



THE FLOYD LAW FIRM PC

**# Legal
Sense**

The Floyd Law Firm PC

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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 head 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.

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 nontraditional 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.



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 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 will 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.*

Crossing State Lines: Is My 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.

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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.optoutprescreen.com. The telephone number and website are operated by the major consumer reporting companies.

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:

- 1. 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.
- 2. 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 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.
- 3. 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.
- 4. 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.

5. 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.



6. 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.



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Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have four attorneys who can handle almost every type of legal work which you, your family or your business may require. We take great pride in our team of lawyers, legal assistants, legal secretaries, and staff members. Each attorney, legal assistant and legal secretary is an expert in one or more fields. This expertise allows us to provide superior legal services in a number of fields of law such as Personal Injury Claims, Community Association, General Trial Work, Golf Industry, Estate Planning, Estate Administration, Social Security Disability, Elder Law, Real Estate Transactions, Family Law, Worker's Compensation, Wills and Trusts and Criminal Law. We hope you will meet our well-qualified team and allow them to work together for your benefit.

Website:

www.floydlaw.com

NEWS FROM THE FLOYD LAW FIRM

The following have celebrated anniversaries with The Floyd Law Firm: Congratulations to all!

Fanny H . Hall—Legal Assistant—15 years on August 23.

Stacy R. Larson—Real Estate—1 year on September 12.

Joann Pirrung—Legal Assistant—Probate—9 years on July 28

