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# Legal Matters®

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## What you need to know if you buy a house with an unmarried partner

**D**id you know that one in four married couples under age 35 bought a home together before they said “I do”?

And they're not alone. A growing number of older divorced people are also buying a house with a new partner to whom they're not married. This might be because they can't arrange wedding bells as quickly as they would like, due to the divorce and other complications, or because they have just come from a bad experience and are cautious about re-tying the knot.

In other cases, one person already owns a house, and a new partner moves in and becomes a co-owner.

In all these situations, there are a lot of legal complexities, and it's wise to talk to a lawyer first. Here's a look at some of the issues you should consider:

### *Should we buy a house as joint owners?*

If you're joint owners, you both have an

interest in the whole house. If one of you dies, the other becomes the sole owner. By contrast, if you're tenants in common, you each have a percentage interest in the house. You might each have a 50% interest, but you could split it differently – for instance, 60% - 40%. You can sell your percentage interest to someone else, and if you die, you can leave your percentage interest to someone besides the other owner.

A big advantage of joint ownership is that if you pass away, the house goes to your partner without having to go through probate. But this can also be a disadvantage. For instance, if you have children from a previous marriage, you can't legally leave them an interest in the



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house – the whole thing will go to your new partner, and your children will get nothing.

### *What if my partner and I have very different credit scores?*

That's a common situation, and if you jointly apply for a mortgage, it can make it harder to get a loan with favorable terms.

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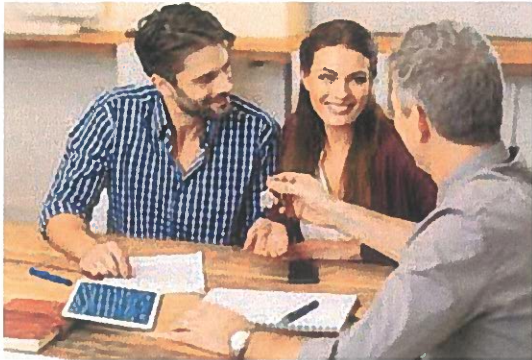
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## If you buy a house with an unmarried partner...

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Of course, it's possible to buy a house together, but only put the name of the partner with the better credit history on the mortgage. This can result in a better loan – but it can be a big problem if you split up. The partner whose name is not on the mortgage might walk off with an interest in the house but no obligation to pay the debt.



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*If I already own a house, and my boyfriend or girlfriend moves in, can I just make him or her a co-owner?*

Sure, but you should be careful and be aware of all the potential drawbacks.

For instance, you will have just made a very large gift to someone to whom you're not related, and you might end up owing gift tax, or at least having

to file a gift tax return.

If you have a mortgage, your mortgage might immediately become due in full if you put someone else's name on the deed. That means you'll have to refinance, and you might not get as good a deal as you currently have.

If your partner runs into financial problems, a creditor could force the sale of your home.

And remember, if you break up with your boyfriend or girlfriend, you won't simply get the other half of the house back. Once you give it away, it belongs to the other person.

*Does that mean that I should keep the title to the house myself until we get married?*

That's one option. But that can create issues too. For instance, what if something happens to you and you pass away suddenly – do you want your partner to inherit the house? If his or her name isn't on the deed, you might have to revise your will to make that happen.

If you let your partner live in the house rent-free, the IRS might consider that you've made a gift to your partner of the fair-market value of the rent. If that value is more than \$14,000 a year, you might have to file a gift tax return.

*What's the best way to deal with all these issues?*

A good solution is to have a written contract – which you could think of as a “house pre-nup.”

The agreement would address how you'll own the property; who contributes how much to start; whether both of you will be on the mortgage; who will contribute how much to the mortgage payments; who will pay for taxes, utilities and maintenance; and so on.

Most importantly, the agreement can say what will happen if you split up – will the house be sold, and how will the proceeds be split? If one partner stays in the house, will that partner buy out the other's share, and how?

Having these things in writing can make the whole process smoother, and protect your legal interests as well.

## Facebook page becomes weapon in custody battle

Social media sites are among the latest weapons that spouses are using to gain leverage in divorce and custody battles. A recent case from New York illustrates how.

A father who was fighting for custody of a four-year-old boy went to court with details from his wife's Facebook page. The page was full of photos and status updates showing her sightseeing in Italy and eating seafood in Boston, which the father used to claim that she was frequently traveling out-of-state while he was busy raising their son.

The mother objected, arguing that the court

shouldn't be able to look at the profile because she kept it private and because she had “unfriended” her husband before they separated.

But a judge sided with the father, saying the amount of time each parent spent with the child could be important to the custody issue, and the Facebook page was relevant evidence.

This goes to show that anyone who is involved in a divorce needs to be very careful with social media, because what you publish about yourself could potentially be used against you in a dispute over custody or property division.



## Do-it-yourself will leads to an unfortunate result

Here's yet another example of how people who try to create their own wills, using a form that's available from a book or the Internet, often shoot themselves in the foot.

George Zeevering of Pennsylvania wanted his estate to go to two of his five children. He wrote a "do-it-yourself" will in which he left his pickup truck to his daughter Diane and his summer home to his son Wayne. He also stated that he was intentionally leaving his other three children out of the will.

The problem? The will never specifically stated what would happen to the rest of his property other than the truck and the summer home. While George presum-

ably wanted it to be divided between Diane and Wayne, he never spelled this out.

The rest of the property was worth \$217,000, and the children all went to court to argue about it. A judge eventually ruled that under Pennsylvania law, the \$217,000 had to be divided equally among all five children – even though George had deliberately tried to cut the other three out of the will.

If George had consulted an attorney about his estate plan, he'd have gotten the result he wanted, and he would also have spent far less than his children ended up spending trying (and failing) to untangle his mistakes.

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## Charitable donations from your IRA could save taxes

Congress has revived a law that lets you make charitable donations directly from your IRA, which might provide older people with some significant tax advantages.

The "IRA charitable rollover" was discontinued at the end of 2014. But Congress has now resurrected it, made it permanent, and also made it retroactive to the beginning of 2015.

If you're over the age of 70½, you're required to take minimum distributions each year from your IRA, and you have to pay income tax on those distributions. But the "charitable rollover" law lets you transfer assets from your IRA to a charity, and whatever amount you transfer reduces the amount you're required to withdraw. So if you're required to withdraw \$20,000 in 2016, but you instead donate \$20,000 to charity, you don't have to withdraw any funds for yourself, and you don't have to pay any income tax.

You won't get a charitable deduction for the amount you donate in this way. However, donating directly from an IRA may be better than taking a distribution and then making a donation, because it results in a lower adjusted gross income – which can help you avoid taxes on Social Security benefits, reduce your Medicare premiums, limit the 3.8% surtax on investment income, and qualify for other deductions and credits.

In addition, donating from an IRA is definitely to your advantage if you otherwise wouldn't be eligible for a charitable deduction, either because you don't itemize your deductions or because you're subject to the charitable deduction "phase-out" for higher-income taxpayers.

To qualify, you must contact the plan custodian and

have the custodian transfer the assets directly to the charity. If the custodian sends you the funds and then you give them to the charity, you'll have to pay income tax on the distribution.



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You can donate up to \$100,000 to charity each year from an IRA. A married couple can donate up to \$100,000 each, as long as each spouse contributes from his or her separate account.

You can't contribute to a private foundation or a donor-advised fund, however. And the tax break applies only to IRAs, not to 401(k)s, 403(b)s, Keoughs, profit-sharing plans, Simple IRAs, SEPPs, etc.

While the tax break theoretically applies to Roth IRAs, there's much less of an advantage because Roth IRAs aren't subject to the minimum distribution rules.

## Emergency vehicles still have to be driven carefully

Many states have laws that give special privileges to drivers of emergency vehicles, such as being able to go faster than the speed limit or run stop signs and red lights.

But this doesn't mean that emergency personnel are completely off the hook if they cause an accident. That's because, even when responding to an urgent call, emergency drivers still have to exercise a reasonable amount of care. If they don't, their employer may be liable.

smashing into Jones's car and causing her serious injuries.

In court, the county argued that Robin should have stopped when the fire truck approached.

But Robin argued that even emergency drivers have an obligation when running red lights to stop momentarily and confirm that the coast is clear. In this case, the emergency driver admitted that another car had blocked his view of Robin's lane, but he had turned anyway. And while the driver had his emergency lights on, his vehicle was a Ford F-250 with lights on the sides of the vehicle, which are less visible than the light bar on top of a typical police car.

A jury weighed the facts and decided that the emergency driver was 60% at fault for the accident, which meant Robin could be compensated for 60% of her damages.

In one recent case, Robin Jones was heading through a green light at an intersection when a county fire rescue truck turned left against the red light,

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