



Anishinabe Legal Services Newsletter

Cass Lake, Minnesota • November 2010

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

Forgotten Property

Where to search for lost property

Property held by states. Go to www.missingmoney.com, affiliated with the National Association of State Treasurers. Records from at least 35 states. Try searching all states in which your relative has ever lived. There is not a time limit for claiming those assets, such as money from bank accounts and bank security boxes.

Lost 401(k) plan. Start at www.unclaimedretirementbenefits.com, where plan sponsors, administrators, and custodians register missing participants who have unclaimed retirement funds.

Missing life insurance policy. Go to www.missingmoney.com. And the American Council of Life Insurers' website, at www.acli.com, and click on Missing Policy Tips under Tools.

Current tax year refund. Go to www.irs.gov; click on Where's My Refund?

If you find funds that are yours contact the fiduciary that holds them and they will provide specific instructions on how to claim them. You will need proof of your identity. If the property belonged to a deceased relative or friend, you will also have to prove that you are the executor of the estate or the rightful heir.

Information provided in part by the American Assoc. of Retired Persons (AARP)

Available Online to help you.

DeafMD.org LawHelpMN.org

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The Ladder out of Poverty Task Force: 2010 Legislative Update

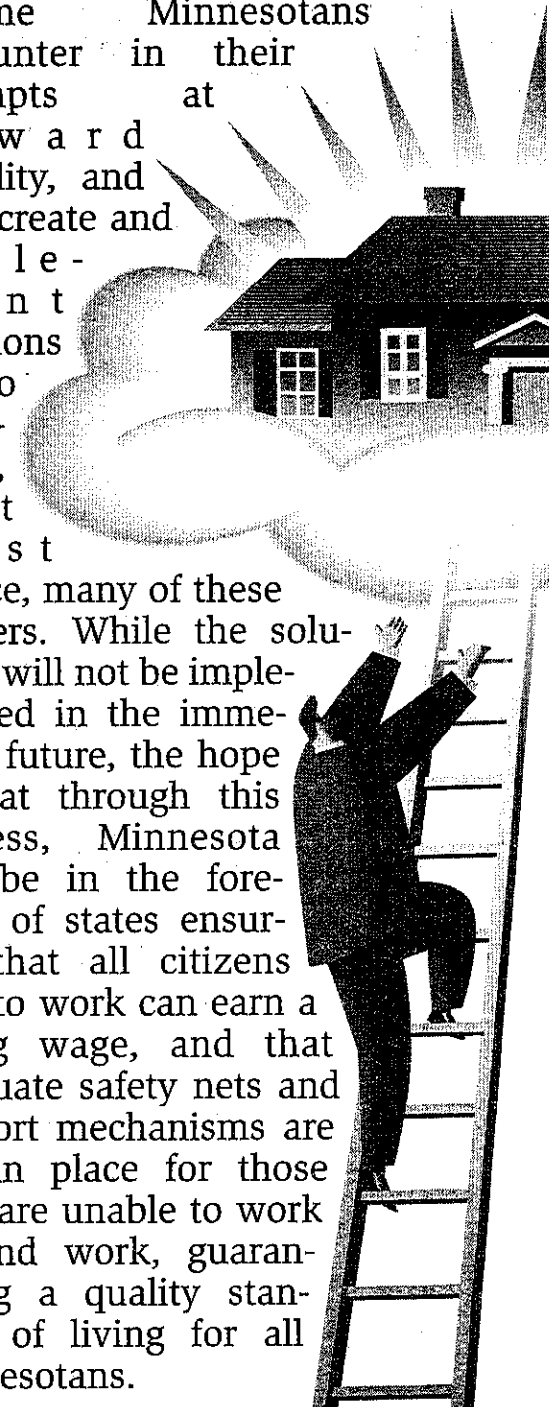
Recently, the State of Minnesota has created "The Ladder out of Poverty Task Force" as part of an ongoing effort to reduce or eliminate poverty in Minnesota by the year 2020. This task force is primarily responsible for gathering information, releasing reports, and drafting proposed legislation on a variety of issues that continue to plague low income Minnesotans and work to impede upward mobility for citizens within the State.

The Task Force is comprised of a bipartisan panel of Minnesota State legislators from the House and Senate, the Commissioner of the Minnesota Department of Commerce (or his assignee) and the Minnesota Attorney General (or her assignee). They will meet with representatives from a number of organizations who will each add their own perspective and ideas for raising the standard of living for low-income Minnesotans all around the State, and protecting them from predatory lending schemes. These representatives include, but are not limited to, organizations such as Community Action Agencies (i.e. Bi-Cap), Credit Unions, Legal Services Organizations (like Anishinabe Legal Services), low-income community members, free-tax preparers through the volunteer income tax assistance program, organizations representing older Minnesotans, philanthropic organizations aimed at preventing predatory lending, and many more.

By June of 2012, the task force is ordered to provide written recommendations and draft proposed legislation to the full legislature aimed at, among other things, increasing opportunities for low-income Minnesotans to acquire assets and build wealth,

reducing and/or eliminating predatory lending schemes, providing incentives or assistance to private sector financial institutions to fight predatory lending, and providing information and education to low-income Minnesotans needing assistance with financial planning or budgeting.

While the purpose of this task force is grand in scope, the goal is for this task force to identify barriers low-income Minnesotans encounter in their attempts at upward mobility, and then create and implement solutions to eliminate, or at least reduce, many of these barriers. While the solutions will not be implemented in the immediate future, the hope is that through this process, Minnesota will be in the forefront of states ensuring that all citizens able to work can earn a living wage, and that adequate safety nets and support mechanisms are put in place for those who are unable to work or find work, guaranteeing a quality standard of living for all Minnesotans.



Thinking About a Will?

Anishinabe Legal Services (ALS) is able to assist people who are 60 and older; or under age 60 if they have a serious medical condition.

The process includes making an application for our services. All information gathered by ALS is confidential. We refer to this as "intake". Since we are a federally funded program we are required to gather personal information regarding Household income and assets, number of people in the household, address, phone number, social security number, birth date and if enrolled. ALS is computerized and the intake information is entered into a case tracking system.

The next step involves paperwork, including our office Retainer Agreement, a Trust Property Inventory

Authorization, and a Will Information form. Depending on individual circumstances there may be a need for additional paperwork, for example, copies of deeds and/or trust land lease legal descriptions.

ALS does not store original Wills. A copy of the signed original is kept on file at the Cass Lake office. Clients are advised on options for safe handling of their original Will. Note: see related article.

NOTE: A Will is a document that is drafted and signed before death. Whereas, probate is a legal process that takes place after death. ALS is unable to provide assistance with probate, except for limited advice and assistance with the legal process when the estate consists only of personal property (no



land or buildings) with a value that not greater than \$50,000.

NOTE: When AIPRA took affect June 2006, the B.I.A. was no longer allowed to store original Wills in their vault. All original Wills on file prior to June 2006 can remain in the vault or be returned if requested. A copy can be kept on file at the B.I.A. The phone number for more information at the Bemidji B.I.A. is 218-751-2011.

To make an application by phone schedule an appointment please call 1-800-422-1335 or 1-218-335-2223.

Will Handling Instructions

Here are some important things you need to know.

1. Your Will does not take effect until death.

2. You have the right to make changes to your Will. However, changes should not be made by making marks or writing on the Will. A change needs to be made in accordance with certain legal requirements.

3. You may revoke the Will at any time. This is best done by making a new will.

4. If you have major changes in your life, like births, deaths, marriages or divorces, it is recommended that you review your will to see if changes in your Will are necessary.

5. We suggest you provide a copy of your will to your Personal Representative. If your Will was drafted by Anishinabe Legal Services (ALS) a copy will also be kept at the ALS Office in Cass Lake (1-800-422-1335). If you want to keep the terms of the Will private, you can keep the Will sealed in an envelope indicating that it is not to be opened until your death. If

you do not choose to leave a copy with your Personal Representative, make sure your Personal Representative knows how to locate the Will should that become necessary.

6. Please put your Will in a safe place. If you choose to store your Will in your safe at home, please make sure someone else has the combination to the safe so they can open the safe if something happens to you.

7. If you decide to store your Will in a safe deposit box at your bank, please be sure to give someone else access to that safe deposit box. You can do this only by signing a form at the bank. If you do not give anyone else access to the safe deposit box, your family will have a hard time getting your Will out of the deposit box if something happens to you.

8. Please ask someone to be responsible for getting your Will to the probate department after you have passed. At the time of this letter, the

Why Have a Will?

What is a Will?

• A legal document allowing you to decide who receives your property when you pass on

• Confidential. Other people will not know the contents of your Will unless you tell them

• Not final until you pass on. Until then, you can change your Will or give away your property

• There is no legal requirement that each adult have a Will. To have or not have a Will is a matter of choice

• Having a Will does not prevent family from disagreement

• Is not a way to avoid probate

Why have a Will?

• Must be 18 or older

• You want to leave cultural items to a specific person

• You have tribal Trust land or non-trust land or personal property

• You have children or stepchildren under 18

• You want to leave property to someone who is NOT in your immediate, blood family

• Your spouse or partner is NOT a tribal member

• You recently married or divorced

• Someone you named in your Will recently passed on or became mentally unable to handle their own affairs

• You recently had or adopted a child

• You want to leave your property to some of your legal heirs, as opposed to all of your legal heirs

• You recently purchased sold or inherited property

• You want to state your funeral and burial preferences

What can be included in a Will?

• Who receives your property, including friends, or extended relatives

• The person to oversee distribution of your estate (your Personal Representative or Executor)

• A Guardian to care for your minor children

Will Handling

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Why Have A W

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AIPRA American Indian Probate Reform Act

A federal law, effective June 30, 2006, establishes the legal process regarding distribution of **Trust property**. One of the main purposes of the Act is to preserve trust status and reduce the number of small, fractioned interests in Indian lands. All **nonTrust property** is probated under state law. AIPRA encourages the drafting of wills for Indian trust property owners to avoid operation of the Act's intestacy (not having a will) provisions.

What is Trust property?

Real or personal property where title is held by the U.S. government. Real property is Individual Trust land and is referred to as allotment land. Personal property includes an IIM (Individual Indian Money) account.

A Will can include a home located on MCT or Band leased land as well as name the person the land lease or site assignment would pass to.

Distribution of Trust property

The Act sets out a process for distribution of the Trust property with a Will or without a Will.

Most allotments have many owners, referred to as fractionated ownership. Other terms to describe the ownership are undivided or in common. To reduce the further fractionation of Trust allotment land it is more important than ever to consider having a Will drafted.

Generally, Allotment land can pass to a Tribal member as well as a nonTribal member. Only thru a Will may Trust land pass to a non-Indian. This will result in the allotment land passing out of Trust and being taxed. It is very difficult to return land interests to Trust status.

If your spouse or partner is non-Indian you may consider giving a Life Estate, meaning your spouse has the right to use the property or receive income generated for his or her lifetime. Full ownership would revert to the Indian heir(s) upon the spouse's death.

Since many allotment land interests are small you may consider leaving your land interests to one heir instead of to all heirs. If you have several allotment land interests, another option to consider is dividing those interests among your heirs as opposed to leaving all interests to all heirs.

Making a Will

Federal and state laws require the person making the Will be mentally alert. In other words, knowing the extent of the estate and the choices being made. Age or physical condition is not a sign of incompetence. A person making and signing a Will must be free of undue influence, persuasion or force.

Information in part provided by the B.I.A. Probate office

Trial Work Period (TWP) (SSDI eligible)

How does the TWP help you?

The TWP allows you to test your ability to work for at least **9 months**. During your TWP, you will receive *full* SSDI benefits *regardless of how high your earnings might be as long as your work activity has been reported and you have a disabling impairment*.

When does the TWP start?

If you are working, your TWP starts the first month you are entitled to SSDI benefits or the month in which you file for benefits, whichever is later.

How long does the TWP last?

The TWP continues until you accumulate 9 months (not necessarily consecutive) in which you perform what the Social Security Administration call "ser-

vices" within a rolling 60-month period. Social Security uses this "services" rule only to count TWP months.

In 2010, the Social Security Administration consider your work to be "services" if your gross earnings are more than \$720 a month, or if you work more than 80 hours in self-employment in a month.

What happens when you complete your TWP?

After you complete your TWP, you begin your Extended Period of Eligibility (EPE), unless the Social Security Administration conducts a continuing disability review and find your impairment has medically improved. After the TWP ends, the Social Security Administration takes into account your work and

earnings to decide if you can work at the SGA (Substantial Gainful activity level) (see the section on SGA on the www.ssa.gov the Social Security Administration's website for more information).

When your TWP is complete, you become eligible for other employment supports and the Social Security Administration considers whether any of them apply to your situation. What else do you need to know about the TWP?

You are not eligible for disability benefits or a TWP if you work at the SGA level within 12 months of the start of your impairment(s) and before the Social Security Administration can

Trial Work Period

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Why Have A Will

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- Specific language to provide for your non-tribal spouse, partner or non-tribal family members

Property distributed outside of your Will?

- All jointly owned land, bank accounts, payable on death bank accounts, etc.
- Life insurance with a designated beneficiary

To reduce further fractionation of family allotment Trust land

- Leave land share(s) to 1-child, for example
- Leave land share(s) in specific parcel(s) to 1-child, so forth
- Leave land share(s) to the Tribe

Thinking about and actually following through with a Will is not easy and may even seem to be inappropriate. The purpose of a Will is not negative it provides a way to state in writing your wishes for the distribution of your property.

With current funding Anishinabe Legal Services assists people age 60 and older and under age 60 when the person has a serious medical condition.

Will Handling

Continued from page 2

BIA probate departments cannot store your Will, so your family or friends will need to present your Will to probate after you have passed. A Personal Representative could be a good person for you to ask to take your Will to the agency probate office should you pass away.

9. If you included a Separate Writings Clause (a list of your personal property) in your Will, then you now have an opportunity to leave a list directing who shall receive certain items from your home. This separate writing can be made by you and may be updated or changed by you at any time. It is important that you and sign and date this list, then keep it in a safe place. Please make sure your Personal Representative knows where the list is.

10. Your original Will may also be stored at the Leech Lake Land Office or at the White Earth Justice Department, in their safe or for a small fee at the County Recorder's office.

MN Courts Self Help Center Announces Availability of Two New Online Automated Divorce Forms

The Court's Self Help Center recently announced two newly created divorce forms now available on its website using I-CAN!® Document assembly: Joint Petition with Children

and Joint Petition without children.

I-CAN!® Walks the user through the forms with a user-friendly question and answer format. It is designed

for prose litigants. Helpful details about the new tool include the following:

Find I-CAN!® Online at www.mncourts.gov/ican. I-CAN!® is accessible from any computer with internet access, including Court's Pro Se Workstations. Its free and everything needed to use I-CAN! is explained as the user goes along.

I-CAN!® Helps the user select the correct divorce forms packet.

Need Help? links connects users to the MN Courts Self-Help Center contact information page. People can call or email if they have questions or problems, and get skilled help from the MN Courts Self-Help Center staff.

I-CAN!® Eliminates many of the common errors people make when filling out their forms by hand, saving time for court staff and customers.

I-CAN!® Leads the user through a set of questions, and then enters the data in all

the necessary divorce forms. Data is securely stored, and Password is assigned. The person can start the process, save, and return to finish the program later by entering their assigned password.

When all I-CAN!® Questions have been answered, the user can print the forms. At this stage, there is a notice that says New! Court Forms Review Service. If you want Self-Help Center staff members to review your completed court forms online before you print them, contact the Self-Help Center by phone or email.

The Court website provides links to I-CAN!® From both the Court Forms pages and the Self-Help Center pages. The handy URL for the public is www.mncourts.gov/ican. If you have feedback or questions, please contact the MN Courts Self-Help Center staff. Information from the MN Legal Services Coalition newsletter Just News.

Why was my case rejected or closed?

Each year the Board of Directors approves a Case Priority List for ALS. See the Case Priority List for 2010 below.

The Case Priority List is necessary because ALS has limited resources. In past years, ALS has had as many as seven (7) fulltime attorneys. Today ALS has three (3) fulltime attorneys to cover Leech Lake, White Earth and Red Lake reservations. (Note: ALS is hiring a 4th full-time attorney who will be placed at White Earth as of November 1, 2010.)

If your legal problem is not on the Case Priority List, ALS will not be able to help you.

If ALS is representing you with a legal problem and you move without giving a forwarding address, ALS will not be able to contact you. Or, if you fail to respond to the telephone calls and letters of your ALS attorney/paralegal, your case may be closed.

There are approximately 20,000 clients eligible for ALS assistance at the three (3) reservations. As you can imagine, the ALS attorneys/paralegals are very busy. Thank you for your cooperation.

2010 Case Priorities:

- Children In Need of Protection or Services (CHIPS) cases at

Leech Lake and White Earth.

- Traffic cases (when appointed by Leech Lake Tribal Court).

- Divorce cases, but only where there has been *physical* domestic violence within the past six (6) months.

- Order For Protection (OFP) hearings, but only when the opposing party has an attorney. (Tell client to request a continuance at the first hearing where opposing party appears with attorney).

- Evictions from tribal or public housing (no private owner evictions).

- Garnishment of bank funds; Wills - where there is a terminal illness or life-threatening medical procedure pending or age 60 or older.

- Civil Forfeiture claims - case must arise from client's reservation of enrollment and client must have received forfeiture notice.

- Social Security claims. Client must alcohol and drug free for at least six (6) months and actively treating with a medical provider. Client must apply for legal assistance at least thirty (30) days prior to the hearing.

- Juvenile and school law claims/issues.

Trial Work Period

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approve your claim for disability benefits. This is because your impairment does not meet their definition of disability.

The Social Security Administration can consider medical evidence that might demonstrate your medical recovery at any time. Therefore, it is possible for your benefits to stop due to your medical recovery before the end of your TWP.

The Social Security Administration will not conduct a continuing disability review if you are participating in the Ticket to Work program and you are using your ticket.

Unsuccessful Work Attempts (UWA) do not apply during the

TWP

The dollar amount of TWP "services" can be adjusted each year based on the national average wage.

Does the TWP apply to SSI?

No. A TWP does not apply to the SSI program.

This information was obtained from www.ssa.gov/redbook/2010/ssdi-only-employment-supports.htm#1 or by simply going to www.ssa.gov and typing "TWP" in the search box in the right upper hand corner. This website also provides a wealth of information about social security related topics.

What Should I Shred, and When?

Shred or destroy everything with your Social Security number, account numbers, passwords or PINs. But do not destroy your original cards or documents.

Shred deposit slips and ATM and credit card receipts immediately after you get your monthly statements.

Shred used airline tickets, unneeded medical bills, preapproved credit card applications and expired IDs such as driver's licenses, medical insurance cards and passports.

Shred credit card monthly statements after 45 days unless you need them for proof of purchase or for tax purposes.

Shred paycheck stubs after the income is noted on a W-2 or other tax form. Shred monthly retirement and investment statements after you get the annual statement (compare to the earlier monthly or quarterly statement and followup on anything questionable) for the entire year.

Keep the annual statements indefinitely.

Shred bank statements, passwords, and medical bills after one year.

Keep utility bills for one year if you want to compare this month's costs to the previous year. Otherwise, shred them sooner.

Papers and checks related to a home purchase or sale, improvements, and contributions made to an IRA, should be kept indefinitely.

Save indefinitely any paperwork that is related to taxes such as checks regarding charitable donations and tax payments, also any documentation for claimed deductions for seven (7) years.

What Not to Shred

Do not shred original Social Security cards, birth certificates, marriage and divorce documents, mortgage paperwork, deeds or wills.

Information from Ask Sid e-mail to asksid@aarp.org