Legal Matters®

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Remarrying? Always consider a prenup

People who are remarrying after a death or divorce should almost always strongly consider having a prenuptial agreement.

When prenup agreements first became popular a generation ago, most people thought of them as a way for wealthy people to protect themselves in case they were marrying a gold digger. Today, however, prenups don't have the same connotation. They're often used as a straightforward financial and estate planning tool, especially by mature couples who are entering into a second marriage.

The number one reason that people enter into prenups when they begin a second marriage is that they have children from their first marriage, and they want to make sure the children will be well provided for in case they get divorced or in case they die before their new spouse.

While blended families can be great, and you might feel sure your new spouse will treat your children like his or her own, things can change over time, and it's wise to protect your children both legally and financially.

For instance, even if you say in your will that all your assets will go to your children when you die, that might not happen. In almost every state, your spouse can claim a significant share of your assets – typically 30 to 50 percent – *even if* your will says that they should go to someone else.

However, if your spouse signs a prenup saying that he or she won't make such a claim, you generally won't have to worry about your children receiving the inheritance you intend for them.

Another issue is that, if you have assets in a 401(k) account, those assets will go to your spouse if you pass away… *even if* your beneficiary designation form says they should go to your children or other family members.

This provision can't be waived in a prenup – it has to be waived in a notarized document after the marriage – but a prenup may be able to impose consequences on a spouse who refuses to sign a waiver after the wedding.

There are other ways to protect children, too, including the use of trusts. But a prenup is often a critical piece of your financial plan for protecting the next generation.

If you don't have children yourself, but

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your new spouse does, you might want to consider whether you want all your wealth to eventually go to your stepchildren. You might want to use a prenup to make sure that certain assets will go to other relatives, such as siblings or nephews and nieces.

Even if neither spouse has children from a

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Grant A. Richardson
Attorney At Law
100 South Main Street • P.O. Box 23 • Bridgewater, VA 22812
540-828-6856 • www.garichardson.com

IRS explains mortgage interest deduction for multiple owners

As a general rule, you can deduct home mortgage interest on your federal income taxes, as long as you itemize deductions. This sounds simple enough, but it can get complicated if a home is owned by more than one person. Recently, the IRS provided an explanation of how this works.

According to the IRS, the key question is how much interest each owner *actually paid* in a given year – not what percentage of the home each owner owns. That means, for example, that if you own a home jointly with a child – so you each own 50% – but you paid 100% of the mortgage interest, you can deduct 100% of the interest payments on your taxes.

Of course, that also means that your child can't deduct any of the interest on his or her own taxes.

You should also note that in such a case, the amount of interest you paid beyond your ownership share would count as a gift to your child. If the amount is large enough, or if you made other gifts to your child over the course of the year, this could result in having to file a gift tax return.

If the interest payments were made out of a joint checking account, it's presumed that each owner of the account contributed 50% of the payments. This rule would apply, for example, to an unmarried couple who have a joint checking account and own a home together, as well as to a married couple who have a joint checking account but file separate tax returns.

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Some bequests 'look' equal, but they penalize one heir

When you're writing a will and deciding how to divide your assets among multiple heirs, it's very important to consider who will pay your estate's debts out of their share. Two bequests that look equal in theory might be very different in practice once debts are taken into account.

Generally, when a person dies, his or her outstanding debts must be paid out of "probate assets." This means the assets that pass to someone according to the person's will. But many assets don't pass via a will. For instance, a jointly held bank account, jointly owned real estate, an IRA, a 401(k), and a "transfer on death" brokerage account might all pass to someone outside of a will, and thus not count as probate assets.

Also, life insurance proceeds aren't dependent on a will and aren't considered probate assets either.

That means that if you have three children, and one gets your retirement accounts, one gets your life insurance proceeds, and the third gets everything else, the third child will be saddled with paying 100% of your debts.

What's a debt? Debts can include taxes, a mortgage, outstanding credit card bills, personal loans, condo fees, and more. Even car leases can cause problems, because some contracts treat a person's death as an "early termination" of the lease.

Of course, your children or other heirs *might* be very cooperative and agree to share the burden of your debts. But it's usually much easier for everyone if you take debts into account in your estate planning, and divide your assets accordingly.

Nursing home abuse and neglect are surprisingly common

Recently, a retired scientist named Joseph Shepter died after a two-year stay at a California nursing home. He had been paralyzed from a stroke and suffered from dementia. The cause of his death was listed as heart failure, and his family naturally assumed that was correct.

But a later investigation revealed that he had actually died from symptoms of poor care, including an infected ulcer, pneumonia, dehydration and sepsis. He had also been given powerful antipsychotic drugs, which can have deadly side effects.

Shepter was not alone. Elderly patients are being neglected and mistreated in nursing homes far more frequently than most people realize.

According to the National Center on Elder Abuse, about one out of every three nursing home residents in America suffers from neglect. In one survey conducted by the Center, nearly half of all participating residents claimed they personally had been abused in some way, and nearly all of them claimed they had seen another patient being abused.

The problem isn't always that nursing home staff members are malicious – many obviously care a great deal about the patients. Often, the problem lies with the nursing home management. A large number of nursing homes are understaffed, and the staff they do have are sometimes poorly trained and don't know how to properly care for the residents. Many nursing homes have high staff turnover, and as a result, patients get lost in the shuffle. And if management pays low wages and treats its staff poorly, the staff might not be motivated to treat patients the way they should.

These conditions can lead to situations where patients are neglected or mistreated, resulting in physical and psychological harm … and in a number of cases, even death.

One reason we don't hear more about the problem is that many deaths related to nursing-home abuse are never identified or reported. Doctors often simply assume that an elderly person's "time has come," and fail to fully investigate what may have happened. One recent survey found that autopsies were performed on fewer than one percent of all senior citizens who died in nursing homes.

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If you have a loved one in a nursing home, it's a good idea to keep an eye out for any changes or problems, and for anything that makes you feel suspicious. This could include unusual bruises, cuts or marks on the person's body; mood changes; withdrawal; bedsores; unexplained injuries or infections; rapid weight loss or gain; psychological changes or indications that the person feels scared or uncomfortable; the person's appearing malnourished or dehydrated; or any sudden changes to medications, especially sedatives.

If the nursing home is uncooperative in response to your questions, that might be a sign that there's something to investigate. It's a good idea explore what legal rights you have.

Remarrying? Always consider signing a prenuptial agreement

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prior marriage, a prenup can still make sense. Many people who enter into second or third marriages have worked for a long time and bring significant assets to the table. Often, both spouses will have accumulated some degree of wealth. A prenup that says what will happen in the event of a divorce can make matters far easier if things don't work out.

Many second-marriage prenups say that if there's a split, both people will keep the assets they brought to the marriage. This makes things simple, and can provide a certain amount of comfort and security to everyone.

Here's another consideration: If one spouse comes to the marriage owning a share of a family business, it can be very smart planning to say in a prenup what will happen to that spouse's share in the event of a death or divorce. That way, the business can keep running without any uncertainty about the terms of ownership.

Also, if one spouse is a partner in a business, the business might have a buyout agreement saying that the other partners can buy out the spouse's interest if he or she retires or passes away, or in certain other circumstances. A prenup can work in tandem with this agreement to make things easier for everyone.

In general, if you're thinking of remarrying, it's a good idea to talk to a lawyer first about ways to further your financial and family goals.

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Grant A. Richardson
Attorney At Law
100 South Main Street • P.O. Box 23 • Bridgewater, VA 22812
540-828-6856 • www.garichardson.com

Late-night e-mails might entitle workers to overtime

These days, many employees feel like they're never really "off the clock." They're expected to check e-mails at home, and occasionally to respond to emergency text messages from their boss or co-workers.

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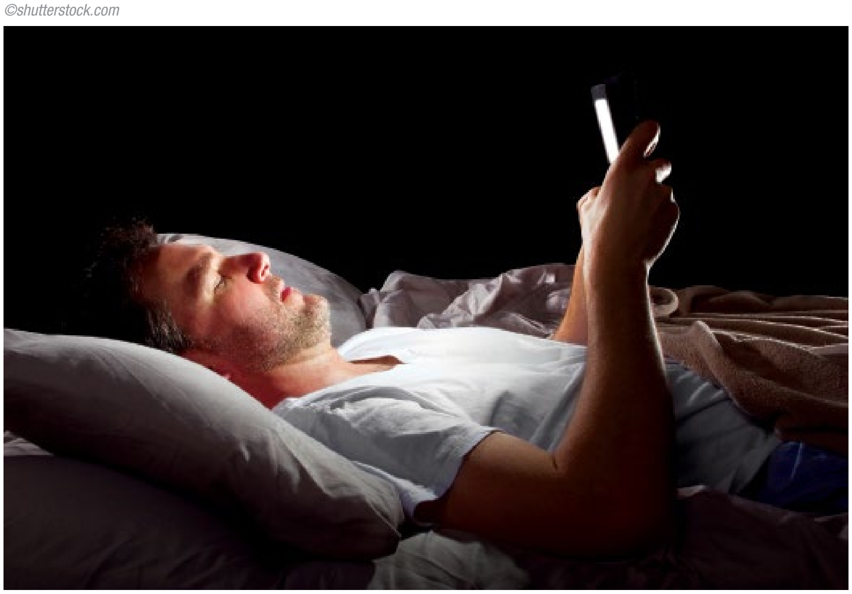

But the truth is, many workers in this situation might literally be "on the clock." If they're expected to check texts and e-mails at night in addition to working full-time during regular hours, they might be eligible for overtime.

For example, a group of salespeople at T-Mobile stores brought a lawsuit complaining that they had been given BlackBerry devices and were expected to answer e-mails and texts from other staffers and from customers outside of regular business hours. T-Mobile settled their claims for overtime pay.

These types of lawsuits could become much more common now that President Obama has proposed making workers earning up to $50,440 – including salaried workers and those classified as "managers" – eligible for overtime, up from the current threshold of $23,660. This change would make overtime available to a large number of employees who are currently expected to be available around the clock.