



Anishinabe Legal Services Newsletter

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P.O. Box 157, Cass Lake, MN 56633 • Phone 218-335-2223 or 1-800-422-1335

Indian Law Conference at Northern Lights Convention Center, Walker, Minnesota

ALS, along with several other organizations, is sponsoring an Indian Law Conference. The conference was held on June 17-18, 2010, with registration beginning at 8:30 a.m. The title of the conference is "Demystifying Public Law 280, the Indian Child Welfare Act and everything else you want to know about Indian law by were afraid to ask." Experts in the area of Indian law will present on a number of topics, including:

- Disparate Impact on Native Individuals and Communities within the Criminal Justice System and the Role of Historical Trauma.

- Tribal Court vs. State Court Jurisdiction: Family Law Matters and Child Protection Cases.

Indian Law Conference
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Available Online to help you.

DeafMD.org LawHelpMN.org

LEGAL INFO

Self-Help Center: Are you handling your own court case or need court forms on:

- Criminal Expungement
- Car Title Problem
- Divorce, Custody/Child Support
- Landlord/Tenant
- Conciliation Court Claim
- or other legal issue?

Visit the MN District Court Self-Help Center on the Internet: www.mncourts.gov/selfhelp.

I-Can: Online help with do-it-yourself divorce forms in Minnesota. If you have questions you can email or call the MN Courts Self-Help Center Tuesday - Friday, 10:00 a.m. - 3:00 p.m. at 651-259-3888. To find a lawyer in your area or to complete the forms go to: www.LAWHELPMN.org.

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Leech Lake Tribal Court and Private Party Family Law Jurisdiction

Last June, the Leech Lake Reservation RBC approved a new family law code for the Leech Lake Tribal Court. Prior to that time, Leech Lake Band members in need of a civil remedy for a family law matter (i.e. divorce, custody, child support) would have to go to State County Court to have their family disputes heard (unless they met the jurisdictional requirements to bring their action in another Band's Tribal Court). Now, many people have an option of filing in either County Court or the Leech Lake Tribal Court in efforts to settle their family law disputes.

There are two ways a person may qualify to bring their action in the Leech Lake Tribal Court under the new family law code. First, a Leech Lake enrollee may bring an otherwise proper action in the Court regardless of where they reside. This means that Leech Lake enrollees may bring their family law action in the tribal court, even if they live off of the reservation. Now the Court always has the option of transferring jurisdiction to a more convenient forum (if, for instance, all of the parties involved live a far distance from the reservation). But if the Court finds they are a sufficiently convenient forum for all parties, jurisdiction is allowed under the Code. Also note that the petitioner need not be enrolled at Leech Lake. The Code only states that "the Tribal Court shall have jurisdiction over the family relations matters of all Leech Lake Band of Ojibwe members wherever they may reside." This means that only one of the parties need be a Leech Lake enrollee. If the action involves a child enrolled at Leech Lake, or if the opposing party is enrolled at Leech Lake, jurisdiction is present under the Code regardless of the enrollment status of the Petitioner.

Second, the Code provides jurisdic-

tion to "all persons who reside within the exterior boundaries of the Leech Lake Reservation for at least 90 days prior to filing a petition. Only one party must meet the filing requirement." This means that even if nobody involved in the action is enrolled at Leech Lake, the Court will take up jurisdiction if one of the parties involved (the petitioner, the opposing party, or the child) has resided within the boundaries of the Leech Lake Reservation for at least 90 days.

The Leech Lake family law code covers a variety of civil matters, including marriage, divorce, pre-marital agreements, custody, visitation and child support. Please note that this code does NOT provide jurisdiction for Orders for Protection. These still must be brought in the appropriate State County Court (unless jurisdiction is present for a different Tribal Court).

The Leech Lake Band of Ojibwe has compiled their various Codes and simple pro se forms on their website. If you have internet access, these materials can be found at <http://www.llojibwe.com/legal/tribalcourt.html>. You may also access this information by making a request to Leech Lake Tribal Clerk of Courts Pat Pizzala or Samantha Senganidzojasi.

There are several notable differences between the Leech Lake Family Law Code, and Minnesota State family law statutes. An examination of these differences is beyond the breadth of this article. It is advisable to obtain a copy of the Leech Lake Tribal Court Family Law Code and review it carefully before deciding whether to file in State or Tribal Court. Again, the Code can be located online at the above web address or can be requested through the Court clerks either in person or by telephone.

ETA



Electronic Transfer Account

What is an ETA?

ETA stand for Electronic Transfer Account. It's a low cost account for people who want to receive federal benefits electronically. Anyone who receives government payments, such as Social Security, Supplemental Security Income (SSI), or Veterans Benefits, can receive payments electronically through an ETA.

An ETA can be opened at a participating federally insured bank, savings and loan, or credit union.

Most people can get an ETA even though they do not have or may not qualify for a checking or savings account. That means a person can qualify for an ETA even if they have bad credit.

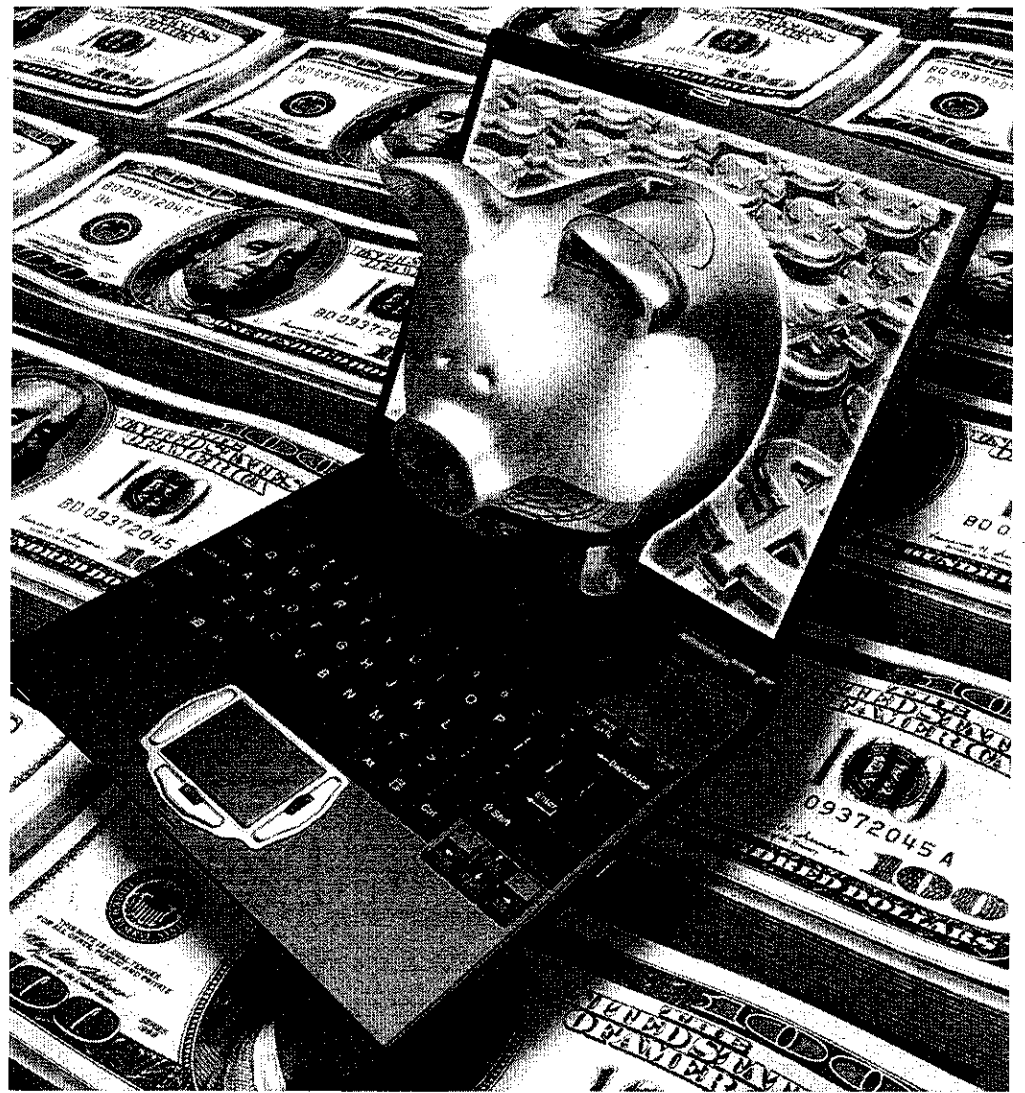
Once an ETA account is opened, benefits will be directly deposited into the account. Benefits can be withdrawn the same day the deposit is made.

When a withdrawal is made from an ETA, funds can be received in a number of ways. Funds can be withdrawn in cash or through an automated teller machine (ATM). A charge may be assessed for using an ATM machine that is not owned by the bank where the ETA is held.

Many providers use plastic debit cards that allow withdrawal of funds from an account when items are purchased as a store. This service is called On-Line Point of Sale (POS) access.

Basic Features!

- ! Monthly charge of \$3 or less
- ! No check writing privileges
- ! Minimum of four (4) free monthly withdrawals
- ! Monthly statement listing all deposit and withdrawals
- ! No minimum monthly balance required (exception for



some credit unions)

- ! Four (4) free balance inquiries per month
- ! Federally insured

How Do I Open an ETA Account?

Not all financial institutions offer the ETA. Before an Institution can offer ETA accounts, they must enroll with the U.S. Treasury and agree to offer the ETA based upon U.S. Treasury's guidelines.

Once you have found a provider in your areas, talk to them about the ETA. For example, some providers do not allow any deposits except Federal benefits. You need to find out the specifics of the ETA before you decide if that financial institution's ETA rules match your needs.

If you have a payee help you manage your benefits, your payee can open an ETA to receive your payments. To open an ETA you should have the following:

- > Photo ID such as a driver's license or state ID card or tribal ID card that shows your name and current address.
- > Your Social Security number (either your card or letter from Social Security that has your printed number on it).
- > Claim number for Veterans Affairs payments.

Some financial institutions allow enrollment over the telephone.

If you have access to the internet, you can find a listing for ETA providers in your areas by using <http://www.eta-find.gov> or you can contact the ETA call center at 1-888-381-3311.

Benefits Exempt from Creditors

Many federal benefit payments, including Social Security, SSI, and Veteran's benefits are protected from garnishment or attachment under Federal law.

This means that creditors do not have the right to take these funds out of an ETA account to satisfy obligations or debts that are owed.

There are some exceptions, For example, funds can be taken to satisfy child support or alimony obligations.

If funds are deposited into an ETA from other sources, creditors may be able to take those funds from an ETA account.

However, federal benefits would still be protected.

This information comes from a fact sheet prepared by Legal Services of Northwest Minnesota (LSNM).

Indian Law Conference

Continued from page 1

- A Panel Discussion on Anishinabe Treaty Rights in Today's World.

- Reemerging Indigenous Economic Systems: Indian Cigarettes

- The Minnesota Story-The Impact of NLRB v. Bois Forte, a Recent Federal Decision that limits Tribal Sovereignty

- Native Land Law Project: A Strategy for Reforming Federal Indian Law. A banquet in honor of the Russell Bryan family will be held on the evening of June 17th. Russell Bryan was a Leech Lake enrollee who challenged the state's authority to tax his personal property (mobile home) on trust land. The U.S. Supreme Court, in a landmark decision, ruled unanimously in favor of Bryan.

The Bryan decision opened the door to other more important matters. For example, the state cannot tax the income of Leech Lake enrollees living and working on the reservation; the state agrees to pay the Leech Lake band a rebate for state sales tax paid on sales made on the reservation; and Indian gaming.

The title of the conference is:

"Demystifying Public Law 280, the Indian Child Welfare Act and everything else you want to know about Indian law by were afraid to ask."

CHILD PROTECTION CASES— WHAT THEY MEAN FOR YOU

Because we believe it is a priority of our organization to keep Native families together, Anishinabe Legal works with both Leech Lake and White Earth courts to represent parents who are in danger of having their children removed by child protection. Here are some answers to general questions parents have about the Child Protection process.

What is Child Protection?

Child Protection is usually a County Agency. Tribes can also have their own Child Protection Agencies, generally called Indian Child Welfare offices. These agencies investigate reports of maltreatment. Maltreatment can mean either the child is abused or neglected. If ICWA or Child Protection believe you neglected or abused your child, they can either offer you services or remove the child and refer the matter to the court. Child Protection and ICWA workers are social workers, not police or lawyers.

What is abuse or neglect?

ABUSE is physical or emotional harm to a child that is not an accident. It can be things like bruises and hitting that is not discipline, all the way up to broken bones and burns. It includes sexual molestation of any type, and can be emotional harm.

NEGLECT is when the child does not get the proper food, clothing, shelter, medical care, supervision or protection from harm. Use of alcohol or drugs can be seen as neglect if it affects a child's needs or safety.

What can Child Protection or ICWA Workers do?

INVESTIGATE- Child Protection workers investigate maltreatment reports that meet the definition of "abuse" or "neglect." This can be done by phone calls, a visit to the home, interviews with the child or other people. Like doctors or teachers, if they find abuse or neglect, the case can go to the court system.

Then the workers keep investigating, to get evidence until the case is closed. They can put together a case plan to solve any

problems in the home. This can be done right away, or when the family is reunified if the children have been removed from the home.

If the case plan works, the case is closed. If the case plan doesn't work, the worker can go to court to end the parent's rights.

MAKE MALTREATMENT DETERMINATIONS- When a worker completes their investigation, they make a determination of whether the abuse or neglect happened or not. If the worker determines that the parent did maltreat the child, it is called a "maltreatment determination". This "determination" will prevent the parent from working in certain jobs or providing foster care. After a determination of maltreatment, a parent has a very short window (usually only 15 days) to ask for a review of the determination.

PROVIDE SERVICES- If abuse has happened or is likely to happen, or if the child has been neglected, Child Protection may open a case file. Then they can offer services for family problems, such as Foster Care, Chemical Dependency evaluations, treatment, and counseling. They can offer services without going to court, if the parent agrees.

RECOMMEND REMOVAL OF CHILD- Workers may remove a child if the parents agree OR if they have a court order. If a worker feels that the children are in danger, and can't get the parents to agree, they will call the police. The police can take the child to a shelter. A hearing **MUST** be held within 72 hours (not including weekends and holidays) to decide whether the children will remain in foster care longer.

GO TO COURT FOR THE AGENCY- The worker also represents the county or ICWA agency at court hearings. They can ask the court to place the children away from the home of the parent. This can be in foster care, the home of a relative, or a shelter.

Workers must make reasonable efforts towards providing services to reunify the family. In ICWA cases, the worker must make **ACTIVE** efforts. If they conclude

these efforts are not working, they will collect evidence to permanently remove the children.

WHAT SHOULD I DO IF CHILD PROTECTION CONTACTS ME?

1. **DO** keep in contact with the worker on the case. Call them if you have any questions. Keeping in touch with your worker is crucial in getting your kids back.

2. **DO** keep copies of all paperwork you receive from Child Protection. Keep notes of all meetings and interviews and who you spoke with.

3. **DO** be cooperative, honest but careful when speaking to workers. **ANYTHING YOU SAY WILL BE USED AGAINST YOU IN COURT.** They cannot legally force you to talk to them but will be suspicious if you don't. Bring an advocate to meetings if you can. You have the right to an attorney if your case is brought to court.

4. If your child does have to be removed from your home, **DO** tell the worker about any relatives who may be able to care for the child. Under ICWA, the priority is to place children first with relatives, & if that's not possible with a tribal foster home.

5. **DO** work with the agency in making your case plan. The case plan is the services that your family participates in order to reunify. If you can think of services that will help your family, such as counseling or treatment, talk to the worker about it. The agency should also be helping with transportation for appointments and visitation with the children.

6. **FOLLOW THE CASE PLAN!** If you don't, the worker will report this to the court. If you haven't made substantial progress on your case plan by the time of the permanency hearing, the worker will ask the court to place the children permanently. Permanency happens when the children have been out of the home for a certain period of time, usually only six months.

7. **GO TO ALL YOUR MEETINGS AND COURT HEARINGS!**

Online Order for Protection Application Now Available

A new online resource is available for domestic violence advocates and Pro Se individuals experiencing domestic abuse. Using HotDocs document automation software and the A2J user interface, users are guided through the process of completing the statewide Petition and Affidavit for an Order for Protection, Petitioner/s Information Sheet and Law Enforcement Information Sheet. Users also receive instructions related to safety and filing their documents with their local court.



LawHelpMN.org

Helping Low-Income Minnesotans Solve Civil Legal Problems



To access the program go to www.LawHelpMN.org. First click on

1. Family Law, then click
2. Domestic Violence/Spousal Abuse, then click on the
3. Self-Help Forms tab. The resource is at the top of the page, titled
4. A2J Do-It-Yourself Forms: Order for Protection Against Domestic Abuse.

This multi-year project was completed thanks to support from Central Min-

nesota Legal Services (CMLS), Legal Aid Service of Northeastern Minnesota (LASNEM) and the Hennepin County Court's Self-Help Center. Future enhancements will include audio support (i.e., questions will be read aloud to users) and support for Ramsey County's unique Law Enforcement Information Sheet. Send questions and comments to Patrick Noonan at pnoonan@mnlegalservices.org or by calling 651-228-9105 ext. #110. This information was obtained from the Minnesota Legal Services Coalition State Support Center.

Tenant Bill of Rights

On May 11th, Governor Pawlenty signed HF 2668, making the Tenant Bill of Rights the law in Minnesota. The measures in this year's Tenant Bill of Rights will make Minnesota law more tenant-friendly and save tenants millions of dollars through revisions to policies on tenant screening fees, late fees, attorney fees and security deposits.

Late Fees: Effective January 1, 2011, late fees will be capped at 8% of rent. This provision will do away with the most egregious late fees and outlaw daily late fees amassing beyond the 8% cap. *Subsidized housing that has conflicting federal rules regarding late fees will follow the federal rules.*

Receipt for Rent: Effective August 1, 2010, tenants will be given a receipt if they pay their rent with cash. Those paying by money order may use the receipts as proof of rent paid, unless the landlord proves otherwise.

Attorney Fees: Effective August 1, 2011 for new leases and August 1, 2012, for renewed leases, if a lease entitles a landlord to have its attorney fees paid when it wins a certain kind of case, tenants will be entitled to the attorney fees in the same kind of case.

Limiting Tenant Screening Fees: Effective August 1, 2010, a fair and consistent process will be used when screening applicants for an apartment. Prospective tenants will also be informed about how their application will be judged. Upon becoming law, landlords will be required to:

- Provide the criteria upon which they will screen applications (that will keep many tenants from paying an application fee for an apartment they have no chance of getting);
- Process applications for an apartment in sequential order (so that if a tenant's application fee is cashed, the application will be examined on its own merits);
- Return application fees if they reject a prospective tenant for reasons other than the criteria they provided; and,

For Tenants: A prospective tenant who provides materially false information on the application, or omits material information requested is liable to the landlord for damages, plus a civil penalty of up to \$500, civil court filing costs, and reasonable attorney fees.

Penalty for Improper Division of Utility Costs: Effective on August, 1 2010, if a landlord does not follow the entire law on division of utility charges, s/he is liable to the tenant for triple the damages or \$500, whichever is greater.

Bad Faith Retention of Security Deposits: Effective on August 1, 2010, the penalty for a landlord not returning the proper amount of a security deposit in bad faith will increase from "not to exceed \$200 to "not to exceed \$500."

Renters Living in Foreclosed Property: Effective August 1, 2010, state law will be brought into conformance with federal law. Tenants living in foreclosed property have the right to the term of their lease or 90 days beyond the redemption period, whichever is longer.

This section was not part of the Tenant Bill of Rights campaign, but was included as a result of negotiations with the Minnesota Multi Housing Association and Housing Redevelopment Authorities.

Abandoned Property: Effective August 1, 2010, a landlord must hold on to property left behind by a tenant for 28 days (reduced from 60 days). If a landlord illegally disposes of a tenant's property, s/he is liable to the tenant for the greater of triple the damages or \$1000. Also, tenants statewide can bring motions for return of property in their evict case, not just in Ramsey and Hennepin Counties.

Minnesota Tenant Bill of Rights is a multi-year campaign. We are asking policymakers to support renters by entitling them to:

1. The right to a warm home: During a cold weather period of October 1st to April 30th, your apartment should be heated to 68 degrees

Fahrenheit or you should be able to control a thermostat capable of heating your apartment to that temperature.

2. The right to a well-maintained home: If your landlord does not respond to the need for an emergency repair promptly, you should be able to do so and deduct the cost from your rent. Additionally, you should have the right to go to court promptly to address repairs and have a choice to break your lease if the landlord does not address the repairs.

3. The right to an affordable, fair, and open application process: You should know how the landlord will judge your application before you apply for an apartment; and if you are rejected, you should be told why.

4. The right to an affordable security deposit and late fees: Your security deposit should be no more than 1 month's rent (1 and 1/4 month's rent if you own a pet). In addition, your landlord should not be able to assess a late fee for rent due unless a grace period of 5 days has passed. There should be a standard and affordable cap on late fees.

5. The right to a receipt for rent paid: If you pay your rent with cash or a money order, your landlord should provide you with a receipt.

6. The right to a fair division of utility charges: If the landlord charges for heat, electricity, or water in addition to your rent, you should pay according to a fair estimate of what you actually used.

7. The right to correct a problem before your landlord files an eviction in court: Your landlord should tell you if you have broken the lease and give you a chance to correct the problem before s/he files an eviction in court.

8. The right to fair treatment in a legal dispute with a landlord: 1) Both you and your landlord should have the same amount of time to correct a problem before the issue goes to court. 2) If your landlord fails to meet the obligations provided for in your lease, you should be allowed to end the lease. 3) You should have legal fees covered if you win a legal dispute with your landlord, if your landlord has the same right. 4) An eviction should only appear on your rental history when the landlord wins in a legal proceeding.

9. The right to move in the case of a severe illness or disability: If your doctor tells you that you must move into a facility because of a medical condition, you should be able to break the lease with one month's notice.

10. The right to fair treatment in the case of landlord going into foreclosure: If your landlord goes into foreclosure, you should be able to break the lease. If you decide to stay in your apartment, your lease should be honored by any future buyer.

This information was obtained from <http://home-linemn.org/blog/act-now/tenants-bill-of-rights/>.

Health Care Choices for Minnesotans on Medicare

The Minnesota Board on Aging has published the 2010 edition of Health Care Choices for Minnesotans on Medicare. The booklet (free of charge) is available online at www.mnaging.org or www.minnesotahelp.info or by calling the Senior LinkAge Line at 1-800-333-2433 for print versions.

The 172-page booklet is full of information about Medicare enrollment, all types of appeals, Medicare supplements, health plans, Medicare Part D prescription drug plans, and more. Choices® is the only comprehensive,

objective statewide publication available that provides information about all Medicare options for Minnesotans. The booklet also contains:

- Information about long-term care planning, fraud alerts and how to find needed resources.
- The first comprehensive article about the Minnesota Long-Term Care Partnership.
- Information for Medicare beneficiaries of all ages residing in any of Minnesota's 87 counties.