



Divorce, Later in Life

Whether you've been married for five years or fifty years, deciding whether to divorce may be the most important decision of your life. Regardless of your age, you will need to navigate a number of emotional, financial and legal obstacles.

However, if you are an older adult, you may face some particularly significant issues. You are more likely to have assets (including a pension), a fixed income, and limited opportunities to increase your financial assets. Health insurance and social security benefits may also be important concerns. If you are considering divorce later in life, speak to a lawyer about steps you can take to protect your rights.

Retirement Benefits

For many families, a pension is the largest asset after the family home. Retirement benefits accumulated during the marriage are subject to division in a divorce. Retirement benefits that were earned before the marriage or that will be earned after the marriage are not subject to division.

Many divorcing spouses agree to divide the pension between them. If you cannot agree on how to divide the pension, the court will step in. Many courts prefer to give full rights to a pension to the party who earned it, as long as the other party will have a sufficient amount of income and property from other sources. However, the court is likely to divide rights to the pension if it is one spouse's primary source of income, even if he or she did not earn it. The court can divide the pension between the spouses by percentage—for example, 60 percent for one spouse and 40 percent for the other—or by giving a fixed cash amount to one spouse with the remainder going to the other spouse.

Federal law regulates the division of pensions. Specifically, the law allows a court to make orders called **qualified domestic relations orders (QDROs)**. These orders require the administrator of a pension plan to send pension checks not only to the worker, but also to the worker's former spouse. Most plans by private employers honor QDRO's but some military and governmental plans allow for marital division of retirement benefits under different rules and procedures. To find out how marital distribution is available under your or your spouses' plan, contact the plan administrator.

Social Security

Although Social Security retirement benefits are not property and are not subject to division in a divorce, they are income and deserve consideration when a couple divorces. If you are divorced after at least 10 years of marriage, you can collect retirement benefits on your former spouse's Social Security record if you are:



1. at least age 62,
2. unmarried,
3. not entitled to other benefits—for example, retirement or disability benefits—that exceed one-half the wage earner's primary benefit amount, and
4. your former spouse is entitled to or receiving benefits.

Because the age at which you or your former spouse retires can have a significant impact on your social security benefits, you may want to try to reach an agreement about the age at which one or both of you can retire. For example, although retirement benefits are available at age 62, the amount received at this age will be less than that payable at full retirement age. To find your full retirement age, visit www.ssa.gov/retirechartred.htm.

Health Care Planning

When going through a divorce, it is important to address health care planning—health insurance and medical bills may be among your most significant expenses. When a couple divorces, the family health insurance policy, if any, will no longer cover both spouses. The policy will only cover the spouse who purchased the policy or who acquired the insurance through work. Children covered under a family policy generally will still be covered after a divorce.

However, a federal law passed in 1986—the **Consolidated Omnibus Budget Reconciliation Act**, also known as **COBRA**—requires most employer-sponsored group health plans to offer divorced spouses of covered workers continued coverage at group rates for eighteen months after a divorce, and up to thirty-six months in some circumstances. The worker's divorced spouse must pay for the coverage. If you wish to take advantage of COBRA, you should act as soon as the divorce is final. You should contact the human resources or personnel department of



Your Kids and Online Social Networks

If you are the parent of a tween or teen, chances are you are familiar with some type of online social network, whether it be Myspace, Facebook, or Friendster. These networks give kids an opportunity to express themselves creatively, to contact friends old and new, and to learn about new music and art. However, they also create security and safety concerns for parents and kids alike. These sites can make very personal information about you child available to virtually anyone with a computer, and in some situations, can even introduce your children to individuals of questionable motives, or worse.

As a parent, you have the legal right to restrict your child's access to the Internet. This means that in the most serious case, you have the ability to completely eliminate your child's ability to go online. Although Congress can't do as much as parents, it has tried to help. It has successfully made it a federal crime to send obscene, indecent, or offensive messages or images to anyone under 18. Additionally, Congress has denied federal funding to libraries and schools that fail to install blocking software that prevents kids from accessing certain websites. **There is currently a bill making its way through the federal government that would require libraries and schools to also block social networking sites. However, the government must walk a fine line in order to ensure that it doesn't violate the First Amendment guarantee of free speech. The Supreme Court has said that cyberspace is different than other media, and therefore can't be regulated or policed to the same degree as television or radio.**

Therefore, as a parent, much of the policing and safety responsibilities fall directly on you. Don't panic. Although you may feel like your child knows more about computers than you do, developing a safety plan may be easier than you think. The first step is to talk to your children and about what kids can do to protect themselves. This includes thinking about how accessible information and to never post their full names, contact information, or any other identifying information. Remind your child that once information is online, they can't get it back, even if they delete it. Old versions of profiles can be saved by other people and cannot be retrieved.



Once your child has established a profile, you may want to ask

him or her to let you see it. It's a good idea to give children a day's notice so that they can remove any information they would prefer to keep private from you and to eliminate the "gotcha" factor. Then, spend some time with your child having him or her explain the profile to you, showing you his or her "online friends" and any photos or other information posted. You may end up learning a great deal about your child that you didn't previously know.

Going forward, you should monitor your child's internet use, and of course, keep the computer in a public space in your home where you can look in. However, realize that your child doesn't have to use the computer at home in order to access the internet.



Libraries, internet cafes, and friends' houses all offer opportunities for your child to access the internet without your knowledge. Thus, it is important to talk to your child frequently about internet safety. Both the **Federal Trade Commission (www.ftc.gov)** and **WiredSafety (www.wiredsaftey.org)** provide helpful tips for parents when talking to kids about social networks and internet safety. If you think your child's safety is being threatened through an online social network, don't wait for the problem to get worse, be proactive. Be on the lookout for signs that may indicate something is wrong. This includes: your child spending a lot of time online, especially at night; your finding any pornographic or questionable photos on your computer; or if your child starts turning off the computer or quickly changing is going on, work with your Internet Service Provider to establish parental permissions that can give you access to your child's profiles and emails. However, if you discover that your child has actually been targeted by an online predator, act immediately. First, shut off the computer in order to save any evidence. Next, contact your local police, the FBI, and the National Center for Missing and Exploited Children (www.missingkids.com). By talking to your child about online safety and being aware of what your child is doing online, you can minimize the risks associated with online social networks and maybe get to know your child a bit better.



Hiring Immigrants

When hiring a new employee, businesses must be careful not only to select the right person for the job, but to make sure that they do so legally. When considering an applicant who is an immigrant, employers must be careful to guard against illegally hiring individuals not authorized to work in the United States while avoiding discriminating against U.S. citizens based upon ethnicity.

The federal Immigration Reform Control Act (IRCA) requires employers to complete Form I-9, an eligibility form, for every new employee. The I-9 serves as proof that the employer has verified the legal eligibility of the applicant to be employed in the U.S. Employers must retain these forms for three years after hiring, or one year after employment is terminated, whichever comes last. IRCA applies to all private-sector businesses with three or more employees. Covered businesses can prove they have verified employment eligibility on the I-9 through checking one or more of several documents:

- **Social Security card plus driver’s license with photograph;**
- **U.S. passport;**
- **unexpired foreign passport with temporary I-551 stamp;**
- **alien registration receipt card;**
- **permanent resident card (green card); or**
- **U.S. birth certificate plus driver’s license with photograph.**

When hiring ANY new employee, it is paramount that your business verifies the individual’s eligibility to work by examining one of the documents listed above. Checking a potential employee’s driver’s license is not enough.

While IRCA prohibits the employment of individuals not authorized to work in the U.S., it also prohibits employers from discriminating against U.S. citizens or “intending citizens” on the basis of national origin or citizenship status.

The antidiscrimination provisions of IRCA protect U.S. citizens and those immigrants authorized to work in the U.S. who are taking active steps to become citizens, from discriminatory or simply overly cautious employers.

It is important for employers and employees alike to understand that all employees, whether legally authorized to work or not, are protected by federal and state workplace law. For example, if an employer fires an illegally hired unauthorized worker because that person has joined a union, the employer has violated the law. Though the employee’s recourse is limited, the employer remains liable and subject to sanction in the event of a violation. The Department of Justice Office of the Special Counsel for Immigration-Related Unfair Employment Practices offers more information on its website, www.justice.gov/crt/osc.

SIDEBAR

Intending citizens are non-naturalized immigrants who are actively pursuing naturalization and have been:

- **lawfully admitted to the U.S. for permanent residence (green-card holders);**
- **granted temporary residence in the U.S. under IRCA’s legalization program;**
- **granted asylum in the US under the Immigration and Nationality Act; or**
- **admitted to the U.S. as a refugee under the Immigration and Nationality Act**

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the covered worker’s employer to learn what steps you must take. Generally, you must act within sixty days after the divorce decree becomes final; continued coverage is not automatic.

Other Steps to Take

Often people are so caught up in the process of divorce that they forget about other aspects of health care and financial planning, including wills, trusts, powers of attorney, and health care advance directives.

It is crucial to revise these documents if you get divorced. In particular, you should be sure to change your will, any trusts that designate your former spouse as a beneficiary or trustee, health care planning documents, and life insurance policies that name your former spouse as a beneficiary. If you have a lawyer assisting you with your divorce, he or she may be able to help you do this.

FAQ’s

Is an out-of-state will valid in South Carolina?

An out-of-state will, will pass title to property if a person dies while a resident in South Carolina, if the will was properly executed according to the law of the state in which the will was signed. It is not absolutely necessary for a person who moves into South Carolina with a will which was properly executed in another state to execute a new will; however, because state laws vary significantly it is foolish not to have an out-of-state will reviewed by a South Carolina attorney. In this way, you can make certain that there are no unexpected problems.

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THE FLOYD LAW FIRM PC



Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have five 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!**

Lynn Brazell, Real Estate Paralegal, **6 years on March 18.**

Linda Davis, Receptionist, **5 years on April 22.**

Fanny Hall, Legal Assistant for Dalton B. Floyd, **16 years on March 29.**

Evone Morris, Probate Legal Assistant, **41 years on April 1.**

Peggy Sue Ross, Closing Coordinator—Real Estate, **4 years on April 7.**

Bradley A. Floyd, litigation attorney, recently was appointed to the **Habitat for Humanity Board.**