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Thinking about divorce? Redo your estate plan, too

Divorce is stressful, and if you're considering a marital split, the last thing you're probably focusing on is your estate planning documents. But if you're thinking of getting divorced, it's usually wise to revise your estate plans now rather than later.

For example:

- You might have signed a power of attorney document that allows your current spouse to make gifts, sign contracts, and make financial decisions for you.
- You might have a life insurance policy that names your spouse as the beneficiary.
- You might have a lot of your money in joint accounts to which your spouse has unlimited access.
- You might have a health care proxy that allows your spouse to make medical decisions for you if you become incapacitated.

In each of these cases, this might be a good time to give some additional thought to your arrangements.

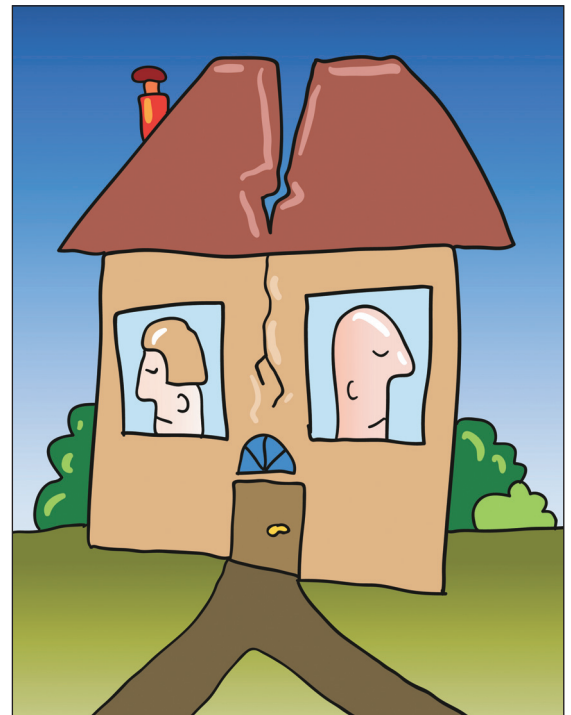
In addition, it's a good idea to revise your will.

You may have heard that in many states, if you get divorced, any bequest to your spouse will automatically be cancelled. That's true in some places – but even where it's true, there are several problems with relying on this fact alone.

First, divorce is a lengthy process, and there's a small chance that something could happen to you before your divorce is final. (No one wants to think about this, of course, but estate planning is all about planning for the unthinkable.)

In a recent case in New Mexico, a man who had filed for divorce died unexpectedly before his divorce decree had been finalized. He hadn't gotten around to updating his will, which

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benefited his wife.

The man's son was appointed his executor. The son asked that a court issue a final divorce decree, which would revoke the man's bequests to his wife.

But the court said that the bequests couldn't be revoked in this situation – and therefore the wife was entitled to collect the man's assets under his will.

A second problem is that even if a divorce cancels out any bequests to your spouse in your will, it doesn't determine what will happen *instead*.

You still need to revise your will to decide what will happen to your property. And you might want to review this carefully with your attorney, because the rules for taxes, trusts and so on can be very different for single people than for married people.

Finally, you'll want to review the beneficiaries of other accounts you may have – including IRAs, 401(k)s, pension plans, transfer-on-death accounts, etc. Remember, even if a state law says that a divorce cancels out your bequests in a will, it doesn't necessarily cancel out your beneficiary designations on these types of accounts.

Even if a divorce cancels out bequests in a will, it doesn't cancel out the beneficiary designations in an IRA, 401(k), pension, or brokerage account.

Military promotion might not increase ex's pension share

The ex-wife of an Air Force officer might not be able to share in an increase in the officer's pension benefits that resulted from a promotion he received after the couple divorced, according to a New Jersey appeals court.

The couple divorced when the husband was a captain. The divorce settlement gave the wife 50 percent of his military pension, which was based on his 11 years of service to that point.

By the time the husband retired, he'd reached the rank of major. His promotion entitled him to a larger pension benefit.

But the court said the wife couldn't automatically share in the increase. Rather, it ordered a hearing to determine how much of the husband's promotion was due to the couple's joint efforts while married, and how much was due to the husband's individual efforts after the divorce.

Husband's credit card debt was his problem, not his ex-wife's

Generally, whatever assets and debts a couple accumulate during a marriage can be split between them at divorce.

But what if a husband racks up an enormous amount of credit card debt without his wife knowing about it? Should she still be responsible for half the bill?

In one recent case, the Kentucky Supreme Court said "no."

The couple in that case divorced after being married for 42 years.

Late in their marriage, the husband ran up \$65,000 in credit card debt trying to help their adult son recover from financial setbacks.

The husband didn't consult his wife

ahead of time, and tried to keep her from finding out about the payments.

In the divorce case, the husband argued that because he ran up the debt while fulfilling a parental obligation to help one's children, it should be considered a marital debt for which the wife was equally responsible.

But the court decided otherwise, pointing out that parents have no legal obligation to help adult children.

In fact, the only connection the wife had to the debt was the fact that she was married to the person who accumulated it, the court said. Because she didn't consent to the debt, didn't have any knowledge of it, and didn't receive any direct benefit from it, it would be unfair to burden her with any part of it after the divorce.



Wife shares in husband's future partnership profits

A husband's interest in a business partnership that produced a consistent stream of profits "counted" as marital property, and his wife can receive a share of his interest at divorce, the highest court in Massachusetts recently ruled.

The husband was a partner in an investment advisory firm. Under the terms of the partnership, he received annual cash payments in the form of salary, incentives, return on capital and merit pay.

The wife claimed a share of the value of his partnership interest. The husband objected, arguing that his partnership interest wasn't "property" since he had no right to the annual payments, which were merely an "expectancy" of future income. (State law says that a divorcing spouse has no right to share in a mere "expectancy" of a benefit.)

But the court ruled in the wife's favor, saying the partnership interest had produced a steady stream of profits over a long enough period of time that a court could fairly determine how much it was worth at the time of the divorce.

In such a situation, the long and steady history of payments meant that future payments were more than a mere "expectancy," the court said.

Divorced mother couldn't demand home schooling

When a divorced couple have different religious beliefs, and when children are involved, it can sometimes lead to court.

That's what happened recently in New Hampshire, where a mother wanted to home-school her daughter according to her religious beliefs, but her ex-husband wanted the child to go to public school.

A judge ruled that it was in the daughter's best interest to attend public school. The mother appealed to the New Hampshire Supreme Court, arguing that requiring the daughter to go to public school violated her parenting and religious rights under the Constitution.

But the Supreme Court ruled that because the parents couldn't compromise on their parenting decisions, the judge did the right thing by determining the best interests of the child. The court also rejected the mother's claim that the judge had an anti-religious bias that violated the First Amendment.



When a divorced couple have different religious beliefs, and when children are involved, a court may have to step in and make decisions about their upbringing.

Father's child support is reduced by SSDI benefits

A father's child support obligations could be reduced by the amount of his Social Security Disability Insurance payments that went directly to his children, the Vermont Supreme Court recently decided.

The father had been ordered to pay \$326 a month in child support when he and his wife divorced. Soon afterward, he went to prison for five years.

When he got out of prison, he applied for SSDI benefits. He received a retroactive payment that included more than \$14,000 that went directly to his

ex-wife on his children's behalf.

The father argued that his child support obligations should be reduced by the amount of this payment to his children.

The court agreed, saying the payment replaced wages that would otherwise have gone toward child support, and if the father didn't receive an offset for that amount, the mother would have an unfair windfall.

Most state courts that have decided this issue have ruled the same way, although some disagree.

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People who are going through the divorce process should be very careful about what they put online through social media and what they allow others to put online about them.

Facebook may be involved in 20% of all divorce cases

Facebook is playing a role in as many as a fifth of all divorces in the U.S., according to a study by the American Academy of Matrimonial Lawyers.

Facebook can come up in a divorce case in several ways.

One is that marriages sometimes end because people have affairs with people they met – or re-connected with – over the social networking site.

One of the most common uses of Facebook is getting in touch with old friends. But if a marriage is in some trouble already, and a spouse gets back in touch with an old friend (or an old flame) who is emotionally available, a simple “hello” could turn into something much more complicated.

But Facebook can also come up in a divorce case because it can provide evidence of a spouse’s misconduct. For instance, because people put so much



of their lives onto the site, it can be a rich source of evidence of adultery.

Facebook evidence can also be used to show that someone has questionable parenting skills, or might be misrepresenting their financial circumstances.

People who are involved in the divorce process, or even just contemplating a divorce, should be very careful about what they put online through social media and what they allow others to put online about them. Once things are on the Internet, they can almost never be completely deleted.

Something that seems fun to a person at the time could come back later to haunt them. So before you post something on a social media site – Facebook, Twitter, LinkedIn, etc. – it’s good to think about how it might look later to a neutral third party who may be making decisions about your future.

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