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Legal Matters®

Disabled workers have more rights

Disabled workers have more rights to request workplace accommodations and to sue for discrimination, as a result of a new federal law.

The law amends the Americans With Disabilities Act (ADA) so that it covers more workers. It applies after January 1, 2009.

The original ADA protected people with disabilities, and defined a "disability" as a physical or mental impairment that substantially limits one or more major life activities.

But that left open a question – suppose a worker could treat an impairment with a drug or a medical device, such that with the drug or medical device he or she was no longer limited in a major life activity. Was that worker still "disabled"?

Under the old law, some employees claimed they were caught in a "catch-22," because although they suffered from serious conditions, such as epilepsy or diabetes, they weren't covered by the

ADA because their medical treatment protected them from being limited in their life activities.

That meant that an employer could legally discriminate against these employees. It also meant that an employer had no obligation to reasonably accommodate their condition in the workplace.

The new law changes this situation by saying that whether an employee has a disability generally has to be determined without considering any medications or devices that the employee uses.

The law also says that in some cases, workers may be covered by the ADA even if their disability poses only a minor interference with performing their job.

As a result of the law, many companies are expecting an uptick in the number of requests for accommodations.



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Over time children might squabble over who will pay for major repairs or renovations, or about whether to sell the property. And there are tax, liability and asset protection issues and opportunities as well.

How to leave a vacation home to your children

You might think it's easy to leave a vacation home to your children in your will. But there are many issues that can arise. For instance, over time children might squabble over who will pay for major repairs or renovations, especially if some children use the property more than others. Children might also disagree about whether to sell the property. And there are tax, liability and asset protection issues as well.

Here's a look at some of your options:

First, you can sell the home to your children if you reach a point where you no longer want the responsibility of ownership. However, this could result in hefty capital gains taxes.

You can also leave the home in equal shares to your children in your will. But this can lead to arguments between the children over handling major expenses that come up in connection with the property, particularly if some children use the property more than others or are financially better off than others.

In many cases, it's a good idea to leave the home to a trust. This can be smart because you can create rules for the children's use of the property, contributions to maintenance and expenses, etc. Another advantage of a trust is that it can help shield the property from creditors if one child runs into financial difficulties.

Or, you could put the home into a limited-liability company or a limited-liability partnership. This can help limit the children's legal responsibility – for instance, if a child brings a friend to the property and the friend slips and falls and has a serious

injury, the child's liability might be limited to the value of the property.

If your children are very enthusiastic about using the home, you might want to place a limit on how much time any one child can spend there. You might want to require that a child give notice, such as two weeks or one month, before using the property, so other children get a fair chance to use it as well. You might even want to specify who gets to use the home at different holidays.

You might provide that expenses will be divided equally among the children, or apportioned according to who uses the property more. You can also help your children by creating a fund to pay for taxes, insurance and repairs. This fund could be a trust that receives the proceeds of a life insurance policy.

Finally, if you want to reduce your estate and gift taxes, one option is a "Qualified Personal Residence Trust," or QPRT. You give the home to your children, but retain the right to use it for a set term. Although you are making a gift of the home to your children during your lifetime, for tax purposes the value of the gift isn't the full value of the home – it's the value of the home minus the value of your right to live there for whatever the term is. So the amount of taxes that are owed will likely be considerably less.

(The only problem with a QPRT is figuring out what the term should be. A longer term will produce more tax benefits, but you don't want to make it too long, because if you happen to pass away before the term is up, then all the tax benefits will be lost.)

When buying a home, it's not always easy being green

Homebuyers, businesses, and residential and commercial tenants are all showing interest in "green" buildings these days – those designed to save energy, use sustainable materials and have less of an impact on the environment.

Many buyers and renters are willing to pay a little more for a green building – especially if they can recoup their money through energy savings.

Green features can include:

- Energy-efficient appliances.
- Extra insulation to reduce heating costs.
- Solar panels or shingles.

- Thicker or double-pane windows, or windows with a metallic coating to block the sun's heat.
- A rainwater-capture system.
- Low-flow toilets.
- Building materials that are recycled, or are produced locally to reduce transport costs.

If you're serious about going green, think carefully about the legal aspects. You'll want to make sure the building really is as green as it claims, and that you get what you pay for. You should include the details of any specific promises about materials or energy savings in any contract with a seller or builder.



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Can divorcing spouses blog about their ex?

It's no surprise that divorce is unpleasant, and many spouses want to tell the world about how awful their ex-partner is.

In the past, a spouse's ability to do this was limited. They might want to tell the whole world, but in practice they usually just told a few friends over a drink or two.

But today, it's easy to publish a blog that can be read by anyone with Internet access. And a growing number of spouses are taking out their frustrations by putting the intimate details of their failed relationships online for everyone to see.

This can be extremely unpleasant and offensive to the other spouse. But is it legal?

The issue came up recently in Vermont, when William Krasnansky and Maria Garrido ended their nine-year marriage. Krasnansky published a blog that included what he described as a work of fiction, but which appeared to be an account of the break-up in which he blamed Garrido for the failure of the marriage. He also scanned and published excerpts from Garrido's diary.

Here's what the court said:

- Krasnansky had a First Amendment right to publish the blog. He couldn't be muzzled in advance as long as he wasn't directly harassing Garrido or making any direct or indirect threats against her.
- However, he did not have the right to reproduce Garrido's diary, since it was her property and she had a copyright in its contents.
- Third, if Krasnansky defamed Garrido, she could sue him in court for damages. (To prove defamation, Garrido would have to show that Krasnansky made false statements, as well as meeting other requirements.)

In general, while it might be tempting to go online and talk about an ex, it's not a good idea. You might end up being sued for defamation, and your comments might come back to haunt you in a divorce case or in other ways. You might feel frustrated, but you're much better off finding more constructive ways to channel your anger.



You might be paying too much in property taxes

Many people are paying too much in property taxes, and may be eligible for a reduction or a refund.

Property taxes are calculated by multiplying the assessed value of your home by the local property tax rate. But since home prices in so many areas have decreased recently, it's possible that the assessed value of your home is now larger than its actual value – in which case you might be entitled to a tax break.

So it's worth looking carefully at your bill to see what your assessed value is, and whether it still makes sense.

In addition, it's a good idea to check for mistakes in an assessment.

Often, an assessor doesn't actually inspect the property; he or she just looks at it from outside or works from a written description. There have been cases where the assessment was based on an incorrect square footage or number of bedrooms, and cases where a half-bathroom was assumed to be a full one and a screened porch was treated as a year-

round living space.

If your assessment is several years old, it might not take into account changes in the neighborhood or surrounding development that have affected your property and reduced its value.

How can you prove your case? One way is to hire an appraiser. Another is to find a number of comparable houses in your area and look up their assessed value, to see if your assessment is out of line.

In some places, you can discuss the issue directly with an assessor, but in other areas this isn't allowed. In either case, you might end up having to file an appeal of your assessment.

Nationwide, assessment appeals are successful and reduce property owners' taxes between 30 and 50 percent of the time, according to the National Taxpayers Union.

If you think your assessment is too high, it's best to act quickly; there are often strict deadlines for challenging a valuation.

Assessment appeals are successful and reduce property owners' taxes between 30 and 50 percent of the time.



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Kidney failure might be caused by heart surgery drug

Few patients know they took it ... unless they ask

A drug called Trasylol that is used during open-heart surgery is the subject of a growing number of lawsuits claiming that it causes kidney failure and other ailments.

Because Trasylol is used in surgery and not prescribed, many patients have no idea whether it was administered to them – unless they ask.

A recent “60 Minutes” report estimated that 4.5 million patients worldwide have been given Trasylol, including 1.5 million in the U.S.

Since last year, about 150 Trasylol lawsuits have been filed against Bayer, its manufacturer.

Trasylol, the brand name for aprotinin, reduces blood loss during surgery and thereby decreases the amount of blood needed for transfusion.

In 1993, it was approved for use in high-risk cardiac surgeries, and was widely used in all types of cardiac surgeries after that.

But in January 2006, a study in the New England Journal of Medicine concluded that the drug more than doubled the risk of kidney failure.

In September 2006, the FDA met with Bayer and decided to keep Trasylol on the market. The following week, Bayer disclosed its own study confirming the New England Journal of Medicine results, and the FDA issued a public health advisory.

In December 2006, the drug’s label was changed to warn of potential kidney dysfunction.

After a Canadian research trial was halted in October 2007 because patients were dying within 30 days of being given aprotinin, the FDA suspended sales of Trasylol.

The final results of that study were published in May 2008, and Bayer pulled the remaining stock of Trasylol from the market.



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