, and list the following references to attest to their competence in the practice of estate planning and probate law.

- A. Three attorneys who practice in the applicant's geographic area and are familiar with applicant's estate planning and probate law practice.
- B. One attorney who is familiar with applicant's estate planning and probate law practice.

- C. One county or probate judge before whom applicant has appeared in an estate planning and probate law matter. If there is not a county or probate judge who is also an attorney within applicant's geographical area, applicant shall submit the name of a judge of a court of record before whom applicant has appeared.

APPENDIX C  
SECTION V  
EXAMINATION

- A. **Place.** The exam for a certification applicant shall be conducted in such place and on such date as set by TBLS.
- B. **Exam Fee.** A fee of \$250.00 shall be due and payable after a certification applicant has been notified that he or she is eligible to take the exam. The full exam fee must be paid for each exam taken. The exam fee may be adjusted by TBLS as it deems appropriate.
- C. **Special Exam Requests.** Special exam arrangements can be made if a certification applicant is physically unable to take the exam as regularly administered.
- D. **Confidentiality.** TBLS handles all exams on a confidential basis. A certification applicant shall not divulge the contents of an exam to another person. Any violation of the confidentiality of an exam will result in the denial, suspension, or revocation of certification.
- E. **Improper Exam Conduct.** If TBLS determines that a certification applicant engaged in improper or unethical conduct during the exam process, the certification applicant will automatically be given a failing score on the exam. The certification applicant shall be prohibited from filing any future application for a period of 3 years following the incident, and must secure TBLS approval prior to submitting any future application.
- F. **Determination of Pass/Fail Line.** TBLS shall set the pass/fail line for each specialty area.
- G. **Passing the Exam.**
1. **Notification.** A certification applicant who passes the exam will be notified, but will not be provided his or her exam scores.
  2. **Retention.** The exam books of a certification applicant who passed the exam will be destroyed after final grading.
- H. **Failure of Exam.**
1. **Notification.** A certification applicant who fails the exam will be notified of his or her exam score and the required passing score.
  2. **Regrade.** Exams within 2 percentile points below the passing grade will be automatically regraded.
  3. **Review / Appeal.** A certification applicant who fails the exam may not review his or her exam. A certification applicant may not appeal the failure of the exam.
  4. **Retention.** The exam books of a certification applicant who failed the exam will be destroyed after one year.

# Estate Planning and Probate Law

## INFORMATION

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

Bar Card Number: \_\_\_\_\_

## AGREEMENT AND AUTHORIZATION

In submitting information to TBLS, I verify that I have answered all questions completely and truthfully and that all information provided is accurate. I agree to abide by the provisions of the TBLS Rules and Regulations and to pay all fees required by TBLS. I authorize all persons and entities to provide to the TBLS or its authorized representative all information relevant to my certification, specifically including records in possession of a district grievance committee, the Chief Disciplinary Counsel, or the Minimum Continuing Legal Education Department of the State Bar of Texas. I understand that all information received by the TBLS shall be treated confidentially and that I have no right of access to information received by the TBLS from third parties. I agree not to modify or alter the content provided on this application.

Signature: \_\_\_\_\_

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

## INSTRUCTIONS

### GENERAL

All Applications are due May 1, 2006. If you have any questions, contact the Estate Planning and Probate Law Certification Analyst, Kathy Logue, at klogue@texasbar.com, or call 512-453-7266, ext. 105 / 800-204-2222, ext. 1454.

### REQUIRED INFORMATION

You must complete **SECTIONS I-VI** and answer all questions. If the question or information requested is not applicable, enter "NA". TBLS contact information requires an office address, office phone and fax, and e-mail for contact purposes. Complete **SECTION II, A - Contact Information**. Notify TBLS if you move, as our records are maintained independently from the State Bar Membership Department. Completion of **SECTION VI - Substantial Involvement** is required regardless of the **Application Method** selected in **SECTION I**. The application will not be processed without the completion of information requested of Estate Planning and Probate Law matters handled during the specified time period. All substantial involvement must be completed by the application deadline - **May 1, 2006**.

### DEFINITION OF SPECIALTY AREA

The practice of estate planning and probate law means practice within the area of law involving the Texas Probate Code, the Internal Revenue Code and other federal, state and local statutes and interpretive material in connection with matters in which issues of estate planning and probate are significant factors. The practice of estate planning and probate law includes, but is not limited to (1) consulting with clients and giving advice regarding estate planning, probate, and guardianship law; (2) analyzing, planning and making recommendations for the conservation and disposition of clients' estates in accordance with the clients' expressed desires, including tax effects and consequences; (3) drafting legal instruments to effectuate the clients' estate plans, e.g., wills, trusts and other legal documents; (4) representing clients before courts which hear and decide cases involving decedent's estates and guardianships; (5) representing clients by litigating contested probate and guardianship issues in trial and appellate courts; (6) representing clients in cases before the Internal Revenue Service and other taxing authorities and courts with respect to proposed, completed and ongoing transactions and other matters involving tax issues which are related to estate planning and probate law; and (7) representing clients in the administrative appeal and litigation of tax issues involving transfers of assets during lifetime and at death.

### SUBSTANTIAL INVOLVEMENT

You must show substantial involvement and special competence in estate planning and probate law practice by providing the information requested in **Section VI - Substantial Involvement**.

**Section VI, A - Percent of Time.** You must provide your percentages of time devoted to the practice of estate planning and probate law during each of the 3 years immediately preceding application.

**Section VI, B - Estate Planning Counseling.** You must provide the approximate numbers persons you have counseled during the 3 years immediately preceding application.



**Section VI, C - Estate Planning Experience Summary.** You must provide the approximate numbers of various estate planning instruments in which you have performed the majority of work or supervised during the 3 years immediately preceding application.

**Section VI, D - Estate Administration Experience Summary.** You must provide the approximate numbers of probate and/or administration of estates and trust matters in which you have performed the majority of work or supervised during the 3 years immediately preceding application.

The information you provide in **Section VI, B-D** requires you to show adequate involvement in a substantial portion of the activities in both Estate Planning and Estate Administration described below.

Estate Planning (1) Counseled persons in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters; (2) Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, marital deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney and other estate planning instruments; and gift and generation-skipping transfer tax returns including representation before the Internal Revenue Service in connection with such tax returns.

Estate Administration Handled or advised with respect to the probate and/or administration of decedents' estates and trusts, including dependent and independent administration and muniments of title; guardianships; determinations of heirships; and will and trust litigation; preparation, review or supervision of the preparation of Federal Estate Tax Returns, Texas Inheritance Tax Returns, and U.S. Fiduciary Income Tax returns, and representation before the Internal Revenue Service, state taxing authorities, or the courts in connection with such tax returns and related tax controversies.

**Section VI, E - Addendum.** You may provide any additional information that would be helpful in analyzing the number of matters you report in Section VI, B-D.

#### **FINAL SUBMISSION**

Your application will not be considered completed and submitted to TBLS until the application fee is paid.

## PAYMENT METHOD

### Pay by Check

Make checks payable to the "Texas Board of Legal Specialization", and please note your Bar Card Number on the check.

### Send payment to:

Texas Board of Legal Specialization  
P.O. Box 12487  
Austin, TX 78711

Once TBLS receives payment, your record will be updated to reflect receipt of your fee(s) payment. This process takes 2-4 weeks. If you have any questions, contact the Estate Planning and Probate Law Certification Analyst, Kathy Logue, at [klogue@texasbar.com](mailto:klogue@texasbar.com), or call 512-453-7266, ext. 105 / 800-204-2222, ext. 1454.

Area: Estate Planning and Probate Law - Total Payment: \$150.00

### Payment Information Summary

Name \_\_\_\_\_  
Bar Card # \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
Zip code \_\_\_\_\_  
Phone \_\_\_\_\_

### Pay by Credit Card

#### Select Credit Card

- ☐ Visa
- ☐ Master Card
- ☐ American Express
- ☐ Discover

Name on credit card \_\_\_\_\_  
Card number \_\_\_\_\_  
Expiration Month \_\_\_\_\_  
Expiration year \_\_\_\_\_

*What is the billing address for your credit card?*

First name \_\_\_\_\_  
Last name \_\_\_\_\_  
Address \_\_\_\_\_  
Address 2 \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
Zip code \_\_\_\_\_

## I - Application Method

In accordance with the Attorney Standards for Estate Planning and Probate Law, you must demonstrate your substantial involvement by applying in one of the following three Application Methods. Choose only one Application Method. Complete Section VI of the application regardless of the Application Method selected.

*Please check only one*

☐ **1. Standard**

You must show adequate involvement in a substantial portion of the activities in both Estate Planning and Estate Administration as described below.

Estate Planning. (1) Counseled persons in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters; (2) Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, marital deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney and other estate planning instruments; and gift and generation-skipping transfer tax returns including representation before the Internal Revenue Service in connection with such tax returns.

Estate Administration. Handled or advised with respect to the probate and/or administration of decedents' estates and trusts, including dependent and independent administration and muniments of title; guardianships; determinations of heirships; and will and trust litigation; preparation, review or supervision of the preparation of Federal Estate Tax Returns, Texas Inheritance Tax Returns, and U.S. Fiduciary Income Tax returns, and representation before the Internal Revenue Service, state taxing authorities, or the courts in connection with such tax returns and related tax controversies.

You must provide the required information in Section VI of this application.

☐ **2. Judicial Experience**

TBLS may permit you to substitute judicial experience appropriate to each specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters you have handled in the specialty area. The judicial experience shall at least be equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of the TBLS.

**You must submit an explanation** using the "Explanation" area below to describe how your judicial experience is equivalent to the Specific Area Requirements for this specialty area. In addition to your explanation, you must provide the required information in Section VI of this application.

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☐ **3. Unusual or Exceptional Experience**

TBLS may permit you to substitute unusual or exceptional experience for one or more of the specific area requirements in the specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters you have handled in the specialty area. The unusual or exceptional experience shall at least be equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of the TBLS.

**You must submit an explanation** using the "Explanation" area below to describe how your unusual or exceptional experience is equivalent to the Specific Area Requirements for this specialty area. In addition to your explanation, you must provide the required information in Section VI of this application.

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## II - General Information

### IIA - Contact Information

Provide an office address, office phone and fax, and e-mail. If you move after the submission of your application, notify the TBLS immediately as our records are maintained independently from the State Bar Membership Department.

Name\_\_\_\_\_

Firm\_\_\_\_\_

Address 1\_\_\_\_\_

Address 2\_\_\_\_\_

City\_\_\_\_\_

County\_\_\_\_\_

State\_\_\_\_\_

Zip\_\_\_\_\_

Office Phone\_\_\_\_\_

Office Fax\_\_\_\_\_

Email Address\_\_\_\_\_

Web site\_\_\_\_\_

## IIB - Previous Employers

List previous law firm(s) or employer(s) and office address(es) for the past 5 years.

### 1. Previous Employers

Name \_\_\_\_\_  
Address 1 \_\_\_\_\_  
Address 2 \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Beginning Month \_\_\_\_\_  
Beginning Year \_\_\_\_\_  
Ending Month \_\_\_\_\_  
Ending Year \_\_\_\_\_

### 2. Previous Employers

Name \_\_\_\_\_  
Address 1 \_\_\_\_\_  
Address 2 \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Beginning Month \_\_\_\_\_  
Beginning Year \_\_\_\_\_  
Ending Month \_\_\_\_\_  
Ending Year \_\_\_\_\_

### 3. Previous Employers

Name \_\_\_\_\_  
Address 1 \_\_\_\_\_  
Address 2 \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Beginning Month \_\_\_\_\_  
Beginning Year \_\_\_\_\_  
Ending Month \_\_\_\_\_  
Ending Year \_\_\_\_\_

## IIC - States Licensed

Excluding Texas, please list all other states in which you are currently licensed to practice law and provide the year of each License Date.

### 1. States Licensed

State \_\_\_\_\_

*(exclude Texas)*

License Year \_\_\_\_\_

### 2. States Licensed

State \_\_\_\_\_

*(exclude Texas)*

License Year \_\_\_\_\_

### III - References

The TBLS requires you to provide a total of 10 names of attorneys and/or judges including his/her contact information to serve as references and attest to your competence in estate planning and probate law. You must have dealt with each of these references in a estate planning and probate law matter **within the 3 years immediately preceding application**. The references, themselves, should be substantially involved in estate planning and probate law.

The TBLS may, at its option, send references to other judges and/or attorneys.

The TBLS will consider the knowledge and experience of references in evaluating your application. You may not submit current partners or associates to serve as references.

Reference responses must be received by the TBLS no later than May 31, 2006. You should contact the individuals you submit to let him/her know that a Statement of Reference form will be sent by TBLS and that it will need to be returned to the TBLS by May 31, 2006.

#### **ALL STATEMENTS OF REFERENCE RECEIVED BY THE TBLS ARE CONFIDENTIAL.**

Provide **10** references that you have dealt with in an estate planning and probate law matter **since January 1, 2003**. You may not submit current partners or associates to serve as references. Five (5) of the 10 references provided should meet the following requirements:

- 3 attorneys who practice in your geographic area and are familiar with your estate planning and probate law practice.
- 1 attorney who is familiar with your estate planning and probate law practice.
- 1 county or probate judge before whom you have has appeared in an estate planning and probate law matter. If there is not a county or probate judge who is also an attorney within your geographical area, you may submit the name of a judge of a court of record before whom you have appeared.

The additional 5 references provided should be a representative list of judges and/or attorneys that you have dealt with in an estate planning and probate law matter.

#### **1. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

#### *Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_



**2. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**3. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**4. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**5. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**6. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**7. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**8. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**9. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

**10. References**

Bar Card # \_\_\_\_\_

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

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

Email Address \_\_\_\_\_

*Position*

- ☐ Co-Counsel
- ☐ Opposing Counsel
- ☐ Consulting Attorney
- ☐ Judge
- ☐ Other

If Other, Describe \_\_\_\_\_

## **IV - Continuing Legal Education**

### **IVA - Self-Study**

Upon completion of this section, any self-study hours claimed will appear on your TBLS CLE Summary and update your overall TBLS CLE hours. You may review your CLE Summary on-line at [www.tbls.org/Cert/AttGetStarted.asp](http://www.tbls.org/Cert/AttGetStarted.asp) or call TBLS and request that your CLE Summary be mailed to you.

You are eligible to receive 5 hours of self-study credit in Estate Planning and Probate Law during each of the calendar years listed below. To receive credit, mark the box for each applicable year. Upon completion of this section, any self-study hours claimed will appear on your TBLS CLE Summary and update your overall TBLS CLE hours.

- ☐ 2006
- ☐ 2005
- ☐ 2004
- ☐ 2003

## **IVB - TBLS CLE Summary**

ALL CLE MUST BE IN THE SPECIALTY AREA.

You are required to complete 60 hours of continuing legal education (CLE) in your specialty area with a maximum of 30 hours per calendar year, including 5 hours of self-study per calendar year. Each TBLS CLE Summary displays the most recent 4 years of CLE activity.

We access your CLE information from the Minimum Continuing Legal Education Department of the State Bar of Texas.

You may view your TBLS CLE Summary on-line at the Get Certified section of [www.tbbs.org](http://www.tbbs.org) or contact TBLS for a copy to be sent to you. You may also do a search for upcoming courses in your specialty area on this website or contact TBLS for a course listing.

## V - Disclosure of Conduct

If you **have not** been involved in any of the matters listed below, no action is required.

If you **have been** involved in any of the matters listed below, complete the appropriate section of the Disclosure of Conduct Form as instructed and return it to the TBLS.

Please note that you have a continuing obligation to report these matters at anytime during the certification process. Failure to do so within 30-days after the event is grounds for denial of your application or revocation of a certification that is subsequently granted.

**Disciplinary Sanctions** - This includes any disciplinary sanctions by the SBOT, a district court in Texas, or an entity in another state, which has authority over attorney discipline. Specific sanctions include disbarment, resignation, suspension, reprimand (public or private), orders of rehabilitation or referral to the Professionalism Enhancement Program of the SBOT.

**Finding of Just Cause** - You have received notification from a district grievance committee of the SBOT or a similar designated entity in another state that a finding of just cause as defined in Section 1.06(P) of the Texas Rules of Disciplinary Procedure has been made against you.

**Criminal Matters** - This includes: a criminal indictment or information or a conviction, probation (whether deferred or not) or fine for a serious crime.

**Concluded Malpractice Matters** - This includes malpractice or other private civil actions alleging attorney misconduct, which have been CONCLUDED against you by settlement, dismissal or judgment within the preceding 5 years. It also includes a finding by the court that you have provided ineffective assistance in a criminal matter.



# DISCLOSURE OF CONDUCT

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

Bar Card No. \_\_\_\_\_

Board Certified Attorneys and Certification Applicants have an obligation to disclose and report the following matters at any time during the certification period or certification application process: (i) any disciplinary sanction(s) (i.e., disbarment, resignation, suspension, reprimand [private or public], or order of rehabilitation; (ii) a criminal indictment or information for a felony or misdemeanor involving moral turpitude or other serious crime as defined in the Attorney Standards, Part I - General Requirements, Section III, B,1; (iii) a conviction of (including probation or deferred adjudication), or fine for a felony or misdemeanor involving moral turpitude or other serious crime as defined in the Attorney Standards, Part I - General Requirements, Section III, B,1; (iv) a suit for legal malpractice or other private civil action alleging attorney misconduct that has been **CONCLUDED** (by settlement, dismissal, or judgment); or (v) a finding of ineffective assistance of counsel.

**CERTIFICATION APPLICANTS** must also disclose and report a finding of just cause by a grievance committee.

**All such matters must be reported to TBLS within 30-days after the initiation of such proceedings, or imposition of sanction or judgment, as appropriate. Failure to do so may be grounds for denial of certification or recertification or revocation of certification.**

## DISCIPLINE

**INSTRUCTIONS:** Complete the appropriate section below and submit this form to TBLS. Provide a signed copy of the sanction along with an explanation you wish to be considered in the review of the matter. Attach copies of any letters, orders, or other documents that you feel are relevant.

	<u>Date Rcvd</u>	<u>Cause #</u>	<u>Griev Com # / Court</u>
<input type="checkbox"/> <b>Disbarment</b>	_____	_____	_____
<input type="checkbox"/> <b>Resignation</b>	_____	_____	_____
<input type="checkbox"/> <b>Private Reprimand</b>	_____	_____	_____
<input type="checkbox"/> <b>Public Reprimand</b>	_____	_____	_____
<input type="checkbox"/> <b>Order of Rehabilitation</b>	_____	_____	_____

	<u>Cause #</u>	<u>Date Began</u>	<u>Date Ends</u>	<u>Griev Com # / Court</u>
<input type="checkbox"/> <b>Probated Suspension</b>	_____	_____	_____	_____
<input type="checkbox"/> <b>Active Suspension</b>	_____	_____	_____	_____
<input type="checkbox"/> <b>Combination Suspension</b>	_____	_____	_____	_____

**CERTIFICATION APPLICANTS ONLY:** Complete the appropriate section below and submit this form to TBLS. Provide an explanation you wish to be considered in the review of this matter along with a copy of the complaint, order, any letters, or other documents that you feel are relevant.

### Finding of Just Cause

Resulting in the following:	<u>Date of Finding</u>	<u>Cause #</u>	<u>Griev Com # / Court</u>
<input type="checkbox"/> <b>Evidentiary</b>	_____	_____	_____
<input type="checkbox"/> <b>Disciplinary Lawsuit</b>	_____	_____	_____

## DISCLOSURE OF CONDUCT

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

Bar Card No. \_\_\_\_\_

**INSTRUCTIONS:** Complete the appropriate section below and submit this form to TBLS. Provide an explanation that you wish to be considered in the review of the matter, along with copies of any orders, judgment, letters or other documents that you feel are relevant.

<b>MALPRACTICE SUIT / PRIVATE CIVIL SUIT</b> <b>INEFFECTIVE ASSISTANCE OF COUNSEL</b>
--

Case Title: \_\_\_\_\_ Court: \_\_\_\_\_

Cause Number: \_\_\_\_\_ Date Concluded: \_\_\_\_\_

**Indicate the manner of resolution.** (Mark as many of the boxes below as appropriate to describe the resolution of the matter.)

☐ (1) Non-Suited      ☐ (2) Dismissed      ☐ (3) Settled (Amount: \$\_\_\_\_\_ )      ☐ (4)

Mediated

☐ (5) Summary Judgment      ☐ (6) Judgment      ☐ (7) Other (provide details)\_\_\_\_\_

**Prevailing Party:**      ☐ Plaintiff      ☐ Defendant      ☐ No Party Prevails

Name(s) of Prevailing Party: \_\_\_\_\_

<b>CRIMINAL MATTERS</b>
-------------------------

	<u>Date Rcvd</u>	<u>Cause #</u>	<u>Name of Court</u>
<input type="checkbox"/> <b>Misdemeanor</b>			
<input type="checkbox"/> Information/Indictment	_____	_____	_____
<input type="checkbox"/> Conviction	_____	_____	_____
<input type="checkbox"/> Probation	_____	_____	_____
<input type="checkbox"/> Fine	_____	_____	_____
<input type="checkbox"/> <b>Felony</b>			
<input type="checkbox"/> Indictment	_____	_____	_____
<input type="checkbox"/> Probation	_____	_____	_____
<input type="checkbox"/> Fine	_____	_____	_____

## **VI - Substantial Involvement**

### **VIA - Percent of Practice**

You must show that during each of the 3 years immediately preceding this application, you have devoted a minimum of 25% of your time to practicing Estate Planning and Probate Law as defined in the Attorney Standards. Enter the approximate percentages of your time below.

#### *Estate Planning and Probate Law*

2005 \_\_\_\_\_%

2004 \_\_\_\_\_%

2003 \_\_\_\_\_%

## VIB - Estate Planning Counseling

The application will not be processed without the information for the Estate Planning and Probate Law matters that you have handled during the 3 years immediately preceding Application.

You must show adequate involvement in a substantial portion of activities in both Estate Planning and Estate Administration as described below.

Enter the approximate number of persons you have counseled during the 3 years immediately preceding Application. Include only instances of actual representation of clients and not instances of casual counseling.

Enter a number for each counseling category listed. You should not leave any blanks.

### 1. Estate Planning Counseling

- |       |   |  |
|-------|---|--|
| <hr/> | 1 | Gifts  |
| <hr/> | 2 | Trusts   |
| <hr/> | 3 | Life Insurance                                 |
| <hr/> | 4 | Business Arrangements and Agreements           |
| <hr/> | 5 | Wills  |
| <hr/> | 6 | Other Estate Planning Matters (describe below) |
-

## VIC - Estate Planning Experience Summary

The application will not be processed without the information for the Estate Planning and Probate Law matters that you have handled during the 3 years immediately preceding Application.

You must show adequate involvement in a substantial portion of activities in both Estate Planning and Estate Administration as described below.

Enter the approximate numbers of the following estate planning instruments in which you have Performed the Majority of Work or Supervised during the 3 years immediately preceding Application.

Enter a number under each role for the estate planning instruments listed. You should not leave any blanks.

### 1. Estate Planning Experience Summary

Performed Majority of Work	Supervised	
_____	_____	1 Simple Wills without tax planning including pour over wills.
_____	_____	2 Complex Wills including provisions for testamentary trusts, marital deductions and elections.
_____	_____	3 Revocable inter vivos trusts.
_____	_____	4 Irrevocable inter vivos trusts.
_____	_____	5 Other irrevocable trusts.
_____	_____	6 Business planning agreements.
_____	_____	7 Powers of Attorney.
_____	_____	8 Gift and generation-skipping transfer tax returns including representation before the Internal Revenue Service in connection with such tax returns.
_____	_____	9 Other estate planning instruments. (describe below)

---

## VID - Estate Administration Experience Summary

The application will not be processed without the information for the Estate Planning and Probate Law matters that you have handled during the 3 years immediately preceding Application.

You must show adequate involvement in a substantial portion of activities in both Estate Planning and Estate Administration as described below.

Enter the approximate number of the following matters that you have Performed the Majority of Work or Supervised with respect to the probate and/or administration of estates and trusts during the 3 years immediately preceding Application.

Enter a number under each role for the probate and/or administration of estates and trust matters listed. You should not leave any blanks.

### 1. Estate Administration Experience Summary

Performed Majority of Work	Supervised	
<hr/>	<hr/>	1 Will probates with dependent administrations.
<hr/>	<hr/>	2 Will probates with independent administrations.
<hr/>	<hr/>	3 Will probates as muniments of title.
<hr/>	<hr/>	4 Guardianships.
<hr/>	<hr/>	5 Determinations of heirship.
<hr/>	<hr/>	6 Will and trust litigation.
<hr/>	<hr/>	7 Construction suits.
<hr/>	<hr/>	8 Ancillary Will probates.
<hr/>	<hr/>	9 Intestate administrations.
<hr/>	<hr/>	10 Other litigation matters relating to trusts or guardianship estates. (describe below)
<hr/>		
<hr/>	<hr/>	11 Federal Estate Tax Return examinations or controversies.
<hr/>	<hr/>	12 Texas Inheritance Tax Return examinations or controversies.
<hr/>	<hr/>	13 U. S. Fiduciary Income Tax Return examinations or controversies.
<hr/>	<hr/>	14 Gift Tax controversies.
<hr/>	<hr/>	15 Other related tax controversies. (describe below)
<hr/>		
<hr/>	<hr/>	16 Federal Estate Tax Returns.
<hr/>	<hr/>	17 Texas Inheritance Tax Returns.
<hr/>	<hr/>	18 U. S. Fiduciary Income Tax Returns.
<hr/>	<hr/>	19 Federal Gift Tax Returns.
<hr/>	<hr/>	20 Other Tax Returns or Schedules including Generation Skipping Transfer Returns or Schedules. (describe below)
<hr/>	<hr/>	

## VIE - Addendum

Submit any additional information that would be helpful in analyzing the number of Estate Planning and Estate Administration matters reported in Section VI, B-D of the application. Otherwise, indicate "NA" or "Not Applicable".

## 1. Addendum

[illegible]

# ESTATE PLANNING AND PROBATE LAW EXAM SPECIFICATIONS

## Date/Time/Location/Fee

The 2006 Attorney Exam is Monday, October 16, in Austin, at the Frank C. Erwin, Jr. Special Events Center. The exam fee is \$250 per specialty exam. Additional information and specific details concerning exam day schedule, registration information, and payment instructions are mailed in August to approved candidates.

## Description/Format

TBLS attorney exams are 6 hours in length, consisting of a three hour Part I (morning session) and a three hour Part II (afternoon session). Part I is three essay questions and Part II is approximately 100 objective questions. Part I is worth 300 points and Part II is worth 200 points. Maximum possible score is 500.

## Standardized Ethics Section

TBLS has determined that knowledge of the Texas Disciplinary Rules of Professional Conduct (TDRPC) should be an integral part of the examination for all specialty areas. Because of the importance of this subject and to provide consistent coverage across all specialty areas, the TBLS has prepared ethics questions, which will be given during Part II of all the specialization exams.

The ethics questions will involve an array of hypothetical fact situations, which will cover several different aspects of ethical issues that arise in the practice of law. The questions **will not** be limited to the practice of any one specialty area and consequently you are advised to be familiar with all provisions of the TDRPC.

## Results

Exam results are mailed in late December. Exam results are not available over the phone or on the TBLS web site.

## Study Materials

There are no preparatory courses provided by TBLS. Past exams are not available.

The following **Statement of Knowledge, Skills and Abilities** is applicable to all specialties and the **Estate Planning & Probate Law Subject Matter Outline** provides the specific topics covered on the exam.

## **STATEMENT OF KNOWLEDGE, SKILLS AND ABILITIES**

The purpose of the written certification examinations is to ensure candidates demonstrate special competence in the following skills and areas of knowledge.

### **Knowledge**

- Specific identification and general application of statutes, regulations and other authorities that pertain to the practice in the candidate's specialty;
- Identification and definition of the jurisdiction and authority of the courts, administrative agencies and adjudicative bodies that take cognizance over regulations and laws that pertain in the candidate's specialty;
- Familiarity with the rules of the courts and administrative agencies before which the candidate practices his/her specialty;
- Identification and articulation of the holdings of the leading cases in the area of the specialty;
- Identification and articulation of the trends in the law, based on recent and current legislation, case law and legal scholarship.



## **Skills**

- Ability to communicate effectively to a variety of audiences (e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.);
- Ability to develop and evaluate strategies for solving a problem or accomplishing an objective;
- Ability to analyze and apply legal rules and principles;
- Ability to analyze, sort and use facts and to plan and direct factual investigations;
- Ability to organize and manage a legal task efficiently within time constraints;
- Ability to represent a client consistent with applicable ethical standards; and
- Ability to invoke and utilize the procedures normally required in the area of specialty, including pleadings and filings.

## **ESTATE PLANNING AND PROBATE LAW SUBJECT MATTER OUTLINE**

Estate planning and probate law is the practice of law dealing with the analysis, planning and recommendations for the conservation and disposition of clients' estates in accordance with the clients' expressed desires, including tax effects and consequences of such planning. Additionally, it is the drafting and preparation of legal instruments to effectuate the clients' estate plans, e.g., wills, trusts and other legal documents, and the administration of estates. The intent of the exam is to fairly test one's ability to display special knowledge, skills, and proficiency in the Estate Planning and Probate area.

You will need to bring a small **calculator** that runs on batteries and operates quietly.

### **Content- The following topics may be on the exam:**

1. Community and Separate Property
2. Formalities of Wills
3. Intestate Succession
4. Gifts
5. Life Insurance
6. Trusts (including the Texas Trust Code)
7. Business Agreements
8. Taxation of Employee Benefits
9. Original and Ancillary Probate and Administrative Procedures, including guardianships
10. Elections (State Law and Tax Elections)
11. Disclaimers
12. Income Taxation of Estates, Trusts and Beneficiaries
13. Estate, Gift, Generation Skipping Transfer Taxes, and Chapter 14 (including, but not limited to, the unified rate concepts, the marital deduction, transfers during life, powers of appointment, life insurance, annuities, jointly owned property, the charitable deduction, special use valuation, extended payments, the use of disclaimers in estate planning, basics of generation-skipping taxes, and Chapter 14)
14. The Income Tax Basis of Property Acquired by Gift or From a Decedent
15. Texas Disciplinary Rules of Professional Conduct
16. Planning for Disability (Property Management, Medical Care, Natural Death Act)
17. Non-Probate Assets (e.g., Multiple party accounts, life insurance)
18. Texas Uniform Transfers to Minors Act
19. Planning for Asset Protection
20. Elder Law Issues (Including government entitlements)
21. Uniform Prudent Investor Act
22. Uniform Principal and Income Act

APPENDIX F

FROST NATIONAL BANK BUILDING  
6750 WEST LOOP SOUTH  
SUITE 500  
BELLAIRE, TEXAS 77401-4199

**RUSSELL W. HALL**  
ATTORNEY AT LAW  
A PROFESSIONAL CORPORATION

TEL. (713) 662-3853  
FAX (713) 662-3854  
RWHALL@RWHPC.COM  
WWW.RWHPC.COM

April 12, 2005

0250.0008.0014

Kathy Logue  
Certification Analyst  
Texas Board of Legal Specialization  
P.O. Box 12487  
Austin, Texas 78711-2487

Re: TBLS CLE Summary Report for Estate Planning and Probate Law  
Name: MR. RUSSELL W. HALL  
Bar Card #: 789338

Dear Ms. Logue:

Please accept this letter as a request to review certain CLE activities to determine whether they qualify for Estate Planning and Probate Law.

I am submitting an application this month, and would like some past CLE approved in order to satisfy the minimum certification requirement, including—

1. 6.50 hours for Federal Fiduciary Income Tax Workshop (PESI Nov. 2002)
2. 30.00 hours for Estate Planning (University of Houston Law Center Fall 2003)
3. 28.00 hours for Post Mortem Estate Planning (University of Houston Law Center Spring 2004)

I would also like start the approval process for—

4. 30.00 hours for Income Taxation of Trusts and Estates (University of Houston Law Center Spring 2005) (this semester ends next month; grades may not post before June).

The University of Houston courses were through the Law Center's LL.M. (Tax) program. A recent transcript is enclosed, along with a grade inquiry reflecting current enrollment in Income Taxation of Trusts and Estates.

I have also enclosed the syllabus for the 2002 Federal Fiduciary Income Tax Workshop.

Thanks for your help.

Sincerely,

Russell W. Hall, P.C.

Kathy Logue  
Certification Analyst

2

April 12, 2005

Enclosures:

University of Houston Law Center transcript

University of Houston Law Center grade inquiry

PESI syllabus

## APPENDIX G

[illegible]

## APPENDIX H

## Estate Planning Instruments Prepared or Supervised Log

The following terms shall have the following application or meaning:

Prepared - Applicant signed off as the responsible person for the document.

Reviewed - Applicant was responsible for the review of documents prepared by another.

Supervised - Applicant was personally responsible for the presentation of the matter, including preparation.

[illegible]

## APPENDIX I

### Estate Planning and Probate Law 2005 Board Certification Exam

WARNING: My notes and bibliography seemed adequate to me in 2005, until I took the exam. They clearly were not a model then, and much has changed since.

### STUDY NOTEBOOK CONTENTS

Admin	1. Directions/reservations; TBLS exam instructions; payment form & e-mail; Exam subjects & resource list; TBLS contact info; Barney CLE; <a href="#">Memorizations</a>
Updates	2. Karisch, Johanson, Beyer
Community and Separate Property	3. TPS SI 49 (Marital Property Rights), SI 72 (Spousal Liability); Putative Spouses; TPS SI 51 (Family Allowance), SI 52 (Exempt Property, Setting Aside, and Allowance in lieu of); Featherston; McComas Anderson; Featherston
Formalities of Wills	4.
Intestate Succession	5. Texas Descent and Distribution; <a href="#">RWH summary</a>
Gifts	6.
Life Insurance	7. Moorman ins
Trusts	8. Jones; Davis; Stephens; Davenport; Akers
Business Agreements	9. Moorman FLP; Lofgren FLP; Gergen; Grove
Taxation of Employee Benefits	10. <a href="#">Employee benefits</a> ; Flowchart (fm KSG 21T); Streng & Davis
Original and Ancillary Procedures	
Jurisdiction	11. O'Connor's jurisdiction (& select charts); Forcible detainer excerpt; PI article
Probate	12. <a href="#">Creditor Claim Procedures</a> ; Stiles (w/o Apx); Jamieson
Guardianship	13. <a href="#">Alternatives</a>
Elections (State Law and Tax)	14. <a href="#">Elections</a>
Disclaimers	15.
Income Taxation of Estates, Trusts and Beneficiaries	16. DNI Worksheets ( <a href="#">Simple</a> , <a href="#">Complex</a> ); <a href="#">MRD Subchapter J solutions</a>
Estate, Gift, Generation Skipping Transfer Taxes, and Chapter 14	17. <a href="#">GT &amp; ET mnemonics</a> ; <a href="#">Tax Rates and Exemption Amounts</a> ; <a href="#">GSTT mnemonics</a> , <a href="#">Special valuation</a> ; <a href="#">BEPS</a> ; <a href="#">Marital deduction funding</a> ; <a href="#">Code summary</a> ; Henkel contents (short-timer); Yale Apx. G; <a href="#">RWH diagrams</a> ; Pacheco & Davis; Baldwin; Henkel ET/GT samples; PESI
The Income Tax Basis of Property Acquired by Gift or From a Decedent	18. Moorman basis
TDRPC	19. Moorman, Circular 230, <a href="#">Tax Ethics outline</a>
Planning for Disability (Property Management, Medical Care, Natural Death Act)	20. <a href="#">Guardian Alternatives</a> ; Alternatives to guardianship of the person; alternatives to guardianship of the estate; Medical Powers, 6 29 <sup>th</sup> Adv. Est. Plng & Prob. 2005; Graham
Non-Probate Assets (e.g., Multiple party accounts, life insurance)	21. Wall; Gerstner; RWH BDMs; Featherston
TUTMA	22. <a href="#">RWH TUTMA</a> ; TLG Excerpt
Planning for Asset Protection	23. Collections Manual excerpts
Elder Law Issues (Including government entitlements)	24. <a href="#">RWH Elder Law</a> ; Drewett; Green; Lovelace; Lovelace
Uniform Prudent Investor Act Uniform Principal & Income Act	25. MRD newsletter; Karisch; MRD Subch J excerpts; Cox; Schwartzel; Ice

Notebook pocket: Creditors' guides—aqua; IA's guide—red

Johanson's Probate Code

O'Connor's Probate Code

Streng & Davis

2003 Estate Planning Notebook (including [class notes](#))

- ch. 5—GSTT,

- ¶ 8.04—G/GT estate inclusion,

- ch. 9—Donor's Retention of Control and Interests,

- ch. 10—Tax-Free Gifts,

- ch. 11—Split-Interest Gifts,

- ch. 12—Life Insurance,

- ch. 14—Qualified Plan and IRA Benefits,

- ch. 16—Limited Partnerships,

- ch. 21—QPRTs,

- ch. 22—GRATs,

- ch. 24—Other actuarial techniques (GRITs, retained term in tangibles, remainder sales),

- ch. 25—Valuation issue,

- ch. 26—Section 2704: Rights that lapse and restrictions on liquidity,

- ch. 27—Section 2703: Buy-sell agreements, options, and noncommercial restrictions,

- ch. 31—Section 2701: Preferred equity interests,

IRC 2035 Adjustments for certain gifts made within 3 years of D's death (2036 retained life estates, 2037 Survivor property if D retained MT 5% reversion, 2038 Revocable transfers, 2042 Life insurance)

- ch. 47—Disclaimers, and

- ch. 49—Wills with marital deduction provisions—drafting, funding, and apportionment.

Building Blocks

2004 Post Mortem Notebook

2005 Subchapter J Notebooks (2)

# DESCENT AND DISTRIBUTION

	Community		Separate	
	Real Estate	Other	Real Estate	Other
Married with children Common Different	SS all			
	SS 1/2 fee, children remainder		SS 1/3 life estate, children remainder	SS 1/3 fee, children remainder
Married w/o children			SS 1/2 fee D's parents 1/2 fee;	
	SS all		D's parent 1/4 fee/Siblings (or descendants ) 1/4 ; Siblings (or descendants ) 1/2 ; SS rather than D's heirs in default	SS all
Single with children			Children (or descendants) 100%	
Single w/o children			D's parents 100%; D's parent 1/2 fee/Siblings (or descendants ) 1/2	



# QUALIFIED PLAN BENEFITS AND IRAs

Definitions	D =	Decedent
	DB =	designated beneficiary; only individuals, but “look through” rules enable some trusts (E/T must deliver trust documentation to plan administrator by October 31 of year following P’s death); if multiple B’s, oldest life controls
	P =	plan participant
	RBD =	required beginning date
	SS =	surviving spouse
	NPS =	nonparticipating spouse
	QP =	qualified plan
RBD	QP if LT 5% company owner:	MAX(70.5, retirement)
	IRA, or QP GTE 5% ownership:	70.5
Distribution periods	During P’s life	Uniform Life Table (assumes B 10 years younger), but if spouse is sole B and LT 10 years younger, then actual joint life table
Date for determining DB	Generally	Sep 30 of year following P’s death. Interim nka “shakeout period” because DBs can be eliminated after P’s death, e.g., i) by disclaimer, ii) cashed out (e.g. a charity), iii) separate accounts may be created for multiple beneficiaries by Dec 31 of year following P’s death.
	Actual joint life table	RBD – deadline for naming young spouse as sole DB of RBD
Spousal rollover		May roll over D P’s IRA into SS IRA at any time; <u>no need to rush</u> , but naming an entity as B usually precludes spousal rollover option. IRS requires unlimited right of withdrawal from the entity: KSG suggests specially drafted disclaimer trust, e.g. i) conduit trust or ii) grantor trust)
NPS’ interest		NPS interest in P’s IRA passes by Will or intestacy on NPS’ death. Cannot be conveyed during P’s life due to ERISA anti-alienation rule. Hence, pour-over Will necessary in lieu of Living Trust.
NPS’ ET		<ul style="list-style-type: none"> <li>○ Roll over qualified plan benefits to IRAs</li> <li>○ Increase NPS’ assets through partition</li> <li>○ Increase NPS’ assets through gifts</li> <li>○ Decrease NPS’ assets in QP/IRA after age 59.5 with discretionary dbns; after 70.5 with <math>\geq</math> MRD <ul style="list-style-type: none"> <li>○ Spend it</li> <li>○ Make tax free or charitable gifts</li> <li>○ Invest in post-tax assets suitable for a bypass trust</li> <li>○ Buy life insurance</li> <li>○ Plan for disclaimer by P spouse</li> <li>○ Divorce and QDRO</li> </ul> </li> </ul>
Funding a pecuniary bequest is a realization event, and IRD is accelerated; not so with a specific bequest		
MRD Rules at Death		
	Sole Beneficiary = Spouse	Sole Beneficiary $\neq$ Spouse
Death before RBD	1) Roll into IRA in SS name; take MRD on RBD 2) Leave in P’s name; withdraw year P 70.5 over SS life	If DB, then distribute over DB’s life, beginning year after P’s death, else distribute over 5 years
Death after RBD	Distribute MRD for year of P’s death. Balance: 1) Roll into IRA in SS name; take MRD on RBD 2) Leave in P’s name; withdraw over greater of DB’s or P’s life	Distribute MRD for year of P’s death. Balance: if DB, then distribute over greater of DB’s or P’s life, else over P’s life

## CREDITOR CLAIM PROCEDURES

QUESTION	INDEPENDENT ADMINISTRATION	DEPENDANT ADMINISTRATION	GUARDIANSHIP PROCEEDING
When do I notify creditors?	Within one month after letters issue.	Within one month after letters issue.	Within one month after letters issue.
What form must an unsecured claim take?	No particular form.	Statutory language; sworn affidavit.	Statutory language; sworn affidavit.
When must a creditor present its claim?	Anytime, unless in receipt of § 294(d) notice letter	Before estate is closed; subject to §§ 294(d), 298	Before guardianship is closed
To whom is the claim presented?	Independent Executor.	Dependent Administrator or court clerk.	Guardian or court clerk.
When must the P.R. object to claim defects?	Not applicable.	Within 30 days of presentment.	Within 30 days of presentment.
How do I bar an unsecured creditor's claim?	§ 294(d) notice.	§ 294(d) notice.	§ 784(c) notice.
When must an unsecured creditor respond to notice?	Within 120 days of receipt.	Within 4 months of receipt.	Within 120 days of receipt.
When do I notify secured creditors?	Within two months after letters issue.	Within two months after letters issue.	Within four months after letters issue (unsecured too).
What election(s) must a secured creditor make?	To be paid in due course of administration or to select preferred debt & lien status	To be paid in due course of administration or to select preferred debt & lien status	To be paid in due course of administration or to select preferred debt & lien status
When must a secured creditor make the election?	Within 6 months after letters issue or 4 months after notice.	Within 6 months after letters issue or 4 months after notice.	Upon presentment to the guardian.
How is claim treated when an election is not made?	As a preferred debt & lien.	As a preferred debt & lien.	As a preferred debt & lien.
When must the P.R. approve/reject claim?	Not applicable.	Within 30 days of presentment.	Within 30 days of presentment.
What if the P.R. takes no action?	There is no consequence.	Claim is deemed rejected after 30 days.	Claim is deemed rejected after 30 days.
When must creditor file suit on rejected claim?	Any time before S/L runs <sup>1</sup>	Within 90 days of rejection.	Within 90 days of rejection.
Must a claim be classified before payment?	Yes.	Yes.	Not applicable.
How will my claim be classified?	As one of eight classes	As one of eight classes	Not applicable.
Class 1	Funeral & last illness expenses not to exceed \$15,000; excess become a class 8 claim.	Funeral & last illness expenses not to exceed \$15,000; excess become a class 8 claim.	Not applicable.
Class 2	Administration expenses; preservation, safekeeping and estate management costs.	Administration expenses; preservation, safekeeping and estate management costs.	Not applicable.
Class 3	Any secured claim to be paid in the due course of administration, including tax liens and second mortgages	Any secured claim to be paid in the due course of administration, including tax liens and second mortgages	Not applicable.
Class 4	A child support judgment.	A child support judgment.	Not applicable.
Class 5	State taxes, penalties & interest thereon.	State taxes, penalties & interest thereon.	Not applicable.
Class 6	T.D.C. costs of confinement.	T.D.C. costs of confinement.	Not applicable.
Class 7	State reimbursement for medical costs.	State reimbursement for medical costs.	Not applicable.
Class 8	All other claims, e.g., unsecured creditors	All other claims, e.g., unsecured creditors	Not applicable.
How will my claim be paid?	Executor may pay at any time.	Claims are paid in the following priority: class 1 claims; family allowance; class 2 claims; and, class 3-8 claims.	Claims paid in following order: i) ward's expenses for care, maintenance and education, ii) administration expenses, and iii) any other claim.

<sup>1</sup> General limitations toll from death until a P.R. qualifies, but not more than 12 months. CPRC § 16.062. Filing a claim for money with the clerk also tolls limitations. If presentment to the P.R. is not required, then filing suit against the P.R. also tolls limitations. Probate Code § 299.

<b><u>ALTERNATIVES TO GUARDIANSHIP OF THE ESTATE</u></b>		
Probate 482	<u>Durable Power of Attorney</u>	
Probate 883	<u>Spousal Management of Community Property</u>	
Probate 885	<u>Receivership</u>	Relief for an estate in danger of injury, loss or waste
Probate 887	<u>Payment of Claims without Guardianship</u>	Debtor may pay \$50,000 or less to the county clerk
Probate 889	<u>Parent's sale of Minor's Property</u>	Parent may sell minor's interest LTE \$50,000
Probate 890	<u>Sale of Ward's Property w/o Estate Guardianship</u>	Guardian of the person may sell minor's interest LTE \$50,000
38USC5502	<u>Veterans Benefits Fiduciary</u>	
42USC1383	<u>Representative Payee</u>	Social Security Administration appoints manager
42USC1396	<u>Miller trust</u>	Removes Medicaid income disability
TRCP44	<u>Next friend</u>	Enables third party to maintain suit for minor child
Property 111-115	<u>Provisions Applicable to Trusts</u>	Creation and operation of a Living Trust by a ward with capacity
Property 141	<u>Transfers To Minor Act</u>	TUTMA
Property 142	<u>Section 142 Trust</u>	Management of funds from a judgment
Family 151.003	<u>Rights and duties of parent</u>	Parental rights absent guardianship
<b><u>ALTERNATIVES TO GUARDIAN OF THE PERSON</u></b>		
H&S 166.031	<u>Directive to Physician</u>	
H&S 166.039	<u>Procedure when No Directive</u>	Doctor + 1: spouse, adult children, parents, nearest relative, doctor
H&S 166.082	<u>Out of Hospital DNR</u>	
H&S 166.151	<u>Medical Power of Attorney</u>	
H&S 313.001	<u>Consent to Medical Treatment</u>	Non-emergency situations
H&S 462.021	<u>Voluntary Treatment or Rehabilitation</u>	Admission to a treatment facility for chemical dependency
H&S 573.011	<u>Application for Emergency Detention</u>	Apprehension and detention at a mental health facility when evidencing mental illness
H&S 591.002	<u>Persons with Mental Retardation Act</u>	State assistance in placement, training, and treatment
H&S 597.041	<u>Surrogate Decisions Making for Mentally Retarded Persons</u>	Resolutions for those housed in an intermediate care facility (ICF/MR) regarding medical and other decisions
H&S 773.008	<u>Emergency Medical Treatment Act.</u>	Patient's implied consent in life threatening emergency situations
H&S 154.301	<u>Support for a Minor or Adult Disabled Child</u>	Post majority support if disability arose as a minor
Family 151.003	<u>Rights and duties of parent</u>	Parental rights absent guardianship
<b><u>LIMITING EITHER GUARDIANSHIP</u></b>		
Probate 693(b)	<u>Enumerated Powers In Guardianship Order.</u>	Provides for ward to retain powers in areas of functional capacity
Probate 694A	<u>Restoration or Guardianship Modification</u>	Termination or modification of existing guardianship
Probate 677A	<u>Parental Written Declaration for Appointment of Their Children's Guardian</u>	
Probate 679	<u>Designation of Guardian Before Need Arises</u>	Also enables disqualification
Probate 703(e)	<u>Safekeeping or "Freeze" Agreements</u>	Minimize bond expense
Probate 745(a)	<u>Closing A Guardianship Estate</u>	Seven (7) mechanisms to close a guardianship of the estate
Probate 745(b)	<u>Direct Payment of Income To Third Party</u>	Ward's negligible income to be paid to third party without liability to account
Probate 745(c)	<u>Minor Ward's Estate</u>	Provides for deposit into court registry an estate of \$25,000.00, or less, and thereafter managed per §887.
Probate 867	<u>Creation of Management Trust</u>	Provides for professional management and bond reduction.

## TAX ELECTIONS & DATES

April 15	IRS Form 1040; IRS Form 709	File D's income tax and gift tax returns for tax year before death
30 days after qualification	IRS Form 56	Notice of fiduciary relation to IRS
QTIP *	IRC 2056(b)(7)	Timely election required by H's executor on estate tax return to qualify trust for QTIP treatment. <sup>†</sup> Pension payments automatically subject unless E elects out.
Date sixty-five days after fiscal year end	IRC 663(b)	E/T may elect to treat dbns by complex trust (or estate) during first 65 days of tax year as having been made last day of prior year <sup>‡</sup>
15 <sup>th</sup> day of 4 <sup>th</sup> month after fiscal year end	IRS Form 1041 due	File estate's income tax return
Following April 15	IRS Form 1040; IRS Form 709	File D's income tax and gift tax returns for tax year of death
Qualified Revocable Trust election	IRC 645	T of grantor trust and E of grantor's estate may elect to treat a qualified revocable trust as part of grantor's estate for income tax purposes (allows fiscal year, avoids estimated tax payments for 2 years, increase personal exemption from \$300 (simple) or \$100 (complex) to \$600, charitable deduction, 2 year grace for real estate passive loss rules, hold S stock indefinitely) (Due on estates first timely income tax return (including extensions)).
Gift-splitting	IRC 2513	One spouse may elect to split a gift of the other's separate property
Roth IRAs		D or B elects dbn to non-spouse beneficiary's over the 5 years following D's death (Note: no MRD wrt owner, and that includes surviving spouse who takes from D)
	IRC 754	Election to adjust basis in partnership property. When appreciated or depreciated assets are distributed to a partner, the partnership may elect to adjust the basis of its remaining assets. This can be useful when a partner dies and the basis in her partnership interest is increased to FMV per IRC 1014.
In-kind distributions	§ 643(e)(3)	T/E may elect to recognize gain at entity level, where burden can be allocated (Think funding pecuniary bequests)
QDOT	2056	Surviving spouse has until 706 due to naturalize or elect a QDOT (which avoids ET of I dbns, but merely defers P ET)
GST exemption allocation		Automatic rules are inconsistent; careful practitioner will make an affirmative allocation on the 709; indicated for ILIT <u>Crummey</u> contributions
Expense election	642(g)	May elect to deduct on FIT or ET return, but not both (generally want to deduct from ET return, since marginal rate higher) ( <i>Hubert</i> regs allow deduction of estate management expenses against income tax without reducing marital or charitable deduction; estate transmission expenses require a dollar-for-dollar reduction in marital or charitable deductions) (Think equitable adjustment).
Fiscal year		Estate may elect fiscal year; trust may not (unless it elected to be treated as part of the estate)
Double deduction items		Take DRD on both income and estate tax returns

\* Or fifteen, if the estate tax return is extended. For deaths in quick succession, it makes sense to avoid the marital deduction in order to pay tax on *both* estates and thus enjoy a run up the brackets *twice*, rather than once. If the surviving spouse dies within 15 months of D, this is found money. E.g., in 2005,  $\$1.5M \cdot 47\% = \$705,000$ , compared to the \$555,800 credit, or a difference of \$149,200 (due to lower initial estate tax rates that are lost when the combined estates are taxed only once). 2013 previously taxed property credit also a consideration (10-year decline—80%, 60%, 40%, 20%) (MRD says manna from heaven).

<sup>†</sup> Or, if inter vivos transfer, by H on his gift tax return.

<sup>‡</sup> Not available to simple trusts, which are required to distribute all income currently, and are so taxed, regardless of actual date of distribution.

Election to treat estimated payments by estate or trust as if made by beneficiary	643(g)	Allows B to take credit for payment on their own return; useful if estate overestimated its tax
Accept executor's commissions		Deductible to estate, for ET or FIT purposes. However, waiving commissions can effect a transfer to the younger generation. Waive early, if at all.
IRA		Surviving spouse may rollover (deferring FIT but often leaving bypass unfunded); note: before rollover, survivor may begin distributions on her life expectancy (at any time), but afterwards must wait until 70.5.
Alternate valuation	2032(d)(1)	Check box on 706; report both values (DoD & AV; both value & ET must ↓). Indicated where marital lead and estate depreciates before funding; spouse disclaims enough to generate \$1 ET, in order to fund with AV and maximize the bypass. If asset sales required 1 <sup>st</sup> six months, sell depreciated assets (sale price will be their AV).
Special use valuation	2032A	Farm/ranch and trade/business real estate valued from D's perspective, not market. Discount limited to \$750,000 indexed from 1999 (\$840,000 in 2003). Elect on 706. Protective election allowed. Requirements— <ul style="list-style-type: none"> <li>○ D not an NRA,</li> <li>○ qualified use NLT 50% of estate,</li> <li>○ qualified RE NLT 25%,</li> <li>○ D/family use last 5/8 year</li> <li>○ D/family material participation last 5/8 year</li> <li>○ All present interests to qualified heirs (D's parents' descendant's and spouses</li> <li>○ 10-year recapture agreement</li> <li>○ All qualified heirs must materially participate for 10 years.</li> </ul> "True worth" marital lead pecuniary formula in H's will optimal
Disclaimer	2518(b)	To cure defective marital gifts (prohibited restrictions or Bs, or excessive survival) To disclaim insurance on surviving spouse into bypass trust (rather than gift, which implicates 3-year rule) To disclaim QP Benefits from QTIP trust to surviving spouse (to enable rollover) To pass joint tenancy or designation property under the Will (to fund trusts) Out of marital gift, to generate ET and use the ET exemption Out of D's generation and the next, to generate GSTT and use that exemption Out of a bypass trust to a QTIP trust (to enable a reverse QTIP election) *Medicaid recipients are penalized for disclaimers*
Discretionary extension of time to pay ET	6161	Discretionary 1 year extension; discretionary annual renewals up to 10 years
Extension of Time to Pay Tax Attributable to Closely-Held Business	6166	ET on first \$1M in taxable value of a closely held business deferred at 2%, balance at 45% of the going rate; interest only for four years, then P&I for 10 years. Ratio of business to estate is deferrable.

#### STATE LAW ELECTIONS

Election against the will	<ul style="list-style-type: none"> <li>○ Devisee cannot accept a benefit under the Will and reject a detriment. E.g., when D tries to devise B's community property. <u>Not</u> implicated by nonprobate dispositions.</li> <li>○ ET consideration: when Will's bequest doesn't qualify for marital deduction, elect (community, family allowance, allowance in lieu of exempt property) against the Will, to take property that does qualify. Disclaimer allowed w/9 months (election doesn't constitute acceptance).</li> </ul>
Permissive notice to creditors	
Family allowance	
Exempt property set-aside, or allowance in lieu of	
Homestead	
Disclaimers	
Medicare coverage at 65	If insufficient quarters, may elect coverage and pay premium

Distributable Net Income Worksheet

Receipts & Disbursements		Fiduciary Accounting Income	Tentative Taxable Income	Exempt Income	DNI	
Taxable dividends allocable to income	\$50,000					TTI
Taxable interest	\$30,000					Less CG
Tax-exempt interest	\$20,000					Plus CL
Long-term capital gains	\$14,000					Plus net exempt
Long-term capital loss	(\$4,000)					DNI
Fiduciary fees charged to income	(\$10,000)					Less net exempt
						TAXABLE DNI

Gross Taxable FAI	
Gross FAI	÷
Allocation Ratio	

TTI	
Distribution deduction	
AILPE	
TAXABLE INCOME	

See 2004 Post Mortem Notebook, 26T5 (Review I example). See 11T3 for answer key.

Distributable Net Income Worksheet — Complex Trust

Trust distributes \$1,200 in the current year.

Receipts & Disbursements		Fiduciary Accounting Income	Tentative Taxable Income	Exempt Income	DNI	
Taxable dividends allocable to income	\$1,000					TTI
Taxable dividends allocable to principal	\$700					Less CG
Tax-exempt interest	\$500					Plus CL
Long-term capital gains	\$2,000					Plus net exempt
Long-term capital loss	(\$600)					True DNI
						Less net exempt
						TAXABLE DNI

Gross Taxable FAI	
Gross FAI	÷
Expense Allocation Ratio	

	Taxable/True DNI
	X Distribution
	Taxable Dbn

TTI	
Distribution deduction	
AILPE	
TAXABLE INCOME	

See 2004 Post Mortem Notebook, 27T5 (Review II example). Pinnell’s Problem 9-4 at p. 433.





**Problem 9-5**

		FAI	Tent Taxable Income	Exempt Income	DNI	
Taxable Interest	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00		\$ 14,000.00	TTI
Capital Gains	\$ 5,000.00	\$ -	\$ 5,000.00		\$ (5,000.00)	Less CG
Trustee Fee	\$ (1,000.00)	\$ (500.00)	\$ (1,000.00)		\$ 9,000.00	True DNI
		\$ 9,500.00	\$ 14,000.00			
					\$ 9,000.00	Taxable DNI
Tentative Taxable Income			\$ 14,000.00			
Distribution Deduction			\$ (9,000.00)			
AILPE			\$ (300.00)			
Taxable Income			\$ 4,700.00			

**Problem 9-6****1st Variation**

		FAI	Tent Taxable Income	Exempt Income	DNI	
Taxable Income	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00		\$ 7,000.00	TTI
Trustee Fees	\$ (3,000.00)	\$ -	\$ (3,000.00)		\$ -	Less CG
		\$ 10,000.00	\$ 7,000.00		\$ 7,000.00	True DNI
					\$ 7,000.00	Taxable DNI
Tentative Taxable Income			\$ 7,000.00			
Distribution Deduction			\$ (7,000.00)			
AILPE			\$ (300.00)			
Taxable Income			\$ (300.00)			

**2nd Variation**

		FAI	Tent Taxable Income	Exempt Income	DNI	
Taxable Income	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00		\$ 5,600.00	TTI
Exempt Income	\$ 2,000.00	\$ 2,000.00		\$ 2,000.00	\$ 1,400.00	Plus Net Exempt
Trustee Fees	\$ (3,000.00)	\$ -	\$ (2,400.00)	\$ (600.00)	\$ -	Less CG
		\$ 10,000.00	\$ 5,600.00	\$ 1,400.00	\$ 7,000.00	True DNI
					\$ 5,600.00	Taxable DNI
Tentative Taxable Income			\$ 5,600.00			
Distribution Deduction			\$ (5,600.00)			
AILPE			\$ (300.00)			
Taxable Income			\$ (300.00)			

Ratio for allocating expense:

Gross Fiduciary Income	\$ 10,000.00
Gross Taxable FAI	\$ 8,000.00
Taxable Ratio	80%

**Review Problem**

	FAI	Tent Taxable Income	Exempt Income	DNI
Taxable Dividends	\$ 50,000.00	\$ 50,000.00		\$ 82,000.00 TTI
Taxable Interest	\$ 30,000.00	\$ 30,000.00		\$ (14,000.00) Less CG
Tax-Exempt Interest	\$ 20,000.00		\$ 20,000.00	\$ 4,000.00 Plus CL
Long Term Capital Gain	\$ 14,000.00	\$ 14,000.00	\$ -	<u>\$ 18,000.00</u> Plus NET exempt
Long Term Capital Loss	\$ (4,000.00)	\$ (4,000.00)		\$ 90,000.00
Fiduciary Fees (income)	\$ (10,000.00)	<u>\$ (8,000.00)</u>	<u>\$ (2,000.00)</u>	
	\$ 90,000.00	\$ 82,000.00	\$ 18,000.00	\$ 72,000.00 Taxable DNI

Tentative Taxable Income	\$ 82,000.00
Distribution Deduction	\$ (72,000.00)
AILPE	<u>\$ (300.00)</u>
Taxable Income	\$ 9,700.00

Ratio for allocating expense:	
Gross Fiduciary Income	\$ 100,000.00
Gross Taxable FAI	\$ 80,000.00
Taxable Ratio	80%

## GIFT TAX

GT base (exclusive)	1) Present gift + 2) <u>Prior taxable gifts</u> = GIFT TAX BASE <sup>1</sup>
GT calculation	1) GT rate · GT base <sup>2</sup> – 2) <u>Current GT rate · Prior taxable gifts</u> * = 3) Tentative tax on present gift – 4) <u>Unused GT credit</u> = GIFT TAX DUE

## ESTATE TAX

GROSS ESTATE	O	2033	Property owned at death
	C	2034	Property in which SS has dower, curtesy, or elective share rights
	3	2035	Certain transfers within 3 years of death (2036-38, 2042; gift tax)
	L	2036	Transfers with a retained life estate or retained controls
	R	2037	Transfers with retained reversionary interests
	R	2038	Revocable transfers
	A	2039	Annuities and employee benefits (1982 & 1984 pension exclusions)
	S	2040	Property passing by right of survivorship
	P	2041	General powers of appointment
	L	2042	Life insurance
	G	2043	Transfers for partial consideration
	Q	2044	QTIP transfers for which a marital deduction was previously allowed
TAXABLE ESTATE			= Gross estate, less
	A	2053	Deduction for administration, funeral expenses, and debts
	C	2054	Deduction for casualty losses
	C	2055	Charitable deduction
	M	2056	Marital deduction
	Q	2056A	QDOT
	Q	2057	Deduction for certain family business interests
TENTATIVE ESTATE TAX BASE			Taxable estate, plus Taxable gifts after 1976
TENTATIVE ESTATE TAX			Tentative estate tax base, multiplied times 2001 estate tax rate schedule
FEDERAL ESTATE TAX			Tentative Estate Tax, less
			Gift tax payable on taxable gifts after 1976 at current tax rates
	C	2010	Unified estate tax credit
	S	2011	Credit for state death taxes
	P	2012	Credit for pre-1977 gift taxes on property included in gross estate
	T	2013	Credit for taxes on prior transfers
	F	2014	Credit for foreign death taxes

<sup>1</sup> a) EXCLUDING--  
 (1) §2503(b), (c) Annual Exclusion (present interests/gifts to minors)  
 (2) §2503(e) Tuition Payments and Medical Expenses, and  
 b) DEDUCTING (to extent of §2503 inclusion)  
 (1) §2522 Gifts to Charity  
 (2) §2523 Marital Deduction

<sup>2</sup> If any generation-skipping transfer tax was or is payable on gifts that were direct skips, include the amount of the generation-skipping transfer tax in the amounts of the gifts.

FEDERAL TRANSFER TAXES; Kathryn G. Henkel, *Estate Planning and Wealth Preservation* ¶ 1.04, Table 1-C (Abridged student ed. 1998 & Supp. 2003) (Reference Materials; Selected Transfer Tax Rates and Exemption for 2001 and Thereafter)

Year	ET Max Rate	GT Max Rate <sup>a</sup>	Flat Rate GSTT <sup>b</sup>	Max ET & GT Rates Begin When Cumulative Taxable Transfers Exceed	ET Exemptions <sup>c</sup>	GT Exemption	GSTT Exemption	ET Credit	GT Credit
2001	55% <sup>d</sup>	55% (35.48%) <sup>e</sup>	55% (35.48%)	\$3,000,000	\$675,000	\$675,000	\$1,060,000	\$220,550	\$220,550
2002	50%	50% (33.33%)	50% (33.33%)	\$2,500,000	\$1,000,000	\$1,000,000	\$1,100,000	\$345,800	\$345,800
2003	49%	49% (32.89%)	49% (32.89%)	\$2,000,000	\$1,000,000	\$1,000,000	\$1,120,000 indexed fin 2002	\$345,800	\$345,800
2004	48%	48% (32.43%)	48% (32.43%)	\$2,000,000	\$1,500,000	\$1,000,000	\$1,500,000	\$555,800	\$345,800
2005	47%	47% (31.97%)	47% (31.97%)	\$2,000,000	\$1,500,000	\$1,000,000	\$1,500,000	\$555,800	\$345,800
2006	46%	46% (32.57%)	46% (32.57%)	\$2,000,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2007	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2008	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2009	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$3,500,000	\$1,000,000	\$3,500,000	\$1,455,800	\$345,800
2010	-0-	35%	-0-	N/A	N/A	\$1,000,000	N/A	N/A	\$330,800
2011 and following	55%	55% (35.48%)	55% (35.48%)	\$3,000,000	\$1,000,000	\$1,000,000	\$1,100,000 indexed fin 2002	\$345,800	\$345,800

ALIENS; RIA Checkpoint ¶ 5038

§ 2103 nonresident, non USC tax base limited to US situs	§ 2102 provides a \$60K exemption amt, subject to treaty
§ 2056 denies ET marital deduction absent QDOT etc.	§ 2523 limits GT marital exclusion to non USC to \$100,000, indexed
USC and resident alien tax base is worldwide	

TEXAS TRANSFER TAXES; RIA Checkpoint TBL-30212; 2720 Estate tax structure--Texas

ET equal to the current federal credit for state death taxes allowed under IRC §2011	Report-pay to Compr. in 9 mos. after death.
GSTT equal to the current federal credit allowed under IRC §2604.	Report-pay to Compr. by Fed. due date
GT not imposed	
Repeal of Texas estate tax. The federal state death tax credit is repealed for estates of decedents dying after December 31, 2004 (see below). Since the Texas estate tax is computed using the federal state death tax credit, the Texas estate tax will effectively also be repealed at that time.	
For individuals dying in 2002, the state death tax credit is reduced by 25% from the pre-2001 EGTRRA amount; for individuals dying in 2003, the credit is reduced by 50% from the pre-2001 EGTRRA amount; for individuals dying in 2004, the credit is reduced by 75% from the pre-2001 EGTRRA amount; and for individuals dying in 2005 and after, the state death tax credit will be repealed and replaced with a deduction.	

<sup>a</sup> Although gift tax rates are nominally the same as estate tax rates, gift tax rates are actually much less, since the estate tax is imposed on the transferred amount plus the tax, and the gift tax rate is imposed on the transferred amount only. Nominal rates are on the top. Rates computed on the same basis as the estate tax rate are in parenthesis.

<sup>b</sup> Simplistically—Rates not in parentheses apply to distributions from, and terminations in favor of, a grandchild-level beneficiary from a trust which includes an older-generation beneficiary. Rates in parenthesis apply to transfers directly to a grandchild-level beneficiary or a trust for a grandchild-level beneficiary.. “Grandchild-level” means the generation of a grandchild or more remote descendant.

<sup>c</sup> The estate tax exempt amount is the applicable number below, less taxable gifts made during the deceased person’s lifetime, and certain administrative expenses occurring at death. In 2002 and 2003, the ET and GT exemption amounts are equivalent to a \$345,800 unified credit.

<sup>d</sup> 60 percent for cumulative transfers between \$10,000,000 and \$17,184,000.

<sup>e</sup> 60 percent (37.5 percent) for cumulative transfers between \$10,000,000 and \$17,184,000.

## BASIS

Effective 2010, subject to EGTTA sunset, property includible in the estate will not receive a step up in basis, except--  
\$1,300,000, plus

\$3,000,000 that passes outright (or in the form of a qualifying interest) to the surviving spouse.

\*Terminable interests will not qualify for a step up, except for QTIP property.

\*Allocation of basis increase subject to Executor's discretion

\*Property eligible for step up if "owned by decedent", i.e.--

\*\*owned outright

\*\*in certain joint ownership forms

\*\*in a revocable trust taxed to D under IRC 676, and

\*\*surviving spouse's share of certain community property

\*\*property subject to a POA not considered owned by D unless so treated for independent reasons.

\*Consider the formula gift, i.e., give my wife any property with basis \$3,000,000 or less than FMV; E's discretion could give a \$3,000,000 property with \$0 basis or a \$20,000,000 property with \$17,000,000 basis: fiduciary issues abound

## NONRESIDENT ALIENS (Treaties trump), excludes:

FIT: i) lawful permanent resident, ii) objective substantial presence (NMT 121 days a year) (subjective safe harbor iff LT 183 days in US and closer connection to foreign tax home), iii) if present 31 days in year of election, and substantial presence the next.

ET/GT/GSTT: Foreign domicile (actual residence + intent)

	Tax Base		Unified Credit	Exclusions / Deductions	Transfers to spouse
	Included	Excluded			
Gift taxes	Real/tangible U.S. property	Intangible U.S. property; any foreign property	None	Same \$11,000 annual and unlimited medical and tuition	Unlimited to USC, else \$100,000 annual exclusion (\$116K in 2005)
Estate taxes	U.S. situs	Foreign corporate stock; U.S. currency abroad; life insurance proceeds on life an NRA D; <u>U.S. deposits, certain debt and OID</u>	\$13K (\$60K exemption)	U.S. charity, and proportionate 2053 and 2054, if worldwide estate disclosed	
GSTT	Imposed only on transfers subject to GT or ET				

RESIDENT ALIENS: Decedent aliens are taxed like USCs (including the limitation on nonUSC spouses).

GSTT MNEMONICS

Method	First Transfer				Second Transfer				Gross Tax	% Tax	Tax Factor
	Gross funds	GT	ET	GSTT	Net Transfer	Gross funds	GT	ET	GSTT	Net Transfer	
[a] Gift to Child, Gift to GC	450	150			300	300	100			200	1.25
[b] Gift to Child, Bequest to GC	600	200			400	400		200		200	2.00
[c] Bequest to Child, Gift to GC	600		300		300	300	100			200	2.00
[d] Bequest to child, Bequest to GC	800		400		400	400		200		200	3.00 <sup>a</sup>
[e] Gift to Trust, Taxable Term or Distrib.	600	200			400	400			200	200	2.00
[f] Bequest to Trust, Taxable Term or Distrib.	800		400		400	400			200	200	3.00
[g] Direct Skip by Gift	450	150 <sup>b</sup>		100	200	200				200	1.25
[h] Direct Skip Subject to Estate Tax	600		300	100	200	200				200	2.00

Direct skips	<p>E.g., taxable transfer by Mom to person in Grandchild's generation or below. Direct skip is always a transfer for GT or ET purposes, even though no tax due (either on account of annual exclusion or use of unified credit)</p> <p>*Transferor (or trustee) liable for GSTT on direct skip; executor if by reason of transferor's death.</p> <p>*GSTT apportioned to property included in the direct skip, unless transferor directs otherwise.</p> <p>*GSTT due April 15 year following, or, in case of estate, when ET due</p> <p>*GSTT added to amount of gift for GT purposes</p>										
Taxable Distributions & Taxable Terminations	<p>TDs and TTs refer to distributions from trusts. E.g., Mom establishes a trust; TDs are distributions to Grandchild's generation. TTs are terminations of an interest of a beneficiary in Child's generation, if remainder beneficiaries are Grandchild's generation. Grandfathered: i) Trusts irrevocable on Sep 25 1985 or transferors mentally incompetent Oct 22 1986</p> <p>*TDs and TTs are generally not taxable transfers for GT or ET purposes, the transfer tax having been paid already.</p> <p>*TD--recipient pays; due April 15 year following; payment by trustee deemed an additional distribution</p> <p>*TT--trustee pays; due April 15 year following</p>										
"Member of the family"	<p>Determines certain generation assignments, and include--</p> <p>Descendants of the transferor's grandparents</p> <p>Transferor's spouse</p> <p>Transferor's ex-spouse</p> <p>Descendants of the spouse's and ex-spouse's grandparents</p> <p>Spouses and ex-spouses of above persons</p>										
Skip person	<p>Family member</p> <p>*Transferor's generation includes current and ex-spouses</p> <p>*Relatives' spouses and ex's assigned same generation</p> <p>*Family with MT 1 generation (e.g., adopted grandchild) assigned to youngest</p> <p>*Relationship includes blood, half-blood, adoption, marriage, former marriage"</p> <p>Other persons</p> <p>0 - 12.5 years younger than transferor = same gen.</p> <p>12.5+ to 37.5 years younger than transferor = child's gen.</p> <p>so on, every 25 years</p>										

<sup>a</sup> If Child dies within 10 years of grandparent, a previously taxed property credit is available under Section 2013 for estate tax paid on grandparent's death

<sup>b</sup> GSTT added to gift before 50% gift tax applied.

ESTATE PLANNING  
Fall 2003  
Prof. Johnny Rex Buckles

**SPECIAL VALUATION RULES**

Russell W. Hall  
December 10, 2003  
(713) 662-3853  
rwhall@rwhpc.com

2701--corporations and partnership transfers to family specially valued  
2702--transfers in trust to family specially valued; Special valuation rules in case of transfers of interests in trusts.; limits actuarial techniques  
2703(a) ET, GT, and GSTT values determined after disregarding options to purchase at below-market price and buy-sell restrictions  
2704(a) --certain lapses are taxable transfers  
2704(b) --disregards certain liquidation restrictions for valuation

**Section 2704(a)** (Lapsing rights treated as taxable transfers)  
Voting and liquidation rights that lapse as a contractual matter raise Section 2704 issues"

**Section 2704(b)** (Restrictions on liquidation)  
Ignores voluntarily imposed restrictions on ability to liquidate a family entity, unless non-family member an owner."

**Section 2703(a)**--ET, GT, and GSTT values determined after disregarding options to purchase at below-market price and buy-sell restrictions

**2703(b)**--Standard Commercial Exception--

- 1) Right or restriction is a bona fide business arrangement
- 2) Right or restriction is not a device to transfer property to junior family members LT adequate consideration, AND
- 3) Right or restriction's terms are comparable to similar arrangements entered into by persons in an arm's length transaction.

3 tests waived if more than 50 percent of partnership is owned by outsiders.

Effective Date: Agreements entered/substantially modified before Oct 9 1990 are grandfathered.

\*Questions to ask-- is it grandfathered, can we meet the Standard Commercial Exception test (can we amend p'ship agreement to conform?), can we sell to unrelated third party

**Section 2702** designed to restrict universe of non-charitable actuarial planning to certain techniques (QPRT, GRIT, GRAT, GRUT, etc.) and to heavily penalize proscribed techniques

\*Generally, if

- 1) grantor transfers property to a trust,
  - 2) any trust beneficiary is member of grantor's family (24.02[5]), and
  - 3) grantor or applicable family member (24.02[3]) retains an interest,
- then retained interest disregarded for GT purposes and entire value of transferred property treated as a gift.  
Exceptions known as "qualified interests," and others as "nonqualified interests."

Treatment of contingent reversions differs—

QPRT—valued, and reduce gift

GRAT—disregarded (valued at \$0), and do not reduce gift

GRUT—valued, and reduces gift (but not estate tax value, because trust includible in grantor's estate if he dies during the term anyway.)

**MARITAL DEDUCTION FUNDING**

Russell W. Hall  
December 10, 2003  
(713) 662-3853  
rwhall@rwhpc.com

Formula	Valuation	Administration	Funding = Sale	Sale consequences	DNI carried out	Real estate distributions generally carry out DNI, unless title passes directly to heirs or devisees by operation of local law.
[i] Bequest of cash	Cash pecuniary bequest	Easy: cash requires no valuation	No	No gain or loss	Do not carry out income unless required to be satisfied in more than 3 installments. Amount must be ascertainable under Will as of date of death or under IV trust as of date of inception	
[ii] Bequest of specific property	Specific property bequest	Easy: specific property requires only the ET valuation	No	No gain or loss	Do not carry out income. Property must be ascertainable under Will as of date of death or under IV trust as of date of inception	
[iii] Date of distribution bequest	Cash or in kind bequest valued on the date of distribution (as opposed to date of death, the subject of Rev Proc 64-19)	Almost as easy: ET and date of distribution values required	Yes	estate will realize FMV at date of distribution	Carry out DNI	
[iv] Minimum net worth bequest	Pecuniary bequest of property valued at MIN(ET Valuation, FMV at distribution). Recall that valuation for ET purposes may be DOD + 6 months	Relatively easy: ET and date of distribution values required if assets worth LT basis (minimum worth bequests) or MT basis (maximum worth bequests)	Yes	estate will realize MIN(FMV at distribution, Adjusted basis in estate); thus, loss, but not gain, recognized	Carry out DNI	
[v] Fairly representative bequest	Pecuniary bequest of property valued at ET Valuation, provided selected property is "fairly representative" of the appreciation or depreciation between death and distribution	Difficult: All assets must be reevaluated each time a distribution is made	At E's election	basis same as funding value	Carry out DNI	
[vi] Bequest of a fractional share of the estate	Bequest of fractional share of the estate; leaving each beneficiary to share proportionately in the appreciation or depreciation of each asset; gross or net expense formula further effects the amount the marital bequest receives	No revaluation required, but complications arise when expenses are not charged proportionately to all shares	At E's election	not automatically a sale	Carry out DNI	
[vii] Residuary bequest	Either i) bequest of entire estate or ii) bequest of entire rest, residue, and remainder of the estate after all other bequests are satisfied.	Only ET valuation required	At E's election	not automatically a sale	Carry out DNI	



## TEXAS UNIFORM TRANSFERS TO MINORS ACT

Scope and application	Adult ( $\geq 21+$ ) may transfer property to a minor ( $<21$ ) if adult, minor, or custodian is a Texas resident, or if property located in Texas
	Nomination of custodian invokes TUTMA
	Qualifies for annual exclusion.
	Texas retains jurisdiction over TUTMA custodian.
	Adult ( $\geq 21+$ ) may transfer property to a minor ( $<21$ ) if adult, minor, or custodian is another state resident, or if property located in that other state, and transfer may be executed and enforced in Texas.
Compensation	Noncumulative annual election to charge reasonable compensation (unless custodian was also transferor by gift or POA)
Investment	Prudent person; no duty of diversification; no incorporation of other fiduciary investment statutes; life insurance investments permitted iff minor is sole beneficiary (or estate if the minor is the insured life)
Accounting	Parent or guardian always entitled to information; minor too at 14
Distribution	"Benefit;" minor may compel at 14

[2] Annual Exclusion—Custodianship	UGMA (Uniform Gifts to Minors) or UTMA (Uniform Transfer to Minors) gifts qualify for annual exclusion, but custodianship typically ends at 18 or 21. Much simpler than 2503(c)
[a] Level of Simplicity	form of title perfects the custodianship
[b] Restrictions on Investments	UGMA - securities, life insurance, annuities, money UTMA - any prudent investment permitted
[c] Appointment of Successor Custodians	Court approval may be required (TX allows nominee to name successors)
[d] Distributions to a Child	In Texas, upon 21/18, death
[e] Income Taxation of Property	Taxed to donee
[f] Death During Custodianship	Of donor - generally included in donor's estate if state law permitted expenditures on child for reasons other than HEMS Of donee - included in child's estate

## ELDER LAW ISSUES

A. Elder Law distinguished	
1. Wills	Assets to surviving spouse will disqualify means tests, disclaimers invite penalties
2. Powers of attorney	Should be broadened to enable taxable gifts, including to agent
	Consider whether it is appropriate for the powers of attorney to include specific authority to: <ul style="list-style-type: none"> <li>• Make transfers into protected trusts, with carefully identified quality of care provisions to remain at home or to seek out and secure good alternative housing opportunities,</li> <li>• Make gifts that are not limited by the annual exclusion,</li> <li>• Transfer specifically listed real estate (to expedite title transfers),</li> <li>• Permit sale of homestead property,</li> <li>• Waive homestead rights,</li> <li>• Enter into a Marital Property Agreement to transfer property to the community spouse if one spouse becomes institutionalized,</li> <li>• Pay family or others to provide home care services, and</li> <li>• Transfer assets to a trust for a child with disabilities or to any individual with disabilities under age 65 (see 42 U.S.C. 1396p (c)(2)(B)(iii) and (iv) for the transfer exemptions, and Sections X.C. and XI.A(3)(d) for a discussion of this exemption.</li> </ul>
3. Living trusts	Countable assets
4. Gifting	36-month lookback; exception for disabled child; exceptions for transfers to 2-year residential caregiver children; monthly exclusion of average cost of nursing care (\$2,908 in Texas 2005)
B. The Big Four	
1. Medicare	Covers emergency and short term medical; 65 + quarters qualifies; no means test; absent quarters, may elect coverage at 65
a. Nursing home care	Iff discharged directly from a hospital after an in-patient stay of 3 days, then full payment the first 20 days, and 100 days thereafter with copay (\$114 per day in 2005)
2. Medicaid	Tests below are specific to Nursing Home Medicaid. Community Care and other programs differ.
a. Qualifying medical need	Elderly or disabled
b. Income cap	\$1,737 (2005); \$1,738 completely disqualifies; higher limits if both spouses in a nursing home
i) Exception—Qualified Income Trust	aka, Miller Trust (c) <u>Miller Trusts or Qualified Income Trusts ("QIT's")</u> . Third, a Qualified Income Trust (a "QIT" or commonly referred to as a Miller Trust) may be used. Income is assigned or deposited into the Miller Trust and then "re-directed" to provide the Medicaid recipient with \$60 a month for spending, to pay the Medicaid recipient's Medigap or other health insurance policy premiums and/or Medicare B premium, to pay the Community Spouse up to \$2,232.00, and to pay the nursing home the remainder. <i>A Miller Trust is a federally-created remedy to a federally-created problem and has been referred to as a "Faux Trust" or "Toll-Booth Trust."</i> All that is required is that the disqualifying income be redirected through the trust and, as such, the Miller Trust appears to be more of a device than a trust.
ii) In-kind support and maintenance	Third-party (including client's trust) purchase of goods and services directly for the client
c. Asset test	NMT \$2,000 countable resources (\$3,000 for couple); higher limits if both spouses in a nursing home
i) Exclusion—Homestead	Intent to return required; Texas home (3 month rollover on sale privilege)
A) Recovery	Lien for reimbursement may be foreclosed on death, but may be limited to probate interest, hence, remainder to children from the special needs trust may avoid the lien
ii) Exclusion—One automobile	NTE \$4500, unless used in trade or business, specially equipped, or treatment transportation

iii) Exclusion—Some household goods	All if community spouse
3. Social Security Disability Income (SSDI)	Disability benefits to workers insured and working 20/40 prior quarters; no means test; qualification enables Medicare
4. Supplemental Security Income (SSI)	Federal welfare to elderly, blind, or disabled; income and asset test; qualification enables Medicaid
a. Income cap	Legislative intent similar to Medicaid, but specifics vary
b. Asset test	
C. Special Needs Trust	Enables exclusion of assets and distributions
1. Nonself-Settled	
a. Common-Law Third-Party Special Needs Trust	Funded with third-party gifts and bequests; no payback
2. Self-Settled	
a. d4A Special Needs Trust	Created by parent, grandparent, guardian, or court, and funded before disabled individual is 65; payback; 42 USC 1396p(d)(4)(A)
b. Pooled Trust	d4A alternative, e.g., B GTE 65, assets too few for d4A; nonprofit custodian entitled to remainder; individual entitled to create for themselves
c. State-Court Created Trusts	
i) Tex. Prob. Code § 867 Management Trusts with Special Needs provisions	Texas court creates this trust as an alternative to a guardianship of the estate. Corporate fiduciary required.
A) Trustee's distribution powers	Broader than guardian's
ii) Tex. Prob. Code § 142 Trusts with Supplemental Needs provisions	Texas court creates this trust when there is no guardian and a lawsuit is pending. Other statutes enable addition of d4A special needs provisions
d. Payback provision	Qualifying trusts must direct on the death of the beneficiary that the state Medicaid program is entitled to be paid back (but no duty to maximize the state's remainder interest)
3. Timing	<p><b>C. The Best Time for a Special Needs Trust.</b> Third-party funds can build a safety net for individuals who receive public benefits when left:</p> <ul style="list-style-type: none"> <li>• By Will into a Special Needs Trust for an elderly individual or a person with serious disabilities,</li> <li>• By transfer <u>from anyone</u> during a benefactor's life into a Special Needs Trust for the individual, provided that the assets used to fund the Special Needs Trust were not the beneficiary's funds (or the beneficiary's spouse's funds) to begin with (impermissible donee trusts),</li> <li>• By transfer by Will or during a benefactor's life to a pooled trust, such as one of the trusts operated by the ARC of Texas (formerly known as the Association for Retarded Citizens).</li> </ul>
D. Trust Distributions	Particulars vary with program; one constant is ability to enhance individual's quality of care and quality of life

E. Global Thoughts	<p><b>D. <u>Make the Most of ALL Opportunities.</u></b> For most persons with disabilities, timing for acquiring opportunities is not within their control. If individuals are aware of opportunities and recognize them when they come along, however, they are less likely to miss them. There are relatively few opportunities. Key opportunities include the following:</p> <ul style="list-style-type: none"> <li>• Alimony and property settlements can be structured to work with public benefits rather than destroy that safety net or source of support by using special needs trusts and purchasing exempt assets.</li> <li>• Child support payments can be made to special needs trusts, thereby preserving public benefits.</li> <li>• Parents, grandparents, or other relatives can make non-penalized transfers of assets to individuals with disabilities, without jeopardizing their own access to Medicaid.</li> <li>• Parents, grandparents, other relatives and other benefactors can do good testamentary or inter vivos planning if they recognize that it is better to pour \$45,000 into a secure bucket than to pour \$50,000 into a bucket with a large hole in the bottom.</li> </ul>
F. Common Medicaid Pitfalls	<p><b>E. <u>Common Pitfalls.</u></b> As stated earlier, this entire area is subject to great uncertainty and change. Expect and watch out for surprises and illogical results. Watch out for:</p> <p>(1) <b><u>Disclaimers.</u></b> Disclaimers of an inheritance are likely to be treated as transfers that are subject to transfer of asset penalties, despite the conflict with state law.</p> <p>(2) <b><u>Inheritances.</u></b> Friends, siblings, parents, and other family members may believe that they can help the Medicaid recipient by leaving the individual some money in their wills; if, however, they do not leave the funds in a special needs trust, the recipient may not be able to preserve such funds for very long if he or she is on Medicaid. Direct inheritances may, in fact, make him or her ineligible for Medicaid—doing more harm than good, or at least not very much good.</p> <p>(3) <b><u>Lack of Medigap Coverage.</u></b> Clients need to realize just how much 20% of medical costs (and other uncovered costs) can be. Medigap coverage can be among one's most valuable assets.</p> <p>(4) <b><u>No Cap On Penalty Period.</u></b> Again, keep in mind that transfers during the "look-back" period will be penalized and that there <u>is no cap on the penalty period</u>. Transfers that take place outside the look-back period are not currently subject to a penalty.</p>