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Legal Matters®

Be sure to watch out for these potentially dangerous products

Whether we're talking about surgical devices, medications, exercise equipment, lawn products or even everyday household goods, we expect products to work as advertised and not to harm us. Sometimes, however, seemingly harmless products can contain dangerous defects that put the public at risk of injury or even death. That's why it's important to stay informed about safety issues with common products and pay attention to those that have been recalled.

Here are some potentially hazardous products that have generated attention recently:

Peloton treadmills

Over the last few years, Peloton has become a wildly popular exercise craze. By paying thousands of dollars for an interactive Peloton stationary bike or treadmill (both equipped with large, high-definition touchscreen video monitors) and a monthly membership fee, you can participate in your choice of hundreds of video-streamed exercise classes of varying degrees of intensity led by expert instructors, getting the benefit of an exercise studio without leaving your living room.

But if you are a Peloton user you should be aware that this past spring the company agreed to recall 125,000 of its high-end "Tread+" treadmills amid reports of dozens of accidents in which children and adults were pulled under the rotating track, resulting in injuries and even the death of a small child. Peloton's other treadmill, the smaller "Tread" model, was



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also recalled because of reports that the video monitor could detach and fall off while in use. No injuries were associated with the "Tread," but that's still a risk Peloton and regulators agreed the public should be aware of.

CPAP machines and ventilators

CPAPs (or "Continuous Airway Pressure Machines") are commonly used to treat sleep apnea, a condition where breathing starts and stops while you're sleeping, and millions of patients use ventilators if they have trouble breathing on their own. Both devices are lifesavers for people with respiratory conditions, but Philips, the multinational con-

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How title affects property in divorce

Many people assume that if a valuable piece of property such as a car, home or bank account is titled in their name and their name only, they'll get to keep it in the event of a divorce. But that is not a safe assumption. A divorce judge will look at various factors in determining whether an asset will be considered part of the marital estate and divided between spouses accordingly.

If you're divorcing in an "equitable distribution" state (which is the majority of states), courts divide property by looking at factors including the length of the marriage, each spouse's needs going forward and the financial contributions each spouse made to the marriage, with the goal of coming up with a fair split.

When determining whether an asset, including an asset titled in one spouse's name, is subject to division, the judge will consider when the asset was obtained. If it was acquired during the marriage, it will likely be part of the marital estate regardless of who holds title,

particularly if it was acquired with marital funds. On the other hand, if one spouse brought a particular asset into the marriage, that spouse will likely keep that asset in the divorce.

In "community property" states, property that either spouse acquires during marriage becomes a marital asset, with each spouse owning a 50-percent share, though that likely wouldn't apply to gifts and inheritances that specifically go to one spouse. That means if you are married and buy a house, your spouse will own half, even if you are the only one with your name on the deed. If you keep the house, your spouse will be compensated with other assets. If the house is sold, your spouse will likely get half the proceeds.

Of course, this example is just the tip of the iceberg. The unique laws of each state and the complexities of each couple's situation can complicate things. If you have questions, talk to an attorney where you live.

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Watch out for these potentially dangerous products

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glomerate that manufactures both types of machines, recently announced that it was recalling them amid reports that certain foam-based components were breaking down into particles and gas chemicals that were putting users at risk for cancer. Between 3 and 4 million machines were included in the recall.

Philips recommended that if you are using a CPAP you should stop using the device and consult with your physician about what to do next. If you are using a ventilator, however, the company recommended that you do not stop using it without first talking to your doctor, as the consequences of a disruption in therapy could be dangerous. If you suspect foam degradation has caused cancer in yourself or a loved one, you should reach out to a lawyer to discuss your options.

Inclined baby sleepers

Inclined baby sleepers, like the Fisher-Price Rock 'n Play Sleeper, are a godsend to exhausted parents whose infants simply won't fall asleep in a crib or a bassinet. Unfortunately, an investigation by the watchdog organization Consumer Reports has linked inclined sleepers that position babies at greater than a 10-degree angle to at least 94 infant deaths, spurring the federal Consumer

Product Safety Commission to tighten regulation of these products.

That means that by next June, only federally regulated, safety-tested infant sleep products, such as cribs, bassinets, play yards and bedside sleepers, will be allowed to be sold for that purpose on store shelves or online. This doesn't mean that products like the Rock 'n Play can't be sold, but companies will not be able to market them for sleep. That also means that parents currently using such products as sleepers may need to train their babies to sleep in a crib.

Electric pressure cookers

Electric pressure cookers have become a popular way to quickly prepare meals with little prep and even less cleanup. Newer electric pressure cookers such as the Instant Pot and those sold under the Crock-Pot, Ninja and other labels are equipped with safety features that are supposed to avoid the safety risks associated with older stove-top pressure cookers. But a series of recent claims suggests that these pots can still burst open under pressure, essentially exploding and resulting in severe burns from the steam. People have also reported eye injuries, broken bones and other complications from spills and explosions. Crock-Pot recalled its own pressure cookers last November and other manufacturers may follow suit. If you have been hurt by a malfunctioning pressure cooker, it's important to discuss the situation with an attorney.



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'E-signature' agreements raise risk of unenforceability

Mandatory arbitration agreements are contracts between employers and employees under which they waive the right to take each other to court should a disagreement arise between them and agree to have a designated neutral third party resolve the dispute instead. Employers like these agreements because they help avoid the stress and expense of litigation while promoting efficiency.

Employers are also increasingly turning to online tools to have workers — particularly remote workers — sign off on such provisions electronically. But before adopting such a practice you should run your procedures by a lawyer to make sure your arbitration agreements and other agreements executed with an “e-signature” will be enforceable. That’s because, as a recent California case demonstrates, sloppy HR practices can result in such agreements being torpedoed in court.

In that case, worker Maureen Bannister sued her employer for wrongful termination. The employer presented Bannister’s e-signed arbitration agreement to the court and moved to have the case dismissed and sent to private arbitration.

Bannister countered that the agreement was void

and presented evidence that she didn’t actually sign or review the agreement herself. According to the employee, a member of the HR team signed it electronically for her during the onboarding process.

The trial judge agreed with Bannister, ruling that the arbitration agreement was unenforceable. The California Court of Appeal upheld the decision, pointing to a state law clearly stating that electronic signatures are only valid if it can be shown that they were the “act of the person,” which may be proved by showing the e-signature required a unique login and password known only to the employee. In Bannister’s case, it wasn’t enough for the employer to show that the HR person needed her Social Security number, employee identification information and PIN code to sign the agreement, implying Bannister’s consent. The operative fact was that the HR person could have signed the document in her place.

The bottom line is that while e-signatures are typically enforceable, the best bet is to use traditional signatures wherever possible and, if that’s not possible, check with an attorney to make sure the process is airtight.



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Smaller property investors might be hurt by tax plan

Real estate investors would experience a tax hike under President Joe Biden’s plan to help fund the \$1.8 trillion American Families Plan.

The American Families Plan allocates funds for childcare, paid family leave and education programs

The tax hike would happen because Biden’s plan removes a real estate investor’s right to defer taxes on property gains over \$500,000.

If this plan goes into effect, it will likely impact smaller property investors.

The plan would put a stop to a strategy known as like-kind or 1031 exchanges — named for Section 1031 under the Internal Revenue Code — which allows investors to defer capital gains taxes on real estate by carrying the profits over to their next purchase of property of the same kind, such as one apartment building for another or one rental house for another.

A 1031 exchange is allowed if the replacement property is identified within 45 days of the closing of the sale of the first property.



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Under current law, real estate investors can use 1031 exchanges throughout life to buy and sell property and defer capital gains taxes. Someone who holds a property until death may also pass it on to their heirs tax-free.

In November 2020, the congressional Joint Committee on Taxation estimated that between 2020 and

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2024 1031 exchanges could save investors more than \$40 billion in taxes if the current law remains in force.

A 2020 survey from the National Association of Realtors found that from 2016 through 2019, around 12% of real estate sales were part of a 1031 exchange. Of those, 84% involved small business investors, such as sole proprietorships and S corporations.

Many smaller investors tend to use 1031 exchanges for investments in multifamily properties and single-family rentals.

Consider a medical practice that owns an office building worth \$1.1 million that it initially purchased for \$500,000. In a 1031 exchange, the practice can sell the current building and buy another office building, thereby deferring capital gains taxes.

However, under Biden's new plan, the medical practice would be required to pay capital gains taxes on the profit above the \$500,000 exemption.

Such a hit in taxes could make it difficult for older people looking to exchange their home for a place with less maintenance needed as they retire. It could



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also lead to increased rent prices for small businesses, with landlords trying to recoup their losses.

A coalition of trade associations, including the Mortgage Bankers Association and National Association of Realtors, has submitted a letter to the Senate Finance and House Ways and Means committees and Treasury Secretary Janet Yellin, asserting how important 1031 exchanges are to the U.S. economy and how many jobs they support.