



# 3RD QUARTER *Brief*

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## Eldercare Planning With “Kid Gloves”

Often, the roles of parents and children will reverse, especially if a parent falls ill. As a result, sensitive legal and financial issues may arise. It is easy to ignore the situation and hope it goes away, but that is not realistic.

It is generally better to discuss “eldercare planning” frankly and openly with your parents. Include siblings and anyone else who should be involved. Here are four steps you might follow:

1. Take it slowly. It is usually not necessary to cover everything in one or two sittings (unless the parties live far apart). In most cases, your relationship won’t change overnight, but slowly over time.

2. Be gentle. If you hit your parents with a barrage of information, they may be overwhelmed. Instead of opening up, the lines of communication can close. You might start by showing your parents a relevant clipping

from a newspaper or magazine. If you give them time to talk with friends, they will find out that others are in the same position.

3. Emphasize that you have your parents’ best interests at heart. If they are like most elderly people, they will want to maintain their independence for as long as they can. You may be able to provide some options that allow them to keep a degree of control over their lives and finances.

4. Ask the critical questions. Then you can begin to plot a course of action. Some typical questions are:

*\*Do you have a will, power of attorney, living will or similar document? Where is it located? Have you prepared a letter of instructions?*

*\*Do you have life insurance and disability insurance policies? Who are the insurers and for how much?*

see Eldercare page 2

## Supreme Court Rules on Age Discrimination

The U.S. Supreme Court has sided with the employer in a significant new case involving an age discrimination claim. Employers and employees should take note of the controversial outcome.

Background: Under the Age Discrimination in Employment Act of 1967 (ADEA), an employer is essentially barred from discriminating against employees who are age 40 or older. But the ADEA does not expressly define what constitutes discrimination for this purpose. Each case is decided on its own merits.

If an employee prevails in an age discrimination claim, he or she may receive back pay and benefits, plus attorney’s fees may be tacked onto the award. Other damages may be awarded if the court finds the violation to be “willful.”

Facts of the new case: As part of a corporate restructuring, a manager at a financial services firm was demoted when he was in his mid-50s. He eventually was assigned to report to a younger employee who had previously reported to him. Subsequently, the former manager sued the firm for age discrimination.

The firm argued that the shift of responsibilities was related to the restructuring and not based on age. After a jury awarded the plaintiff almost \$50,000 in compensatory damages, an appeals court overturned the verdict. The case made it all the way up to the Supreme Court where the highest court in the land ruled in favor of the employer by a narrow 5-4 margin.

Key point: The demoted employee failed to prove that age was the primary factor—and not just one of several factors—resulting in the reassignment to a lower position in the firm. In the majority opinion, Justice Thomas said that the burden of proof does not shift to the employer to show that it would have taken the action regardless of age, even though the plaintiff has produced evidence that age was a motivating factor in the employer’s actions.

However, a strong dissent, written by Justice Stevens, pointed to prior case precedents and federal civil rights laws in this area. Several members of Congress also voiced their disagreement with the majority opinion.

see Age Discrimination page 2

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### Eldercare from page 1

*\*Do you receive Social Security benefits? How much? Are the benefits directly deposited into your bank account?*

*\*Are you receiving income from other sources, such as annuities, stocks and bonds, certificates of deposit? What are they and how much?*

*\*What are your real estate investments? Is any property owned as a “life estate” where ownership ends at death?*

*\*Do you have any other assets? What is their value, and where are they located? How about bank accounts and safe deposit boxes?*

*\*Have you already transferred some of your assets? To whom did you give them and how much?*

Develop a plan that satisfies the main objectives while taking all the factors into account. State laws vary, so obtain professional assistance.

### Age Discrimination from page 1

In the past, business owners often settled age discrimination claims out of court in order to avoid drawn-out legal battles over the nature of demotions or layoffs. If the new case stands, it will become more difficult to prove that age discrimination was the primary factor resulting in a demotion or termination

## *Brief's*

**\*Pregnant Pause**—During a job interview, an employer allegedly asked a female job applicant if she planned to have children. She demurred. But when she became pregnant as an employee, the company downsized her. Several months later, it hired a male replacement. Result: A District Court in California ruled there was sufficient evidence of discrimination to send the case to trial.

**\*S Corporation Loans**—Generally, you can increase your tax “basis” by lending money to an S corporation, but not always. New case: An S corporation owner borrowed funds from his partnership and then lent the money to the S corporation. The corporation paid the partnership an equivalent amount in rent. Because the owner did not actually provide the funds, he could not increase his basis in the S corporation stock.

**\*Quick Response**—Fast action can thwart sexual harassment claims. In a new case, a Dallas police sergeant claimed that a coworker called her “darling” and engaged in unwanted touching. The department promptly investigated the matter and subsequently required counseling for the coworker. Result: A Texas District Court dismissed the case because the conduct was corrected soon after the incident.

**\*No Thaw from ICE**—U.S. Immigration and Customs Enforcement (ICE) is ratcheting up its efforts to deter illegal employment. On July 1, 2009, it issued 652 notices of inspection to businesses—more than it had sent out in all of 2008. This activity goes hand-in-hand with an initiative launched earlier in the year that aims enforcement efforts at employers, rather than the workers themselves. That his firing was motivated by age discrimination.

## Can You Fight City Hall?

Although real estate values have declined throughout the country, your property tax assessment may have remained on the high side. Is there anything you can do?

Possible solution: You are allowed to appeal a property tax assessment when you have reasonable grounds. If the appeal is successful, your property tax bill will be reduced.

Be aware that you have only a limited time to initiate a hearing after you have received your bill. A professional adviser can provide assistance.

### Questions?

For more information about articles and information contained in the WAW Brief, contact Wharton Aldhizer & Weaver at (540) 434-0316 or send e-mail to [info@wawlaw.com](mailto:info@wawlaw.com).

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