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## LIFE AND ESTATE PLANNING DOCUMENTS

- Sponsored by HOUSTON VISITING CHRISTIAN SCIENCE NURSE SERVICE, INC.
- Presented by Michael S. Holmes
- October 22, 2017, Seventh Church of Christ, Scientist

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## AGENDA

- Disclaimer
- Introduction
- Survey
- Issues
- Life documents
- Estate documents
- Resources
- Questions

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## DISCLAIMER

- **DISCLAIMER:**
- THIS PRESENTATION IS FOR INFORMATION ONLY AND IS NOT LEGAL ADVICE TO ANY ONE. IT IS FOR EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE RELIED UPON BY YOU. IF YOU HAVE A LEGAL QUESTION, YOU NEED TO CONSULT AN ATTORNEY WHO CAN ADVISE YOU SPECIFICALLY AS TO THE FACTS OF YOUR SITUATION.
- I HAVE NO ATTORNEY-CLIENT RELATIONSHIP WITH ANYONE AT THIS MEETING. I REQUIRE A WRITTEN CONTRACT TO BE SIGNED BY ALL PARTIES TO BE EMPLOYED AS SOMEONE'S ATTORNEY.
- THEREFORE, THERE IS NO ATTORNEY-CLIENT RELATIONSHIP WILL BE FORMED WITH ME OR MY FIRM BY YOU LISTENING OR DISCUSSING THE INFORMATION IN THIS PRESENTATION OR FROM ANY DOCUMENT YOU RECEIVED OR ANSWERS TO ANY QUESTION YOU MAY HAVE AT THIS MEETING.

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## MICHAEL S. HOLMES

- Licensed since Nov. 1982
- Served as briefing attorney for Justice Sam Robertson, 14<sup>th</sup> Court of Appeals
- Began private practice of law in 1983 with focus on bankruptcy, probate and creditor's rights.
- Prepared wills and other estate documents.
- Filed 100+ probate cases in my practice.

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## SURVEY

- Who has powers of attorney?
- Who has had to care for a loved one?
- Who has a will?
- Who has ever been involved with probating an estate, with or without a will?

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## DOCUMENTS FOR LIFE

TRY TO AVOID A GUARDIANSHIP

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## POTENTIAL ISSUES

- No MPOA, CS unable to make care decisions; adult children cannot agree on health care treatment
- CS has family resistance to metaphysical treatment
- Parent 1 is CS; Parent 2 is not CS, child needs care
- CS needs someone to manage assets for care
- Family needs to get information about CS's care and treatment

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## DOCUMENTS:

- DURABLE POWER OF ATTORNEY
- MEDICAL POWER OF ATTORNEY
- DIRECTIVE TO PHYSICIANS
- HIPAA AUTHORIZATION
- OTHER LIFE DOCUMENTS OF INTEREST

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## DURABLE POWER OF ATTORNEY

- Deals with your **property** only
- Statutory form most used
- Recent changes make stronger push for 3<sup>rd</sup> party acceptance
- Immediate or effective on disability
- Can have alternate agents
- **CAUTION!!** Handing a signed blank check to agent.
- Record in county records if selling real property
- Must be signed in attorney office if used for Home Equity Loan

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## MEDICAL POWER OF ATTORNEY

- Deals with your **person** only
- Effective only when you cannot make a health decision because of mental incompetency or physical inability
- Upon regaining competency or consciousness, you make your own decisions.
- Appoint primary agent, alternates
- Provide to healthcare provider
- Can insert language to restrict or request CS metaphysical treatment and authorize agent to remove you to Nursing facility or other care facility
- For CSer's "Ticket out" of medical situation
- Guardianship overrides MPOA if guardian appointed

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## DIRECTIVE TO PHYSICIAN

- Commonly known as "Living Wills"
- A written directive on ending life support
- Applies only to terminal conditions or irreversible conditions
- Choices: let me go; keep me alive
- Not euthanasia
- Easily revoked by principal
- Provides guidance of your wishes to family

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## HEALTH INSURANCE PORTABILITY AND ACCOUNTING ACT (HIPAA)

- Federal law (HIPAA) prevents any healthcare provider from disclosing any information, treatment about an individual without authorization,
- Specify what individuals may obtain healthcare information about you
- I like to have a group of individuals, not a list of successors – more convenient to the family

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## OTHER LIFE DOCUMENTS OF INTEREST

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- Do Not Resuscitate (DNR)
- Appointment of Guardianship, name guardian or exclude persons from being your guardian

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## WHEN DO LIFE DOCUMENTS EXPIRE OR TERMINATE?

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- Revoked in writing during lifetime
- Upon death

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## ESTATE PLANNING DOCUMENTS

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- Legal stuff and definitions
- Contractual transfers
- No Will
- Wills
- Trusts

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# FIRST THINGS FIRST



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## DEFINITIONS: (NO PARTITION)

- Separate property:
  - (i) all property owned by a single person;
  - (ii) property brought into marriage or received by gift or inheritance during marriage that has not been commingled into community property.
- Community property: all property acquired during marriage, except for separate property from gift or inheritance.
- Unless there is an agreement in writing pre or post marriage, all income from separate property is community property

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## DEFINITIONS (CON'T):

- Intestate – someone who dies without a will
- Testate – someone who dies with a will

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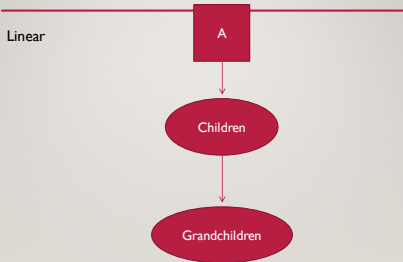
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## DESCENDANTS



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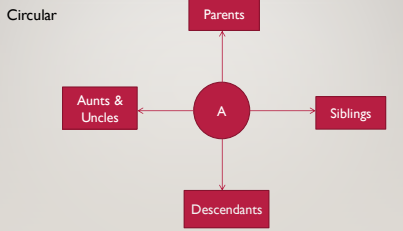
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## HEIRS



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## HOW TO TRANSFER PROPERTY AT DEATH

- Contract
- Will

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## CONTRACT

- Beneficiary designation
- Joint Tenancy with Right of Survivorship (JTWROS) with proper written agreement
- Payment on Death (POD)
- Transfer on Death/Transfer After Death (TOD/TAD)
- Trust
- Unrecorded gift deed (no step-up in basis)
- **Contractual transfers ALWAYS trump terms of a Will**

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## CONTRACT

- Life insurance
- IRA's
- Transfer on Death Deed (TODD)
- Real property with a separate recorded survivor agreement
- Lady Bird deeds, retain life estate, remainder vests in 3<sup>rd</sup> party
- Testamentary trust that terminates on death

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## PASSAGE OF ESTATE ON DEATH

### § 101.001. Passage Of Estate on Decedent's Death

- (a) Subject to Section 101.051, if a person dies leaving a lawful will:
  - (1) all of the person's estate that is devised by the will vests **immediately** in the devisees;
  - (2) all powers of appointment granted in the will vest immediately in the donees of those powers; and
  - (3) all of the person's estate that is not devised by the will vests immediately in the person's heirs at law.
- (b) Subject to Section 101.051, the estate of a person who dies **intestate** vests **immediately** in the person's heirs at law.

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## ABILITY OF ESTATE FOR DEBTS IN GENERAL

### § 101.051. Liability Of Estate For Debts In General

- (a) A decedent's estate vests in accordance with Section 101.001(a) **subject to** the payment of:
  - (1) the debts of the decedent, except as exempted by law; and
  - (2) any court-ordered child support payments that are delinquent on the date of the decedent's death.
- (b) A decedent's estate vests in accordance with Section 101.001(b) **subject to** the payment of, and is still liable for:
  - (1) the debts of the decedent, except as exempted by law; and
  - (2) any court-ordered child support payments that are delinquent on the date of the decedent's death.

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## JOINT OWNERSHIP OF PROPERTY

### § 101.002. Effect Of Joint Ownership Of Property

If two or more persons hold an interest in property jointly and one joint owner dies before severance, the interest of the decedent in the joint estate:

- (1) does not survive to the remaining joint owner or owners; and
- (2) passes by will or intestacy from the decedent as if the decedent's interest had been severed.

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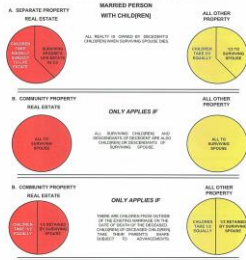
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### TEXAS DESCENT AND DISTRIBUTION

(THE LEGAL EFFECT OF NOT HAVING A WILL)




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**SINGLE OR WIDOWED PERSON**

**FATHER AND MOTHER SURVIVING ONLY**  
 WITH NO CHILDREN  
 ESTATE DIVIDED EQUALLY BY FATHER & MOTHER OR THEIR REPRESENTATIVES SURVIVE DECEDENT

**PARENT AND BILLINEL SURVIVE**  
 ALL OTHER PROPERTY  
 TO ALL SURVIVING BILLINELS

**WIDOWER WITH CHILDREN**  
 ALL OTHER PROPERTY  
 ALL CHILDREN TAKE THEIR SHARE (EQUALLY IF NO SURVIVING BILLINELS)

**MARRIED PERSON WITH NO CHILDREN**  
 ALL OTHER PROPERTY  
 ALL TO SURVIVING SPOUSE

**SEPARATE PROPERTY REAL ESTATE**  
 1. FIDUCIARY SURVIVE: ALL TO FIDUCIARY  
 2. ONE PARENT SURVIVES: ALL TO SURVIVING PARENT  
 3. NO PARENT OR THEIR DESCENDANTS: ALL TO SURVIVING SPOUSE

**COMMUNITY PROPERTY** ALL REAL AND PERSONAL ASSETS TO SURVIVING SPOUSE

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## WILL

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- Controls disposition of property that is **not transferred by contract**, whether real or personal, tangible or intangible
- Only conveys the decedent's interest in property
- Can set up independent administration of probate estate
- Allows executor to serve without bond

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## WILL CONT'D

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- Bequests are subject to payment of debts
- May grant more or less powers to an executor or trustee that may be allowed under Texas law
- Executor is a fiduciary

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### PROBATE WILL

- Will is not effective to prove title to or right to possession of any property disposed of by the will **UNTIL** the will is admitted to probate. §256.001
- Must be probated no later than 4 years from death of testator. §256.003
- Can probate as muniment (record) of title after 4 years **IF** party applying was not in default in failing to present the same for probate. Must prove good cause why will was not probated within 4 years
- Heirs now entitled to notice that probate of will may deprive them of property. §258.051
- No letters testamentary after lapse of 4 years

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### MISCELLANEOUS – BUT IMPORTANT

- Title passes immediately upon death under will or intestates. Tex. Estates Code §101.001
- Person who fails to survive by 120 hours is deemed to have predeceased the decedent. Tex. Estates Code §121.001 (if will has different time, will controls).
- Devise of real property does not include "contents" unless will directs that they are included in the devise. Tex. Estates Code §255.002 (building does not include furnishings unless will specifically states so)
- Legacy of personal property does not include "contents" unless will directs that they are included in the legacy. Tex. Estates Code §255.003(jewelry box does not include jewelry unless specifically stated so)
- A person can disinherit an heir. Tex. Estates Code §251.002
- Premarried child (born after will signed, no provision for after born children) is entitled to share of estate. Tex. Estates Code §255.051 et seq.
- Will made before divorce, marriage then dissolved, will is read as if former spouse and each relative of the former spouse who is not a relative of the testator failed to survive the testator. Tex. Estates Code §123.001(b)
- Creditors are to be paid from estate assets BEFORE any distributions to heirs, devisees or legatees. If not paid, creditors may pursue persons receiving the estate's assets. Tex. Estates Code § 101.051
- Homestead vests in surviving spouse irrespective of whether it is separate or community property Tex. Estates Code § 102.002; 102.003

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### TRUSTS

- Created during lifetime a "Intervivos Trust"
- Created in a will a "Testamentary Trust"

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## INTERVIVOS TRUSTS

- Can be revocable meaning the trust provisions can be amended, added to, or trust revoked. No creditor protection.
- If irrevocable, no changes allowed. Creates a new taxable entity. No creditor protection for settlor of trust.
- Use for charitable giving
- Allows for management of assets if settlor cannot do so
- Always need a will in case there are assets not put in the trust (a rollover will)

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## TESTAMENTARY TRUST

- Created in a will
- Allows married couple to shield assets from estate taxes if needed
- Allows asset protection for beneficiaries from creditors and other family members or spouses
- Allows advance estate tax planning
- Used a lot for second marriages with spouses wanting to deal separately with their own families

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## HIGH WORTH INDIVIDUALS

- Need specialized attorney who understands IRS code
- Techniques used are to take advantage of tax code to provide transfer of wealth with least amount of taxes
- Charitable giving often a part of planning

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## CS CHURCHES

- The First Church of Christ, Scientist Treasurer's department to help with any planned gifts.
- Questions and information: e-mail at [philanthropy@cspcs.com](mailto:philanthropy@cspcs.com), by phone at 1-800-288-7155, extension 3288, or write to us at the address below.
- The First Church of Christ, Scientist Philanthropy, P2-02  
210 Massachusetts Avenue  
Boston, MA 02115-3195 USA
- Your local CS churches are grateful for any gifts

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## OTHER RESOURCES

- Texas Health and Human Services
- Gulf Coast Legal Foundation and Lone Star Legal Aid\*
- UH Civil Practice Legal Clinic\*
- South Texas College of Law Houston – The Randall O Sorrells Legal Clinic\*
- Houston Bar Association – Volunteer Lawyers\*
- TexasLawHelp.org

\*Income limitations restrict availability

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## IT'S BEEN NICE TO BE WITH YOU.




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# THANK YOU QUESTIONS??

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