

# yourLAW

FALL 2006

## Reviewing Your Advance Directive

In the words of former Supreme Court Justice Benjamin Cardozo, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body." Health-care advance directives are legal tools that enable you to choose one or more people to make health-care decisions on your behalf when you cannot speak for yourself.

A **living will** is a type of health-care advance directive. A living will is simply a written instruction spelling out any wishes you have about your treatment or care in the event that you are unable to speak for yourself. A living will says, in effect, "Whoever is deciding, please follow these instructions!" On its own, a living will is very limited—it usually applies only to end-of-life decisions.

A **health-care power of attorney** (also known as a **health-care proxy** or **medical power of attorney**) is another type of advance directive. In a health-care power of attorney, you appoint someone of your choosing to be your authorized agent to

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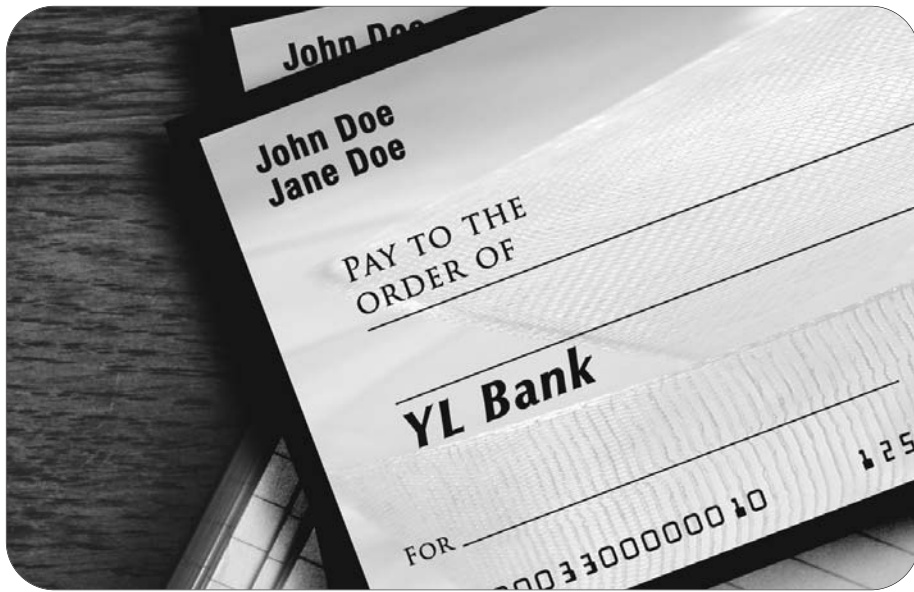


## Back to School on Equal Terms

Summer vacations are a distant memory, and students all over the country have packed their book bags and headed back to school. Many young people—and their parents—don't realize that a federal law, Title IX, protects the right of all students to receive equal opportunities at school, both inside and outside the classroom.

Title IX prohibits sex-based discrimination under any educational program or activity that receives federal financial support. Title IX doesn't just require equal opportunities for male and female athletes. It applies to all aspects of education, from math class to band practice.

continued on the back page



# Joint Ownership and Estate Planning

When most people think about estate planning, they think about writing a will, in which they bequeath all their worldly goods to their surviving relatives and friends. However, some kinds of property, such as jointly owned property, do not pass through a will. Instead, when one joint owner dies, the property passes directly to the other joint owner. This transfer is immediate, and no probate process is necessary.

There are many different types of property that you can own jointly, including bank accounts, family cars, and homes. Particularly in old age, people hold bank accounts or stocks in joint ownership with their spouse, with one or more children, or with friends.

Should you put property in joint ownership as part of your estate plan? The answer depends on your circumstances. Most lawyers urge caution. You may want to *avoid* joint ownership in the following circumstances:

- ✓ **When you don't want to lose control.** Giving someone co-ownership gives him or her co-control. For example, if you make your son a co-owner of your house, you cannot sell or mortgage the house unless he agrees. If you do sell the house, your son may be entitled to part of the proceeds.
- ✓ **When you cannot be sure of your co-owner.** An untrustworthy co-owner could withdraw all the money from a jointly held bank account, or creditors

Joint tenancy is seldom a complete substitute for a will.

of the co-owner could put a lien on the co-owned property. Moreover, if the co-owner were to become legally incapacitated, you would not be able to sell or transfer titled property, such as a home, without going through a cumbersome court proceeding.

- ✓ **When you are in a shaky marriage.** In most states, separate property becomes marital property once it is transferred into joint names, which means it can be divided between spouses in the event of divorce.
- ✓ **When your intentions may change.** When you transfer property into joint tenancy, you make a gift of one-half of the property to the new joint tenant. If you later change your mind, you can't undo the gift.
- ✓ **When you are using co-ownership to substitute for a will.** Joint tenancy is seldom a complete substitute for a will. The reason is that a deceased person almost always has some property that was not jointly owned, so probate may still be necessary. Joint tenancy also does not help if all the joint tenants die at the same time. Each joint owner still needs a will.
- ✓ **When co-ownership might cause confusion after your death.** For example, it might be unclear whether a bank account held in joint ownership was created to help a child manage bill payments or whether the money in the account was intended as a gift. This type of confusion could cause strife among heirs.

Even if none of the above red flags seem to apply to you, you still should exercise caution in using joint accounts. They may result in unexpected tax consequences for either or both owners and may also affect your eligibility for public benefits such as Medicaid. Talk to your lawyer about the legal implications of joint property ownership. *M.*

## Legal Update

### Preapproved Credit Card Offers

If you have a credit card and a decent credit record, chances are that you receive dozens of "prescreened" or "preapproved" offers for credit cards every month.

There's nothing wrong with these offers. You get them because companies that solicit new credit card accounts have asked a consumer

reporting company for a list of people in the database who meet certain criteria or who have a certain credit score. Receiving preapproved offers—or rejecting them—does not have any effect on your credit rating. In fact, prescreened offers can be useful if you are in the market for a credit card. They can help you learn about what's available, compare costs, and find the best product for your needs. Because you are preselected to receive the offer, you can only be turned down under limited circumstances.

However, preapproved credit card offers do contain sensitive personal information. If other people have access to your mail, or if you dispose of preapproved offers in the trash without shredding them, then they can put you at risk for identity theft. If you decide that you don't want to receive prescreened offers of credit and insurance, you can opt out of receiving them by calling 1-888-5-OPTOUT or by visiting [www.optout-prescreen.com](http://www.optout-prescreen.com). The telephone number and Web Site are operated by the major consumer reporting companies. *M.*

Employers should take careful notes during interviews. Besides being helpful in defending hiring decisions if they're challenged in the future, keeping accurate job-related interview notes improves the quality of the selection process.

## A How-to Guide to Hiring

Hiring a new employee to work in a small business is a process fraught with legal issues. The federal government and most states have anti-discrimination laws in place protecting applicants and employees from hiring and employment decisions based on race, color, religion, national origin, sex, pregnancy, age, disability, union affiliation, or veteran status. (Some states also prohibit discrimination based on other categories, including sexual orientation, marital status, and arrest record.) Would-be employers must comply with the law at every step of the hiring process.

### Advertising the Position

In order to attract the most qualified applicants or employees, ads and job descriptions should avoid words that suggest the employer prefers applicants of a particular race, sex, religion, national origin, age, or other protected trait under the relevant state or local law. For example, an ad that

#### Criteria That Can Get the Employer in Trouble

Examples of job criteria that have been found to discriminate against certain groups include:

- height and weight standards (which may adversely impact women and members of certain ethnic groups)
- fluency in the English language (which may adversely impact members of certain national-origin groups)
- standards relating to arrest and conviction records (which may adversely impact members of certain racial and ethnic groups)
- standards relating to history of garnishment (which may adversely impact members of certain racial and ethnic groups)

Remember, an employer can still make use of such criteria if it can show that the qualifications measured are necessary for successful performance of the job.



employs the phrase “recent college graduate” instead of “college degree required” could imply a preference for young people and discourage older applicants from applying. Likewise, using the term “salesman” instead of “salesperson” could suggest that only men should apply.

Employers should also use care when deciding how to disseminate information about available jobs. The method an employer uses to get out the word about job openings can create problems if that method has the effect of foreclosing certain classes of applicants. Employers can avoid problems by disseminating news of job openings as widely as possible. Placing ads in newspapers and magazines with wide circulation bases and using employment agencies or state job-service divisions can help employers reach a wide variety of qualified applicants.

### Interviewing Applicants

The Americans with Disabilities Act prohibits an employer from asking any questions relating to the applicant’s physical or mental health. Questions that seek such information either directly (such as “Do you have any health problems?”) or indirectly (such as “Have you ever filed a claim for workers’ compensation?”) are forbidden. Rather, employers should ask all applicants if they can perform the essential functions of the job. For example, if the job requires sitting down for eight hours a day, the application should ask whether the applicant is physically able to meet that requirement.

The National Labor Relations Act prohibits any questions about union membership or activities. For example, questions such as “Do you belong to a labor organization?” or “Have you ever participated in a strike?” are against the law.

Employers should take careful notes during interviews. Besides being helpful in defending hiring decisions if they’re challenged in the future, keeping accurate job-related interview notes improves the quality of the selection process. However, employers should only write notes that pertain to an applicant’s ability to perform the functions of a job.

### Reference Checks

Both federal and state laws regulate the ability of employers to request references and other information. Reference checks that unnecessarily request private information or use unreasonable methods to gather data may subject an employer to liability for invasion of privacy, though such liability is admittedly rare. As a rule, when conducting reference checks, employers should inquire only about issues relating to an individual’s past work performance. ✎

## An advance directive should be looked at as a work in progress that may be modified at various turning points in your life.

### Crossing State Lines: Is Your Advance Directive Still Good?

Health-care providers normally try to respect your wishes, regardless of the form you use to indicate those wishes or the state in which you executed the form. Only if you spend significant amounts of time in more than one state do you seriously need to consider executing an advance directive for each state. In such cases, you should find out whether one document will meet the formal requirements of each state. As a practical matter, you may want to name different agents if one agent is not easily available in all locations. Generally speaking, your agent should be physically close to your place of care.

make decisions about your health. You can give your agent as much or as little authority as you wish to make health-care decisions; the decisions are not limited to end-of-life decisions. Appointing someone as your agent provides that person with the authority to weigh all the medical facts and circumstances and interpret your wishes accordingly. A health-care power of attorney is broader and more flexible than a living will.

Some lawyers recommend that you create a **comprehensive health-care advance directive**, which combines the living will and the health-care power of attorney into one document. The document may also include any other directions you wish, including your choices about whether to donate or receive organs and where and how you prefer to be cared for.

When planning for future health-care decisions, it is important to understand that merely completing a health-care advance directive will do very little good if you skip the most important part of the process: reflecting on what you want and discussing what you want with your family. In order to be effective, the planning process requires that you share your wishes, fears, and priorities with your physician, family, and whomever else you choose to speak for you when you cannot. Think of the process as a continuing conversation that you will likely need to have more than once. After all, your views may change as you age and may change dramatically in the event of serious illness. For example, your thinking about end-of-life options would probably be different if you were a healthy 35-year-old than if you were a chronically ill 85-year-old. An advance directive should be looked at as a work in progress that may be modified at various turning points in your life. ✕

### Reviewing Your Advance Directive

Priorities and goals change as your life circumstances change, so review your health-care advance directive with your family and your lawyer periodically. Such review is particularly important when you experience any of so-called Five Ds:

- Decade** when you start a new decade of your life;
- Death** when you experience the death of a loved one;
- Divorce** when you experience a divorce or other major family change;
- Diagnosis** when you are diagnosed with a serious health condition; or
- Decline** when you experience a significant decline or deterioration of an existing health condition, especially when it diminishes your ability to live independently.

The primary purpose of Title IX is to give all women and girls equal educational opportunities and benefits—and in particular, to open doors to colleges and graduate schools. Before Title IX, many graduate schools had quotas on the number of women they would admit, and some schools set higher standards of admission for women than for men. Under Title IX, such practices are illegal.

There are two types of discrimination under Title IX. **Disparate-treatment** discrimination occurs whenever students are treated differently because of their gender. This might occur, for example, if girls are assigned to home economics classes and boys are assigned to shop class, or if a teacher gives males pamphlets about careers in construction but does not give the same information to females. There might be disparate-treatment discrimination in athletics if a high school athletics program schedules girls in a non-traditional or less popular season, while the boys play in a traditional season.

**Disparate-impact** is a more subtle form of discrimination that occurs where actions that appear to be gender neutral actually affect one sex more than the other. For example, there may be disparate-impact discrimination if a school has a rule that “students with long hair cannot conduct chemistry experiments.” Such a rule appears to be gender neutral because it applies to all students, but in fact it applies to more female students than male, because more females have long hair. The school might be able to justify the policy if it can show a “substantial legitimate justification” for the rule. For example, it might argue that such a policy is necessary for safety reasons. Female students might argue in turn that safety could be protected to the same extent if students with long hair were required to keep it tied back during experiments. Similarly, a rule that students can only play tuba in the school marching band “if a student can carry a tuba for one hour” might be discriminatory. The rule appears to be gender neutral because it ostensibly applies to all students, but in fact it is likely to apply to more female students than male students because female students are less likely to have the physical strength and stamina required to carry the instrument for so long.

If you think a school is discriminating between students on the basis of sex, talk to your lawyer about the steps you can take to make a complaint and seek redress. ✕

### Resources

The *ABA Legal Guide for Women* contains a chapter about Title IX and includes more information about the steps you can take to make a complaint about sex discrimination in education.