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Legal Matters®

If you have a lawsuit, use Facebook with care

Recently, a private school in Miami called the Gulliver Preparatory School decided not to renew the contract of its 69-year-old headmaster, Patrick Snay. Patrick sued the school for age discrimination.

The school settled the case by agreeing to pay Patrick $80,000. As part of the deal, Patrick signed an agreement saying he wouldn't tell anyone the details of the settlement other than his wife and his lawyers.

Not long afterward, however, Patrick's college-age daughter Dana wrote on Facebook that "Ma and Pa Snay won the case against Gulliver," and bragged, "Gulliver is now officially paying for my vacation to Europe this summer." The post went out to more than 1,000 of Dana's Facebook friends.

The comments eventually made their way back to school officials. The school claimed that Dana's post was evidence that Patrick had violated the agreement, and it refused to pay the $80,000.

The result? A Florida appeals court ruled that since Patrick had told his daughter about the settlement, he had violated the contract, and the school could keep all the money.

The case is just one illustration of the many ways that Facebook, Twitter, and other social media can cause problems for people who are involved in court proceedings.

Insurance companies and others often monitor the social media accounts of people who are involved in lawsuits, looking for information that they can use in court. Often, even perfectly innocent posts or comments online can be used (or sometimes, twisted or manipulated) in ways that can make obtaining a fair result more difficult.

Bill McMillen, a motorist in Pennsylvania, brought a lawsuit after another driver rear-ended him. Opposing lawyers looked up McMillen's public Facebook page and discovered that he'd taken a fishing trip and attended an auto race after the collision occurred. They used this information to suggest that he wasn't as badly injured as he had claimed. Plus, based on the information, they persuaded a judge to order McMillen to provide access to the private areas of his page as well.

Social media posts have been used as evidence in a number of divorce cases to suggest that a spouse was having an affair, was hiding

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'Cohabitation agreements' can be useful for unmarried couples

If you're living with a romantic partner and you don't have any immediate plans to get married, you might want to consider signing a "cohabitation agreement," also known as a "domestic partner agreement."

Cohabiting couples often enjoy many of the trappings of marriage, such as combined finances and property. But it's important to realize that you have none of the legal protections of marriage, such as equitable distribution of property or support payments if you ever break up.

A cohabitation agreement is a legally binding contract designed to protect both you and your partner in the event that you don't stay together, and enforce the promises you've made to each other in the relationship.

For instance, an agreement can define your financial obligations after a breakup, including continuing support if one partner was the primary breadwinner and the payment of debts that you may have taken on together as a couple.

An agreement can also determine how property will be divided should the relationship end, including who keeps the house or apartment, who gets a car you own together, and who will have custody of a beloved pet.

Additionally, you can appoint each other as your health care proxies. A health care proxy is someone who has the power to make medical decisions for another person if that person no longer has the capacity to make them on his or her own. For married couples, the law generally assumes that spouses can make medical decisions for each other in such circumstances. But this is generally not the case for unmarried couples, even if they live together. If you want to serve as each other's health care proxies, you need to make this clear in writing.

Some couples have tried to write these agreements on their own, but this is not a good idea because you need a lawyer to make sure the contract is legally binding. Ideally, just as with a prenuptial agreement, each member of the couple should have their own lawyer in order to ensure a fair agreement that protects you both.

Does child support count as part of your income?

A lot of people wonder if child support payments count as part of their income. The answer varies a great deal depending on the context, and it's important to plan for this if you're getting divorced.

For instance, when you're calculating your federal income tax, child support payments do not count as income, which means you don't have to pay tax on them.

On the other hand, if you're buying a house and applying for a mortgage, a bank *might* consider child support to be income in deciding whether you're qualified for a loan. Each lender is different, but some consider child support as a financial resource that's available to you.

The bank might take into account how much child support you receive, how long you've been receiving it, and how long you expect to continue receiving it. It might also want to know if there's a significant chance that your custody arrangements could change in the future.

In most cases, child support counts as income for the federal Supplemental Nutrition Assistance Program (formerly known as food stamps). If child support boosts your income above the maximum amount, you won't be eligible for assistance. The same is true for many state-administered health insurance programs.

On the other hand, child support apparently does *not* count as income when determining if you're eligible for subsidies to buy health insurance under the Affordable Care Act, popularly known as Obamacare.

Many other contexts can arise where the treatment of child support will vary; you should talk to an attorney if you're uncertain.

If you have a lawsuit, be careful when using Facebook

assets, or wouldn't make a good parent if given primary custody.

Personal injury cases can be especially tricky, because many people who have suffered an injury try to put on a brave face and project an image of strength in order to keep relatives and friends from worrying about them. They might post something on Facebook such as, "I was in an accident, but don't worry about me; I'm doing fine." Their intent is to keep a stiff upper lip and reassure their family and acquaintances, but an insurance company could use an innocent comment such as this to claim that they're exaggerating an injury.

How can you protect yourself? The best advice may be to simply dismantle your social media accounts while you have a legal claim pending. But of course, many people find this very hard to do.

If you do maintain a social media presence, generally the best advice is to avoid discussing your lawsuit in any way at all.

You should also take down old pictures or status updates that could be misinterpreted. For instance, in personal injury cases, defense lawyers frequently try to claim that a person's injuries pre-date their accident. If someone hurt their knee or their back in a car crash, and defense lawyers come across old posts in which they mention back or joint pain, the lawyers may try to use those posts to call the person's new injuries into question.

You should also keep close tabs on what your friends are posting about you. Facebook allows friends to "tag" you when they post a picture with you in it, so everybody knows it's you in the photo. Make sure to set your security features so that no photo can be "tagged" without your prior approval. And by all means, ask friends to take down any comments mentioning your name that could be misinterpreted.

Finally, never accept friend requests from people you don't know well and trust. These could actually be attempts to spy on you.

If you have any questions, consult with your attorney to make sure you're not using social media in a way that could compromise your right to a fair result in court.

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Problems can arise if a tenant is hiring a contractor

Businesses that perform contracting work at a property are generally entitled to a "lien" against the property to make sure they get paid. That means that if the property owner fails to pay, the contractor can in some circumstances foreclose on the property, have it sold, and collect payment from the sale proceeds.

These types of liens can benefit building contractors, laborers, carpenters, plumbers, electricians, architects, engineers, and suppliers of materials (such as lumber yards). Sometimes liens also apply to cars and trucks, and can be claimed by mechanics and towing companies.

There are sometimes complex rules for these liens, though, so it's good to talk to an attorney if you have any questions. This is particularly true if a contractor is hired by a tenant.

An Alabama company called Matador Holdings found this out the hard way. Matador signed a contract to supply about $60,000 worth of materials to a company called Stratford. Stratford had leased a warehouse and planned to convert it into a plastics manufacturing plant.

Stratford did some work on the property, but ended up abandoning it before the lease ran out, and never paid Matador for the materials. Matador sued the landlord, claiming it had a supplier's lien on the property.

But the Alabama Supreme Court sided with the landlord. Why? Because the lease with Stratford was very clear that if Stratford did any work on the property, it had to pay cash in advance to avoid the existence of any liens. Because Stratford violated the lease, the landlord was off the hook.

The lesson for contractors is to be very careful if you work for a tenant. You might want to ask for a copy of the lease in order to protect your rights, or consider demanding payment in advance.

There's also a lesson here for landlords, which is to protect yourself in your lease in the event that a tenant orders work performed on the property and then doesn't pay.

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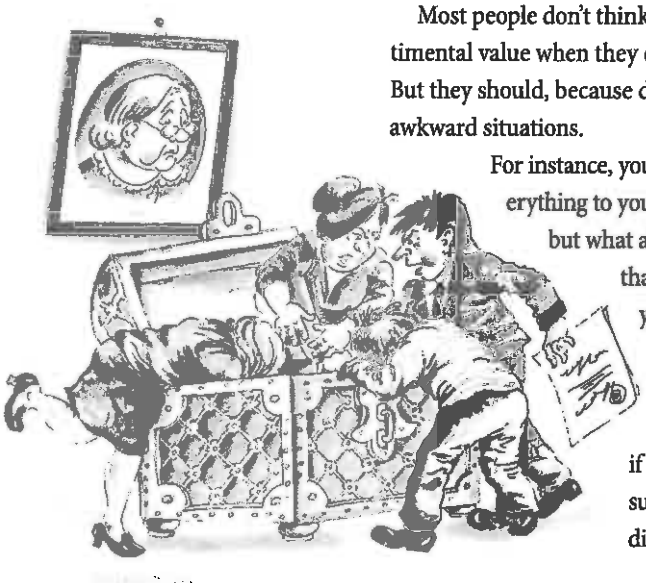
How to handle items of sentimental value in your will

Often, the issue that causes the most hard feelings among family members after a death isn't how much money everyone received in the will, but who should get the plate on which Grandma served her famous Thanksgiving pie year after year.

Most people don't think much about items of sentimental value when they do their estate planning. But they should, because doing so can avoid a lot of awkward situations.



For instance, you might plan to leave everything to your children in equal shares, but what about the piece of jewelry that you always promised to your eldest daughter, or the antique vase your cousin loved that no one else in the family liked? Or what if you have a valuable item such as a piano that can't be divided equally?

In most (but not all) states, you can write a "personal property memorandum" that's separate from your will and that covers how personal items are to be distributed. It's valid as long as your will specifically refers to it, and an advantage is that you can change it yourself whenever you want without having to revise the entire will.

Usually, the memorandum can cover items such as furniture, artwork, jewelry, and so on. Some states let you include cars, but you can't use it for financial instruments such as bank accounts or stocks and bonds.

What happens if someone dies and doesn't make any plan for personal property, and the children or other heirs can't agree on how to divide it? Some families have come up with creative solutions.

For instance, they might assemble all the personal items and take turns picking one item each. Or each child might be given an equal amount of Monopoly money, which they can use to "bid" for each item at an auction.