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# Legal Matters®

Family Law  
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## When and how to talk to your adult children about your finances

If you're like most people, you don't like to contemplate your own mortality. After all, you're enjoying life and if you're in your 50s, 60s or even 70s, that's not really considered very old these days.

That feeling is why so many older Americans avoid talking to their adult kids about end-of-life issues such as who's going to make important medical decisions should they no longer be able to decide for themselves and, especially, their personal finances. It's also why many younger Americans avoid approaching aging parents about these issues.

In fact, according to a 2014 study from Marist College, approximately 80 million Americans are avoiding these conversations with aging parents. When they do occur, it's usually only after a health crisis.

Don't be part of that statistic. If you are an aging parent or a younger adult with aging parents, it's important to have these conversations as soon as possible. That's because circumstances can change in a hurry, and when it's left to the kids to figure out how to unwind complicated finances, bickering and resentment can result. Sometimes family members in these situations can even end up in court.

So what should you be talking about? First, older parents need to give their kids a basic understanding of where they stand financially. For example, kids should know whether their parents have adequate



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retirement savings. It's not fair for adult kids to be blindsided with the knowledge that they're going to need to support their parents at some point.

Additionally, what if one or both parents require long-term care, either from a home health aide, in an assisted living facility or in a nursing home? It's important for your kids to know if you're insured or if you're going to have to cut down your estate to qualify for Medicaid, or even if they are going to end up footing the bill.

Unfortunately, it's common for there to be a disconnect between

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# When and how to talk to your adult children about your finances

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parents' and kids' understanding of what's going to happen. A study from Fidelity Investments



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shows that nearly 75 percent of parents expect one of their kids to take care of them when they can't live independently, but only 40 percent of children are aware of this.

It's also important to discuss with adult kids what,

if anything, you plan to cover for them. Without being too specific, you can let them know if you're in a position to help with your grandkids' education, the purchase of a home, a wedding or a host of other things that your kids would otherwise need to cover for themselves. This knowledge may affect their own investment and savings decisions.

It's even more critical to share with them how to access all your bank and investment accounts should anything happen to you and to provide a list of your debts, assets, insurance policies, retirement plans and expenses.

You also want to provide contact info for anyone

who helps you in these matters, whether an attorney or a financial planner. And you absolutely want to let them know the location of any wills, trusts, health-care proxies (instructions on who can make medical decisions on your behalf), powers of attorney (who can act legally on your behalf) and the like. Better yet, create a document with all of this information and keep it in a safe place they know about.

It can be very difficult for your survivors to untangle these things after you're gone if you haven't provided this information. It also can cause misunderstandings and stress in what's already a very difficult time.

Finally, it's a good idea, once your children are old enough to handle the conversation, to share the details of your will. Talk to all your kids at the same time, especially if you're not distributing assets equally. Although it may cause some hurt feelings, you can reduce the tension by explaining why you made the decisions you made.

It's equally important to let them know who might be granted power of attorney or named health care proxy and why. This can forestall costly legal battles between them over your estate and over important decisions later.

This is just a start, and there are many more things to consider. Talk to a family lawyer where you live to learn more.

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## Do you need a prenup for a later-in-life marriage? There are issues to consider

You're probably heard a lot about "gray divorce" in recent years, referring to when couples over 50 get divorced, often after decades of marriage. Along with gray divorce comes "gray marriage," when older people get married in their 50s, 60s, 70s and beyond.

In a lot of cases, both spouses come into these marriages with financial security. They may both be retired with good pensions. The kids may be grown and on their own. The house may be paid off.

The assumption may be that if the marriage breaks up, they're each no worse for the wear and will leave the marriage with what they brought into it. That doesn't mean they shouldn't still consider a prenuptial agreement for these late-in-life marriages.

For one thing, a pre-nup may be a way of balancing your loyalty to your children from a previous marriage with concerns about ensuring your new spouse is

taken care of should anything happen to you.

Without a pre-nup, an estate plan can be changed at any time for any reason, giving both your kids and your new spouse a level of insecurity. With a pre-nup, however, you can split up your estate between your new spouse and your kids in the most appropriate way possible.

A pre-nup also is a useful way to deal with retirement assets. This is especially relevant because later in life, you're more likely to be using these assets. You can decide in a prenuptial agreement which assets you'll use as a couple to support yourself and work out how to divide up retirement accounts between a surviving spouse and a deceased spouse's kids from a prior marriage.

There are a lot of other potential benefits to considering a pre-nup for a gray marriage. Talk to a family lawyer where you live to find out more.

## Important assets in divorce

Divorce can be difficult in so many ways. The breakup of a relationship that was supposed to be 'til death do us part can be emotionally devastating. Depending on the circumstances, there can be a lot of pain, anger and recrimination. If there are kids, there's an additional level of complexity.

Then there's the issue of dividing up property, which can be even more difficult considering the emotional factors. When most of us think of property division, we just think about our bank accounts, our house and our investments and we often think we can divide these things on our own. Often, there are assets that are overlooked and that's why it's important to have your own attorney who can help you identify and value these assets for a more equitable split.

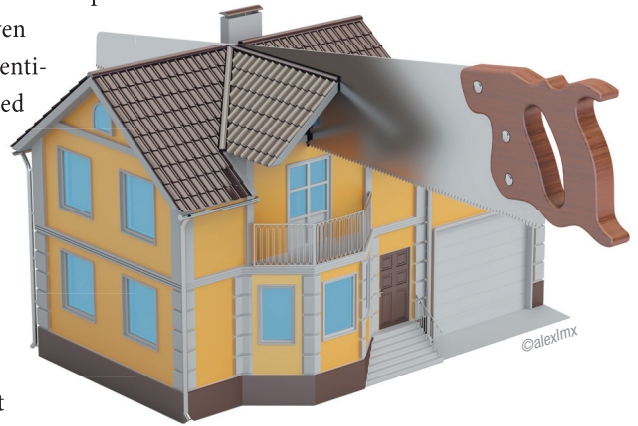
For example, it may be easy to split up the house, but how easy is it to split up the furnishings? After all, these items each have their own financial value that needs to be appraised to ensure they're properly considered.

The same thing goes for pets and even livestock. What about wedding gifts? Or employee benefits? Don't assume that things like retirement accounts, stock options and pension benefits can't be valued and split.

Maybe you and your spouse belonged to a golf club or a country club as a couple. Who gets to keep the membership, and how much does the other spouse give up to let it go?

Perhaps, as a couple, you loaned money to friends or family. The right to collect on this debt can be considered a marital asset, and that needs to be given a dollar value as well. So do things like unused credit card rewards points and frequent flyer miles. Even things with primarily sentimental value, like framed family photos, art, collectibles and family keepsakes need to be considered.

Depending on your situation, you might want to just let some of this go without nickel-and-diming each other and elevating the level of acrimony. It's still important for you and your soon-to-be-ex spouse to appraise everything so your attorney can protect your interests and help you ensure the fairest division of property possible.



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## Active military duty can create complexities for child support

If you're divorced with kids and in the military reserves or National Guard, being called up for active duty can create complications for meeting your child-support obligations.

There are several issues to be aware of. First, the military considers it your duty to meet your support obligations. That means the military can potentially discipline you if you fail to do so. For example, it can reduce your rank, put you on extra duty or reduce your pay. You even can be subject to a court-martial for failure to obey an order if you've been ordered by your commanding officer to pay child support. Your pay also can be garnished.

This can become complicated when you've been working a civilian job and all of a sudden are on active duty and not getting a civilian paycheck. However, if you're paying your support through withholdings from your paycheck, the child support

enforcement division in many states can arrange to apply the withholdings to your military pay.

Additionally, your military pay may be less than your civilian pay. This reduced income while you're on active duty could potentially justify modifying the amount of your obligation. You'd have to go to court and get a judge to agree, but the revenue department in your state may be able to help make this happen.

Finally, you should be aware that if you're deployed overseas, you might need to get a passport. The government won't issue you a passport (or renew an existing one) if you owe more than \$2,500 in support, so you need to make sure you get any overdue support taken care of before you deploy.

These are just a few issues you need to consider. If you think you may be called to active duty, consult with a good family law attorney where you live to help you prepare.

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## Retirement account can't be protected in bankruptcy, court says



If you are divorced, your debts are out of control and you're contemplating bankruptcy, you should know that certain retirement assets may not be safe from creditors if a recent decision from a federal appeals court is any indication.

In that case, a husband received half the value of his ex-wife's 401(k) when they got divorced. He transferred that money into his IRA account. He also allegedly owed a creditor a significant amount of money.

At some point, he filed for bankruptcy and asked the court to protect the IRA account as an "exempt" asset — an asset that creditors can't reach to satisfy outstanding debt. Generally, retirement accounts are considered exempt, but the creditor didn't think this particular account should qualify. The creditor objected and the court decided that retirement

funds received in a divorce should no longer be exempt under federal law. The court's reasoning was that the funds were originally set aside for the wife's retirement, not his.

That decision followed a 2014 ruling by the U.S. Supreme Court that "beneficiary IRAs" —accounts opened with assets inherited from a deceased person's IRA — were no longer protected from creditors because they weren't really retirement accounts.

The more recent ruling by the appellate court only applies in certain states, but that doesn't mean courts elsewhere won't decide the same way. If you're struggling with debt and have an account with assets transferred through an inheritance or a divorce, talk to a family lawyer where you live to find out how it might be treated in bankruptcy.