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Legal Matters

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Legal issues to consider when parents are living with their adult children

Did you know that 17 percent of the U.S. population – that's more than 50 million Americans – are living in households with two adult generations?

Some of these are homes where "boomerang" children have returned home after college. But in a great many cases, seniors who no longer want to live alone (or are no longer able to live alone) are living with their middle-aged children. Sometimes the senior moves in with the children, sometimes the children move in with the senior, and sometimes both generations pool resources and buy a new home together.

In most cases, this works out well for everyone. But there are a lot of financial and legal issues that arise from such a relationship, and you'll want to make sure you've accounted for them in your real estate, tax and estate planning. Not doing so at the beginning can cost a lot of money and stress down the road.

For example, suppose Louise is having some trouble taking care of herself, and she moves in with her daughter Susan and Susan's husband Ted. It would be good if the family had an open discussion about these issues at the outset

* If Susan and Ted move into Louise's house, what happens when Louise passes away? Do Susan and Ted have to move out? If Louise leaves them the house, is that fair to Susan's siblings? If Louise tries to make things fair by leaving her savings and investments to the other siblings, what happens if that money ends up being spent on Louise's future medical care?

* Suppose Louise pays for an in-law addition to Susan

Be careful – a 'letter of intent' could be binding

Businesspeople who have agreed on the general terms of a deal often sign a "letter of intent" that lays out these terms in writing. The idea is to make sure that everyone is on the same page while a formal contract is being drafted.

But what happens if you sign a letter of intent with someone, and then they walk away from the deal? Is that okay?

In general, the answer is yes – a letter of intent isn't a binding contract; it's merely an expression of a plan to negotiate a binding contract.

But that's not always true. Sometimes a letter of intent is so specific and leaves so little out that it can legally be considered a contract in itself.

For instance, in one case involving a real estate sale, the buyer and seller signed a letter of intent that included a description of the property, the sale price, the deposit and title requirements, and the time and place of closing. It said the buyer's offer was accepted, and that the two sides "shall" sign a sale contract that was satisfactory to both.

Before signing the sale contract, though, the seller changed her mind and agreed to sell the property to someone else.

The buyer sued, and the Massachusetts Supreme Court sided with him. It said that while the letter of intent wasn't a formal contract, it was so specific and clear that it amounted to a binding agreement.

If you're signing a letter of intent, be very careful if it's important to you to (1) preserve your right to back out or (2) make it as difficult as possible for the other side to back out.

Some letters of intent solve this problem with a "withdrawal fee." That is, they say that the letter isn't a binding contract, but if one side doesn't sign a binding contract on the stated terms by a certain date, he or she must pay a money penalty.

Employee goes to work

Your 'power of attorney' can name more than one agent

A power of attorney document allows someone else to act as your agent and handle your legal and financial affairs. It's critical to have such a document in case you become incapacitated.

Sometimes, people want to name more than one agent. For instance, a person may have two children, and not want one child to feel that the other is being favored. Sometimes a parent will name two children and give them both access to all his or her affairs, so one child won't suspect that the other is abusing the power.

Naming more than one agent has some advantages. For one thing, if one agent is hard to reach in an emergency, the other may be able to step in.

On the other hand, naming two agents can be a disaster if they can't agree on how to handle matters. You should name two agents only if you feel confident that they can get along and agree on a course of action.

You'll also want to make very clear whether the two agents can act independently or whether they both have to sign off on everything.

If they both have to sign off, this will eliminate any suspicion that one is abusing the power. But it's much more cumbersome, and makes it hard to act in an emergency.

Allowing the agents to act independently is more efficient, but it also means that the agents might act in contradictory ways. And some financial institutions are reluctant to let one agent make unilateral decisions, for fear that the other agent will say something different and leave the institution stuck in the middle.

It's also possible to name one person as an agent and another as a successor or "backup"

and Ted's home. What guarantees should she have about being able to live there? What happens if, despite everyone's best intentions, the arrangement doesn't work out, or Louise needs additional care that the family can't provide? Do Susan and Ted simply get the advantage of the increase in their property value? What if Louise needs the money she put into the house to live on? And how does paying for the addition affect Louise's eligibility for Medicaid?

* How do the answers to these questions change if Louise, Susan and Ted buy a house together?

* If they all buy a house together, should it be jointly owned or owned as tenants in common? Should Susan and Ted be the owners, with Louise having a "life estate" (i.e., a legal right to live there as long as she wants)? Or should the house be put into a trust? All of these options have different legal benefits and drawbacks.

* What are everyone's expectations in terms of paying for living and housing expenses? If Susan and Ted have young children, will Louise be expected to help with child care?

* What happens if Susan gets a great job offer in another city? Or if Susan and Ted get divorced?

* What if Louise becomes disabled? Will Susan be expected to give up her work to provide care for her? If so, will Louise financially compensate her? How will this work?

These can be difficult questions, but talking about them – and incorporating the answers into an updated estate plan – is crucial. It's especially important if the senior is living with one child but there are other children in the family, because of the possibility of misunderstandings, hard feelings or conflicts between the caretaker child and the other children.

20% of homeowners don't refinance when they should

About 20% of U.S. homeowners fail to refinance their mortgage when interest rates drop enough to make it worthwhile, according to the National Bureau of Economic Research.

This is a huge mistake. The median total of lost savings for these families is currently about $11,500 in present-value terms, the Bureau found.

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for competitor, despite contract

Michael Holton was the president of a cancer radiation services company. When he took his job, he signed an agreement saying that if he left, he wouldn't disclose any confidential information or trade secrets to a competitor for at least a year.

After the company merged with another business, Holton was terminated. A month later he went to work for a competing firm. His original company filed a lawsuit saying he shouldn't be allowed to work for the competitor.

The original company wasn't able to prove that Holton had divulged any specific confidential information or trade secrets. But it said it should win the case anyway, because Holton would "inevitably" disclose such information as part of working as an executive at the new company.

However, the Georgia Supreme Court sided with Holton. It said that Georgia already had a specific law about trade secrets, and as long as Holton didn't clearly violate that law, his original employer couldn't block his new job on the theory that he would "inevitably" spill some beans.

Can spouses be forced to show how child support is spent?

The rapper Clifford Harris – who performs under the stage name "T.I." – had two sons with his girlfriend Lashon Dixon before the couple split up. Afterward, T.I. was ordered to pay $2,000 per month in child support, plus private school tuition, medical expenses and other costs.

Dixon went back to court seeking an increase to about $3,000 a month. T.I. objected, and argued that Dixon was misusing the payments by living off the money herself instead of actively seeking employment. He demanded an accounting of how exactly the money would be spent if she received an increase.

Disputes about how child support is being spent are fairly common. But whether and when a parent can be forced to explain how the money is actually being used depends a great deal on the circumstances, and varies from state to state.

For example, child support orders in Washington state and Oklahoma specifically warn recipients that they may have to account for their expenses. In Delaware, Indiana, Louisiana and Missouri, parents can be forced to show what expenses they've paid on their child's behalf if the other parent can demonstrate that it's legitimately necessary to do so. And in Florida and Oregon, judges can generally require such a showing at any time if they choose.

Of course, nobody can be expected to account to the penny for how much of a grocery bill was used for a child's meals. On the other hand, child support is

agent, who will take over if the primary agent resigns or becomes incapacitated. This can be a good solution – but you'll want to be very specific about when the successor agent can take over. Some financial institutions are very reluctant to follow a successor agent's orders unless they have clear proof that the first agent is no longer able to make decisions.

Restaurant responsible for auto accident on nearby road

Here's yet another case that shows that you should always have an attorney investigate any auto accident, and never just assume that the other driver is the only person who is at fault.

Joe Annocki was driving his motorcycle on the Pacific Coast Highway in Malibu, California, when he crashed into a car driven by Terry Turner. Turner was pulling out of the parking lot of a restaurant.

The highway had temporary dividers at that point, so patrons could only make a right turn out of the restaurant. Turner attempted to make a left turn, encountered the dividers (which weren't very visible from the restaurant driveway), and tried to back up, at which point Annocki was unable to avoid crashing into him.

Annocki's family sued the restaurant. They claimed that the restaurant could easily have installed a "Right Turn Only" sign at the driveway, and that it was irresponsible not to do so because the restaurant owners knew the dividers were hard to see and could have foreseen the danger caused by customers trying to make a left turn.

The California Court of Appeal sided with Annocki's family. It said the restaurant had a legal duty to take reasonable, inexpensive steps to protect its patrons and others where it could see they would be encountering a danger.

It didn't matter that the crash occurred on the highway and not on the restaurant's property.

Most people in the Annocki family's position wouldn't have realized that they might be able to collect additional compensation for their loss from the restaurant's insurance company. That's why it's always wise to talk to a lawyer about any injury.

meant to be used to support children, and it's clearly wrong to grossly misuse these funds for other purposes.

In general, a child support order can be adjusted if a parent can show that the other parent's circumstances have changed. If a parent can prove that the other parent isn't using the child support payments for the purpose for which they were intended, that might be evidence that the parent's circumstances have changed, and he or she doesn't need such large payments.

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