



## 7TH CIRCUIT AFFIRMS WIN FOR PETRIE+PETTIT CLIENT IN MAJOR ADA CASE

In a significant ruling for employers, the 7th Circuit Court of Appeals recently agreed with arguments made by Petrie+Pettit attorney, **DAVE MCCLURG**, and issued a decision affirming the dismissal of an ADA claim that had been filed against his client, Heartland Woodcraft. The case involved an employee with a back injury who requested an additional 2-3 months of leave for back surgery *after* exhausting his three-months of FMLA leave. Because Heartland needed to fill the employee's second shift lead position, and believed it would only be able to find a competent replacement if it offered applicants a permanent position, the request for additional leave was denied, and the employee was asked to re-apply for available positions once he recovered from his surgery. Instead of reapplying, the employee sued, claiming that the employer failed to "accommodate" his disability by denying him the additional 2-3 month leave.

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The Federal District Court in Milwaukee dismissed the case, agreeing with McClurg's argument that the "inability to work for a multi-month period removes a person from the class protected by the ADA." The EEOC joined the appeal that followed, arguing that any request for leave of a "definite duration" that will allow the employee to return to work must be considered "reasonable," and that such requests can be denied *only* if the employer can carry the (extremely difficult) burden of proving that the leave would cause "undue hardship."

McClurg argued the case before a 3-judge panel of the 7th Circuit Court of Appeals, and on September 20, 2017, Judge Diane Sykes, writing for a unanimous panel, agreed with McClurg's argument that,

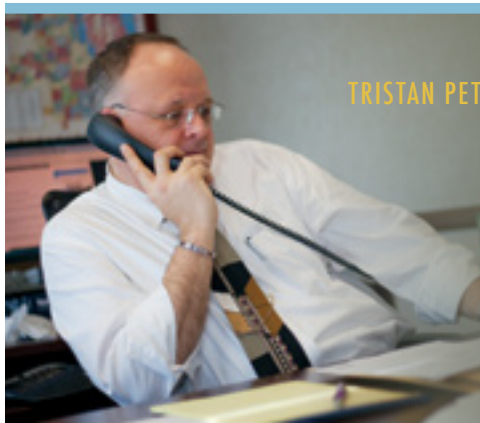
'qualified individual' under the ADA." The Court went on to note that the EEOC's position would transform the ADA into a "medical leave entitlement" – which it was never intended to be.

The employee's attorneys and the EEOC argued that an extended leave should be considered a "reasonable accommodation" because it would be "effective" in allowing the employee to (eventually) perform the essential functions of his job. The Court rejected this approach, and again agreed with McClurg's argument, based on a Supreme Court case, that "the word 'reasonable' does not mean 'effective.' It is the word 'accommodation,' not the word 'reasonable,' that conveys the need for effectiveness ... An effective accommodation could prove unreasonable."

AN EMPLOYEE WHO NEEDS LONG-TERM MEDICAL LEAVE CANNOT WORK AND THUS IS NOT A 'QUALIFIED INDIVIDUAL' UNDER THE ADA.

although a brief period of leave ("a couple of days or even a couple of weeks") may sometimes be a reasonable accommodation under the ADA, a multi-month leave is not. The Court stated that "the term 'reasonable accommodation' is expressly limited to those measures that enable a person to work. An employee who needs long-term medical leave *cannot* work and thus is not a

The *Severson* decision is significant in that the 7th Circuit is the only Circuit that has established a "bright-line" test for periods of leave that will *not* be considered as reasonable accommodations, based on the theory that "An employee who needs long-term medical leave cannot work and thus is not a 'qualified individual' under the ADA."



**TRISTAN PETTIT** will be presenting an all-day seminar on *February 24, 2018* for the Apartment Association of Southeastern Wisconsin, Inc. entitled "*Landlord Boot Camp: The ABC's of Landlord-Tenant Law In Wisconsin.*" If you are interested in attending or would like to learn more about the program please go to [www.LandlordBootCamp2018.com](http://www.LandlordBootCamp2018.com).

# ADVANCE DIRECTIVE DOCUMENTS ARE IMPORTANT FOR ALL ADULTS

Parents, did you know that as soon as your children turn 18 you no longer have any legal authority over their health care or financial matters – even if they are still living with you and/or you are still paying all of their bills? This logistical problem can be compounded when your young adult child goes away at college and has an unexpected medical emergency. Unless your child has the appropriate documents already in place, you will have no ability to request information from their university or medical clinic about their medical condition, or even to call a local pharmacy on their behalf to fill needed prescriptions.

And married couples, did you know that your spouse will not automatically have legal authority over your health care or financial matters in the event of your incapacity – regardless of whether your incapacity is temporary or permanent?

The solution for both of these difficult situations is to make sure that every person over age 18 with legal capacity has signed *advance directive* documents. Advance directives grant others whom you have chosen the authority to make healthcare and/or financial decisions for you if you are ever unable to make such decisions for yourself. Advance directives can also document your preferences as to certain specific medical care and/or financial transactions.

In Wisconsin, advance directives typically include the following:

- A **GENERAL DURABLE POWER OF ATTORNEY (GDPOA)** appoints an agent to make financial decisions for you if you become incapacitated – whether on a temporary or a permanent basis. (For example, if you are in a temporary coma due to an accident, your agent will be able to access your financial accounts to pay your rent or mortgage to avoid eviction/foreclosure).
- A **HEALTHCARE POWER OF ATTORNEY (HCPOA)** appoints an agent to communicate your health care desires and to make health care decisions for you during any period of time you are incapacitated and unable to express your own desires and decisions independently.
- A **HIPAA AUTHORIZATION (HIPAA)** waives federal privacy rules, allowing for the release of your protected health information to certain persons whom you designate, which is critical to ensure that your healthcare information may be immediately shared with your loved ones in case of a medical emergency.

Creating these advance directive documents will allow you to make your financial and health care wishes clear without court involvement. After age 18, if you do not have advance directives in place and you unexpectedly become incapacitated, emergency guardianship proceedings may be necessary. This court process can be expensive and emotionally draining at a time when you and your loved ones are already under stress.

If you have questions regarding Wisconsin advance directives, please feel free to contact any P+P estate planning attorney: Laura Petrie, Sumeeta Krishnaney or James Petrie.

# WISCONSIN'S LAND CONTRACT DEFAULT REMEDIES

By David J. Espin

As bank's lending standards have tightened in recent years, financing for real estate sales has become more difficult to obtain. More buyers and sellers are considering alternative financing options, such as land contracts. If the buyer, otherwise known as the vendee, makes all payments on time and pays off the land contract when due, then all parties seemingly walk away from the transaction happy.

However, in the event the buyer defaults on the land contract, Wisconsin has a limited number of remedies that the seller, otherwise known as the vendor, may choose to employ.

**STRICT FORECLOSURE.** Vendors most frequently elect to use this option. Like in a traditional foreclosure, the vendor starts by filing a strict foreclosure lawsuit against the vendee. Unless the vendee files an answer and disputes the assertions in the complaint, the court typically will grant a default judgment and give the vendee a period of time to pay off the remaining amount due under the land contract, called the "redemption period." In Wisconsin, the redemption period must be at least seven business days. If the vendee pays off the balance due during the redemption period, it obtains legal title to the property. If it fails to pay, title reverts back to the vendor. If the vendor chooses this option, it cannot also pursue the vendee for a money judgment for any additional amounts owed.

**SPECIFIC PERFORMANCE.** This option typically is used if the property is significantly underwater, and the vendee has assets available to satisfy a money judgment. It is most akin to a traditional bank foreclosure; a lawsuit is filed for the balance due, a redemption period is set, and a sheriff's sale is scheduled. The vendor can "credit bid" at the sheriff's sale up to the full amount of the debt it is owed and pursue the vendee for any remaining balance, which is called a "deficiency judgment."

**LAWSUIT FOR BREACH OF CONTRACT.** The vendor can also simply sue the vendee for the unpaid balance due under the land contract. In this scenario, the vendee retains title to the property, and the vendor obtains a judgment against the vendee for the full balance due. The vendor would then have to satisfy the money judgment from the vendee's assets.

**QUIET TITLE ACTION.** If the vendee's interest in the property is "insignificant," the vendor can declare the land contract to be at an end and bring an action to quiet title, thus restoring full title to the vendor. While no hard and fast rule delineates when the vendee's interest is "insignificant," this remedy likely only could be utilized if the vendee has made a small number of payments prior to the default.

**EJECTION.** Similar to having a tenant evicted, the vendor can sue to have the vendee "ejected" from possession of the property. The vendor can then manage the property on its own, or request that a court appoint a third-party like a receiver to manage the property on its behalf.

While selling a property through a land contract may seem like a viable solution when a buyer is not able to obtain a traditional bank loan, sellers should carefully consider the additional time, expense, and hassle involved with Wisconsin's default remedies before deciding whether or not it is their best option.



# Is It A Service Animal, An Emotional Support Animal, A Comfort Animal, A Companion Animal, Or A Therapy Animal?

By *Tristan R. Pettit and Jennifer M. Hayden*

THERE IS SIGNIFICANT CONFUSION SURROUNDING THE VARIOUS TERMS USED FOR ASSISTANCE ANIMALS. THE GENERIC TERM "ASSISTANCE ANIMAL" REFERS TO ANY ANIMAL PRESCRIBED TO ASSIST A TENANT AND INCLUDES ALL OF THE FOLLOWING TERMS.

## SERVICE ANIMALS

The American's with Disabilities Act (ADA) defines a service animal as a dog trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.

- Can only be a dog or a miniature horse (under certain conditions);
- The task performed by the animal must be directly related to the person's disability;
- May include guiding a person who is blind, alerting of an oncoming seizure, pressing an elevator button, or reminding a person to take medication;
- Because service animals are highly trained, they typically are impeccably behaved;
- Is allowed to accompany its handler in public places, private property, rental housing, and on airplanes, with few limited exceptions;
- No government entity certifies or registers service animals. Cards, badges, and vests can be purchased by anyone and used for any animal;
- Are not pets, they are an assistive device.

## EMOTIONAL SUPPORT ANIMALS, COMFORT ANIMALS, AND COMPANION ANIMALS

Emotional support animal (ESA), companion animal or comfort animal are interchangeable terms referring to an animal that assists a person with a mental or emotional health issue.

- Provides companionship, relieves loneliness, mitigates emotional or psychological symptoms associated with the handler's mental health issue;
- Not specifically trained to perform a task;
- May be poorly behaved and cause problems in rental housing such as excessive barking, damaging property, and attacking other animals or people;
- Not restricted by type or breed of animal;
- Not allowed in public places;
- Allowed in rental housing as a reasonable accommodation under the Fair Housing Act and on airplanes;
- Is not a pet.

## THERAPY ANIMALS

A therapy animal is a pet trained to interact with people to make them feel better and is typically found in public settings such as hospitals or nursing homes.

- Can be any type of animal;
- Not specifically trained but generally is well-behaved;
- Typically must pass a test and may be certified;
- Does not have any special rights to public places, private property, rental housing or airplanes;
- Is a pet.

The key for a landlord is to focus on what the animal does for the tenant rather than what the animal is called as many tenants may mistakenly use these terms interchangeably. Does the animal assist a tenant with a disability? Is it prescribed for the tenant because of a disability? Whether the animal is a service animal or an ESA, both are allowed in rental housing.

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## TRUSTS+ESTATES TEAM NEWS



Clockwise, from top left: Sumeeta Krishnaney, Kelly Wachniak, Laura Petrie, James Petrie

Attorney **SUMEETA KRISHNANEY** continues to serve on the Board of Directors of Best Buddies Wisconsin, an organization dedicated to creating opportunities for one-to-one friendships, integrated employment and leadership development for people with intellectual and developmental disabilities. Several members of the P+P team joined Sumeeta at the annual Best Buddies Leadership Breakfast held at the Pfister Hotel on October 26th. Sumeeta will also be speaking on the topic of special needs planning at the Best Buddies Project: Inclusion event being held at Divine Savior Holy Angels (DSHA) high school on January 27, 2018.

Attorney Krishnaney, along with Missy Burbach from Northwestern Mutual, recently lectured at Muskego High School on the topic of special needs planning for families of students with special needs.

Attorney **LAURA J. PETRIE** has been elected to a 3 year term on the Board of Directors of Congregational Home, Inc., a continuing care retirement community located in Brookfield, Wisconsin, starting in January, 2018. Laura previously served 6 years on the Congregational Home Board, which included 4 years of service on the Executive Committee and 1 year as Board Chair.

Attorney Petrie also co-hosted and presented a 2 part lecture series entitled *Aging with Dignity* in late September/early October at Westmoor Country Club with Carol Busche and her Ameriprise Financial Services team.

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