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# Legal Matters®

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## 'Snooping' on spouses and others may be tempting – but legally dangerous

**T**he proliferation of high-tech recording devices has made it much easier than it used to be to spy on people. But just because it's easy doesn't mean it's legal.

For instance, there's been a growing tendency recently for spouses who are thinking about divorce, or who are going through the divorce process, to snoop on the other spouse. They're looking for evidence of adultery, hidden assets, bad parenting, or other information that might give them a leg up in a divorce or custody proceeding.

Other people snoop on employees, nannies, babysitters, and others they're worried about.

"Snooping" could include accessing a private e-mail or social-networking account, looking in a smartphone for suspicious phone numbers or texts, or digging through a person's web search history.

In some divorce cases, spouses have been known to use methods that are more technologically sophisticated, such as installing key-logging software on a computer that tracks every keystroke a spouse makes, setting up hidden cameras or recorders, or attaching a GPS device to a spouse's car.

You might feel you have good reason to be suspicious of someone, but if you are, it's critical to talk to a lawyer beforehand. This is because some of these practices could be illegal and get you arrested. In addition, in a divorce case, the fact that you uncovered information illegally could cost you credibility in court, and the evidence you came up with might not even be admissible in court if you obtained it through improper means.

If you discuss your concerns with your attorney, your attorney may be able to use other methods to obtain the same kind of information without compromising your credibility.

So what kinds of snooping are actually allowed?

It's perfectly legal to do a Google search on someone, for example. However, it's potentially illegal to access



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If you're worried that someone is doing something wrong, don't take the law into your own hands, or you might wind up on the wrong side of it.

## 'Snooping' may be tempting – but legally dangerous

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someone's password-protected smartphone or Facebook page. Although the law varies from place to place and situation to situation, this could constitute a serious violation of someone's electronic privacy rights.

Installing a GPS device or key-logging software might also get you in trouble – especially if it's not clear that you have sole legal ownership of the car or the computer.

And hidden cameras and recording devices are likely to violate wiretapping and other privacy laws.

For example, a man in California who was going through a bitter divorce discovered that his wife had sewn a tiny recording device into his son's blue jeans. Not only were he and his son recorded, but the device picked up conversations with lawyers, therapists, and members of the man's family. All these people have now filed lawsuits against the man's ex-wife, accusing her of violating federal laws against secret tape-recording.

In a similar case, a Nebraska woman who hid

a recording device in her four-year-old daughter's teddy bear now has to pay a significant damages award, plus attorney fees and costs, for violating her ex-husband's privacy.

Computer snooping can also get people into serious hot water. For example, a Michigan man accessed his estranged wife's e-mail on a shared computer and discovered that his wife – who had been married twice before – was cheating on him with her second husband. He not only sought to use the information in his own divorce proceeding, but also printed out the e-mails and gave them to her first husband, with whom she was entangled in a custody dispute.

The man – who claims he "guessed" the password to her Gmail account – was criminally charged and faces up to five years in prison.

If you're concerned that someone might be engaged in improper activities, talk to your attorney. Don't just take the law into your own hands, or you might wind up on the wrong side of it.

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## Know the rules if you're renting space in your home

The number of people who rent out space in their home, such as an extra room or an apartment, is skyrocketing. But many people don't realize that doing so can create legal problems.

Craigslist reports that the number of people offering to rent a room in a home has nearly doubled over the last year or so. Some of this is due to the economic doldrums. But another phenomenon is that many baby boomers whose children have grown up and moved away have houses that are larger than they need, yet they don't want to move – or they can't sell because they owe more on their mortgage than their home is worth. Often, these people rent out extra space to generate income.

That's fine – but many people who rent out a room or convert a garage into a studio apartment don't realize the complexities of landlord-tenant law. Even if you only have one apartment, or even if you only rent to "friends," you still need to have a formal lease and understand the legal rules for tenancies, or you could find yourself facing unexpected legal issues down the road.

For instance, you'll need to make sure that everything in the rental space is up to code – loose steps, lead paint, and other issues can cause problems. And remember that if anything breaks in the rental area, you'll need to promptly repair it.

You'll want to talk to your homeowner's insurance company about any issues that might be created by having a rented space, and whether your insurance will cover damage to your home that is accidentally caused by a tenant.

You'll need to think through the rules you want for the tenancy – such as pets, smoking, noise, storage areas, and utility payments – and put those in writing. You'll also want a security deposit, and you'll need to know the sometimes-complex rules that can apply to handling security deposits.

Many people don't realize that rental payments are taxable as income – so you'll need to determine not only how much you'll receive as rent, but also how much you'll get to keep after taxes.

The good news is that you can often offset your taxable income by your expenses, which could include advertising, cleaning, maintenance, insurance, repairs, supplies, utilities, and depreciation. But you'll need to know what's deductible and what isn't, and keep careful records.

Also, many communities have zoning ordinances that limit rental apartments or the number of unrelated people who can live together in a structure. You'll need to make sure that the rental is legal, and if it is, whether you need to obtain a permit.



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## Son is liable for mother's \$93,000 nursing home bill

The adult son of a nursing home patient is legally on the hook for her \$93,000 in unpaid nursing home bills, an appeals court in Pennsylvania recently decided.

It doesn't matter that the son never signed a contract with the nursing home; he's still liable for his mother's debt, the court said.

The case is the latest in a series of lawsuits in which nursing homes, assisted living facilities and other institutions have sued the adult children of their residents for the cost of their care.

In the Pennsylvania case, John Pittas' mother entered a nursing home for rehabilitation after a car crash. Later, she left the nursing home and moved to Greece, leaving a large portion of her bill at the nursing home unpaid. She applied to Medicaid to cover the cost of her care, but that application is still pending.

The nursing home sued John under the state's "filial responsibility" law. This is an old law that says that if a person doesn't have enough money to take care of their own needs, then the person's relatives – such as a spouse or child – are obligated to pay for their care if they can afford to do so.

Some 30 states currently have laws making adult children responsible for their parents if their parents can't afford to take care of themselves. These laws have rarely been used in the past, but they are increasingly being invoked by nursing homes and other institutions seeking payment for large bills.

In court, John claimed that the nursing home

should have to wait until his mother's Medicaid claim was resolved. But the court said that the nursing home wasn't obligated to wait for the government.

John also argued that the nursing home shouldn't have singled him out, and should also have sued his mother's husband and his siblings. But the court said the nursing home was free to choose whichever relative or relatives it wanted to sue.

A similar case occurred several years ago when Betty Budd transferred most of her assets to her daughter Elizabeth, then entered a nursing home. When Betty died, she owed the nursing home \$96,000.

The nursing home sued Elizabeth for the money.

In that case, a court said that Elizabeth would have been off the hook if Betty had qualified for Medicaid. However, Betty and Elizabeth hadn't taken the proper steps to qualify Betty for Medicaid, and that meant that Elizabeth was liable for the bills.

These cases highlight the importance of understanding the often tricky rules involving long-term care insurance, Medicaid and other programs. Failure to do so could not only cause problems for seniors, but could also leave their children financially hobbled and wipe out an important legacy.



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## Weight discrimination can be cause for a lawsuit

If a company discriminates against an employee because of obesity, this could violate the federal Americans with Disabilities Act.

That's the word from the U.S. Equal Employment Opportunity Commission, the agency in charge of enforcing the nation's anti-discrimination laws.

In a recent case, a Louisiana woman who worked at a drug treatment facility claimed that her employer fired her after eight years because of her severe obesity. She argued that while her condition was a disability, it didn't prevent her from doing her job.

According to the employee, she was really fired

based on stereotypes and prejudices against overweight people.

The employer settled the case with the EEOC by agreeing to pay a significant sum in damages and to provide annual training on disability law.

According to the agency, obesity discrimination can be illegal regardless of whether the person's weight gain is caused by an underlying physical disorder.

In a public statement, the EEOC criticized the "wrongheaded idea" that obese people are at fault for their condition.

### **We welcome your referrals.**

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

## Make sure you can access your power of attorney documents

It's important to have access to the originals of your power of attorney documents, because a photocopy sometimes won't be accepted.

Sometimes an attorney keeps the originals, and sometimes the client keeps them. Both are good ideas. But either way, make sure you can access them when you need them.

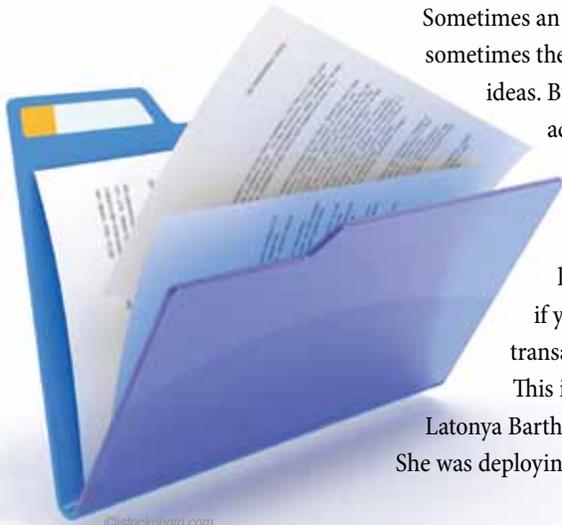
If you keep them yourself, put them in a safe place. And if your attorney keeps them, be sure you leave enough time to obtain them if you'll need them for an upcoming transaction.

This issue came up recently when Latonya Bartholomew signed a power of attorney. She was deploying overseas with the Air Force, and

wanted her husband Lyndon to be able to manage their affairs back home in Kentucky. Later, Lyndon refinanced the couple's mortgage. But when it came time to record the new mortgage with the county, the clerk's office refused to do so – because Lyndon couldn't find the original notarized power of attorney, and only had a photocopy.

Lyndon explained that it would be very difficult for him to get a new power of attorney document when his wife was serving overseas, but the clerk's office wouldn't bend.

Lyndon eventually sued the county, claiming that he suffered damages because he wasn't able to refinance or sell the property. But a federal appeals court said the county was within its rights, and Lyndon was out of luck.



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