



## Call the Minnesota Elder Law Attorneys for Assistance with:

Veterans Benefits  
 Medical Assistance  
 Elder Care  
 Planning for Disability or Incapacity  
 Planning for a Disabled Child  
 Special Needs Trusts  
 Guardianship & Conservatorship  
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# Finally! Special Needs Trust Fairness Act Becomes Law

Assets held in a properly established special needs trust are not counted toward a person's asset limits when a person applies for public benefits, including SSI and Medicaid. Since 1993, federal law has permitted individuals living with disabilities to fund special needs trusts with their own assets. However, the law did not permit the person with a disability to establish the trust for themselves. Instead, only the individual's parent, grandparent, court, or guardian could set up the trust. Those without a living parent or grandparent generally had to go to court simply to establish a trust for their own benefit.

Advocates for older persons and those people with special needs have worked for years on legislation that would allow these individuals with disabilities to establish a first party special needs trust for themselves. On December 7, 2016, Congress passed the Special Needs Trust Fairness Act, which was part of a broader bill called the 21st Century Cures Act. The Special Needs Trust Fairness Act was passed by Congress, and became law with President Obama's signature on December 13, 2016.

As a result, individuals who have a disability and wish to may establish a

special needs trust using their own assets to fund the trust may do so, without having to involve a parent, grandparent, or the court as prior law required.

The Special Needs Trust Fairness Act recognizes that persons with disabilities are in most cases fully capable of engaging with an attorney to set up a special needs

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trust. It confirms that, as long as an adult with a disability has cognitive capacity, prohibiting that person from establishing a special needs trust and naming the trustee(s) simply because he

or she has a disability is condescending, discriminatory, and unfair. Going forward, it will be the policy of Long Reher Hanson & Price to follow the letter and spirit of the Special Needs Trust Fairness Act when drafting first-party special needs trusts for clients who wish to establish such a trust using their own funds. **If you believe this change in law could impact your planning, please contact your attorney.**



## Designation of a Caregiver

Beginning in 2017, Minnesota hospitals will be required provide patients (or their agent) an opportunity to designate a caregiver before the patient is discharged or transferred. If a caregiver is designated, the hospital is required to notify the caregiver of the patient's discharge or transfer and must provide the caregiver with the patient's discharge plan and instructions for providing aftercare.

The caregiver is the person designated to provide aftercare assistance to the patient upon discharge from the hospital, and can be any individual over the age of 18 as long as he or she is capable of providing aftercare assistance according to the patient's health care provider. If a patient designates a caregiver the caregiver's contact information and relationship to the patient is recorded in the patient's medical file; not choosing a caregiver is also recorded in the medical file. The designation can be changed or revoked at any time.

Be aware that a person may designate a caregiver other than the health care agent named in a health care directive. In addition, when a patient names a caregiver under the new law, **the hospital is permitted to share the patient's medical information with the caregiver** as if the patient had provided written consent to share that information.

What *doesn't* the new law do?

- The law does not authorize the caregiver to make any medical decisions on behalf of the patient.
- The law does not require the hospital to notify the health care agent (who is not also the designated caregiver) of the patient's discharge, transfer, or provide him or her with aftercare instructions or the discharge plan.



## Medical Assistance Numbers That Change in January 2017

The following are the basic Medical Assistance figures that change annually in January.

- The monthly personal needs allowance for the Medical Assistance recipient will remain at \$97 (\$90 for veterans and widows and widowers of veterans).
- The cap for the minimum income allowance for the community spouse is between **\$2,005** and **\$3,022.50**, depending on the community spouse's shelter costs.
- The maximum community spouse asset allowance is **\$120,900** for applications in 2017.
- If you are receiving Elderly Waiver services and your gross monthly income (not including your spouse's income) does not exceed **\$2,205**, your monthly personal needs allowance will be **\$988**. If your gross monthly income exceeds **\$2,205**, your monthly personal needs allowance will be either **\$97** or **\$730**.
- The home equity limit for 2017 increased to \$560,000.

## SAGE Launches LGBT Elder Hotline

On November 1, as part of its work to improve the lives of LGBT older people, Services and Advocacy for GLBT Elders (SAGE) launched the country's first hotline dedicated to LGBT elders. The SAGE LGBT Elder Hotline is operated by the GLBT National Help Center and staffed entirely by LGBT volunteers. This new national program responds to the fact that many LGBT people live in parts of the country which lack community supports targeted to their needs. For example, the holidays can be a lonely time, especially for older LGBT people, who are less likely to have children and more likely to suffer from social isolation. The LGBT Elder Hotline was established to provide support, as well as information and referrals, to LGBT older people no matter where they live.

**The SAGE LGBT Elder Hotline is live and ready to take calls at 1-888-234-SAGE. It is open Monday through Friday from 4:00 p.m. to midnight Eastern Time, and on Saturday from noon to 5:00 p.m. Eastern Time. LGBT elders can also contact the hotline at [SAGE@GLBThotline.org](mailto:SAGE@GLBThotline.org).**

## Do You Have a “Digital Estate Plan?”

Today, much of a one’s estate may in fact be documented only through digital records. As electronic records and digital property — including online accounts such as Facebook, Twitter, and other social media accounts — have become more ubiquitous, it has become increasingly important to name a “digital executor.” A digital executor is a person who, in the event of your incapacity, has the ability to access your accounts online, monitor your digital property, and take actions that might be necessary to protect your identity.

The American Bar Association recommends creating a “virtual asset instruction letter,” or VAIL, that provides information that your digital executor will need to manage your financial and personal affairs if you aren’t able to. This letter should:

- Identify each Internet account that you have and determine how each company handles an account when the account holder dies.
- Determine which accounts you want your representative to maintain and have access to, and prepare a written and electronic file list of those accounts with their passwords.
- Determine which accounts you wish to have deleted and provide the necessary written instructions to do so.
- Consider saving the account and access information on a CD or memory stick and store it in a safe place.

Give your representative instructions about how to access this information. Don’t forget to update it as passwords change.

- If you have a collection of photographs or other memorabilia that are being stored on the Internet, consider making a backup of that information to a disk drive or CD that you control. Store this information in a safe place, and provide your personal representative with instructions on how to obtain that information.
- Upgrade your power of attorney, trust, and will to include provisions authorizing your agent to access your e-mails and other electronic data.
- If someone other than your personal representative is being designated to handle your electronic data, then those individuals should be named in your will or other estate planning documents.

*(Source: Michael Walker & Victoria D. Blachly, Virtual Assets, ST003 A.L.I.-A.B.A. 175, 177 (2011))*

**Contact your attorney for more information or if you need help assuring that your digital assets are handled appropriately when you die or can’t manage them on your own.**

## Transfer on Death for Watercraft

On the last day of the 2016 legislative session, Minnesota lawmakers passed a law allowing Minnesotans to pass title for a watercraft by using a transfer on death designation. Section 86B.841 allows a boat owner to obtain a new certificate of title showing the owners name(s) with right of survivorship followed by the words “transfer-on-death to (name of beneficiary).” The statute also allows the owner(s) to use the acronym “TOD” instead of “transfer-on-death.” This option allows watercraft owners to avoid probate of the watercraft and also simplifies the process by which the new owner can obtain a certificate of title after the death of the original owner.



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## REVIEW OF YOUR SITUATION

If you have questions or concerns about any of the information presented in this newsletter or would like to consult with us about how the changes might affect your own circumstances, please call our office to set up an appointment with Cathryn Reher, Laurie Hanson, Laura Zdychnec or Mary Frances Price. We will be happy to meet with you to answer any questions you may have and to help you re-evaluate your particular circumstances.

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## Minnesota Last of 50 States to Enact Pet Trust Law

The 2016 legislature amended Minnesota’s Trust Code to allow for the creation of a “trust for the care of an animal alive during the settlor’s lifetime.” Minnesota was the last of all 50 states to incorporate pet trusts into state law. The trust must terminate at the death of the last surviving animal that was alive during the settlor’s lifetime and cannot be enforced for more than 90 years. While there is no specific dollar limit to the amount that can be placed in the trust the new law allows the court to determine “that the value of the trust property exceeds the amount required for the intended use.” Any property remaining in trust at the death of the last surviving animal is distributed according to the terms of the trust.



**Our lawyers continue to make presentations on elder law topics to the public through charitable organizations, support groups, veterans’ groups, church groups, and other entities. If you know of a group that you think would benefit from one of our presentations, please call Tracie Fenske at (952) 929-0622.**