

**TEXAS BOARD OF LEGAL SPECIALIZATION**  
**STANDARDS FOR ATTORNEY CERTIFICATION**

**PART II**  
**SPECIFIC AREA REQUIREMENTS**

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

**SECTION IV**  
**ESTATE PLANNING AND PROBATE LAW**

*(Area ID: EP / Year Started: 1977)*

**A. DEFINITIONS.**

1. Estate planning and probate law is the practice of law involving the Texas Probate Code, Texas Property Code the Internal Revenue Code and other federal, state and local statutes and interpretive material in connection with matters in which issues of estate planning and probate are significant factors. The practice of estate planning and probate law includes, but is not limited to:
  - consulting with clients and giving advice regarding estate planning, probate and guardianship law;
  - analyzing, planning and making recommendations for the conservation and disposition of clients' estates in accordance with the clients' expressed desires, including tax effects and consequences;
  - drafting legal instruments to effectuate the clients' estate plans, (*e.g., wills, trusts and other legal documents*);
  - representing clients before courts which hear and decide cases involving decedent's estates and guardianships;
  - representing clients by litigating contested probate and guardianship issues in trial and appellate courts;
  - representing clients in cases before the Internal Revenue Service and other taxing authorities and courts with respect to proposed, completed and ongoing transactions and other matters involving tax issues which are related to estate planning and probate law; and
  - representing clients in the administrative appeal and litigation of tax issues involving transfers of assets during lifetime and at death.
2. The following terms shall have the following application or meaning:
  - a. Prepared. Applicant personally performed the majority of the work in the matter, including its presentation (*e.g., to clients, governmental agencies, courts*), if applicable.
  - b. Supervised/Reviewed. Applicant was responsible to the client for (i) documents prepared by a lawyer or paralegal who is under applicant's direct supervision, or (ii) the review, prior to execution or filing, of tax returns and related documents prepared by a non-legal professional (*e.g., accountant, appraiser*).

- B. SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in estate planning and probate law practice by providing such information as may be required by TBLS.

1. **Certification.**

a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing estate planning and probate law during each year of the 3 years immediately preceding application as defined in Section IV, A of the Specific Area Requirements for Estate Planning and Probate Law.

b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in estate planning and probate law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant must show sufficient involvement in a substantial portion of the activities described in **both** of the following categories within the 3 years immediately preceding application.

(a) **Estate Planning**

i. Counseled clients in estate planning, including giving advice with respect to gifts, life insurance, wills, trusts, business arrangements and agreements, and other estate planning matters.

ii. Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, tax deductions and elections; revocable and irrevocable inter vivos trusts; business planning agreements; powers of attorney and other estate planning instruments.

(b) **Estate Administration and Tax Matters**

Represented clients with respect to the probate and/or administration of decedents' estates and trusts, including dependent and independent administration and muniments of title, guardianships, determinations of heirship, and will and trust litigation; prepared, reviewed, or supervised the preparation of federal gift, estate, and generation skipping transfer tax returns, Texas inheritance tax returns, and U.S. fiduciary income tax returns; and representation before the Internal Revenue Service, state taxing authorities, or the courts, in connection with such tax returns and related controversies.

2. **Recertification.** Applicant must have devoted a minimum of 25% of his or her time practicing estate planning and probate law during each year of the 5 year period of certification as defined in Section IV, A of the Specific Area Requirements for Estate Planning and Probate Law except as provided for in Part I—General Requirements, Section VI, C,1(b).

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in estate planning and probate law. These persons must be substantially involved in estate planning and probate law, and be familiar with applicant's estate planning and probate law practice.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving estate planning and probate law matters within the 3 years immediately preceding application.

2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving estate planning and probate law matters since certification or the most recent recertification.

3. **Reference Types.** Applicant must submit the following types of references:

a. Four attorneys who are substantially involved in estate planning and probate law.

b. One judge, who is an attorney, before whom applicant has appeared in an estate planning and probate law matter, contested or uncontested. If there is no such judge, applicant shall submit the name of a judge of a court of record before whom he or she has appeared in an estate planning and probate matter.