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## Employers: Hang on to Those Time Cards and Get Ready to Comply with New Overtime Exemption Rules

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# Legal Bytes

Attorneys and their employer clients will have to get together and discuss how BIG changes to federal wage and hour laws will affect them, impact their employees, and possibly increase labor costs subsequent to the December 1, 2016, effective date of the changes.

The U.S. Department of Labor (DOL) in May published a final rule that makes certain changes, effective December 1, 2016, to the so-called "white collar" exemptions in the Fair Labor Standards Act (FLSA). For just the eighth time since enactment of the FLSA in 1938, the DOL has adjusted minimum salary levels needed to meet the exemptions for salaried executives, administrative employees, and professionals.

**Current Law:** The FLSA requires that employers pay overtime (at time and one-half the regular rate of pay) for hours worked in excess of 40 hours in a work week. But there are exemptions to this basic rule. Currently, the "white collar" exemptions apply to employees who are: 1) paid on a salary or fee basis; 2) paid a salary of at least \$455 per week (\$23,660 per year); and 3) meet a "duties test" for exempt salaried executives, administrative employees, or professionals.

The FLSA also exempt certain "highly compensated employees" who do not meet the more stringent test above. Under current law, to be exempt as a highly compensated employee (HCE), an employee must receive annual compensation of \$100,000 which must include the \$23,660 in guaranteed salary.

Additionally, the employee must customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

**Changes Effective 12/1/16:** The changes to the FLSA's rule are as follows:

- The salary minimum needed to meet the exemption will increase to \$913 per week or \$47,476 per year; (essentially double that of current law)
- Up to 10 % of the salary minimum may come from nondiscretionary bonuses and incentive payments, including commissions, as long as such payments are made at least quarterly;
- The minimum annual compensation for exempt HCE employees is increased to \$134,004;
- Annual salary minimums will be adjusted every three years, beginning in January 2020;

- No changes were made to the duties test.

**State Requirements Are Still Relevant:** Employers must keep in mind that states may have more stringent exemption tests in place.

In Wisconsin, for example, the duties tests contain percentage limits on nonexempt work (20% for most occupation; 40% in retail and service establishments) that – for most employers – make the federal duties test irrelevant.

Likewise, Wisconsin's salary minimums have not been updated for many years and are irrelevant to employers subject to both federal and state law.

Essentially, employers subject to both Wisconsin law and the FLSA must look to the state duties test and the federal salary minimum to comply.

Moreover, Wisconsin law does not contain the HCE exemption, so its use is not available to Wisconsin employers subject to both laws.

**Conclusion: What Should Employers and Practitioners Do?** Attorneys and their employer clients will need to take proactive steps to ensure compliance. This should begin with an analysis of their current salaried exempt workforce earning between \$23,660 and \$47,476 annually.

The DOL has estimated that approximately 4.2 million workers nationwide fit into this category. This would equate to about 70,000 workers in Wisconsin. Consider these options:

- The employer could simply convert such workers to non-exempt status and begin paying overtime. Since the exemption would no longer apply, the employer would need to begin tracking hours worked;
- The employer could increase the salary to \$913 per week to continue to apply the exemption;
- The employer could reorganize workloads and adjust schedules to spread work hours so as to avoid additional overtime liability;
- If the employee does not work more than 40 hours per week, no change is necessary (other than keeping time records); and
- The employer could adjust (i.e. lower) wages to reallocate the amount paid for regular wages and the amount paid for overtime to keep wages relatively constant.

## How Not to Plan Your Estate The Art Marsh Story

(Factual part of a United States Tax Court Decision filed April 21, 2016.)

Art Marsh was born in Montana a century ago, in late December, 1915. His parents weren't too far removed from the first homesteaders, and he grew up on their farm in Plentywood as the fifth of seven children. His mother worked all day to do the laundry and prepare meals for her family, while his father tended to the land. Neither had much education and their lives were recorded only in the short and simple annals of the poor. Many decades later he recalled that there hadn't been much room for tenderness. He never once heard his father tell his mother that he loved her, and he never once saw his parents show affection to each other. Art's education was cut short by the Depression, and it seemed he could look forward to the same hardscrabble life.

Then the war came. After Pearl Harbor, Arthur March volunteered and became an enlisted man. He served the country honorably in a state-side posting, and after he was discharged he used his GI benefits to get a higher education.

After graduation, Dr. Arthur Marsh moved to California. It was the Golden State's golden age. The city of Gilroy – the small town where he settled after the war – boomed, with its state doubling in size and then doubling again, and doubling once more. Dr. Marsh opened an optometry practice there; and as Gilroy prospered and its middle class grew, he saw to the vision of three generations of families.

Dr. Marsh also set down deep roots in his town. He joined civic associations like the Rotary Club, grew thick connections in his profession, and was a faithful member of his local church. He loved the outdoors and would often take vacations throughout the West with his brothers and sisters and nieces and nephews. But he never married or had children of his own, and when he returned home, it was always to the same second floor apartment on Carmel Street. It was only about 800 square feet, and Dr. Marsh furnished it modestly – a small table with a single chair on the right when one walked in, a living room connected to a kitchenette, and a single bedroom and bath. Dr. Marsh was no means a miser, but the poverty of his childhood and youth had – as it did to so many of his generation – marked him for life and made him frugal. He rented his little apartment for \$175 a month and got by largely on Social Security. But Dr. Marsh had been a good businessman, saving over \$1 million before he retired in the '80s and investing it prudently well into retirement until it reached nearly \$3 million. His friends would sometimes josh him about his habits, but he would just tell them that his wealth was insurance against having to leave his apartment of 50 years to end up in a nursing home.

But the silent artillery of time began to bracket him – his sisters and brothers died one after the other. Then, at the start of the new century, it hit him too. In 2000 he had a terrible fall and broke his hip, which sent him to the hospital and rehab. He began to use a walker and could not leave his second story apartment without help. In 2007, when he was 91, things grew still worse. He couldn't drive a car, he couldn't go to the doctor, and he could no longer even prepare his own food. He suffered from incontinence, atrial fibrillation, congestive heart failure, hypertension, chronic back pain, arthritis, hearing loss in both ears, and deteriorating vision; then he suffered a stroke in the right frontal lobe of his brain. (According to Dr. Jonathan Mueller, the neuropsychiatric specialist who examined Dr. Marsh, this is the part of the

brain associated with reflective self-awareness and insight.)

His physician, Dr. George Green, diagnosed him with dementia and cognitive decline. These neurological problems showed themselves in Dr. Marsh's poor short-term memory, diminished long-term memory, inability to perform simple arithmetic, and persistent deficiencies in visual-spatial analysis. These problems also made him vulnerable – it had become difficult for him to remember any information about his assets. Tests showed that he couldn't repeat five digits in sequence – let alone manage, analyze, or protect his seven figure wealth. In January of 2007 Dr. Marsh was admitted to St. Louise Regional Hospital for dehydration. His doctor knew he lived alone, knew he had no immediate family, and knew that his room was on the second floor. Even as he recovered a bit in the hospital, Dr. Marsh was told he couldn't go back without first arranging for in-home care.

Enter Ms. Angelina Alhadi. Ms. Alhadi is a native of the Philippines. She had immigrated in the '80s and told Dr. Marsh that she was born into a poor family and spent many years working in rice paddies. She claimed to have a bachelor's degree in medical technology in her native country. She found work here as a nurse's assistant, which is what she did first at St. Louise Hospital in 1998 and then at a nursing home called Covenant Care in 2003. When she wasn't working these two jobs, she lived in a house in Hollister, California, that she co-owned with her estranged husband and fellow immigrant, Yahya Hassan Alhadi. They had three children.

St. Louise knows the elderly can be vulnerable, and it has a written policy that bans its employees from soliciting work from patients. But never mind – Ms. Alhadi slipped a note to Dr. Marsh when she heard that he wouldn't be discharged without some in-home care ready for him.

Dr. Marsh accepted her offer, and she became his primary caregiver at the beginning of 2007. As part of her employment, Ms. Alhadi was supposed to prepare his meals, bathe him, make sure he took his drugs, provide basic nursing, shop for groceries, do his banking, drive him wherever he needed to go, help him to and from the bathroom, wash his clothes, clean his apartment, and provide some companionship for what had become a lonely old age.

Dr. Marsh hired Ms. Alhadi at an hourly rate, and she deposited her first paycheck from him in January, 2007. She was paid according to their initial hourly arrangement through March. But then he agreed to pay her \$6,000 a month for her services – even though the going rate was \$3,750. He also gave her \$1,000 a month for groceries – even though he only needed \$400 a month to feed himself, and his mini fridge could only hold about \$50 worth of food. Ms. Alhadi began making deposit after deposit of cash into her bank account. Dr. Marsh's payments to Ms. Alhadi became irregular. On April 14, he wrote a check to her for \$11,100.00; two days later he wrote her another for \$100,000. He also bought her expensive electronic equipment.

Ms. Alhadi's lifestyle began to improve. In June, 2007 she used money from Dr. Marsh to make a down payment on a million dollar home in Gilroy. After that, she began to pressure Dr. Marsh to help her with her mortgage payments



By the end of November, 2007, he had written checks to her that added up to roughly \$400,000 – which she used to pay off her husband's \$80,000 interest in their old home in Hollister and to remodel her new home in Gilroy. She spent \$7,000 on furniture (purchased by Dr. Marsh for her); \$8,000 on a new stone facade; \$34,000 on landscaping work; and \$73,000 on a new pool complete with a spa and a “therapeutic turtle mosaic.”

This new pool almost became a problem for her. She told Dr. Marsh about her plans for it before work began. He said he didn't see how it made sense for her to build a pool until she had her house paid off. She ignored him. Then one day she presented Dr. Marsh with the \$22,000.00 invoice for digging the hole for the pool. He roused himself to ask her: “Who the hell is going to pay for it?” She gave him a look as if to say: “Like who the hell do you think? I expect you to pay for it.” Dr. Marsh then relented and later said that he felt he had to pay for the pool because the work was already done and he had to accommodate his caregiver.

Sometime that summer Ms. Alhadi told Dr. Marsh that she had won a cruise, and that she wanted him to come with her. This was a ploy – she hadn't won anything, and he was afraid he'd be all alone at home without any assistance when she went. Dr. Marsh paid \$25,000 for the whole thing. But though she took him along, Ms. Alhadi left him sitting alone in the sun while she went off with her own children. Later, he couldn't remember paying for the cruise and was surprised when he was shown the check he had written.

Dr. Marsh wasn't yet wholly isolated. He'd always been particularly close to one niece, Sheila Person. But Ms. Person lived in Seattle and had her own life there. As her uncle grew old, however, she made it a habit to call him every Sunday night to check in. After Ms. Alhadi entered his life, her success in reaching him became sporadic. By 2008 Ms. Person found it even more difficult to get in touch. Ms. Alhadi would answer the phone and tell her that her uncle was asleep or eating, and sometimes the phone would just ring and ring with no answer. By the end of the summer of 2008, neither Ms. Person nor Dr. Marsh's other family members were able to get through Ms. Alhadi to talk to Dr. Marsh at all.

Ms. Alhadi wed isolation to expressions of affection. She told Dr. Marsh four or five times a day that she loved him. She suggested getting married and invited him to come live with her. She would sit in front of him and cry about how she was financially struggling and worried about how she was going to survive and provide for her children. But, alas, the tears were not genuine, for Ms. Alhadi was at the same time hiding her newfound fortune. In June 2007, as part of her divorce action, she signed and filed a property declaration under penalty of perjury in the Superior Court of California. In that declaration, she disclosed none of the money Dr. Marsh had paid her, even though she had received at least \$150,000 by that point. In February 2008, as Ms. Alhadi's divorce action continued, she again filed with the court under penalty of perjury an income-and-expense declaration, in which she disclosed only the income she earned from St. Louise and Covenant Care.

A month later she went to Margarita Lopez, a tax preparer, to complete her 2007 return. She handed Ms. Lopez a handwritten list of her income and expenses; and when asked if she had any additional income, Ms. Alhadi said no. She never once mentioned Dr. Marsh or the money that she had wheedled from him.

Forgetfulness? Not likely because the mortgage applications that Ms. Alhadi filled out to get two mortgages on her new million dollar home showed that Ms. Alhadi told the bank that she earned \$15,000 a month -

\$7,500 from her jobs at St. Louise and Covenant Care and \$7,500 from her “second job” with Dr. Marsh.

Yet even this was only a fraction of what he was actually paying her. By the fall of 2008 Dr. Marsh had written checks to Ms. Alhadi that totaled nearly \$800,000. Then Ms. Alhadi pressed down even harder. In October she wrote to her mortgage company that she didn't have enough money to make her mortgage payments and wanted her payments reduced.

Here begins the end of the story. One sometimes hears mockery of the modern mantra that “your call may be monitored for quality-control purposes”, but Dr. Marsh had his wealth mostly in mutual funds with the Vanguard Group. Vanguard records all of its phone calls, and Dr. Marsh is heard on the recordings in his own voice. On one recording that October, the Vanguard representative identified herself and expressed concern that a fund owner had written five \$100,000 checks in such a short time. She began to ask Dr. Marsh how he had come to write them. Ms. Alhadi's voice is heard in the background telling Dr. Marsh to repeat his social security number, and reading to the Vanguard representative the account balances in his money-market fund. In another she explains to Vanguard on what days, and exactly how many shares, Dr. Marsh had sold from his accounts. In another call only thirty minutes later, she is heard in the background telling Dr. Marsh that he needed to tell Vanguard that he wants to sell stock. Ms. Alhadi, however, always maintained that she knew nothing about Dr. Marsh's finances.

The next day, Vanguard's fraud team called Dr. Marsh to verify that he had authorized the five \$100,000 checks to Ms. Alhadi. During this call Ms. Alhadi yells in the background at Dr. Marsh, “reminding” him that he had written her five checks for \$100,000, and Dr. Marsh replied: “I didn't think they were all a hundred thousand dollars.” Throughout the rest of the phone call, Dr. Marsh got confused and stated: “I wrote one check, ten grand”? At various points Ms. Alhadi threatens that he was going to get her in trouble if he didn't confirm that he had written her the checks.

Vanguard didn't honor the checks. It suspended his access to his accounts and sent him a letter to explain the steps he needed to take to regain control. Remember, though, that Dr. Marsh was home-bound. He depended on Ms. Alhadi to get his mail, and she made sure he didn't. On one occasion, she told the FedEx delivery man that Dr. Marsh no longer lived there. On another, she said that he wasn't home. Lies, all lies – Dr. Marsh couldn't leave his apartment without her help.

The people at Vanguard now knew something was seriously wrong, and they sent a report of suspected elder abuse to the California Department of Health and Human Services in November 2008. The Department assigned Susan Fowle to investigate Vanguard's report. She is part of the Financial Abuse Specialist Team that investigates elder-abuse referrals for the Santa Clara County Public Guardian's Office. Investigator Fowle – whom the Court later found to be an entirely credible witness – went to visit Dr. Marsh with two other members of her team and interviewed him for two hours. When she asked him about the money he was paying Ms. Alhadi, he was so adamant that he hadn't written five \$100,000 checks that Investigator Fowle had to call Vanguard again after the interview to make sure it was true. That was when she learned he had written a lot more than just five. **(Continued on page 5)**

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## Attorney Advise—No Charge

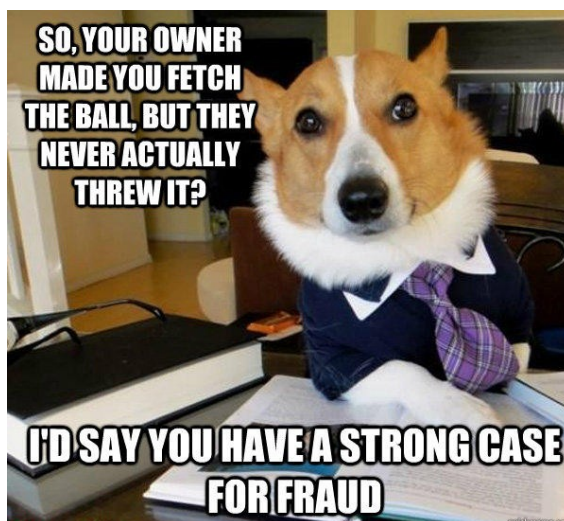
### Deducting Interest Paid On Your Boat Loan

You generally may deduct mortgage loan interest on up to two residences. A residence may be a condo, or mobile home – but did you ever think of your boat as a “second home” as well? You should, because if you own a boat that provides sleeping, cooking and toilet facilities, you may be entitled to tax benefits normally associated with a fixed dwelling. As long as you meet certain requirements, you’re entitled to deductions for interest you pay, just like the mortgage interest paid on a second home.

The basic rule is that you’re allowed to deduct the qualified mortgage interest paid on a principal residence and one other home, such as a vacation home in a resort area. The deductible amount is limited to interest paid on acquisition debt of up to \$1 million, plus interest paid on home equity debt of up to \$100,000.

The IRS defines a home for this purpose as “a house, condominium, cooperative, mobile home, house trailer, boat, or similar property that has sleeping, cooking and toilet facilities.” In other words, if your boat has a galley, sleeping quarters and a head, you should qualify. But you can’t simply throw a cot or a sleeping bag on the deck.

Of course, if you claim interest deductions for a boat as a second home, you might have to forgo deductions for another place. Consider all the tax angles. Two residences is the limit.



### IRS Impersonators Target Students

Students living away from home on college campuses are the latest target of bogus phone calls from IRS impersonators. The scammers are telling victims that they owe a “student tax” and must pay up fast or they will be reported to the police. This comes on the heels of another phone scam in which fraudsters demand payment of overdue taxes in the form of iTunes gift cards.

Warn your kids and grandkids not to fall for these high-pressure scams. IRS won’t make unsolicited calls about a tax debt or demand immediate payment. Nor will it threaten to bring in law enforcement to have you arrested for not paying. Any such calls should be reported to Treasury inspectors at 1-800-366-4484 and to the Federal Trade Commission by filing a consumer complaint at [www.ftc.gov](http://www.ftc.gov).

He who works with his hands is a laborer.

He who works with his hands and his head is a craftsman.

He who works with his hands and his head and his heart is an artist.

- St. Francis of Assisi



(Continued from page 3)

Ms. Alhadi made a last lunge for Dr. Marsh's money. She took him to see an estate attorney, James Simoni, in November 2008 to have Dr. Marsh grant her a power of attorney. Mr. Simoni, whom the Court also found to be a credible witness, testified that he learned about the blocked Vanguard accounts and supposed promise by Dr. Marsh to Ms. Alhadi to pay her approximately \$300,000 in exchange for taking care of him for the rest of his life. The Court later found that this trip to his office was a ploy by Ms. Alhadi to get those accounts unblocked and to get her hands on the last few \$100,000 checks that Dr. Marsh had written. Dr. Marsh later told Mr. Simoni that Ms. Alhadi was pressuring him to get named in his Will, and that he needed to create a separate trust for her so that his family members wouldn't be able to interfere. Mr. Simoni refused to be part of this, and even tried to convince Ms. Alhadi to return the money she had already received. She told him: "Why should I, he gave it to me."

Ms. Alhadi's scheme soon unraveled. The Santa Clara Public Guardian filed a petition in state court to put Dr. Marsh under a temporary conservatorship. The court granted the petition in January 2009 on two grounds. The first was that Dr. Marsh's assets were at risk – he had written Ms. Alhadi nearly \$1 million in checks and then wrote another five \$100,000 checks in October 2008.

The second, and even more devastating ground, was that Ms. Alhadi wasn't providing even a bare minimum of care. Ms. Fowle – and the Court again found her testimony entirely credible – looked in Dr. Marsh's kitchen. The appliances were old, the sink was old, the cabinets were old, but on top of being old, they were not clean. He had two little dorm-size refrigerators, and one was on the floor, and it was a freezer. The other was overfrosting, and there was ice coming out of the door, and it couldn't be shut, and there was a trail of ants, and the food that was in this freezer that was on the floor was rotten. She saw greasy pots and pans, broken utensils, and nothing but stale food "and just sparse things."

She looked into his bedroom and whatever was in the drawers, everything that was close to the front was stained with urine that he had spilled down it because he would either maybe try to get to the bathroom and not make it and then use the urinal that he had resting on his dresser, and nobody ever bothered to clean this. She looked in the bathroom and found it really filthy. She testified that she pulled up the bath mat because it was older and that she wanted to get a new one. "I thought, you know, just to get the bathroom cleaned up. Underneath it there was gelled mold all under this bath mat, which told me that nobody was also cleaning the bathroom."

Investigator Fowle also came across some papers. Ms. Alhadi had handwritten a document for Dr. Marsh to sign. The document is in broken English, written entirely in Ms. Alhadi's handwriting, and purports to make "any amount of money given to her as a gift or loan will be void and cancelled after his death." The document goes on to say that "I, Arthur Marsh, made this decision in repayment for Angelina Alhadi her excellent care for me for take good care of him every day." (The Court concluded that this awkward phrasing wasn't an effort to undo any of the "gifts" Dr. Marsh had given her, but instead an attempt to insulate her from any effort to recoup the money she had received.)

On February 13, 2009, Dr. Marsh died at the age of 93. His niece, Ms. Person, described the scene at his funeral mass: Ms. Alhadi, dressed in full hijab and carrying a single red rose, tried to "crawl in the coffin or get inside there and she was screaming." This was the last contact Ms. Alhadi had with Dr. Marsh.

In August, 2010 the Arthur J. Marsh Trust (Marsh Trust), which Dr. Marsh had created years before as a substitute for a Will, settled a suit against Ms. Alhadi. The Trust recovered assets and \$310,000 in cash. Ms. Alhadi's million dollar home, with its pool that Dr. Marsh had paid for, was lost to foreclosure. Ms. Alhadi spent almost all the rest of the money, gave it away, or rendered it untraceable.

On behalf of the Marsh Trust, Santa Clara County filed Forms 1099 for Ms. Alhadi covering 2007 and 2008. Ms. Alhadi didn't bring them to her accountant, and the preparer didn't include the income that they reported on her returns. The IRS noticed, and wrote Ms. Alhadi to point out her failure. Ms. Alhadi took this letter back to her tax preparer, who warned Ms. Alhadi that she should file an amended return to include this unreported income. Ms. Alhadi refused. Revenue Agent Dan Sutherland later sent a letter to Ms. Alhadi to try to schedule an appointment, but she called back and said she'd hired an attorney. She refused at that time, however, to provide any information about this lawyer – not even his name. She never did provide Agent Sutherland with anything, and she failed to cooperate with the examination.

The IRS Commissioner mailed Ms. Alhadi a notice of deficiency in which he asserted deficiencies and penalties on what he determined was a total unreported income of more than \$1 million. Her tax case was tried in San Francisco.

The Commissioner introduced bank and credit card records that showed Ms. Alhadi received at least \$900,000 during the years 2007 and 2008 that she failed to report on her tax returns. Ms. Alhadi doesn't deny receiving this money from Dr. Marsh. Instead, she argued it should be excluded from her gross income because it was a loan or gift from Dr. Marsh. She lost.

The Court found that Dr. Marsh lent no money to Ms. Alhadi. He never once referred to the money as anything other than compensation for taking care of him. He received no certificates evidencing indebtedness or schedules for repayment, and Ms. Alhadi shows no proof of any maturity dates, or interest rates set, or interest paid. The document that she prepared for him to sign and that Ms. Fowle found, purports to forgive all "loans" after his death – further demonstrating that she never intended to give the money back.

Ms. Alhadi argued in the alternative that the money she received from Dr. Marsh was a gift and so not income. But to be a gift, the transfer must proceed from a "detached and disinterested generosity, out of affection, respect, admiration, charity or like impulses". Where payment is for past services or an inducement for services in the future, it's not a gift, and it doesn't matter that the donor derived no economic benefit from it.

Ms. Alhadi admitted that she earned \$37,300 and \$72,000 for services she performed for Dr. Marsh in 2007 and 2008. The Court therefore presumed that the rest of the payments she received from Dr. Marsh weren't gifts, but rather compensation for services. And, it had no difficulty, then, in finding that the transfers to Ms. Alhadi weren't gifts. But they also weren't embezzlement. So what were they? On this question, the Court agreed with other expert testimony given at trial, which concluded that there was a real, if sad, emotional bond between Dr. Marsh and Ms. Alhadi. Dr. Marsh wanted to rescue her, wanted to be a good person, and wanted to feel "loved for the rest of his days on earth."

(Continued on page 6)



**Continued from page 5)**

The Court found that Ms. Alhadi exerted undue influence over Dr. Marsh. She was in a confidential relationship with Dr. Marsh as his sole caregiver. He relied on her just to get downstairs, to go to the doctor, to be fed, and even to bathe. Dr. Marsh was also in extremely poor health; he suffered from heart problems, hearing and vision loss, a broken hip, and dementia, among other handicaps. Ms. Alhadi knew all this. She used her relationship with Dr. Marsh to isolate him from his family and financial advisers and to wring money out of him. She repeatedly prevented Vanguard from contacting him by mail and would interfere when Ms. Person tried to talk with him on the phone. The resulting isolation and dependence made him even more vulnerable to Ms. Alhadi's influence. His multiple cognitive deficits also affected his ability to withstand this influence. He wasn't able to do simple computations, he had poor short-term and diminished long-term memory, and he could no longer understand (let alone analyze) his million dollar portfolio.

Ms. Alhadi was a trained caregiver. Dr. Marsh's problems were obvious to anyone, but their consequences for his ability to make rational decisions would have been even more obvious to her. Dr. Marsh's spending on Ms. Alhadi was uncharacteristic of a man who had spent most of his life fearing the poverty in which he was born. Inspector Fowle concluded that this wild spending was so abnormal for Dr. Marsh that it was strong evidence that Ms. Alhadi had unduly influenced him. And Ms. Alhadi's unending demands on Dr. Marsh – that he pay for a swimming pool, cover her mortgage, name her in his Will, create a separate trust for her benefit, and treat her and her family to a cruise – all support this finding. Ms. Alhadi preyed on his loneliness. She would sit and cry in his apartment and lament how she had no money and didn't know how she was going to survive. She exploited his forgetfulness. Sometimes Dr. Marsh thought he was behind on paying her and she didn't correct him, even though he had actually never fallen behind. Dr. Marsh's lack of animus and his failure to experience any deep outrage or disgust at her behavior do not exculpate her. They merely indicate that she "chose her victim well."

In the end, Ms. Alhadi was determined to have filed fraudulent income tax returns, to have attempted to conceal it, and to have committed elder abuse. All of the above facts are true, and were part of a United States Tax Court Decision filed April 21, 2016.

But this real life tragedy could have been avoided, and Dr. Marsh could have enjoyed the fruits of his lifelong work. Even though his niece, Sheila Person, lived in Seattle, he could have named her his agent for health care purposes. Sheila could have used that POA to hire a qualified caregiver, and monitor her uncle's course of medical care. And Dr. Marsh could have used an independent trustee to hold his assets, pay his bills, and invest and manage his investments.

As attorneys, we serve to protect the interests of our senior citizens who are often preyed upon by those who perceive them as "easy pickings". Don't let it happen to your family members – give us a call to avoid having what happened to Dr. Marsh happen to you, or your loved ones.

## IRS Can Force a Sale of Commercial Realty to Satisfy Income Tax Liability of a Family Member

The IRS can force a sale of commercial real estate jointly owned by a father and son to help pay off the dad's overdue personal income taxes. The son objected, saying he'd be harmed by the sale. An appeals court agreed he was an innocent party, but sided with the IRS that the forced sale would not cause him undue hardship. He'll get half the proceeds, and he doesn't live on the lot, so he won't be dislocated. Additionally, he could bid on the parcel at the foreclosure auction.

### Background:

Leonard and Joyce, who are husband and wife, filed joint federal income tax returns for the years 1998 and 2001, showing they owed taxes which they did not pay. The IRS sent demand letters for payment. Leonard also owed federal employment and unemployment taxes for various periods between October 2006 and April 2012.

At the time his tax liability was declared, Leonard and his son, Derek, jointly owned a commercial piece of property. By virtue of the IRS assessments for Leonard's personal income and employment taxes, tax liens attached to the real estate.

The IRS foreclosed its lien, and Derek asked the Court to stop the sale (by auction). If the sale were to be denied, the government would be precluded from claiming any sales proceeds. But, alas for Derek, the sale was not stopped. The court said that Derek, the non-delinquent co-owner, has no "legally recognized expectation" that his interest would not be subject to a forced sale due to his father's delinquency. Also, it found that any prejudice to Derek as the result of a sale would be minimal; Derek does not reside in Parcel B, so dislocation is not a consideration. And, after the sale, Derek will be compensated for his half interest. Further, Derek may bid on Parcel B at the foreclosure auction, either to gain the property outright or to attempt to increase the final sale price. Finally, the "relative character and value of the non-liable and liable interest" does not weigh in any party's favor. The non-liable interest of Derek is equal to the liable interest of Leonard.

What this means to you is that you have to realize that your partner's interest in a piece of real estate you co-own with him/her is subject to the rights of creditors, including the IRS. You need to make sure you know how financially sound your partner is – or else you could find your investment property being auctioned off at bad time, for a low price, to satisfy debts of your partner, thus ruining your situation we well.

