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# Legal Matters®

## How an LLC could help protect the family cottage

**D**oes your family have warm memories of gathering at a lake house? Sitting by a cabin campfire? Hunting on grandpa's acreage? A vacation home often holds a special place in a family, sometimes enjoyed generation after generation.

Unfortunately, if left unprotected the family cabin can fall victim to nursing home costs. If you require long-term care under Medicaid, you will be required to spend down your assets first, including the value of

**If left unprotected the family cabin can fall victim to nursing home costs.**

that beloved cabin.

There are a variety of options available, but the best protection comes when people act proactively, well ahead of the time they need care. Medicaid uses a five-year look back period for "countable assets," and you can be penalized for gifts within that timeframe.

An LLC is one flexible option that allows a parent to retain some measure of control over property while transferring the equity to an



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adult child.

Under one scenario, parents could gift a 49% interest to one child and a 49% interest to another and retain 2% for themselves. That works well if a parent can ensure that at least one child will consistently vote with them over property management issues.

In this option, the parent retains just 2% interest in the property that could be considered a countable asset for Medicaid. If that value

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# Psychiatrist held responsible for woman's suicide attempt

## **We welcome your referrals.**

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

A Missouri woman who severely burned herself in an attempted suicide after being discharged from a local hospital was able to hold the psychiatrist who sent her home accountable, even though her suicide attempt occurred two weeks after her discharge.

The patient, Katherine Harned, apparently had a long history of psychiatric care that included prior suicide attempts. She was hospitalized after attempting to overdose on prescription medication.

During her stay at the hospital, Harned expressed suicidal thoughts but, when speaking to a psychiatrist, denied being suicidal. The psychiatrist did not admit her as an inpatient and instead sent her home with instructions to visit a mental health facility for a follow-up in another eight days.

Harned kept that appointment, but six days later (which was two weeks after her discharge) she covered her body in hairspray and lit herself on fire. Although she survived, she sustained third-degree burns over 42 percent of her body.

She sued the psychiatrist and the hospital, arguing that the doctor did not take the time to treat her properly, failed to admit her to the hospital for monitoring and treatment and did not develop a safety plan for her. A reasonably competent psychiatrist would have done otherwise, she asserted.

The psychiatrist and the hospital responded that suicide is not predictable and that there was nothing to justify admitting Harned on an inpatient basis.



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The case went to trial and a jury found the defendants liable for Harned's harm, awarding a significant amount for past medical damages, future noneconomic damages (in other words, harm that you cannot put an exact dollar figure on, like pain and suffering and loss of enjoyment of life) and \$300,000 in future noneconomic damages.

The results obtained by Harned in this case might not be predictive of other cases, because any case's outcome depends on the facts as well as laws in the state where the trial is taking place. However, this is not the only time that a patient has been able to hold a mental-health professional responsible for substandard care resulting in harm. If you or a loved one have suffered an injury that you feel is due to deficient care from a psychiatrist or clinical psychologist, it's worth a call to an attorney to discuss your options.

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## *How an LLC could help protect the family cottage*

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needed to be liquidated, the other LLC members could purchase those shares at fair market value.

In another scenario, a parent could give majority interest to an adult child, for example 90%, while still maintaining management control. That requires a

carefully drafted operating agreement that could include classes of membership interest or restrictive management rights.

Transferring the family cottage via an LLC can offer estate planning and tax benefits that are not available with outright gifts and other vehicles. LLCs can use flexible operating agreements that govern member duties, access, and financial responsibilities.

When one member dies, membership interests can be easily transferred outside of probate.

Other advantages of holding the family vacation home in an LLC include liability protection and creditor protection. When compared to joint ownership, an LLC also prevents a property owner from using a divorce or right of partition to force a sale.

Trusts are another common option to protect the family cottage.

Planning for your family vacation property is a critical part of estate planning. There are pros and cons to each option and your attorney can help you decide what's best in your situation.

Whether you're worried about long-term care protections or not, advance planning can ensure the asset transitions to family members securely and tax-efficiently, according to the owners' intent.



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# Be ready for a wage-and-hour audit

Over the past year and a half many businesses have adjusted the way they operate, including a host of changes to who does what job and where people spend their workday.

That means it's a good time for employers to ensure that they are in compliance with all state and federal wage-and-hour laws, including the federal Fair Labor Standards Act (FLSA), and ready for a potential audit from the federal Department of Labor (DOL).

For starters, it's essential to know that DOL investigators don't always give advance notice of an audit. As a result, conducting an audit internally now will help ensure you are prepared if the DOL's Wage and Hour Division comes knocking.

Often these investigations begin with a complaint from a worker or workers. These complaints are confidential, so you won't be able to find out who complained. Also, businesses with lower wage workers are more likely to be checked for compliance.

The DOL will review all payroll and time-keeping records and interview employees. The better your records, the easier it is likely to be. An investigation could result in a requirement to pay backpay for certain workers.

You are entitled to have an accountant or attorney represent the company during the investigation. Having an attorney involved ensures that the results of your internal investigation are protected by the attorney-client privilege.

You also have the opportunity to provide additional information if violations are found.

## State and federal requirements

There are several key areas to check in conducting

an internal audit:

**Minimum wage:** First, ensure you are paying all workers at least the minimum wage required in your state.

**Overtime pay:** Mistakes in overtime pay calculations, including failure to pay overtime, are a focus for the DOL.

For employees who are due bonuses, be sure to pay attention to whether overtime is due for the bonus calculation. Overtime must also apply to a shift premium, when additional pay is due to a worker who worked a split shift or night shift, for example.

**Meal breaks:** Any unpaid meal breaks are required to be uninterrupted and last at least 30 minutes under federal law. Be sure to check your state's law to ensure compliance with its meal break requirements. It is important that nonexempt employees do not work during unpaid meal breaks or any other time they are not on the clock.

**Employee classification:** Ensure that all employees are properly classified. Employees who fall under certain exemptions, including the executive, professional, administrative and outside sales exemptions, do not have to be paid overtime. There are some jobs that obviously fall in these categories, but it might be more of a gray area for others.

Pay special attention to independent contractors. President Joe Biden has indicated that he supports a stricter test for independent contractor classifications, but as of now the DOL is using the multi-factor test established under the prior administration.



# FAA eases drone restrictions

Hoping to take a picture of your property for marketing purposes? New drone rules could make that easier.

Under the new federal Remote Identification Rule, drones can legally fly over people for the first time. The change will make it easier to capture pictures in busy urban areas.

Per the rule, drones will need to transmit identifying information. (Drone manufacturers have a limited time window to make this feature standard on new models; older drones can be retrofitted.) Law enforcement will have access to this information and can use

it to address unsafe flying or privacy violations.

Another rule allows drones to fly after dark, creating a new opportunity for nighttime lighting photos. To fly at night, drone pilots will need to complete a test or take updated training. The drone will also need to be equipped with flashing lights.

Per FAA rules, commercial drone flyers must pass a licensing exam and take recurring follow-up tests. Recreational flyers must pass a basic exam. Property owners and real estate agents wishing to take photos for commercial purposes are encouraged to obtain a license and insurance coverage.

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## Legal marijuana use can have custody implications

As more and more states have decriminalized marijuana use, an increasing number of parents have opted to partake. It's important, however, to be aware that cannabis use could potentially impact child custody arrangements, as a recent ruling out of New Jersey illustrates.

In 2020, New Jersey passed a bill legalizing medical and recreational marijuana.

Not long after, state child welfare authorities instituted proceedings to terminate the parental rights of a couple that they claimed could not adequately care for their school-aged child as a result of their marijuana use.

A family court judge ruled in the state's favor and ordered that the children be given to foster parents. While the judge ruled that way based on a number of factors, the fact that the parents smoked marijuana regularly while caring for the child was part of the analysis.

In appealing the decision, the parents argued that because of the new state laws, a court could not hold their cannabis use against them.

The New Jersey Court of Appeals disagreed.

The court said that even before the new law was enacted, the state had never taken children away from



their parents strictly because they smoked marijuana. But the impact of the marijuana use could be a key factor. Post-legalization, while a judge could not rely exclusively on parents' recreational or medical marijuana use as the reason for terminating parental rights, it could still rely on it as a major consideration when, as in this case, there was substantial evidence that the marijuana use was actually endangering the health, safety and welfare of the child.

Cannabis and custody laws differ from state to state, however. So, consult with a local attorney to find out the situation where you live.