

yourLAW

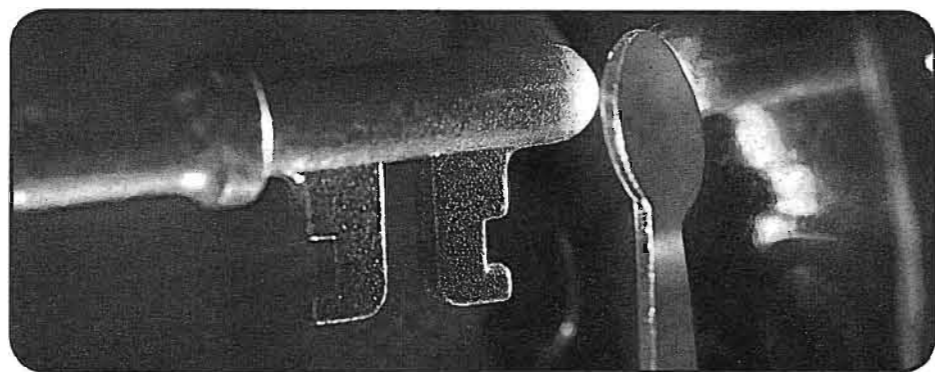
WINTER 2014

Your Driver's License—Understanding the Rules of the Road

You likely remember the sense of freedom and excitement that came with turning sixteen and finally getting your driver's license — the open road, your favorite band on the radio, and the wind in your hair! However, just because you received your license, it doesn't mean it is yours forever. Automobiles, the roads, and driver's licenses are some of the most legally regulated parts of our daily lives, and it is important that you be aware of the legal implications of getting behind the wheel.

The exact requirements for getting a driver's license in the first place generally vary, but there are usually some similarities. These include being a certain age (generally between sixteen and eighteen), passing a behind-the-wheel driving test, passing a written test on the rules of the

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Skeletons in Your Closet—Disclosures When Selling Your Home

If you are thinking about putting your home up for sale, you likely have many small home projects on your to-do list: fixing that leaky faucet in the bathroom, repainting the kitchen, or trimming back that bush in the yard. As you take inventory of your home, make a list of any problems or issues that may need to be disclosed to prospective buyers. You may not think it is a big deal that the roof leaks every time it rains, but a buyer needs to at least be on notice to buy some extra buckets.

Disclosures are generally addressed by state law, and requirements vary. Because this is an area of law that frequently changes, it is important to review your state's requirements before listing your home for sale.

Some states require sellers to fill out a long form that explicitly asks about the seller's knowledge of various significant or material defects that might be present in

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road, showing proof of having taken a driver's education class, and showing identification, such as a Social Security card, birth certificate, and/or other government-issued identification.

Once you have your license, you must keep it up-to-date and properly renewed. Some states permit renewal by mail, while others require a vision test, and in some instances, a new photograph, for renewal. In addition to the vision test, prerequisites for license renewal may include a written test, a thumbprint, a signature, and a photograph. Some states impose additional requirements if a driver has amassed a certain number of traffic convictions, or if the driver is of a certain age or has certain physical problems. Some states require a road test of "elderly" drivers (those over a specific age set by state law) prior to renewal.

If you permanently move to another state, you will likely need to get a driver's license with your new state's licensing authority (usually the Department of Motor



Vehicles, or DMV). You may be required to take a written or driving test, or both. Check with your new state's DMV for the exact requirements and time frame for getting your new license.

Of course, even if you keep your license renewed and up to date, state officials can suspend or revoke it. Barring an emergency, due process under the Fourteenth Amendment generally requires the state give you notice and a chance to be heard before it terminates your license privileges. However, for certain serious offenses, the state may simply rely on the court conviction to revoke a license without the need for any hearing.

If your license is revoked, do not take chances and drive, even for a quick trip to the grocery store. If you are stopped while driving with a suspended or revoked license, you are likely to be arrested. At a

minimum, the offense is usually cited as a serious misdemeanor that carries with it a stiff fine and possibly jail time. In some states, it may be considered a felony, in which case the offender could be sentenced to state prison or performing a significant amount of community service, particularly if the suspension or revocation is based upon a drunk driving offense.

If you are charged with an offense that could result in a license suspension or revocation, you should talk to your attorney to determine the best course of action. Your attorney will assess the situation and work with you to determine how to get your driving privileges reinstated. ❧

The Difference Between License Suspension, Cancellation, and Revocation

Suspension involves the temporary withdrawal of your privilege to drive. The state may restore your driving privileges after a designated time period and payment of a fee. You may also be required to remedy the cause of the suspension, for example, by purchasing auto insurance.

License cancellation involves voluntarily giving up your driving privilege without penalty. Cancellation allows you to reapply for a license immediately.

Revocation aims to both discipline the driver and protect the public. Revocation involuntarily ends your driving privilege. Revocation of your license applies for a minimum period set by law, until you become eligible to apply for a new license. The state may conduct a reinstatement hearing and you may have to retake a driver's license examination.

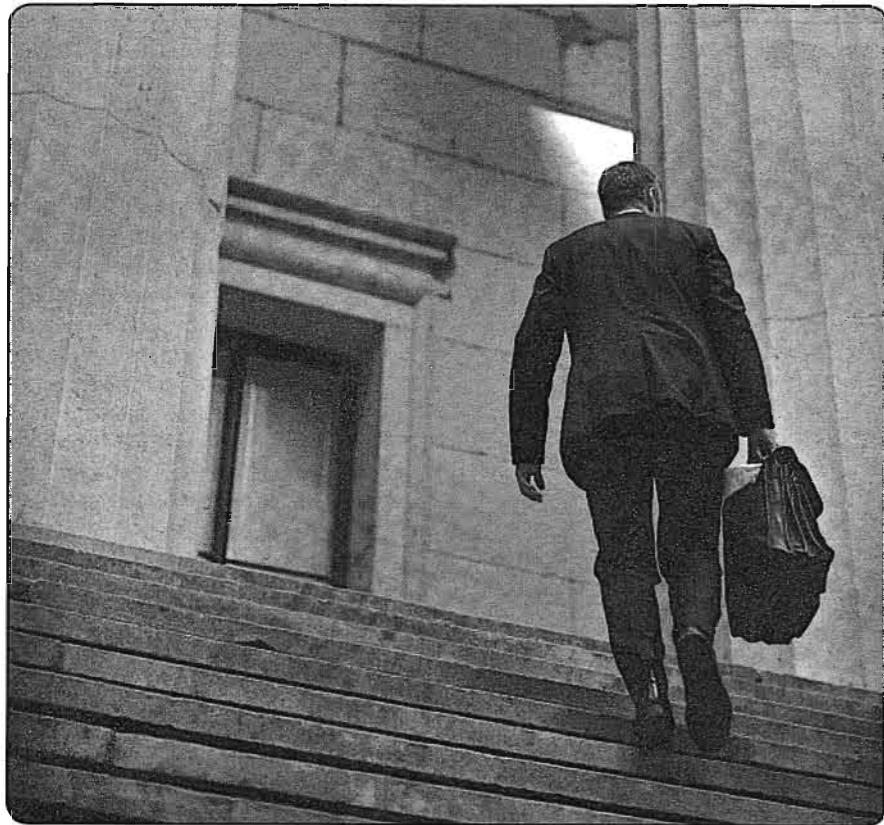
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As a seller, you may want to disclose known material defects that seriously affect the home's value, even if your state does not mandate such disclosure.

the home, such as leaks in the roof or unsafe concentrations of radon gas. In other states, sellers are not required to fill out disclosure forms but are required to disclose any defects in equipment that should be functioning at the time of sale, such as the furnace, central air-conditioning, or hot-water heater. In others, unless a buyer asks specific questions about defects, the seller is not required to disclose them, even if the seller has specific knowledge that one or more substantial defects exist. As a result, any problem buyers discover after the closing is their problem. Buyers are consequently encouraged to protect themselves by hiring an inspector to examine the property. When in doubt, a buyer should ask specific questions of the seller and obtain answers in writing. In certain homes, usually those built before a certain date, federal laws require disclosure of lead-based paints that can create a health risk.

As a seller, you may want to disclose known material defects that seriously affect the home's value, even if your state does not mandate such disclosure. Responding honestly to the buyer's questions and either repairing material defects or disclosing them will help to avoid future legal problems. Many lawsuits that involve real estate transactions are based on the seller's misrepresentation or failure to disclose.

If you are working with a real estate agent, he or she may have additional disclosure requirements. Real estate agents must abide by the Code of Ethics of the National Association of Realtors. The code calls for disclosure by a realtor of all known pertinent facts about the property. Some states require the broker to make additional disclosures that might affect the value or desirability of the property. More information on the realtors' Code of Ethics and a realtor's duties and responsibilities can be found at www.realtor.com. You can also talk to your realtor or an attorney who specializes in real estate transactions in your area to learn more about required disclosures and to ensure that you are meeting all your obligations. ❧



Points to Ponder in Picking an Executor

Other than how you want to dispose of your assets, one of the most important things that you will have to decide in devising an estate plan is who your executor will be. The law requires that an executor (in some states called a personal representative) be appointed to handle an estate because someone must be responsible for collecting the estate's assets; protecting the estate's property; preparing the inventory of the property; paying valid claims against the estate (including taxes); representing the estate in claims against others; and distributing the assets to the beneficiaries.

Sounds like a lot of work, doesn't it? And some of it can be complicated. However, the executor does not have to shoulder the entire burden. He or she can pay a professional out of the assets of the estate to take care of most of these functions, especially those requiring legal or financial expertise. Such an option will, of course, reduce the

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about who makes the best executor.

amount that goes to the beneficiaries. Therefore, handling an estate is often a matter of balancing expertise, convenience, cost, and other factors. There's no consensus, even among lawyers, about who makes the best executor; it all depends upon your individual circumstances.

One approach is to appoint someone with no potential conflict of interest—that is, someone who does not benefit from the will. For this reason, many individuals avoid

Executor Selection at a Glance

- Choosing the executor of your will is one of the most important decisions you will make while drafting your estate plan.
- There is no simple formula for picking an executor—it all depends on the nature of your estate, your family situation, and other factors.
- The main thing to remember is to have some idea of potential executors and the pros and cons of each when you meet with your lawyer to plan your estate.

naming family members and business partners as their executors. This helps the estate to avoid claims by disgruntled relatives who may accuse the executor of dishonesty. Having a professional such as a lawyer handle the job can also save a spouse or other family member the hassle of dealing with estate issues while they are grieving, and the embarrassment of things such as collecting the debts that the estate is owed from friends and relatives. For a large estate, a paid professional executor is advisable.

For small estates, the fees of a paid professional executor may not be worth it. For estates under one million dollars, a spouse or a mature child is generally the best choice for an executor. However, be aware that choosing a child may create animosity among siblings.

If you decide to appoint an interested person as the sole executor and give that person discretionary power to decide who gets certain property, it makes sense to include the methodology by which those decisions should be made. The appointment of coexecutors may be another way to help deal with potential conflicts of interest.

So, what qualities should you look for in an executor? It's important that the executor be capable of doing the job. Persistence in paying bills is a key trait of a good executor. Pick someone who has the time and inclination to deal with bureaucrats and forms.

The executor will probably have to hire a certified public accountant to deal with the final income tax return for income the deceased person accrued prior to death; the estate tax return; and the estate income tax return for income accrued after the person's death.

The executor may have to hire an investment advisor if the estate includes stocks, particularly if the asset value has changed due to fluctuations in the market. However, no legal expertise is required to be an executor; the estate may hire a lawyer to help resolve legal issues.

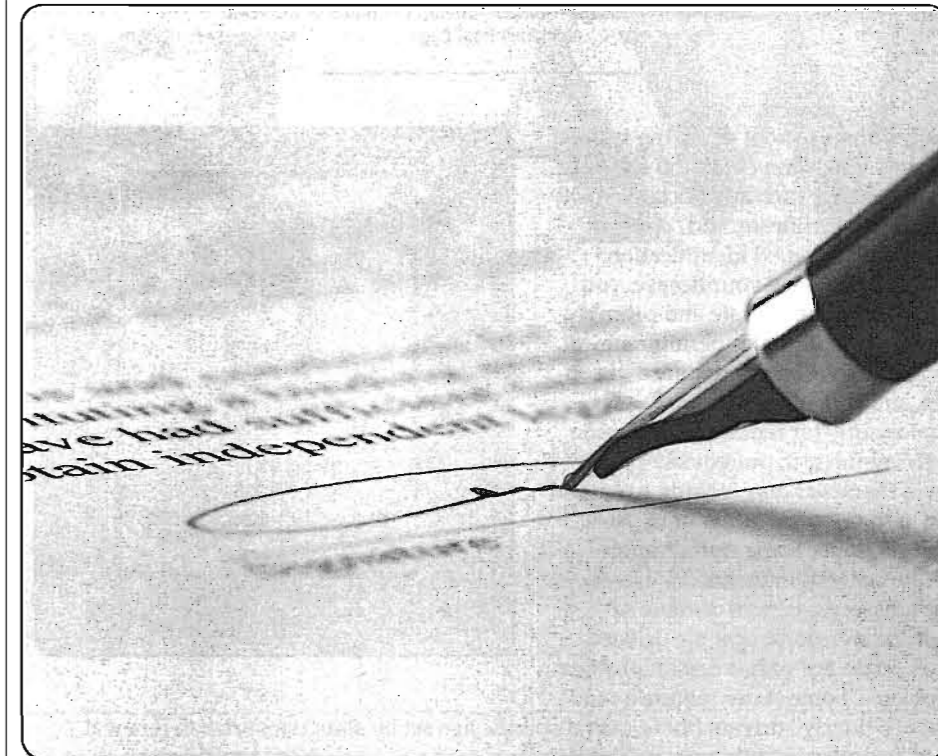
Whoever you choose as executor, make sure your will provides for a backup in case the original executor is unable or unwilling to serve. If you do not, the court will assign one for you. *M.*

Don't Get Burnt by Boilerplate Contracts

We have all been there before—ready to sign the lease on a new apartment, and then the leasing manager passes over a contract with a bunch of blanks to fill out and even more fine print. These form contracts are often referred to as “boilerplate” contracts. Although they usually look standard and straightforward, it is important to read all form contracts before you sign them. When you are asked to sign a form contract, keep the three “Rs” in mind: Read, (be) Realistic, and Respond.

Read—The most important thing to do before signing any contract is to read the entire document. In most states, courts have held that people are bound by all the terms of a contract, even if they didn't read the contract before signing it (unless the other party engaged in fraud or unconscionable conduct). Don't trust the other party to tell you what a contract term means; even with good intentions, that party could be mistaken. When a substantial amount of money is at stake, take the time to sit down with the form and underline any parts you don't understand. Then find out what they mean from someone you trust, such as your attorney. Also, be suspicious if the other party to the contract urges you to disregard certain terms as unimportant. If the other party continues to push a clause as unimportant, ask if it is okay to cross it out; an individual who refuses to cross out a clause after asserting it is unimportant, is probably not one with whom you want to do business.

Realistic—Even though you must take time to read and understand all the contract terms, you must still be realistic about exercising your right to read a form contract. At the airport car rental counter, you probably don't have the time to read the contract and get an explanation of each confusing term. And even if you did take the time, with whom would you negotiate? The sales clerk almost certainly doesn't have the authority to change the contract. Similarly, when agreeing to the license term of a commercially sold software program, no negotiation is possible. If you want the program, you have to agree. However, contract forms and terms are usually



available to examine while you are considering a transaction and before you actually enter into the deal.

Moreover, if you are worried about a good deal disappearing while you take the time to read the fine print, you shouldn't. Rarely will a truly great bargain not be there tomorrow. For all the great deals that work out fine, the one you will remember is the one that went sour—where the seller socked you with the fine print you didn't bother to read.

Respond—Think of the standard contract you are presented with as a first offer—if you don't like a term in it, respond with your own offer. You never have to accept a contract. Every part of a contract is open to negotiation, at least in theory. You can cross out parts you don't like. You can also add terms that the contract doesn't include, such as oral promises made by a salesperson. (However, make sure that any

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time to sit down with the form and underline any parts
you don't understand. Then find out what they mean from
someone you trust, such as your attorney.

changes appear on all copies that will bear your signature; initial any pages that are altered but unsigned, and have the other party do the same.)

This doesn't mean the other side must agree to your changes. But if you encounter a lot of resistance over what seem to be reasonable issues, take a hard look at the person with whom you are dealing—especially if they resist your request to put oral promises in writing.

Lastly, take some solace in knowing that there are laws that offer you some protection in these situations. Many states now require that some or most consumer contracts use plain English, and that potentially confusing sections or clauses be written in precise, standard terms that nearly anyone can understand. Federal and state truth-in-lending laws require providers of credit to furnish specific information about credit contracts in clearly understandable forms.

If you are worried about your rights and responsibilities under a contract, or that the terms to a contract you are a party to have been violated by the other party, your lawyer will be able to help you wade through the “legalese” and determine if you have any legal recourse. *M.*