

page 2  
Identifying fraud by workers

page 3  
Judge halts ban on real estate  
'love letters'

Including life settlements in your  
estate plan

page 4  
Judge can't require possible  
siblings to provide DNA samples

# Legal Matters®

## Hurt by an independent contractor? You may still be able to recover

**G**enerally, a company cannot be held responsible for injuries caused by the carelessness of an independent contractor it has hired to perform a job.

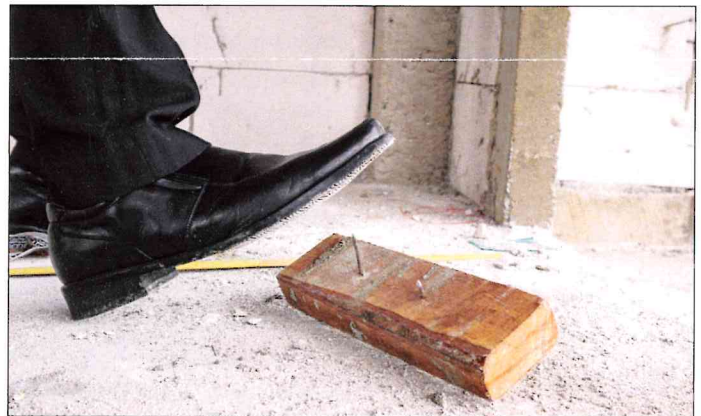
However, if you or someone close to you has been hurt in an accident caused by an independent contractor and the contractor doesn't have the resources to compensate you for your harm, don't just assume you're out of luck. Instead, contact an attorney with personal injury experience who can fully investigate the situation. Because in certain cases, the person or company who hired the negligent contractor may be held accountable as well.

Take a Florida case from a few years back. In that case, a homeowner hired a handyman and paid him in cash to hang cabinets in her home. The owner apparently had no idea what the man's name was or the name of his business, and she didn't know if he was licensed. She didn't ask for references — she selected him because he happened to have a truck with cabinets in it.

The contractor hung the cabinets improperly and they fell on the homeowner's tenant, who was seriously injured. Because the contractor couldn't be located, the tenant sued the homeowner for negligent hiring. The case went to court and the tenant eventually secured a very significant recovery.

Of course, that doesn't mean a homeowner will be held liable for the

negligence of a contractor he or she has hired in every instance. But if an improperly done job poses a lot of risk, if the work is something that needs



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a lot of skill and training or if there's a relationship that gives the owner a duty to protect someone else from harm, then the homeowner has more of an obligation to investigate before hiring.

In most states an injured party can also hold someone accountable for the work of their contractor if the work is inherently dangerous.

*continued on page 2*

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## Identifying fraud by workers



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### 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!

No one likes to think the workers they hired would steal from them, but nearly two out of three businesses have been victims of employee fraud, reports the U.S. Chamber of Commerce.

Fraud conducted by employees costs an employer, on average, \$60,000 for every incident. But when managers and supervisors are involved, fraud costs can jump to \$180,000 per event, according to a report from the Association of Certified Fraud Examiners.

Fraud can take many forms. These are some of the most common:

- Misuse of company assets, such as selling company scrap, renting out company equipment, or carrying out a competitive business using company materials
- Skimming cash
- Payroll fraud, including ghost employee schemes and timesheet fraud
- Data theft, including intellectual property and customers' personal data
- Unauthorized credit card purchases
- Accounting fraud, including payments to fake vendors or bank transfers to the worker's own account

If you suspect fraud has occurred, you need to investigate carefully to preserve the integrity of any evidence. Maintain strict confidentiality to avoid defamation risks or alerting accomplices.

Decide if the worker should be suspended right away or if theft would be better detected by monitoring employee actions. If you choose suspension, remember to revoke all access privileges, including office keys, credit cards, and passwords.

If fraud is substantiated, to avoid defamation issues it may be best to terminate a worker for alternate reasons, such as "failure to follow procedures," rather than making an outright statement of theft or fraud.

Check to see whether you have insurance coverage that would assist a recovery effort. Notice and proof of claim procedures must be followed carefully. Be careful not to do anything that would compromise the insurer's rights against third parties, such as the worker who committed the theft.

If you don't have insurance coverage, or it's insufficient, you will need to decide whether to pursue a civil suit or press criminal charges. An attorney can help you figure out what to do in your situation.

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## Hurt by independent contractors?

*continued from page 1*

For example, in a case from Michigan, landowners hired an independent contractor to fell timber on their property. One of the contractor's employees

had his leg crushed by a falling tree. The employee sought to hold the landowners responsible. A trial court threw out the case, but the Michigan Supreme Court reversed, finding that logging could be deemed inherently dangerous because it could not be done without causing damage.

The timing of events may play a part in your ability to recover from the party that hired the contractor.

For example, in a recent Massachusetts case, a lumber reseller contracted with a trucking com-

pany to deliver wood. After the trucking company's driver completed the delivery, he caused a fatal accident. The estate of the man who died then sued the lumber reseller, asserting that the reseller was negligent in selecting the trucking company.

But a federal judge in Massachusetts dismissed the case. A federal appeals court agreed, emphasizing that the contract between the reseller and the trucking company ended as soon as the driver delivered the lumber. Because the accident happened after that point, any negligence occurred outside the scope of the driver's employment and the reseller could not be held responsible.

The results of any case are dependent on its unique facts and the law can differ from state to state, so if you've been harmed by an independent contractor and you're wondering whether you have recourse against the party that selected that contractor, contact a local attorney.



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## Judge halts ban on real estate 'love letters'

Would-be homebuyers are still allowed to write personal letters to home sellers in Oregon. That's after a federal judge granted a preliminary injunction against a law that bans them.

In 2021, Oregon became the first state in the nation to ban homebuyers from writing so-called "love letters" to sellers as a way of improving their chances of being selected to buy a house. HB 2550 prohibited letters, photographs, and any written communication outside "customary documents."

Supporters of the law say that personal letters fuel housing discrimination because they can reveal a buyer's race, religion, sexual orientation, or other protected class. U.S. District Court Judge Marco A. Hernández, however, said that the law "likely violates" a real estate agent's First Amendment rights.

During the initial hearing, real estate agent Cheri Smith suggested HB 2550 would lead to angry and dissatisfied clients. The love letter practice, she said, allowed her clients to compete with higher offers, including those submitted by investors.

Smith also expressed concern that the law would

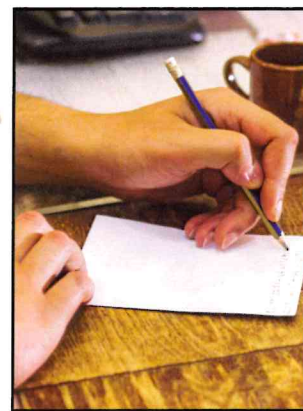
lead clients to accuse her of not fulfilling her ethical and fiduciary duty to "disclose material facts known by the seller's agent."

In his opinion, Hernández recognized that evidence had been submitted showing love letters likely do enable discrimination and that sellers are influenced by those letters in determining which offer to select.

Hernández noted the "laudable goal" of the law, as evidence shows "housing discrimination is an enduring societal problem." However, he said the law was too broad, as it banned significant speech beyond references to a buyer's personal characteristics.

Hernández further expressed the opinion that an alternative suggested by the plaintiff, one that required real estate agents to redact personal information, would be "a more precise tool to address the government's interests." The injunction will remain in effect until Hernández makes his final decision after discovery.

The suit against HB 2550 was filed by the Pacific Legal Foundation, on behalf of a Bend, Oregon-based real estate firm.



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## Including life settlements in your estate plan

If you have a life insurance policy you no longer need, you may be able to sell it for significantly more than its cash surrender value (CSV).

A life settlement is the sale of a life insurance policy to a third party. The sale can provide the policy holder with more than the CSV and even more than the premiums paid over the life of the policy.

Life insurance settlement companies buy policies and then continue paying the premium with the expectation that they'll collect the death benefit. That means these companies typically purchase policies from people who have life expectancies of up to 15 years and death benefits of at least \$100,000.

A life settlement may be an option when someone no longer needs the coverage for their intended plan. For example:

- The policy was meant to provide death benefits to someone who predeceased the policy holder.
- It was intended to pay estate taxes, but the policy holder's estate plans have changed.
- Coverage was meant to fund a business owner's buy-sell agreement, and now the business has been sold.
- The premiums are no longer affordable.
- The policy holder has immediate financial needs.

These settlement arrangements are available in all states, and any policy type may qualify. However, buyers

generally prefer universal life, guaranteed universal life, and those policies with return of premium riders. There's greater value in policies that won't increase in cost.

Whole life policies are the least attractive. These high cash value policies typically have higher maintenance costs and lower death benefits.

Buyers will also be looking at the insurance company issuer rating. Established, active firms with a rating of "A" or better are preferred.

**Getting started.** Find a broker or request a policy appraisal from a life settlement company. You'll need to provide policy details and access to your medical records. Appraisals are free, but you may incur expenses for the medical records. Seek out multiple offers, as bids can vary widely from one company to the next.

**Seek professional advice.** If you do receive an offer to purchase, you are under no obligation to accept. However, you should consult with an attorney before you move forward. Typically, you will not owe taxes on the amount you receive, but it's best to review your plans with an expert in your state. If you're selling a policy for financial need, consider the alternatives and weigh the best option for you and your survivors. Depending on the type of policy, you may be able to accelerate the terms and collect while you're still alive.

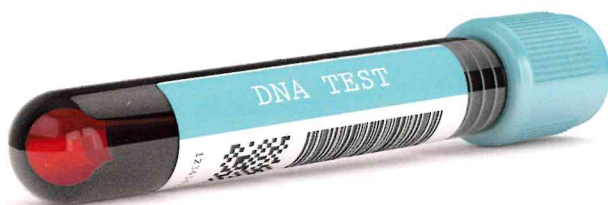
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## LegalMatters

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### Judge can't require possible siblings to provide DNA samples



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A recent Michigan case sheds some light on how far a court may be willing to go in order to accommodate someone who claims they're a long-lost relative entitled to a share of a deceased person's estate.

In that case, a man named Terry Seybert died in 2019 without a will, and his body was cremated. After Seybert's mother died, his adult daughter Shannon Marie Parker was named personal representative of his estate.

Not long afterward, a man named Aaron Wise entered the picture and demanded a halt to Parker's distribution of Seybert's assets, claiming he was Seybert's biological son.

According to Wise, he, along with Seybert's mother and brother, had provided DNA samples

that indicated a 99-percent probability that he was related to Seybert.

The probate court told Parker not to make any distributions from the estate until the court could determine whether Wise was an heir. Wise then requested that the court require Parker to submit to genetic testing herself so he could show that Seybert was his father. Wise's reasoning was that Seybert had been cremated, leaving no genetic material behind, and that while genetic testing from Seybert's mother and brother may have shown a biological relationship, it didn't show he was Seybert's son.

The court agreed and issued the order.

But Parker appealed, and the Michigan Court of Appeals reversed.

Specifically, the court pointed out that Michigan's paternity law does not explicitly allow a judge to order anyone other than a mother, child and alleged father to provide genetic samples when determining a person's paternity. While the law doesn't prohibit a court from ordering a potential father's other children to submit to genetic testing, the court was unwilling to read such a requirement into the law.