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# Legal Matters®

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## Can injured people sue if they were doing something dangerous?



Sometimes people choose to engage in activities that are somewhat dangerous. If they get hurt, they might not be able to be compensated for their injuries, because they knew they were taking a risk.

But that's not always true – and if you or someone you know was injured in a dangerous activity, you should still talk with an attorney. For instance, it might turn out that an activity was risky, but that someone else did something careless that increased the danger.

Here's an example: A spectator was hit by a golf ball at a tournament in Wyoming. The spectator had been watching his son putt on the first hole, when he was struck on the side of the head by a pro golfer's tee shot on the same hole.

A judge threw out the man's lawsuit against the tournament organizers, saying that getting hit by a ball is an inherent risk of golf.

But the Wyoming Supreme Court disagreed, and allowed the man to sue. It turned out that the pro golfer had expressed concern to a tournament official about people on the green, but the official told him to tee off anyway.

So even though golf is dangerous, the organizers could be held responsible if the tournament official had carelessly

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## Same-sex couples should consult a lawyer after latest ruling

Same-sex couples should carefully review their legal situation in light of the U.S. Supreme Court's decision striking down part of the federal Defense of Marriage Act.

The Supreme Court said that the federal law, which refused to recognize same-sex marriages with regard to federal taxes and benefits, was unconstitutional.

The ruling affects more than a thousand federal laws and regulations, ranging from Social Security to veterans' benefits to income and estate taxes, employment benefits and immigration.

Same-sex couples who were married in a state that recognizes same-sex weddings can now file income taxes jointly, and might be able to amend past returns and collect a large refund.

Estate plans should be reviewed as well. Previously, estate planning was difficult for same-sex couples because they couldn't take advantage of techniques that were available to other married couples. But now, under federal law, same-sex married couples can make unlimited gifts to each other and can leave an unlimited amount of property to each other in a will without incurring any gift or estate tax.

There will be big changes for employment benefits, including family health insurance qualifications, flexible spending accounts, high-deductible health care

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plans and health savings accounts, 401(k) rules, pension plan annuities, and COBRA rights.

Same-sex divorced couples will also get new rights, including the ability to get a court order authorizing payments from the other spouse's retirement plan.

Older couples will want to review their Social Security, Medicare and Medicaid planning.

There are many complexities in the wake of the ruling. For instance, it's not completely clear whether the Supreme Court's decision is retroactive, or what the effect will be on couples who have a valid marriage in one state but currently live in another state that doesn't recognize that marriage. But every same-sex couple should know that their legal situation has changed dramatically, and they should review their rights and opportunities.

## IRS makes it simpler and easier to deduct a home office

The IRS has made it easier to deduct a home office, starting in 2013.

In the past, the home office deduction was very difficult to document, and the IRS was very suspicious of

it. Even people who could legitimately claim the deduction were often hesitant to do so for fear that it could trigger an audit.

This year, though, the IRS has created a "safe harbor" for taxpayers. You might not be able to deduct every expense if you use this method, but it will be a lot easier and safer.

The new method involves measuring the square footage of your office and multiplying by \$5. There's a maximum of 300 square feet, which works out to a \$1,500 deduction.

If you use this method, you can't deduct actual expenses or depreciation, even if they would come to more than \$1,500. However, you can continue to take other, non-office deductions pertaining to your home, such as mortgage interest and property taxes.



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# Can injured people sue if they were doing something dangerous?

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increased the danger by ordering the man to hit a tee shot.

In another case in Omaha, two sisters went sledding on a hill in a municipal park. Both girls were injured when their saucer-style sled struck a tree bordering the slope. Tragically, the younger girl suffered a severe spinal fracture that left her paralyzed.

The girls' parents sued the city, claiming it was negligent in planting trees in the area shortly before the accident, despite warnings by local residents that it was a popular sledding hill.

The city argued that sledding was naturally dangerous. But the Nebraska Supreme Court said the city could be sued anyway, if its actions had carelessly increased the level of danger.

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## High court helps landowners to develop their property

A new decision from the U.S. Supreme Court will strengthen the hands of many landowners who are battling with local authorities over development of their property, by making it harder for municipalities to demand financial concessions in return for land-use approvals.

The case involved Coy Koontz, who owned 15 acres of land near Orlando, Florida. Much of the property was wetlands, and as a result, in order to develop it, Coontz had to negotiate with the local water management district.

Coontz proposed to develop 3.7 acres along one side, and in return he would agree never to develop the remainder. But the district wasn't satisfied. In addition to limiting Coontz to 3.7 acres, it also wanted him to pay to make improvements on some other, unrelated wetlands that the district owned several miles away.

Instead of giving in, Coontz took the case to court. And the Supreme Court sided with Coontz.

In the past, the court has ruled that if a municipality wants a landowner to give up real estate in return for a building permit, it has to show that the demand is related to the proposed land use and roughly proportional to the effect of the development.

For instance, if someone is creating a housing development, he or she might have to dedicate some land for municipal services that will be required by the new community.

However, in a case where a California family wanted to tear down their beachfront bungalow and build a larger home, and the local government insisted that in return they had to give the public access to their private beach, the Supreme Court said that was going too far.

In Coontz's case, the court said the rules about proportionality apply not just when a local government wants real estate, but also when it demands money.

As a result, if the water district's demand that Coontz pay for improvements to nearby land wasn't related to Coontz's own plans and wasn't proportional to the effect of his plans, then the district had to drop the request and simply approve Coontz's project.



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## In business? Be careful about using copyrighted images

If you own a business and you have a website or use brochures or other sales materials, it's important to be careful about "borrowing" photographs or other artwork to create your designs. It's wise to make certain that you have a legal right to all the images you're using – even if you hired someone else to design the materials.

A company called Dream Communications found this out the hard way recently, when a designer used a photograph without permission in creating an online magazine about luxury homes in Hawaii. The owner of

the image sued, claiming that it was entitled to almost \$8,000 in licensing fees.

Dream's problems became a nightmare when a court added penalties under the federal copyright law. In the end, Dream was ordered to pay the owner \$45,000 in damages, plus almost \$7,000 in attorney fees and costs.

There are a number of companies that license "stock art" for business use at a modest cost, as well as websites that offer artwork for free. Whatever you do, make sure you have a legal right to the images you're using.

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## Employee sues over broken promise of new job

Michael Cocchiara had worked as a salesman for eight years at a Dodge dealership in Oregon when he suffered a heart attack, and his doctors told him he needed to get a less stressful job. He lined up a new job at a newspaper company, but the dealership asked him not to quit, and said that it would give him a new “corporate” job instead that would meet his health needs. Relying on this promise, Cocchiara turned down the newspaper job.

But the dealership then reneged, and didn’t give him the corporate job. He eventually found yet another job, but at much lower pay.

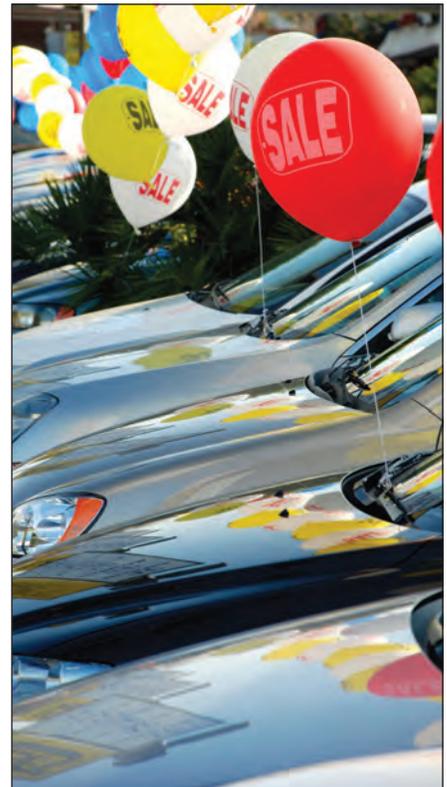
Cocchiara sued the dealership, claiming it had committed fraud and demanding lost wages.

The dealership argued that it couldn’t be sued because, even if it had given Cocchi-

ara the corporate job, the job was “at will,” meaning that it could have fired him at any time for any reason. Since the corporate job had no security and he could have been fired immediately anyway, the dealership said he didn’t really lose anything by not getting it.

But the Oregon Supreme Court said Cocchiara could sue. It said that while he *could* have been fired immediately, that was highly unlikely given that he was a long-term employee and the dealership had made efforts to keep him. Besides, the dealership’s “bait and switch” kept him from taking another valuable job.

Under the circumstances, the court said, Cocchiara could sue for the additional pay he could have reasonably expected at the newspaper job if not for the broken promise.



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