Texas Department of
Family and Protective Services

Working with Adult Protective Services – Resources

APS Policy Handbook
https://www.dfps.texas.gov/handbooks/APS/default.asp

APS Statutory Authority – Texas Human Resources Code Chapter 48 Investigations and Protective Services for Elderly Persons and Persons with Disabilities - https://statutes.capitol.texas.gov/Docs/HR/htm/HR.48.htm

APS Agency Rules – Texas Administrative Code, Title 40/Part 19/Chapter 705 Home - Rules & Meetings - https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=705&interface=VIEW_TAC&part=19&title=40

Texas Health and Human Services Guardianship Program
https://www.hhs.texas.gov/regulations/legal-information/guardianship

Texas Estates Code, Court Initiated Guardianship Procedures
Estates Code Chapter 1102. Court-Initiated Procedure to Appoint Guardian - https://statutes.capitol.texas.gov/Docs/ES/htm/ES.1102.htm

How to request copies of APS Case Records
DFPS – Request A Copy of DFPS Records
https://www.dfps.texas.gov/policies/records_requests.asp

Make a Report of Suspected Abuse, Neglect, or Exploitation
Hotline 1-800-252-5400 | DFPS - Report Abuse or Neglect - https://www.dfps.texas.gov/Contact_Us/report_abuse.asp

APS Community Partners
Partnering to Protect - https://www.dfps.texas.gov/Partnering_To_Protect/default.asp

DFPS Regional Map and Office Locations
DFPS - DFPS Offices - https://www.dfps.texas.gov/Contact_Us/offices.asp

Terry W. Hammond
Kemp Smith, LLP
Partner
(915) 533-4424
Terry.Hammond@kempsmith.com

Laura Palmquist
Adult Protective Services
Managing Attorney
(512) 831-8747
Laura.palmquist@dfps.texas.gov

Checklist: Drafting Irrevocable Trusts for Medicaid Planning

Trust Structure

- ☐ Clearly designate the trust as irrevocable
- ☐ Include no provisions that allow distributions of principal to the Grantor — under any circumstances
- ☐ State that the Grantor may retain income, if desired
- ☐ Exclude capital gains from the definition of "income" (explicitly allocate to principal)

Medicaid Eligibility Compliance

- ☐ Avoid language implying Grantor's use, benefit, or control over trust principal
- ☐ Prohibit trust adjustments between income and principal (opt out of Uniform Principal & Income Act powers)
- ☐ Eliminate any unitrust conversion or principal invasion powers
- ☐ Exclude provisions for paying the Grantor's: last illness expenses, funeral expenses, estate debts or taxes

Drafting Safeguards

- ☐ Restrict Trustee authority — especially if Grantor is also Trustee
- ☐ Prohibit trustee compensation to Grantor
- ☐ Prohibit Grantor reimbursement from trust assets
- ☐ Include Trustee powers to manage, restructure, or eliminate income streams when appropriate
- ☐ Consider using an independent Trustee or Trust Protector to approve distributions or trust changes

Termination & Distribution

- ☐ Specify named remainder beneficiaries
- ☐ Ensure residuary and remote taker provisions avoid reversion to probate estate
- ☐ Include contingent Special Needs Trusts for beneficiaries receiving public benefits

Tax & Reporting Provisions

- ☐ Include provisions to preserve grantor trust status (e.g., income retention, power of substitution)
- ☐ Clearly define no retained general power of appointment
- ☐ Address gift tax and basis issues
- ☐ Lifetime transfers = reportable gifts with carry-over basis
- ☐ Trust corpus = included in Grantor's estate to preserve step-up in basis

Also available as part of the eCourse
[2025 Estate Planning, Guardianship and Elder Law eConference]

First appeared as part of the conference materials for the
27th Annual Estate Planning, Guardianship and Elder Law Conference session
"Working with Adult Protective Services"