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# Legal Matters®

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## The four biggest dangers of putting your assets into joint accounts

Often, older people will add the name of one of their children to their checking account, their brokerage account, or even their home. They might do this to make it easier for the child to help them with their financial affairs. Or they might think that it's a clever way to avoid probate.

Joint ownership can be good in some cases, but you should be aware that there are a number of dangers in setting things up this way.

To illustrate, imagine that a woman named Anna has three children – Barry, Todd and Louise – and she adds Barry's name to her accounts so he can help her with her finances. What could go wrong?

**A child's debts.** Suppose Barry loses his job and runs up some large debts. Since Barry is a joint owner of Anna's accounts, his creditors could potentially come after Anna for repayment. Or suppose Barry owns a business and personally guarantees a business loan. If the



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business hits a rough patch, Anna could be on the hook for the loan.

**A lawsuit.** Suppose Barry is involved in an auto accident, and an injured driver sues him. Or suppose someone falls on Barry's property and suffers an injury. A person who brings a

lawsuit might be able to empty Anna's bank account as well as Barry's.

**A divorce.** If Barry gets divorced, his wife could potentially claim some rights over the joint property. Suppose Anna put Barry's name

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## Be careful when signing an 'assisted living' contract

An agreement to enter an assisted living facility or a nursing home is a binding contract, and it typically involves a large amount of money. Just as with a real estate contract, it's wise to have an attorney review the agreement before you sign it, so you can understand exactly what your rights and responsibilities will be.

For instance, you'll want to understand any initial deposits and monthly fees, and what level of service will be provided. You'll want to know what will happen if you need additional services later, and what the cost will be. If you decide to leave, you'll want to know how much notice is required and whether you'll be entitled to a refund. You'll want to know if your family is entitled to part of your deposit if you should pass away.

If you're signing a contract for an aging relative, you'll want to know to what extent you might become personally responsible to pay for your relative's care.

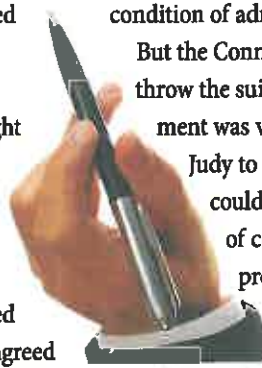
In one recent case, Judy Andrien signed an admission agreement with a nursing home in Connecticut on behalf of her mother. Judy signed the contract as a "responsible relative," and she agreed

to pay the nursing home out of her mother's assets and assist in arranging for Medicaid coverage.

The contract didn't require Judy to personally guarantee payment to the nursing home out of her own pocket. However, it did say that Judy could become personally liable if she did anything that interfered with her mother's Medicaid eligibility, or if she failed to arrange payment to the home from her mother's assets.

Eventually a dispute arose, and the nursing home sued Judy personally for payment. Judy argued that she was protected by a state law that says a nursing home can't require a third party to guarantee payment as a condition of admission.

But the Connecticut Superior Court refused to throw the suit out. According to the court, the agreement was valid because it didn't directly require Judy to guarantee payment. The court said Judy could still be sued personally for "breach of contract" if she failed to live up to her promises to pay the home out of her mother's assets and to assist in obtaining Medicaid benefits.



### Download old tax returns directly from the IRS

Now you can download your individual tax returns from the last few years directly from the IRS.

To begin the process, go to <http://www.irs.gov/Individuals/Get-Transcript>

## U.S. issues new, easier forms to help mortgage shoppers

One reason many potential homebuyers find mortgages intimidating is that lenders send them lengthy, complex "disclosure" forms that are confusing and hard to understand. This can make it more difficult to figure out exactly what you're getting into, and whether one mortgage product is really better than another.

Now, the federal government is issuing new, simplified forms to help make shopping for a mortgage easier.

The new forms will make it much less complicated to understand your costs and obligations, and to engage in comparison shopping.

In the past, mortgage applicants received two separate forms after applying for a loan – an early Truth in Lending Statement and a Good Faith Estimate. At closing, they got two more forms – a final Truth in Lending Statement and a HUD-1 Settlement Statement.

These forms were administered by two different federal agencies with different regulations, and

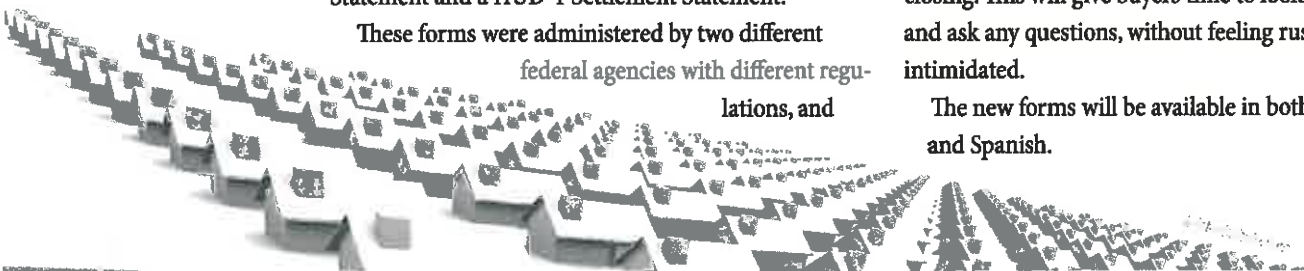
they were often confusing and contained overlapping information. Buyers who got the settlement statement at closing sometimes didn't fully understand it, but were reluctant to ask questions or challenge anything at the last moment with everyone already at the table.

Starting next August, though, the rules will change. Buyers who apply for a loan will get a single form, called a Loan Estimate. This form will clearly lay out the terms of the loan, and make it easy to compare the features of one loan to another.

The two closing forms will be replaced by a single form called a Closing Disclosure, which will provide a clear accounting of the transaction.

Further, the Closing Disclosure must be given to a buyer at least three business days before the actual closing. This will give buyers time to look it over and ask any questions, without feeling rushed or intimidated.

The new forms will be available in both English and Spanish.



## The dangers of putting your assets into joint accounts

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on the deed to her home. That could mean that if Anna wants to sell the house, or take out a home equity loan, Barry's wife might have a veto power.

**A family fight.** When Anna dies, any real estate or financial assets that have Barry as a joint owner will go directly to Barry. If Anna has a will that divvies up her other property, it simply won't apply to the jointly owned property. What about Todd and Louise? If

Anna intended to split her property evenly among her children, that might not happen – which could create lasting hard feelings between the siblings.

Even if Barry is a nice guy and offers to give Todd and Louise a share, doing so might create gift tax issues and other problems that could easily have been avoided.

A lawyer can suggest a number of other techniques to avoid probate and allow children to help with finances, and they might be much safer arrangements.

**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!

## Who's getting divorced these days? People over 50

The new face of divorce has gray hair.

While divorce rates overall have stabilized and even inched downward in recent years, the divorce rate among couples who are 50 or older doubled between 1990 and 2010, according to a study by Ohio's Bowling Green State University.

These so-called "gray divorces" now account for more than 28% of all marital splits – up from just 10% back in 1990.

The reasons for this trend are unclear, although some people have speculated that seniors are living longer and are more active than they used to be, and may be less willing to stick it out in a loveless marriage once their children are grown. Also, there's been a significant increase in divorces that are initiated by older women, who may be more independent than in an earlier generation.

What *is* clear is that there are many legal issues that have special relevance for seniors who are contemplating divorce.

Health care is one. People who are over 50 but not yet eligible for Medicare may have significant health care expenses, and it's important to plan carefully for these at the time of a breakup.

Retirement accounts also tend to be a more important issue for older divorcing couples, since they typically are a much bigger part of the pie than they are for young couples. Dividing a couple's interests in pensions, 401(k) accounts, IRAs and profit-sharing plans can be highly complicated. This is especially true if spouses have taken out loans against these accounts.

The issue of "who gets the house" is also more difficult because it may affect planning for government

benefit programs such as Medicaid.

Older couples are more likely to have a vacation home or investment property, and splitting this type of property can have complex implications for capital gains taxes. That's because second homes and investment property don't get the same beneficial capital gains treatment as a primary residence.

It's also important to plan for Social Security. If you were married for 10 years or longer, then even if



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you get divorced, you may be able (in certain circumstances) to collect Social Security benefits based on your spouse's work record – even if your spouse hasn't retired, and even if your spouse remarries and his or her new spouse starts collecting benefits based on the same record.

You might also be eligible for Social Security survivor's benefits even if you divorce your spouse, depending on your situation.

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## Government may be liable for unsafe road conditions

Jason Rhoades was driving across an icy bridge on Interstate 81 in Syracuse, New York when his vehicle slid across the roadway and vaulted up a snowbank that had accumulated against a concrete barrier. His car went up the bank, fell off the bridge, and landed on the road below. The 28-year-old father of two – who was also the mayor of a neighboring town – died from his injuries.

Less than two days later, William Gardner, a retired Air Force colonel, was killed in a similar accident at the exact same spot.

The families of both men sued the state, arguing that it had carelessly failed to plow the snow away from the guardrail barrier, thus leaving the bridge without any protection if a car slid toward the edge.

Initially, a judge threw out both cases,

ruling that the state couldn't have known about the danger in time to fix it.

But an appeals court sided with the victims. It said a similar crash had occurred in the past on the same bridge, which should have put the state on notice that its plowing methods were dangerously inadequate. It also said the state should certainly have removed the snow after Rhoades' accident, but instead it plowed more snow against the barrier, increasing the odds of the same thing happening to Gardner.

While this particular case involved snow plowing, you should know that governments can potentially be sued for all sorts of road maintenance problems that cause injury – including potholes, broken traffic lights, lack of signage, overgrown trees and bushes that reduce visibility, and even poor planning that makes a curve or an intersection more dangerous than it should be.



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