



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
Estate Planning

L | R | H | P

Long, Reher, Hanson & Price, P.A.

5881 Cedar Lake Road
Minneapolis, MN 55416
952-929-0622

RECEIVE OUR
NEWSLETTER BY EMAIL!

If you would like to receive
the newsletter by email,
please send:

Client Name,
File Number and
Email addresses to:

info@mnelderlaw.com

We're on the Web!

www.mnelderlaw.com

Minnesota Has An ABLE Account!

THE MINNESOTABLE Plan, which became a reality in the winter of 2017, is now up and running. Individuals who are living with a disability that began prior to age 26 (“eligible individuals”) may establish and fund an ABLE account. ABLE accounts can be used instead of or in addition to a traditional special needs trust or pooled trust, and may be a perfect vehicle to complement a third party supplemental needs trust.

An ABLE account allows eligible individuals and their loved ones to set aside money — currently, as much as \$15,000 annually per beneficiary — up to a total savings of \$425,000 (\$100,000 if the person is receiving SSI) and pay no taxes on that money’s growth as long as it is used for qualified disability expenses (QDEs). QDEs include any expenses related to the individual’s blindness or disability, including education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses. If distributions are made for non-qualified expenses, the eligible individual’s eligibility for government programs may be affected.

Changes to ABLE in 2018

- ABLE account owners may take advantage of the Retirement Savings Contributions Tax Credit when making contributions to their own ABLE account.
- Funds from a 529 College Savings Account may be rolled over to an ABLE account without incurring any tax or penalty; and
- ABLE account owners who work may be eligible to contribute above the \$15,000 annual contribution limit (possibly up to an

additional \$12,060 depending on the gross income of the account owner).

A person is considered a “eligible individual” if he or she receives SSI or SSDI, or has Medical Certification signed by a doctor confirming that the person is blind or has a diagnosis of physical and/or mental impairment resulting in severe functional limitations expected to be continuous for more than 12 months, and that the blindness or disability started prior to age 26.

The ABLE account must be established by an eligible individual or someone with authority to establish the account on his or her behalf (parent of a minor, attorney-in-fact, or a guardian of an adult with court approval). So, if you are the parent of a minor child, you can set up the ABLE account; but if you are the guardian of an adult disabled child, you will need to get a court order giving you authority to establish the account. We understand that there may be legislation put forth to allow guardians to set up ABLE accounts without a court order.

Any money left in the ABLE account at the time of the eligible individual’s death will be paid to the Minnesota Department of Human Services to reimburse the state for any Medical Assistance that has been paid on the individual’s behalf since the establishment of the account. So, it may be wise to use the ABLE account to meet the individual’s expenses annually and replenish when necessary.

Our office can help you establish a MINNESOTABLE Plan account and explain how to use it to optimize tax savings and program benefits. To learn more, visit the State’s website at: <https://savewithable.com/mn/home/plan-benefits.html>.

Childhood Disability Benefits

If you have an adult child who was disabled prior to age 22, your child may be eligible to receive Childhood Disability Benefits (CDB) through the Social Security Administration. CDB is a monthly cash payment made to a disabled adult child based on the Social Security earnings record of one of the child's parents. The child is eligible to receive CDB payments based on a parent's work record if the parent is retired, disabled, or deceased, and is either receiving, or was entitled to receive Social Security benefits. The child may receive up to one-half of the parent's benefit amount if the parent is living, and three-fourths of the parent's benefit amount if the parent is deceased. If both of the child's parents are retired, disabled, or deceased, then the child receives the higher of the two amounts.

A significant advantage of the CDB payment is that the income is disregarded for Medical Assistance purposes if the child meets certain requirements. This means that the child can have an income in excess of the Medical Assistance limit (currently \$1,005 per month), and still remain eligible for the program. If your child was disabled prior to age 22, and one of the child's parents is receiving Social Security benefits, will begin receiving Social Security benefits in the near future, or is deceased, contact our office to discuss the possibility of enrolling your child in the CDB program.

Medicaid Update

Over the last year, our firm has posted updates in real time on the federal initiatives to eviscerate Medicaid for persons with disabilities and the elderly. We will continue to monitor proposed laws and policies to limit federal participation in the Medicaid programs. If successful, these changes would increase the burden on states to fund essential services and supports for our most vulnerable populations. We also want to remind any married persons under age 65 on waiver programs that the federal law requiring application of the spousal impoverishment laws in determining program eligibility will terminate December 31, 2018 unless extended by Congress. We have received no guidance on what would replace the eligibility requirements for married persons on waiver programs, but will continue to monitor developments in this area. You can check for updates on our website at mnelderlaw.com.

Supported Decision-Making: Because Guardianship is Not Always the Answer

A nation-wide effort is underway to educate families and professionals regarding supported decision-making as an alternative to guardianship. Supported decision-making (SDM) is an alternative to guardianship that allows an individual with a disability to work with an individual or team and make choices about his or her own life. Under this model, the individual designates people to be part of a support network to help with decision-making.

SDM promotes self-determination, control and autonomy. Unlike substituted decision-making where guardians or family members make decisions for the individual, supported decision-making enables the person to make his or her own decisions with assistance from a trusted network of supporters.

It's important to understand that guardianship is not required to access services for a person living with a disability. Further, a guardianship is not required due to disability when the person already has the supports needed. If you have questions about whether a guardianship is necessary or appropriate, we encourage you to come in and discuss guardianship options and alternatives to guardianship with us. We can help you problem-solve to understand the best solution for your situation.

LRHP Adds 6th Attorney — Welcome Eleanor Richardson

We are pleased to report the addition of Eleanor Richardson to the LRHP legal team. Eleanor began working with LRHP as a law clerk in October of 2015, and has proven to be a dedicated and earnest member of our firm. Eleanor graduated cum laude from the University of St. Thomas School of Law, and was admitted to the Minnesota State Bar in October of 2017. She earned her B.A. in Political Science magna cum laude from the University of Minnesota Duluth. While studying at the University of St. Thomas, she represented clients as a certified student attorney in the Elder Law Practice Group. Eleanor will focus her practice in the areas of estate planning, probate and trust administration, and special needs planning. In her free time, Eleanor enjoys spending time with her family and her two dogs, and traveling.

Minnesota's Weakened Estate Tax May Offer Simplified Estate Planning Options

Minnesota is one of a minority of states that still imposes their own estate or inheritance tax. Continuing with a trend over the last five years, the 2017 legislative session in Minnesota weakened the estate tax again. The Minnesota estate tax exemption limit increased on January 1, 2018 from \$2.1 million to \$2.4 million per person. This escalation in the filing threshold has opened up new opportunities to simplify estate plans.

Using Joint Trusts

When the estate tax was lower, many married couples incorporated Marital/Family Trust, Disclaimer Trust, and/or Credit Shelter trusts into their plans to avoid or minimize the Minnesota estate tax and avoid probate at the death of the first spouse. Best practice for such a plan required separate trusts for each spouse to achieve the most efficient and organized distribution of an estate at the death of the first spouse.

With the increased filing threshold, fewer families will have to worry about the tax and this has revitalized the conversation around keeping the estate plan as simple and efficient as possible. One simplification may be to use one joint trust to hold marital property instead of each spouse having a separate revocable trust. This can allow the couple to fund a single trust. The trust can continue even after the death of the first spouse for the benefit of the surviving spouse, simplifying the administration at the death of the first spouse.

Using Beneficiary Designations and TODs

Not having to “split” the assets at the death of the first spouse in order to implement the tax planning features of a Will or Trust also renews the conversation about using beneficiary designations/payable on death (POD) and transfer on death (TOD) designations to streamline asset distribution at death.

One caveat remains, however: that is to think through how heirs will manage post-death expenses in cases where all assets pass directly by beneficiary or other designation. When all assets are directly distributed there may be confusion among beneficiaries about who is responsible for paying outstanding creditors and expenses of administration. While the temptation to avoid probate is strong, it is important to be thoughtful about expenses and creditors to avoid conflict and confusion.

Medical Assistance Numbers That Change in January 2018

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

- The monthly personal needs allowance for Medical Assistance recipients was increased to **\$99** (it remains at **\$90** for veterans and widows and widowers of veterans).
- The cap for the minimum income allowance for the community spouse is between **\$2,030** and **\$3,090**, depending on the community spouse's shelter costs.
- The maximum community spouse asset allowance is **\$123,600** for applications in 2018.
- If you are receiving Elderly Waiver services and your gross monthly income (not including your spouse's income) does not exceed **\$2,250**, your monthly personal needs allowance will be **\$990**, otherwise it will be **\$99**.
- The home equity limit for 2018 increased to **\$572,000**.

“Granny Cams” – Balancing Privacy Rights in the Face of Elder Abuse

According to the U.S. Centers for Disease Control, elder abuse is a growing public health crisis. In 2016, Minnesota's Department of Human Services received more than 50,000 reports of suspected maltreatment of a vulnerable adult. One tool increasingly being utilized by families to prevent abuse is hidden cameras, sometimes called “granny cams.”

Currently, state law neither permits nor prohibits electronic monitoring of vulnerable adults. In 2016, the Minnesota legislature established a work group to study the use of electronic monitoring of vulnerable adults. The work group, which included state health officials, elder care advocates and industry representatives, submitted a final report to the legislature which identified key issues for lawmakers to consider. Some of the more complex issues challenging lawmakers involve assuring informed consent of the vulnerable adult being monitored, informed consent of roommates, whether facility staff must be notified that electronic monitoring is taking place, and retaliation concerns.

If you suspect a vulnerable adult is being abused or exploited, call the Minnesota Adult Abuse Reporting Center at 844-880-1574.

INSIDE

**Minnesota Has An
ABLE Account!**

**Childhood Disability
Benefits**

Medicaid Update

**Supported Decision-
Making: Because
Guardianship is Not
Always the Answer**

**Welcome Eleanor
Richardson**

**Minnesota's Weakened
Estate Tax May Offer
Simplified Estate Planning
Options**

**Medical Assistance
Numbers That Change in
January 2018**

"Granny Cams"

**New Limitations on
Medical Assistance Estate
Recovery**

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.

952-929-0622

info@mnelderlaw.com
www.mnelderlaw.com

New Limitations on Medical Assistance Estate Recovery

Legislation passed in 2017 put limits on Minnesota's ability to recover against the estates of deceased individuals who received Medical Assistance benefits prior to their deaths. The limitations are effective retroactively, and apply to all claims which were still pending on or after July 1, 2016. All estate recovery claims asserted by the state on or after July 1, 2016 are also subject to the new limitations.

All medical assistance services are recoverable, regardless of age, during permanent residence in a medical institution. For services received by an individual age 55 or older, recovery is limited to medical assistance received for long term services and supports (LTSS). LTSS includes nursing facility

services, home and community based waivers including alternative care, brain injury, community alternative care, community access for disability inclusion, developmental disabilities, and elderly waiver programs. Recovery will also be sought for non-waivered services including home health services, home care nursing, home health aide services, medical supplies and equipment, services provided by a home health agency including physical therapy, occupational therapy, and speech therapy, personal care assistance, and hospital and prescription drug services provided during the time the individual was receiving nursing facility services or home and community based waived services.

