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Legal Matters®

Here's another good reason to review your will and estate plan

It's very common for people's wills to provide that the executor will pay the estate's expenses out of the estate's assets, and what's left over will be divvied up among the heirs.

That's usually a good plan. But one of the many reasons for regularly reviewing your estate plan is that changes in your financial arrangements could result in some of your heirs being unfairly burdened with estate expenses, while others will get a windfall you didn't intend.

Here's why this is true: An estate's expenses are paid only by the heirs who receive property under the will. But very often, some heirs receive substantial property *outside* a will – for instance, they're beneficiaries of an IRA or a 401(k) plan, a co-owner of a joint bank account, or the payee of a transfer-on-death brokerage account.

Life insurance proceeds are another important type of property that people receive outside a will.

And unless you specify otherwise in your estate plan, the beneficiaries of these "non-probate" assets won't have to contribute at all to the estate's expenses.

That means that if you've recently opened a joint

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Homeowner's insurance usually won't cover a flood

Many people are surprised to discover that their standard homeowner's insurance policy doesn't cover them in the event of a flood.

If you want flood insurance, you generally have to buy a separate policy. Typically these policies are sold by private insurers, but are backed by the federal government through the National Flood Insurance Program.

Some federally backed mortgage programs require homeowners to buy flood insurance if they live in a high-risk area. Some private lenders require this as well, and they may require it even if the property is not in a high-risk area.

You should note that just because a property is not in a high-risk area doesn't mean that flooding is impossible. High-risk areas are typically low-lying regions that are subject to storm surges or overflowing rivers, but even property in a very low-risk area can still be flooded due to heavy rainfall, drainage system failures, or a broken water main.

In fact, about 27% of all insurance claims for flooding are brought by property owners who don't live in flood zones.

Some people mistakenly believe that if there's a flood, their losses will be covered through a federal disaster relief program. That's not true. You generally won't get any assistance at all unless the government declares a disaster area, and even then, most government assistance is in the form of low-interest loans, not compensation for losses. You will eventually have to pay back these loans.

The good news is that homeowner's policies often (though not always) cover some other types of water issues, including leaky roofs, plumbing problems, theft or fire triggered by flood damage, and frozen groundwater. On the other hand, such policies typically won't cover sewer back-up, sump-pump failures, or leaking swimming pools, at least without a special endorsement that costs extra.

As always, it's a good idea to review your insurance coverage regularly and make sure that you're adequately covered.

Employee 'background checks' may violate law

Many employers have gotten into trouble because they buried a background check disclosure in the middle of other material for the applicant to sign, or relied on a "catch-all" waiver at the end of a document.

In the past, employers typically required background checks only for high-level jobs with security clearances. But the Internet has made background information much more readily available, and employers are taking advantage of this fact, particularly in a tight job market where they can afford to be selective. Today, background checks are routinely performed on potential telemarketers, fast-food cashiers, and pizza cooks.

But many employers who conduct these checks – and many job applicants who are subject to them – are unaware that a federal law strictly limits how they can be conducted.

Employers who don't fully comply with the law can be sued, and if they routinely conduct these checks, they could be subject to a class action. Recently, Wal-Mart paid $6.8 million to settle a class action under the law, and the company that owns the Greyhound bus service paid $5.9 million.

The federal Fair Credit Reporting Act covers credit reports, criminal background checks, and public records searches for liens, court judgments and bankruptcy filings. Unlike many federal laws that apply only to larger companies, this one applies to *any* employer who conducts a background check – even a mom-and-pop business.

Under the law, anyone who obtains a report must get authorization from the person in a disclosure document. And this must be a "stand-alone" document; it can't be hidden in with other disclosures. Many employers have gotten into trouble because they buried a disclosure in the middle of other material for the applicant to sign, or relied on a "catch-all" waiver form at the end of a document.

Employers who collect job applications online need to be particularly careful, because it's not clear whether a "click-on-the-box" consent to a background check is sufficient under the law.

The law also requires employers to notify a rejected applicant if the employer made a decision based on information in a report. And the employer must then provide a reasonable amount of time for the applicant to dispute and correct the information.

Some people who think they're married really aren't

These days, a growing number of couples are opting out of traditional church weddings and are choosing instead to be married in less formal ceremonies, often presided over by a friend or relative rather than a priest or rabbi.

That's fine if that's what the couple wants – but the problem is that some such weddings might not be technically legal.

Typically, a valid marriage requires a license, witnesses, and solemnization by someone with the legal authority to do so. "Legal authority" is the problem. In many states, this means either a justice of the peace or a person who has been ordained by a recognized religion.

Many people believe that they can perform weddings if they've been ordained by the Universal Life Church, an Internet "religion" that has no particular belief system but that allows people to fill out an online form and quickly become "ordained." The ULC's website proudly touts that its "ministers" can perform weddings. But just because something appears on a website doesn't mean it's necessarily true.

For instance, the Virginia Supreme Court ruled that someone who was "ordained" by the ULC is not a real minister and doesn't have any legal authority to perform a valid wedding. Courts and legislatures in a number of other states have also rejected "marriages" solemnized by someone with an online or mail-order ordination, including New York, Pennsylvania, North Carolina and Utah.

If a person who doesn't have a valid legal marriage ever decides to get divorced, they might find that they're not protected by the divorce laws. They might have no more rights than someone who merely cohabited with another person for many years.

Another problem is that if they signed a prenuptial agreement, it might be worthless if it wasn't followed up with a legally binding "nuptial." Prenups are signed in contemplation of marriage, and they're usually meaningless if there isn't a marriage. In one case, an appeals court in New York ruled that a prenuptial agreement was legally unenforceable because the subsequent "nuptials" were performed by a ULC minister.

People who aren't technically married could face all sorts of other problems. They might not be able to inherit property from a spouse – especially if the spouse died without a will – or to share in a deceased spouse's pension or 401(k). They might not have the right to own real estate as "tenants by the entireties" and thus protect themselves from creditors. They might not be able to sue and recover damages if their spouse is injured or killed. And they could face dire problems with income, gift and estate taxes.

Another good reason to review your will, estate plan

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account with someone, or named them as a beneficiary of a life insurance policy, or made them the beneficiary of an IRA or brokerage account, you might have unwittingly burdened some of your heirs with a lot of expenses to which your other heirs won't have to contribute.

This is important because an estate's expenses can be, well, expensive. Expenses can include:

- Estate taxes. Even if federal estate taxes aren't an issue, many states have their own estate taxes, often with a much lower threshold than the federal tax.
- Medical and funeral expenses.
- Professional fees for accountants, appraisers and others.
- Probate fees.
- Fees for transferring title to assets.
- Local taxes on a decedent's personal property.
- Certain debts of the decedent.

If you think your expenses could become significant, or you've recently arranged for substantial assets to pass to your heirs outside of probate, this might be a good time to schedule a review of your estate plan.

U.S. Government helps older personal injury victims

The federal Medicare agency has issued a ruling that will help many seniors who are bringing personal injury claims.

In general, if you have an accident and Medicare pays any of your medical expenses … and you later bring a legal claim against someone and recover compensation … you're required to reimburse Medicare out of your settlement proceeds.

A big problem is that Medicare is a huge bureaucracy, and it often takes it a very long time to determine exactly how much it's owed.

As a result, many lawsuits that would normally provide a speedy settlement to an injured person instead get caught up in red tape.

Frequently, insurance companies are reluctant to sign off on a settlement until they know for sure how much the government is going to demand. If an insurance company pays an injured person, and for some reason Medicare doesn't get its full share, Medicare can force the insurer to make up the difference. So many insurers want to wait until Medicare decides exactly how much it's owed, so they can make certain the government is repaid.

In other cases, an injury victim's claim might be settled, but a large amount of money will be set aside in escrow – meaning the injured person can't get access to it – while Medicare slowly makes up its mind.

This year, though, the Medicare agency has taken steps to fix the problem. It has adopted a rule saying that in many cases, it will provide a final "bill" within 60 days of a request.

Unfortunately, the new rule only applies to settlements of $25,000 or less, but the agency says that it plans to increase this $25,000 limit in the future. (The rule also says that if a settlement is for less than $5,000, the injured person has the option of simply paying 25% to Medicare, regardless of how much reimbursement Medicare is actually owed.)

For now, the new rule is a step in the right direction toward helping older injured people get the compensation they deserve in a timely way.

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