

page 2
7th Circuit clarifies limits on
medical documentation requests
under ADA

How surveillance, dashcam
footage can help your injury case

page 3
'No damages for delay' provisions
aren't bulletproof for contractors

page 4
Vague divorce agreement costs
ex-wife life insurance payout

General
summer 2025

Legal Matters®

Ensuring your final farewell: protecting your body disposition wishes

As we navigate the important terrain of wills and estate planning, a deeply personal aspect often arises: our final arrangements.

Your loved ones may envision a particular type of memorial, a final resting place, emerging green burial options, or even the donation of their body to science.

It's natural to think these desires can simply be stated in a will. However, while your will serves as a crucial document for distributing your assets, its effectiveness in dictating immediate post-death arrangements, like funeral services and body disposition, can be limited.

The authority, not always the obligation

In many states, the legal concept of the "right of sepulcher" (or similar terminology) comes into play.

That right grants a specific individual — often a surviving spouse, adult children or parents — the authority to make decisions about your final arrangements. That authority encompasses choices regarding burial, cremation, funeral services and more.

The crucial point to understand is that while this designated person has the legal power to make these decisions, they are not always legally obligated to adhere to your specific wishes if those wishes haven't been formally documented through legal channels.

Imagine expressing a strong desire for cremation in your will, only for the person with the right of sepulcher to choose burial instead. Your family may not agree with your wishes, and, without a binding direc-



tive, their choices hold legal weight.

Taking control of your final arrangements

The good news is that in most states, you can take steps to ensure your preferences for body disposition and funeral arrangements are respected.

State laws and legal tools may vary, but these are the options generally available:

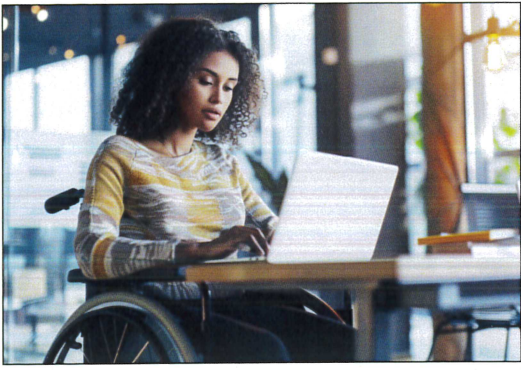
- Formally appoint a decision-maker: Many states allow you to legally designate a funeral representative, agent or surrogate. The person will have the legal authority to carry out your wishes.

continued on page 3

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7th Circuit clarifies limits on documentation requests under ADA



An employer did not violate the Americans with Disabilities Act by requiring that an employee provide additional documentation supporting her disability-related work restrictions, the 7th U.S. Circuit Court of Appeals has ruled.

In the case, the plaintiff, Jennifer Gomez, a patient access specialist, requested accommodations due to anxiety and depression.

She submitted a note from her nurse practitioner stating she could not work more than eight hours a day. The defendant, St. Vincent Health, requested further clarification from her health care provider to better understand the basis for the restriction.

When Gomez failed to provide additional documentation, the company did not implement the accommodation. She later resigned and sued, alleging failure to accommodate and retaliation under the ADA.

The 7th Circuit sided with the employer, affirming

summary judgment in its favor.

The court issued the following findings:

- Requesting medical clarification was lawful: Under the ADA, employers are entitled to request documentation that is “reasonable under the circumstances” to understand the nature of the disability and the need for accommodation.
- No ADA violation: The employer’s request was limited and appropriate, and its refusal to implement the accommodation without proper documentation did not constitute a denial of rights.
- No retaliation proven: Gomez’s resignation did not amount to constructive discharge, and there was no evidence of retaliatory intent.

The case demonstrates that, when evaluating accommodation requests, employers can lawfully seek additional documentation if initial submissions are vague or incomplete.

Keeping clear records of requests and follow-up efforts can provide key defenses if claims arise.

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How surveillance, dashcam footage can help your injury case

Automobile accidents happen quickly, making it tough to prove what occurred and giving the at-fault party an easy out in many cases.

But nowadays, police and commercial vehicles are often equipped with bodycams and dashcams. Plus, traffic cameras and security cameras are increasingly omnipresent. That means that, in many cases, there could be footage of the accident — perhaps the most potent type of evidence to help prove your case.

Multiple cases

Take the case of a Kansas high school athlete who was riding in a Dodge Charger with friends when the driver, who was speeding and driving recklessly, cut into the path of a concrete truck.

As a result of the collision, the boy broke his pelvis, several ribs and an arm. He also suffered a lacerated spleen and kidney, a concussion, and a torn aorta severe enough to keep him from ever playing contact sports again.

The driver of the Charger had nowhere near the insurance needed to cover the boy’s harm. But it turns out the cement truck was equipped with a dashcam that recorded the accident and the time leading up to it. Footage revealed that the cement truck driver was driving at least 10 miles per hour above the speed limit.

That led to a substantial settlement with the cement company. As a result, the boy was able to recover more completely for the harm he suffered.

In another case, a woman was traveling over the Johns Island Connector outside Charleston, South Caro-

lina, when her vehicle was hit from behind, pushing it into the bridge’s wall and almost over the side. When she exited her vehicle, she encountered a frantic man who told her he was sorry he hit her, that he had been drinking and was in a fight with friends, and that he was texting them before the crash.

The woman, who hurt her back in the collision, ultimately underwent a three-level decompression procedure to relieve her pain.

The other driver later testified in a deposition that he had not been drinking and had only briefly looked at his phone, but he acknowledged he had a pending DUI case from that night. Police did not have bodycam footage from the aftermath of the collision, but they did have footage from the DUI arrest after the young man was stopped for excessive speeding. The footage showed him attempting to bribe police and sexually propositioning an officer.

The footage led the insurer to settle for a much fairer amount than it had been offering.

In addition to capturing key details, such as weather and road conditions and road hazards, video footage can provide an objective record of events, rather than relying on sometimes conflicting witness statements.

Video footage can also be valuable in slip-and-falls and other instances in which someone is hurt by a dangerous condition on someone else’s premises.

If you or someone you care about has been hurt in an accident, talk to an attorney who can start investigating and try to secure footage right away.

'No damages for delay' provisions aren't bulletproof for contractors

A federal court is allowing a subcontractor's claim for damages to proceed, despite a "no damages for delay" provision in its subcontract.

In the case, the subcontractor, Tri-Krete, was hired to provide precast concrete walls for a college dorm project.

The general contractor, Pike, sued for breach of contract, but Tri-Krete asserted counterclaims, alleging that Pike mismanaged the project and actively interfered with its work, leading to additional costs.

Pike sought summary judgment based on provisions that said the subcontractor's sole remedy for delays caused by the contractor was an extension of the schedule, while any damages for delay, interference or changes in sequence were waived.

The court held that such provisions are generally valid and prevent the recovery of damages for a "broad range of reasonable and unreasonable conduct by the contractee."

It identified several exceptions:

- Delays caused by the contractee's bad faith or its willful, malicious or grossly negligent conduct
- Uncontemplated delays
- Delays so unreasonable that they constitute an intentional abandonment of the contract
- Delays resulting from the contractee's breach of a fundamental obligation of the contract

Subcontractor's argument

The subcontractor, Tri-Krete, argued that the general contractor, Pike, caused cost increases by failing to grant time extensions (even though they received them



from the project owner) and by actively interfering with Tri-Krete's work.

Tri-Krete presented evidence alleging Pike forced changes to Tri-Krete's production methods, failed to coordinate prerequisite work by other subcontractors, and compressed the construction schedule by approximately 50 percent. The court found the evidence sufficient to raise material issues of fact, allowing the case to go to trial.

While "no damages for delay" clauses are enforced in most states, there are exceptions, and contractors can't rely on them as a complete shield.

Contractors and subcontractors should be meticulous about documenting delays and providing timely notices, tracking the cause and noting anything could be construed as misconduct or negligence.

Ensuring your final farewell: protecting your body disposition wishes

continued from page 1

- Create a specific funeral directive: Instead of relying solely on your will, consider creating a separate document that outlines your specific wishes for your body's disposition (burial, cremation, donation, etc.), funeral or memorial services, and any other related preferences.
- Pre-plan your funeral: By making pre-need arrangements with a funeral home, you can specify your service preferences and final disposition, and often pre-pay. That guarantees that your wishes are known and reduces financial stress for your loved ones.
- Consider your health care power of attorney: In some jurisdictions, the person you designate as your health care agent may also have the authority to make decisions about your body after

death, if explicitly stated.

- Explore trust incentives: For those who want an additional layer of assurance, it may be possible to structure financial incentives within a trust. That involves linking trust distributions to compliance with your body disposition and funeral wishes. Consult with an experienced attorney who can advise on viability, legal precedent and structure.

While courts generally uphold testamentary freedom, requests deemed illegal or overtly impractical might be invalidated.

The most effective plan will combine clear legal documentation, appropriate financial provisions, and the appointment of a committed advocate who understands your wishes.

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Vague divorce agreement costs ex-wife life insurance payout

Going through a divorce involves dividing assets and making agreements.

But what happens to things like life insurance policies years later? One Massachusetts court case highlights a critical lesson: Being specific in your divorce agreement is essential, especially about life insurance.

During their marriage, Joseph Sevelitte named Renee as the beneficiary on his life insurance policy. When they divorced in 2013, their agreement included a section on life insurance.

One paragraph stated that Joseph's "Whole Life Insurance Policy shall remain in full force and effect" and stipulated Renee would get half the value if Joseph cashed it in during his lifetime.

Joseph passed in 2020 after having remarried. Renee tried to claim the life insurance payout, but Guardian Life challenged whether she was the rightful beneficiary.

Here's the snag: Massachusetts has a law that automatically removes an ex-spouse as a beneficiary on things like life insurance policies after a divorce.

There are exceptions, but only if:

1. The policy itself says divorce doesn't change the beneficiary. (Joseph's policy didn't say this).
2. A court order clearly states the ex-spouse remains the beneficiary.
3. The divorce agreement specifically says the ex-

spouse should stay the beneficiary.

Renee argued their divorce agreement's phrase "remain in full force and effect" was enough to count as exception no. 3. The estate (represented by Joseph's new wife) disagreed, saying it just meant the policy shouldn't be canceled, and only dealt with the cash value if Joseph accessed it while alive.

The court sided with the estate, finding that:

- The phrase "full force and effect" wasn't specific enough to mean that Renee must remain the beneficiary after the divorce, especially compared to other parts of the agreement in which she was explicitly named beneficiary.
- Evidence, including testimony from Joseph's divorce lawyer, showed the intent was likely just to address the policy's cash value if Joseph chose to cash it in, not to keep Renee as the death beneficiary.

Essentially, the vague wording wasn't enough to overcome the default Massachusetts law that removes ex-spouses as beneficiaries. The death benefit went to Joseph's estate, not Renee.

The case is a reminder after a divorce to be sure to review insurance policies and beneficiary designations and understand how your divorce agreement affects them.

Note that laws about divorce and beneficiary status vary, so be sure you understand the rules in your state.