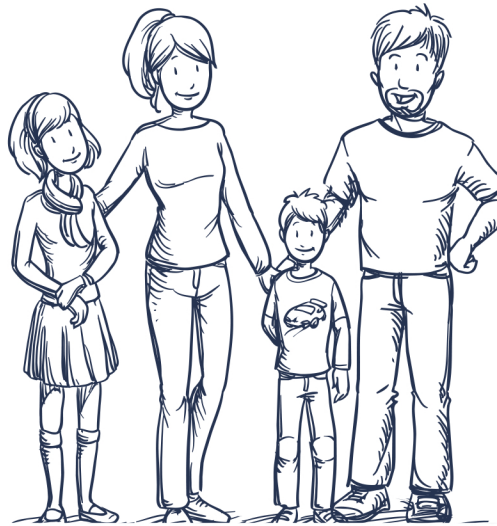




PLANNING AND SETTLING ESTATES





"My wife and I attended an educational session on Estate Planning presented by Justin Crain. His presentation included real-life examples of pitfalls and problems encountered by many people over the years when confronted with probate complications due to a lack of proper Estate Planning. We met Justin shortly after the session and began the process of putting together an Estate Plan to meet our needs. From the initial consultation through the information gathering, sharing and eventual close meeting, the process was very easy. Questions were addressed on a timely basis, and we felt that our experience was important to them. Justin and his team were a pleasure to work with and their secure site for sharing information made the journey that much easier. There is a sense of relief knowing we have an Estate Plan that will smooth the transition of our assets when the time comes."

- Lawrence Cope of Plano, Texas



Last Will and Testament

A Last Will and Testament is one of the oldest forms of law in American jurisprudence. A valid Will provides your loved ones and the probate court with specific instructions on how to distribute your assets when you pass away. In fact, your Will doesn't become a legally binding document until you pass away.

A Will does NOT avoid probate. A common misunderstanding is that a Will gives family and friends immediate power to distribute assets. WRONG! A Will requires that your executor (the person you named to be in charge) complete the probate process.

So what is Probate?

Probate is a Latin term meaning "to prove". When you create a Will you are leaving a set of instructions that must be proven in court during the probate process. The probate process proves that the Will in question is actually YOUR Will and is your LAST (most recent) WILL. If we didn't have this process, it would be easy for a nefarious person to assume an identity as your executor and take your assets.

Each Will, family, and estate is different, and as such, there are at least NINE different types of probate that may or may not apply to your situation. Two common types of probate are Independent Administration and Small Estate Affidavit.

Independent Administration: If the Will is written correctly and non-contested (meaning all parties agree), once sworn in by the court, the executor begins the probate process. According to public records, a non-contested, DFW metro-area probate takes about 6 months to complete, after the initial meeting with an attorney, and costs an average of \$10,000 in total probate costs (court fees, attorney fees, accounting fees, etc.).

Small Estate Affidavit: A change in the *Texas Estates Code* created a new class of estates. If the estate meets certain requirements: being valued at \$75,000 or less, the decedent died without a Will, and the estate has no unsecured creditors, to name a few, the heirs can file a Small Estate Affidavit.

Special Circumstances: Probate

Two of the most common special circumstances that pop up during the probate process are when the decedent has assets in multiple states and if disagreements arise between parties.

Ancillary Probate(s): Your primary probate takes place in your state of primary residence. Ancillary probates occur when you own assets in more than one state. A Texas judge doesn't have jurisdiction over the distribution of assets in New York, California, or any other state. These additional ancillary activities add cost and time to the probate process.

Disagreement: Disagreement in any form -- be it between beneficiaries, creditors, or any other party requires that the probate process stop and hearings be held to address each disagreement. As you can imagine, each additional hearing adds time and cost to the probate process.

Does My Estate Have To Hire A Probate Attorney? Short Answer, Yes.

An estate must be represented by a licensed attorney in order to be granted application for probate. Courts are starting to post this requirement for the public to read. For example, this posting appears at the Collin County Court:

"TEXAS LAW REQUIRES REPRESENTATION BY ATTORNEY. Chapter 81 of the Texas Government Code requires that a licensed attorney represent the legal interests of any person serving as the administrator or as the executor of an Estate. The Judge of the Collin County Probate Court cannot appoint a person as the administrator or the executor of an Estate unless that person is represented by a licensed attorney. All persons seeking to be appointed as the administrator or as the executor of an Estate must be represented by an attorney."



Trust Planning

Trusts are, in terms of the legal profession, a relatively new estate planning tool. No longer are trusts beneficial only for the extremely wealthy who want to hide money in offshore bank accounts. Trusts are used by everyday people for many reasons. There are multiple types of trusts, but three of the most common are Revocable Living Trusts (RLT), Irrevocable Living Trusts (ILT), and Supplemental Needs Trusts (SNT).

Revocable Living Trust (RLT)

Revocable: completely changeable up to and including the elimination of the trust

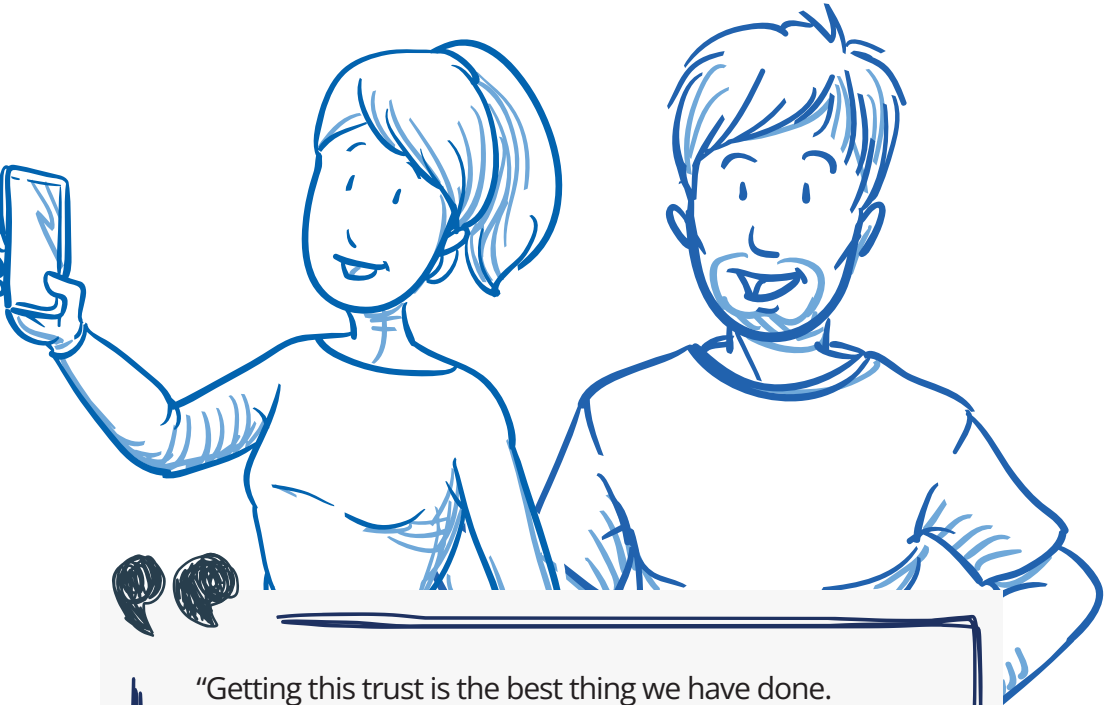
Living: created while you are alive and becomes a legal document upon signing

Trust: trusting someone to carry out your wishes immediately and without court oversight

A RLT operates much like a safe. It is a tool that, when funded properly, holds your assets with you named as the Trustee or Co-Trustee(s). As Trustee, you can continue to buy, sell, spend, and give away your assets just like before the creation of your trust.

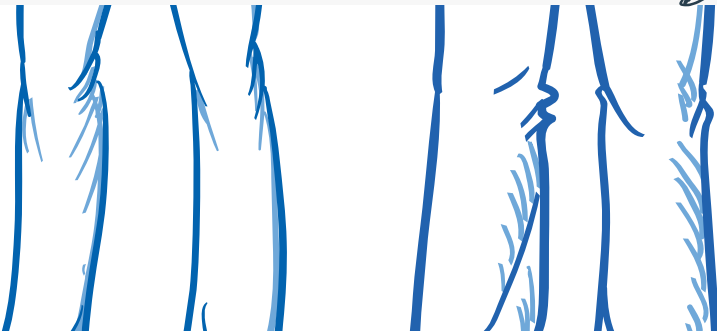
Creating a RLT has far too many benefits to list here, but a few key highlights are:

- Avoid both in-state and out-of-state probate proceedings
 - Protect assets from troubled heirs
 - Provide, in advance, for minor children and grandchildren
 - Address blended family concerns
 - Afford the ability to keep married/partner assets separate as needed
 - Proactive tax planning
 - Give to charities
-



“Getting this trust is the best thing we have done. We now have peace of mind knowing our daughters will have no question or problem upon our passing. All information is very clear of what we want. Justin made it very easy for us with no work on our part except getting him the papers he asked for. Thank you very much!”

-Mike and Carolyn Dickey of Dallas, Texas



Trust Planning

Irrevocable Living Trust (ILT)

An ILT varies greatly from a RLT, in that it is irrevocable, or unchangeable once executed.

The mechanisms of an ILT work much like those of a RLT. However, the reason for creating an ILT and the ongoing management of an ILT differ significantly from those of a RLT.

One of the primary reasons to invoke an ILT is to protect your estate from “nursing home poverty”. Nursing home costs continue to increase with the most recent estimate being more than \$6,500 per month for a Texas facility. This cost often drains an estate of assets. When utilized correctly, an ILT can protect up to 100% of assets from being used for nursing home costs and simultaneously allows for the potential of Medicaid assistance.

Supplemental Needs Trust (SNT)

A SNT has a distinct purpose and benefits apart from those of a RLT or an ILT; primarily the ongoing financial support of a person with special needs such as autism or Down syndrome.

Supplemental: additional financial support

Needs: expenses not covered by public benefits such as additional personal care, therapy, and so on

Trust: trusting someone to provide support for a person with special needs without court oversight

A SNT is created in order to provide supplemental financial assistance for a person with special needs while allowing him or her to continue qualifying for state or federal assistance programs. An inheritance is left in trust for the benefit of a person with special needs, but no assets are titled in his or her name. A Trustee is put in charge of the trust and is bound to follow the provisions laid out in the SNT.

Disability Planning

The Social Security Administration estimates that “more than one in four of today’s 20-year-olds can expect to be out of work for at least a year because of a disabling condition before they reach the normal retirement age.”¹ This staggering statistic highlights the need to plan for a time in which you may not be able to make decisions autonomously. Creating a comprehensive estate plan includes proactive planning to address a time in life when another person (your agent) needs to make decisions on your behalf.

Disability Planning Documents

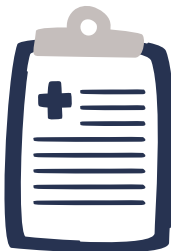
Power of Attorney: gives your agent the authority to make day-to-day financial and property-related decisions

Medical Power of Attorney: gives your agent the authority to make medical decisions

Directive to Physicians (aka Living Will): communicates to your doctor and your medical agent the types of medical support you desire should you be diagnosed with a terminal or irreversible condition

Declaration of Guardian in Advance of Need: names a guardian in advance should you be completely incapacitated

HIPAA Release: allows your healthcare provider to share your total healthcare history with your agent



¹ <https://disabilitycanhappen.org/disability-statistic/>
Council for Disability Awareness, accessed 7/25/2019.

Other Considerations

Estate planning touches almost every aspect of life. There is no way to list every single item to consider because each person, couple, and family is so unique. However, there are a few topics that occur with frequency.

Community Property

Texas is a community property state. However, this does NOT mean that a surviving spouse/partner automatically gets all titled assets of the deceased spouse/partner. Property transfers according to legal documents such as Wills, Trusts, and contracts.

Rights of Survivorship

You may think that when opening a joint checking account, checking a box that says “with right of survivorship” is enough to guarantee it, but as the Governor Preston E. Smith Regents Professor of Law and nationally recognized estate planning expert Gerry Beyer noted in the Texas Bar Journal when reviewing the TX Court of Appeals case Hare v. Longstreet, “merely stating that the account has the right of survivorship is insufficient to make it so.”

Transfer on Death Deeds (TODD)

Did you know that Texas Estates Code 114.106(e) enables creditors to file suit against your estate for up to two years after your death if you utilize a TODD as your real property planning mechanism? This creditor period can prevent the issue of title insurance should your heirs desire to sell the property within the first two years of your passing which will prevent the house from being able to sell until more than two years following your death.

Planning for Minor Children

Whether you are the parent or grandparent of minor children, there are specific actions to take when planning for their guardianship or their inheritance. Trust planning allows for proactive steps to be taken for the financial and physical care of children and grandchildren.

Business Continuity and Personal Asset Protection Planning

Whether you own one rental property or a multi-million-dollar organization, business continuity planning and personal asset protection must be addressed. There are many ways to approach this topic and one-size does not fit all.

Working with Crain & Wooley

Any licensed attorney can write a Will or Trust for you; however, very few dedicate themselves solely to the art and science of estate planning. We do!

We practice solely in the area of estate planning, thereby providing our clients best-in-class service supported by up-to-date best legal practices.

Crain & Wooley is a full-service estate planning firm with expertise in Trust Creation, Will Creation, Probate Services, Adult Guardianship, Nursing Home (Medicaid) Qualification, Business Planning, Asset Protection, and Reviewing as well as Updating Existing Plans.

At Crain & Wooley, you will never receive a surprise legal bill. Visit www.crainwooley.law/flat-rate-services to learn more about our proactive estate planning pricing.

Our Services

Crain & Wooley provides expert service in the following areas:

- Revocable Trusts
- Irrevocable Trusts
- Supplemental Needs Trusts
- Charitable Trusts
- Last Wills and Testaments
- Asset Protection
- Primary and ancillary probate
- Adult guardianship
- Nursing home qualification (Medicaid)
- Existing document review and update
- Business continuity planning
- Small business formation

Disclaimer: Information presented is for general educational purposes only and does not constitute legal advice. Crain & Wooley encourages you to meet with a qualified attorney to learn more about your unique situation.

About Us

Planning for the future doesn't have to be stressful. At Crain & Wooley, we help families in the metroplex protect what matters most with personalized estate planning and probate services. With offices in Plano, Mansfield and Ft. Worth, our team has guided hundreds of local families to protect their legacy.

Founding managing partner, Justin T. Crain, believes peace of mind comes from clear guidance, fair pricing, and a plan tailored to your family. Whether you need a will, a trust, help with long-term care planning, or support during probate, we make the process simple and approachable.

Our services include: revocable and irrevocable trusts, wills, power of attorney documents, special needs trusts, asset protection, guardianships, pre and post nuptial agreements and probate guidance.

What makes us different? We keep pricing simple with flat-rate packages for most planning services, so there are no surprises. For matters that are harder to predict, like probate or guardianships, we charge reasonable hourly rates.



Justin T. Crain
Managing Partner

At Crain & Wooley, our mission is to give families confidence, clarity, and control over the future. We're proud to serve the DFW community with the professionalism of a large firm and the personal care of a neighbor.

Start your legacy plan today and give your family peace of mind tomorrow.

The Law Office of Justin T. Crain, PLLC

DBA Crain & Wooley

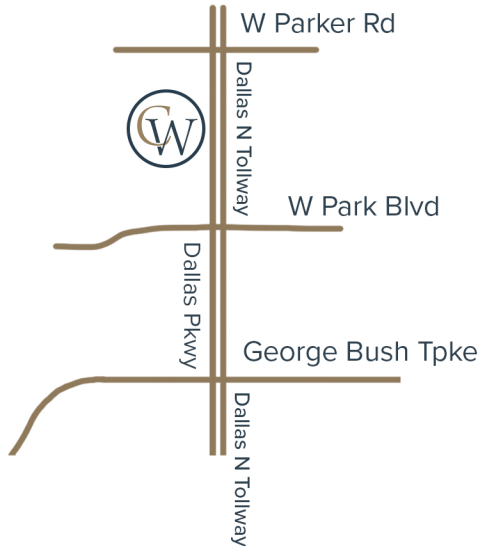
Plano Office

2805 Dallas Parkway, Suite 400

Plano, TX 75093

972-560-6288

office@crainwooley.law | www.crainwooley.law



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NOTES

CONTACT US

The Law Office of Justin T. Crain, PLLC

DBA Crain & Wooley

Plano - Principal Office

2805 Dallas Parkway, Suite 400

Plano, TX 75093

972-560-6288

office@crainwooley.law

www.crainwooley.law

