

BRAUN & GRESHAM

ATTORNEYS AT LAW

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ESTATE PLANNING

Comprehensive estate planning creates peace of mind

HALL PROVIDES LEGAL EXPERTISE, LISTENING SKILLS, GENTLE GUIDANCE
& ANSWERED PRAYERS FOR RANGLAND OWNER

Joyce Lucas, like most people in their golden years, has acquired a wealth of life experiences – many of which came with paperwork. Marriage, divorce, buying and selling property, relocating, inheriting property, births and deaths of family members – all are common lifetime occurrences, and all involve a paper trail.

And though it's not necessarily pleasurable to ponder, life's most common occurrence – death – requires its own file folder full of documents, too, customarily labeled *Estate Plan*.

Joyce Lucas had an estate plan, which included: a decades-old living trust created in Alaska while she was living there; a will and various powers-of-attorney documents added once she returned to Texas; and a limited partnership and limited-liability company, under which she owned her family's Central Texas ranch. Joyce created the partnership to reduce her liability and to gift partnership interests to her two daughters and three grandchildren – in order to pass along the land upon her death as their inheritance.



"I had all these pieces of paper, but they were incomplete, fragmented," Joyce says sadly. "It was shocking what a lack of information there was in all those legal documents. They didn't provide what I thought they would in the big picture, and they weren't coordinated under a common plan. My daughters knew this and that, but holy cow – how would it all work together?" Joyce engaged Thomas Hall – an attorney with Braun & Gresham who had helped her forever preserve her ranchland under a conservation easement [see "*Being an Eternal Steward*"]

– to review and revamp her estate plan, updating it and organizing the separate documents into a comprehensive and consistent plan that includes her conservation easement.

"From the very beginning, Thomas was like a family adviser, working in my best interests," attests Joyce. "He never said 'You need to do this;' he said, 'You need to think about this.' It was always my decision. He did such a thorough job of

Joyce Lucas (left) with her father, daughter, and grandchildren.

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JOYCE LUCAS, LANDOWNER

asking so many poignant questions – there’s so much more to it than just *‘pull the plug, the ranch goes to the kids, yada yada ...’* It comes down to what do you want all that to mean to you personally? Thomas listened to not just the words of my answers, but to the intent behind them. He has the gift of hearing what’s in your head and in your heart, and putting it down on paper the right way.”

Thomas addressed with Joyce the four main issues of every estate plan: disability planning, probate avoidance, eliminating federal estate tax and leaving a legacy.

Disability Planning

In Joyce’s existing estate plan, Thomas discovered outdated powers of attorney – the people designated to act as Joyce’s financial and medical agents in case of her mental disability were no longer the right fit. Thomas helped Joyce create a more comprehensive set of disability-planning documents, including a medical power of attorney – which named a new agent and successor agent to act on her behalf, and a “living will” expressing her wishes regarding life-sustaining treatment should she become incapacitated and in a terminal condition. He also coordinated these medical directives with new provisions in her living trust, instructing her successor disability trustee on how to manage her affairs and use the trust assets to care for her in her home rather than placing her in a nursing home.

Probate Avoidance

Probate is the legal process by which a decedent’s will is validated, assets gathered, final debts paid and remaining assets distributed. If you die without a will, then a probate is necessary to empower an administrator to do all of those things according to Texas law. Though probate in Texas is not as lengthy or expensive a process as it is in other states, many people want to avoid it if possible. If you own your assets in trust – such as Joyce



Birk Family Cemetery on the Birk-Sommerfeld Heritage Ranch

(photo courtesy of Texas Land Conservancy)

owned hers in her living trust – you no longer own them under your individual name, so probate is unnecessary upon your death. Thomas and Joyce redesigned her trust for Texas law, named new successor trustees, and updated and expanded many of the trust provisions.

The estate-planning process is an excellent opportunity to review your assets and investment strategies. Thomas and Joyce examined her assets to make sure her accounts, investments, real estate, insurance policies, retirement accounts and personal property were all properly titled in the name of her trust, or otherwise coordinated with her trust plan to avoid probate. Joyce closed or consolidated some accounts and repositioned assets to improve her investment position. In case any asset may not be placed in trust in the future, Thomas also created a simple will, ensuring such assets will be added to her trust, to be administered and distributed upon her death.

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Federal Estate Tax

The federal estate tax doesn't affect many people – yet. Currently, every American has a federal credit which can be used to transfer up to \$5 million of assets to heirs other than a spouse, free of federal estate tax. But all assets beyond that credit amount are taxed at 35%. In 2013, that credit amount is slated to shrink to \$1 million, while the tax rate will rise to as much as 55%, unless Congress acts to change the law.

To protect against this tax, Thomas and Joyce worked to reduce the value of her estate by positioning assets in her limited partnership and donating the conservation easement on her ranch. Thomas notes, “Many landowners have had to sell pieces of their property to pay this tax because they didn't plan in advance. Texas ranchers and other landowners must continue to pay attention to this issue, or they can get caught by this changing tax law – and their goal of leaving a legacy will be lost.”

Leaving a Legacy

Thomas and Joyce restructured how Joyce's assets would be distributed at her death. They left the limited partnership she had created as is, but changed all the other elements of her existing estate plan. They kept the name of Joyce's living trust in tact, because she still owns some Alaska land in that trust, but essentially gutted the trust terms, replacing the old Alaska provisions with current Texas ones. Thomas also helped Joyce create sophisticated subtrusts designed specifically to meet the needs of her children and grandchildren, and for future management of the ranch; part of Joyce's estate will now go to fund a ranch management trust, which will be used to pay for the property's taxes and maintenance costs for decades to come, so that her family can enjoy the ranch without these financial burdens.

Both Thomas Hall and Joyce Lucas feel the work they did on Joyce's estate plan was vital to honoring her intentions. But even more important than the beneficial legal changes they implemented were the conversations they shared to ensure Joyce's full education about the plan – how it works as a whole, what it will do, what it won't do, and why.

“Before, Joyce felt vulnerable and irresponsible,” affirms Thomas. “We sat together for several hours to help her

Homestead ranch house which is over 100 years old

(photo courtesy of Texas Land Conservancy)

“I HAD FELT I WAS FLYING BY THE SEAT OF MY PANTS,” CONFIRMS JOYCE...“IT'S LIKE AN ANSWERED PRAYER FOR ME. I HAD PRAYED ABOUT WHAT MY DUTY WAS AS A GOOD STEWARD, AND HOW I COULD MAKE SURE WHAT I'M THINKING IN MY HEAD IS WHAT OTHER PEOPLE WILL KNOW WAS IN MY HEART ONCE I'M GONE. THAT'S WHAT HAS HAPPENED IN MY WORK WITH THOMAS, AND IT GIVES ME GREAT PEACE.”

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understand all the different pieces – not just the paperwork, but the legal principals involved – and to rearrange and renovate her estate plan, so that she could see how it all works together.

“What a blessing it is for her to have all these issues dealt with,” he continues, “to have a coordinated, comprehensive plan covering all of her goals and with a long shelf life. And now she can manage it, because she understands it all. It’s extremely empowering.”

“I had felt I was flying by the seat of my pants,” confirms Joyce. “Now, for the first time in years, I feel at peace. It’s like an answered prayer for me. I had prayed about what my duty was as a good steward, and how I could make sure what I’m thinking in my head is what other people will know was in my heart once I’m gone. That’s what has happened in my work with Thomas, and it gives me great peace.”

CONSERVATION EASEMENTS

Being an Eternal Steward

Birk-Sommerfeld Heritage Ranch is the final 444 acres of what was once a 2,000-acre homestead ranch originally settled by Joyce Lucas’ great-grandparents. They came with her great-great-grandparents from Germany to Central Texas around 1845 for the promise of land; today, six generations of Birks have lived with and loved the ranch. Joyce inherited her mother’s portion of the land in 1997, and spent 13 years struggling with the best way to honor not only the land, but also the family legacy accompanying it.



Top: Llano River on Birk-Sommerfeld Heritage Ranch



Bottom: Spring flowers at the Birk-Sommerfeld Heritage Ranch

(photos courtesy of Texas Land Conservancy)

A conservation easement is an agreement between a landowner and a land trust – for Joyce, it was private nonprofit group Texas Land Conservancy – where the landowner outlines exactly how the land can or cannot be used, in order to preserve its natural or other special features. The landowner retains legal title to the property, but donates or sells the development rights to the land trust. In turn, the land trust

Joyce always knew she didn’t want the property divided further, and while she had considered a conservation easement, she never felt it was quite the right solution – until she heard Thomas Hall speak at a landowner workshop.

“Thomas speaks from his heart,” Joyce recalls. “No sales pitch – simply information and options. It was like the answer to all the mumbo-jumbo questions I’d had in my head for years. It just seemed to be such a match.”

And so it was. Together, Joyce and Thomas began the process of forever preserving Joyce’s ranchland through a conservation easement.

makes sure the landowner’s restrictions on the property are followed in perpetuity. The income tax saving from this charitable donation often pay the costs of contributing the gift and create additional income in the future.

According to Joyce’s conservation easement, a second home may be built on the property and family can continue to be buried with past generations in the family cemetery, but future generations can sell the land only as a whole, and use it only for agriculture and recreation – and the same goes for any other future owners, family or not.