

How to Avoid Probate in Texas

Texas has no estate tax and no inheritance tax, and since November 2025 its constitution bars a state estate or inheritance tax. So the cost of dying in Texas is probate itself: court filings, a 5 percent executor commission on the cash an executor handles, and attorney fees. Texas offers lighter court routes than full court supervision, and six legal tools move assets around probate entirely.

General information, not legal advice. This guide explains Texas law in general terms for the public. It isn't legal advice and isn't a substitute for the advice of an attorney licensed in Texas. Taylored Tax is a firm of Enrolled Agents, enrolled to practice before the Internal Revenue Service. We don't practice law, draft legal documents, or recommend which legal instrument you should use. Reading this guide or booking a call doesn't make you our client.

THE TEXAS REALITY

In Texas, the cost of dying isn't a tax bill. It's probate, and a four-year clock.

A Texas will generally has to be filed for probate within four years of death. Assets with a recorded transfer on death deed or a named beneficiary pass without a court case.

Does Texas tax your estate or your heirs? No, neither one.

Texas has no estate tax and no inheritance tax. The Texas Legislature repealed the state inheritance tax in 2015. On November 4, 2025, Texas voters added Article VIII, Section 26 to the Texas Constitution, which bars the Legislature from imposing a state estate or inheritance tax. If an estate, plus taxable gifts made during life, stays below the federal threshold, **no Texas or federal transfer tax is due.** Real estate owned in a state with its own estate tax can still be taxed there. The federal threshold is \$15 million per person in 2026 under the 2025 federal tax law (Public Law 119-21). A married couple gets \$30 million if the first spouse's estate files a timely federal estate tax return electing portability.

The cost that remains is the **probate process**: the court filings, the executor's commission, the attorney fee and the time. A court process called independent administration, covered below, keeps much of the court time out of it.

What a family faces at death in Texas	2026 reality
Texas estate tax	\$0. Texas has none, and the Texas Constitution has barred one since November 4, 2025.
Texas inheritance tax	\$0. Repealed in 2015. The same constitutional amendment bars a new one.
Federal estate tax	\$0 if the estate is below \$15M (single) or \$30M (married, with a portability election). No scheduled expiration under the 2025 federal law; indexed for inflation for deaths after 2026.
Probate court costs	Fees differ from county to county. Travis County charges \$360 to file a probate application. With newspaper notice and certified copies, our estimate is about \$1,000 in total.
Executor commission	5 percent of the cash the executor actually receives or pays out, capped at 5 percent of the gross value of the property going through probate. No commission on bank or brokerage funds on hand at death, life insurance proceeds, or payouts to heirs (set by Texas statute).

What a family faces at death in Texas	2026 reality
Probate attorney fees	"Reasonable" fees, with no fixed state schedule. We use \$10,000 for an uncontested independent administration in the example below, as our own estimate. Contested cases cost more.
Time tied up	The executor files an inventory within 90 days of qualifying. An independent executor can file a sworn statement in its place when the only unpaid debts are secured debts, taxes and administration costs. Our estimate: 3 to 9 months for an uncontested independent administration, 1 to 2 years or more if contested.
Deadline to probate a will	Four years from death. After that, a will generally can't be probated unless the person applying shows they weren't at fault for the delay.

All together, a \$1,000,000 estate that runs through Texas probate, with the house sold by the executor, could pay roughly **\$31,000 in commission, attorney fees and court costs**. The commission skips bank and brokerage funds on hand at death, which keeps the bill down. Most of the \$31,000 still leaves the family.

Can Texas probate be lighter? Yes, through three shorter court routes.

Texas offers three lighter court routes when probate can't be avoided. The table shows them beside full court supervision. Each still runs through the county court that hears probate cases, so each still counts as probate.

Texas court route	How it works
Independent administration	The court appoints the executor, the executor files an inventory or a sworn statement in its place, and after that the executor can sell, pay and distribute without further court orders. A will can call for it, or everyone who inherits can agree to ask the court for it. Authority: Estates Code 401.001 to 401.003 and 402.001.

Texas court route	How it works
Dependent (court-supervised) administration	The slower route. The executor needs a court order to sell estate property, files a yearly account with the court, and the court generally requires a bond unless the will waives it. Authority: Estates Code 356.001, 359.001 and 305.101.
Probate of a will as a muniment of title	The court accepts the will as proof of who owns the property, and no executor is appointed. It's available when the estate owes no unpaid debts except debts secured by real estate, like a mortgage. Banks and buyers can then deal directly with the people the will names. Authority: Estates Code 257.001 and 257.102.
Small estate affidavit	For people who die without a will. Available 30 days after death when no request to appoint an administrator is open or has been granted, and the estate, not counting the homestead and exempt property, is worth \$75,000 or less. The heirs take the estate only to the extent its assets exceed its known debts, leaving the homestead and exempt property out of both sides. A judge reviews the affidavit and may approve it. It can transfer the homestead only if the homestead is the only real estate. Authority: Estates Code 205.001, 205.003 and 205.006.

Every one of these routes still needs a court filing, and the will-based routes generally need it within four years of death. The six tools below generally move assets without a court case.

Which tools keep assets out of Texas probate? Six, and a recorded deed carries the house.

Texas law gives families six statute-backed ways to pass assets **without** probate court. Many Texas families use more than one of them. Which ones fit a given family is a question for a Texas attorney.

TOOL 1: OFTEN USED FOR REAL ESTATE

Transfer on Death Deed

A transfer on death deed names who inherits a piece of Texas real estate when the owner dies. It must be recorded in the county deed records before death. During life, the owner keeps full control: the owner can sell or mortgage the property, and the deed doesn't change homestead rights or property tax exemptions. The owner can revoke it during life, and a will can't override it. If co-owners holding it as joint tenants with survivorship rights signed it, all living co-owners have to join in revoking it. That rule doesn't cover a married couple's community property: there, each spouse's revocation covers only that spouse's share (Estates Code 114.002, 114.057). At death, the property passes to a beneficiary who survives the owner by 120 hours, without probate. The beneficiary takes the property with any mortgage still on it, and the executor can collect estate debts from the property if the rest of the estate can't pay them. A transfer on death deed can't be signed through a power of attorney. **Authority: Texas Estates Code Chapter 114 (114.051 to 114.106).**

Commonly used for: *A home, a rental property, a ranch or a lake house. People who own Texas real estate in their own name and have a clear idea of who inherits it.*

TOOL 2: OFTEN USED FOR MARRIED COUPLES

Community Property Survivorship Agreement

Texas is a community property state: property either spouse acquires during marriage, other than gifts and inheritances, is community property, owned by both. Spouses can sign a written agreement that some or all of their community property goes to the surviving spouse at the first death. The agreement takes effect without a court case. During the marriage, the property stays community property and both spouses keep managing it as before. Recognized wording includes "with right of survivorship."

Authority: Texas Estates Code Chapter 112 (112.051 to 112.152).

Commonly used for: *Married couples who want the surviving spouse to take community property without probate. Like any survivorship tool, it only covers the first death. Separate property (owned before marriage, or received by gift or inheritance) uses a different written survivorship agreement under Estates Code 111.001.*

TOOL 3: OFTEN USED FOR RETIREMENT ACCOUNTS AND LIFE INSURANCE

Beneficiary Designations

A 401(k), IRA, 403(b) or life insurance policy each has a form that names a beneficiary. That beneficiary receives the account directly, by contract, without probate. Texas law treats these designations as valid transfers outside a will. Beneficiary forms are the simplest step on the list, and a form that's out of date can pay the wrong person or send the account back into probate. **Where it breaks:** naming "my estate" as the beneficiary, or leaving the form blank. Both can pull the asset back into probate and can shorten the time heirs have to withdraw a retirement account. **Authority: Texas Estates Code 111.052.**

Terrence holds the life insurance licenses on our team and is paid when a policy is placed.

Commonly used for: *Texans with a retirement account or life insurance. Families commonly review these forms every few years and after a marriage, divorce, birth or death.*

TOOL 4: OFTEN USED FOR BANK AND BROKERAGE ACCOUNTS

Payable on Death (POD) and Transfer on Death (TOD) Accounts

A savings account, checking account or certificate of deposit (CD) can carry a "POD" designation that names who receives the balance. Texas law treats an account labeled "TOD" the same way. A brokerage account can name a TOD beneficiary under the account agreement. The owner keeps full control during life. At death, the named person deals directly with the bank or broker, without probate. A joint account is different: in Texas, it passes to the surviving owner only under a written survivorship agreement signed by the owner who died. The letters "JT TEN" alone don't create one. **Authority: Texas Estates Code 113.004, 113.151 and 113.152 (bank accounts); 111.052 (brokerage and other contracts).**

Commonly used for: *Texas bank and brokerage accounts. Usually free to set up, filed directly with the institution, and changeable at any time.*

TOOL 5: OFTEN USED FOR COMPLEX ESTATES

Revocable Living Trust

A revocable living trust holds assets under written instructions. The person who creates it usually serves as trustee during life, and a successor trustee hands out the assets at death without probate. In Texas, a trust can be revoked unless its terms say it's irrevocable. The trust avoids probate only on assets retitled into its name. An unfunded trust avoids nothing. **Authority: Texas Trust Code, Texas Property Code Title 9, Subtitle B (including 112.051).**

***Commonly used for:** Several properties, real estate in more than one state, business interests, blended families, and families that want a successor trustee ready if the owner can't manage their affairs.*

TOOL 6: OFTEN USED FOR CARS AND TRUCKS

Motor Vehicle Beneficiary Designation

A Texas vehicle owner can name one beneficiary for the vehicle through the state's title process. The vehicle passes to that person at death if they survive the owner by 120 hours, with any loan still attached. A will can't override the designation. The owner can change it during life on a title application, but a change that isn't submitted to the state before death doesn't count. If joint owners with survivorship rights made it, all living joint owners have to join in a change. A married couple's community property isn't covered by that joint-owner rule (Estates Code 115.001, 115.003). **Authority: Texas Estates Code Chapter 115; Texas Transportation Code 501.0315.**

***Commonly used for:** Cars, trucks and other titled motor vehicles, especially where a vehicle is the one asset that would otherwise need a court filing.*

What can probate cost a \$1 million Texas estate? About \$11,000 to \$31,000.

ILLUSTRATIVE: \$1 MILLION TEXAS ESTATE

Plan A: Will only, with independent administration.

Executor commission (5% of \$400,000 house sale proceeds)	\$20,000
Executor commission on \$600,000 of bank and brokerage funds	\$0
Attorney fees (our estimate)	\$10,000
Court costs, newspaper notice, certified copies (our estimate)	\$1,000

Total probate cost **About \$31,000 (3.1%)**

Assumes the executor sells the house for cash and takes the statutory commission, and the bank and brokerage funds pass to heirs without being sold. If the executor hands the house to the heirs instead of selling it, or waives the commission, the commission on the house is \$0 and the Plan A total is about \$11,000. Plus our estimated 3 to 9 months in court, in the public record. A will without independent administration, or no will at all, costs more.

SAME \$1 MILLION ESTATE, RESTRUCTURED

Plan B: Transfer on death deed + POD/TOD accounts + beneficiary designations.

Setup cost (attorney-drafted deed, recording, account designations; our estimate)	\$500 to \$2,000
Executor commission	Near \$0
Probate attorney fees	Near \$0
Court costs	Near \$0

Total cost **\$500 to \$2,000**

Accounts with beneficiaries and the deeded house transfer without a court case. After setup costs, the family keeps roughly \$29,000 to \$30,500. If the house wouldn't have been sold, or the commission would have been waived, the family keeps roughly \$9,000 to \$10,500.

Numbers are illustrative, based on Texas's statutory executor commission (Estates Code 352.002), Travis County's \$360 filing fee and our own attorney-fee and court-cost estimates. Texas has no

statutory attorney-fee schedule. Actual numbers depend on county, asset mix and complexity. This isn't legal or tax advice.

Where does our work stop? We estimate the tax, and attorneys draft.

We're Enrolled Agents. We work on the tax: what your estate would owe the IRS, which filings it triggers, and what each choice is worth in dollars. We don't draft documents and we don't practice law.

Every tool on this page is a legal instrument. Which one fits your family, how it's drafted, and how it works with the documents you've already signed are questions for a Texas attorney. It helps to know what each choice is worth in tax before you sit down with that attorney.

What do Texas families get wrong? Five avoidable mistakes.

Each mistake costs a family time, money or control.

- **Waiting more than four years to probate a will.** After four years, a Texas will generally can't be probated unless the person applying shows they weren't at fault, and an executor can't be appointed unless the application was filed in time.
- **A will that doesn't call for independent administration.** Without it, independent administration needs everyone who inherits under the will to agree, and the court can still turn it down. Otherwise the estate can end up in slower, court-supervised administration. With no will, independent administration also needs a court ruling on who the heirs are first.
- **Expecting a will to change a transfer on death deed.** It can't (Estates Code 114.057). A later transfer on death deed or a written revocation changes it only if it's signed and acknowledged after the deed and recorded in the county deed records before the owner's death. A sale or gift of the property recorded before death also defeats it as to that property. A divorce defeats it as to the former spouse if notice of the divorce judgment is recorded before death.
- **Naming "my estate" as the beneficiary on a retirement account.** It pulls the account into probate. It can also force heirs to empty the account within 5 years, instead of the 10 years a

named person usually gets. If the owner had started required withdrawals, the payout follows the owner's remaining life expectancy instead.

- **Letting beneficiary forms go stale after a divorce.** Texas law usually cancels a former spouse's designation on an IRA, a life policy or a bank account at divorce. Federal law can override that rule for most employer 401(k) plans, so an old 401(k) form can still pay a former spouse. That's why families commonly update every form after a divorce.

What doesn't this guide cover? Five issues that need their own plan.

Avoiding probate is one part of a full estate plan. Five Texas issues go beyond probate and need separate attention:

- **The surviving spouse's homestead rights.** Texas law bars dividing the homestead among heirs while the surviving spouse keeps living there (Estates Code 102.005). Its fit with a deed, a trust or a will is a question for a Texas attorney.
- **Texas Medicaid estate recovery.** If someone receives Medicaid long-term care benefits, the state can seek repayment from their estate at death. Medicaid recovery needs a long-term-care planning conversation, not a probate-avoidance form.
- **Asset protection from creditors and lawsuits.** A revocable trust **doesn't** protect assets from the owner's own creditors. Asset protection is a separate kind of planning.
- **Federal estate tax planning for estates over \$15M.** A different conversation, and the focus of Lever 5 for ultra-high-net-worth families.
- **Out-of-state real estate.** Property in Louisiana, Oklahoma, New Mexico or anywhere else can need a second probate in that state (ancillary probate) unless it's held another way.

What do the legal words mean? Each one, in plain English.

The terms below appear in this guide or come up often in estate planning.

Term	What it means
Probate	The court process that proves a will (or decides who the heirs are) and moves what a person owned into the names of the people who inherit it. In Texas it runs through the county court that hears probate cases.
Personal representative, executor, administrator	The person who settles an estate in probate. An executor is named in a will; an administrator is appointed when there's no will or no executor who can serve.
Letters testamentary	The court paper that shows banks and buyers the executor has authority to act.
Independent administration	The Texas route where the executor, after filing an inventory, acts without further court orders.
Dependent administration	The court-supervised Texas route. The court approves sales and reviews yearly accounts.
Muniment of title	A Texas probate order that accepts a will as proof of who owns property, with no executor appointed.
Small estate affidavit	A sworn statement, approved by a judge, that transfers a small estate of someone who died without a will.
Homestead	The home a person or family lives in, which Texas law protects in special ways, including from most debts after death when a spouse or minor child survives.
Exempt property	Household and personal property the probate court sets aside for a surviving spouse, minor children and certain adult children. Apart from the homestead, it's shielded from most estate debts.
Transfer on death deed	A recorded deed that names who inherits Texas real estate at the owner's death, without probate.

Term	What it means
Community property, separate property	Community property is what either spouse acquires during marriage, other than by gift or inheritance. Separate property is what one spouse owned before marriage or received by gift or inheritance.
Community property survivorship agreement	A written agreement between spouses that their community property goes to the survivor at the first death.
Right of survivorship	A way of co-owning property so the surviving owner takes it all at the first death, outside probate.
Revocable living trust	A trust the creator controls and can change or cancel during life. Assets titled in it skip probate.
Funded trust	A trust that holds assets because they were retitled into its name. An unfunded trust avoids no probate.
Successor trustee	The person who takes over a trust at the creator's death or incapacity and hands out the assets under its instructions.
Beneficiary designation	The form on a retirement account or life insurance policy that names who receives it at death.
Death benefit	The money a life insurance policy pays when the insured person dies.
401(k), IRA, 403(b)	Retirement accounts. A 401(k) or 403(b) comes through an employer. An individual retirement account (IRA) is opened by the owner.
Payable on death (POD), transfer on death (TOD)	A beneficiary named directly on a bank or brokerage account. The account passes to that person without probate.
Certificate of deposit (CD)	A bank deposit held for a set term at a set interest rate.
Irrevocable life insurance trust (ILIT)	A trust that owns a life insurance policy so the death benefit stays out of the insured person's taxable estate. Used in federal estate tax planning for large estates.

Term	What it means
Estate tax	A tax on what a person leaves, paid by the estate before anyone inherits. Texas has none; the federal one applies above the federal threshold.
Inheritance tax	A tax on what a person receives, set by that person's relationship to the one who died. Texas repealed its version in 2015.
Transfer tax	A general name for estate, inheritance and gift taxes: taxes on wealth passing from one person to another.
Gross estate, taxable estate	The gross estate is everything a person owned or controlled at death for federal estate tax purposes. The taxable estate is what's left after deductions such as debts, gifts to a spouse and gifts to charity.
Exclusion, federal threshold	The amount a person can leave before federal estate tax applies: \$15 million per person in 2026.
Portability	A federal election, made on a timely estate tax return at the first spouse's death, that lets the surviving spouse use the unused part of the first spouse's exclusion. With it, a couple can leave \$30 million in 2026.
Marital deduction	The federal rule that lets property left to a surviving spouse pass free of federal estate tax. Different rules apply when the surviving spouse isn't a U.S. citizen.
Tax basis, step-up in basis	Basis is the cost figure used to measure taxable gain when property is sold. At death, inherited property generally gets a new basis equal to its market value. For a married couple's community property, both halves generally get a new basis at the first spouse's death, if at least half was counted in the deceased spouse's estate (Internal Revenue Code 1014(b)(6)).
Medicaid estate recovery	The state's right to be repaid from a person's estate at death for long-term care benefits Medicaid paid during life.

Term	What it means
Ancillary probate	A second probate in another state where the person owned real estate.
Estates Code, Property Code, Texas Trust Code	Parts of Texas's written law. The Estates Code governs wills, probate and transfers at death. The Texas Trust Code is part of the Property Code.
Internal Revenue Code (IRC)	The federal tax law. Section 1014 sets the basis of inherited property.

Questions about the federal estate tax?

Texas has no estate or inheritance tax, but the federal estate tax can still apply. We're always glad to talk about how it works. For anything about drafting or choosing legal documents, talk with a Texas attorney.

Book a Tax Discovery Call calendly.com/terrence-cec/taylorred-tax-discovery-meeting

Important. This guide is general educational information about Texas probate law as of October 2026. It isn't legal advice or tax advice for your situation, and it isn't a substitute for the advice of an attorney licensed in Texas. Texas probate, trust and tax law changes; statute citations should be re-verified against the current Texas statutes before any document is filed. County filing fees differ across Texas. Federal estate tax figures reflect Public Law 119-21 (2025) (\$15 million per individual exclusion, 2026). IRS figures can change after this guide is published. Taylored Tax isn't engaged in the practice of law. Sources for every statute and dollar figure above are available on request.