

WARD & OEHLER, LTD.

Attorneys at Law

Robert Ward
William Oehler
Jason Wagner

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(507) 288-5567

FARM SHOW 2017 A CHANCE TO CONNECT

We had a booth at the 2017 AgriNews Farm Show at the Graham Arena again this year. Last year was our first time attending the show as an exhibitor, and it was such a great opportunity to reconnect with old clients and meet new friends, we decided to do it again. It is a great opportunity to see the many different facets of agriculture in Southeastern Minnesota, and we truly enjoy visiting with people, learning more about our clients' businesses, and fielding some general legal questions.

However, we did experience a little "hiccup" this year! Attorney Jason Wagner's second child, a son (George Martin) was born only two days before the show. Between running between daycare and the hospital, Jason helped set up our booth. Meanwhile, Attorney Bill Oehler was recovering from a grandchild-induced stomach bug. Our Office Manager, Mary Lynn Schiltz, of course stood pat and kept things running smoothly. In the end, everything turned out just fine and we are reminded of how grateful we are to have our loving families, exceptional staff, and unparalleled clients.

Thank you!



Attorney Bill Oehler at the 2017 AgriNews Farm Show.



*George Martin Wagner was born March 11, 2017.
His big sister is very happy he decided to finally come out!*

WARD & OEHLER, LTD.

Attorneys at Law

Providing high quality legal services in the areas of estate planning, probate, real estate, farm law, and business law to families, individuals, businesses, and farmers throughout Southeastern Minnesota for over 40 years.

William Oehler | Jason Wagner
(507) 288-5567 www.wardoehler.com

PROBATE TRUTHS (and “Truthiness”)

Comedian Stephen Colbert popularized the term “truthiness”, defined to mean “the quality of seeming or being felt to be true, even if not necessarily true”. For “probate”, truthiness abounds! Here are three myths, and three truths about the probate and estate settlement process:

Many speakers at estate planning “seminars” will state the cost of probating an estate at 4-6% of the value of the estate: for a \$1,000,000 estate, cost of \$40,000-\$60,000! But, “truthiness” about cost abounds.

Myth #1: Probate takes a long time

The probate process takes place where a person has died owning real estate or significant financial or other assets in the deceased person’s own name (with no joint owner or named beneficiaries). Everyone can tell a horror story about an estate which lasted for many years, with accounts frozen and the estate unable to pay its bills.



Truth: In Minnesota, many estates can be probated using “informal” probate, which calls for filling out a 2 ½ page probate application, and filing the application with other paperwork with the Registrar of Probate in the County where the person died. After reviewing the filing, the Registrar of Probate issues the probate notice which is published for two weeks in the legal ads in a local newspaper. Following the publication, the appointment of the personal representative (“executor”) is complete, and the personal representative is able to collect assets, pay bills, and handle the business of the estate.

Within nine months after the date of death, the personal representative is to file an inventory listing the assets and values of the estate; when all the assets are collected and the bills paid, the personal representative can close the estate.

We tell our clients that they will usually be able to handle the business of the estate within 30 days from the date the application is filed with the Registrar of Probate. Most estates handled by our firm are completed within nine to twelve months from beginning to end.

Myth #2: Wills are often contested

Worried about a will contest? Imagining the family gathered around the lawyer’s desk, with siblings shouting at each other? Seen a movie or TV show where Grandpa cut someone out of his will, and the family went to trial?

Truth: Will contests are extremely rare, and rarely successful. To properly execute a will in Minnesota, the person signing the will (the “testator”) signs the will in front of two independent persons who witness that the testator signed the will without undue influence, knowing the contents of the will, and with sound mind. All signatures are notarized, often by the lawyer who wrote the will and handled the signing.

To win a will contest, a contestant must prove by clear and convincing evidence (a very high standard) that the testator was not of sound mind, or that someone exerted a tremendous influence on the testator.

Our firm has helped thousands of clients with their wills, and handled many of their estates; in over 40 years, one of the wills we prepared was contested (and the contestant lost: the will was properly handled).

Myth #3: Probate is expensive

Many speakers at estate planning “seminars” will state the cost of probating an estate at 4-6% of the value of the estate: for a \$1,000,000 estate, cost of \$40,000-\$60,000! But, “truthiness” about cost abounds.

Truth: Remember “informal” probate? With this “paper” process, no court appearances are required and lawyer time is less. The filing fees and publication costs for an informal probate usually are less than \$500, and in the absence of family fights, complex business or farm issues, or complicated estate tax issues, legal fees are a fraction of the “4-6%” cited at the seminars. **In fact, Minnesota prohibits lawyers from charging fees to an estate based solely on the size of the estate.**

Conclusion? There are great reasons for using beneficiary designations, trusts, and business entities to help with estate planning (more to come in our future newsletters). But, the probate process does not have to be lengthy, controversial, or costly. *We are honored to have helped thousands of people and families with their estate needs over more than 40 years: feel free to contact our firm if we can help you.*

Community Spotlight

Legal Assistance of Olmsted County

Legal Assistance of Olmsted County (“LAOC”) is a 501(c)(3) non-profit organization that provides free civil legal services to low-income people in Olmsted County. LAOC provides direct representation by its own staff attorneys in the areas of family law and landlord-tenant law. The program also leverages volunteer help from lawyers throughout Olmsted County in many other practice areas. In addition to legal representation, LAOC hosts family law clinics, financial and consumer law clinics, landlord-tenant clinics, expungement clinics, and operates the Olmsted County landlord-tenant hotline. These vital community services provide stability for families facing separation or divorce, ensure accountability that leads to better housing for low-income tenants, relief for victims of domestic violence, and safeguard the rights of consumer debtors.

Recently, the Minnesota State Bar Association collaborated with the Minnesota Legal Services Coalition to create an economic impact report for civil legal aid in Minnesota. The report shows that **for every \$1 spent on civil legal aid programs like LAOC, the return on investment to the community is \$3.94!** The report found that legal aid benefits the economy by helping local communities avoid the high costs associated with domestic violence and evictions. By providing quality legal services in these areas, medical costs, lost work, and homelessness are reduced.

Ward & Oehler was a proud sponsor at the annual fundraiser for LAOC held in March. Attorneys Bill Oehler and Jason Wagner also regularly serve as volunteer attorneys for legal aid clients and staff the financial and consumer law clinics. They will also be volunteering at the upcoming Wills Clinic for Low-Income Seniors held June 6 at the Rochester Public Library.



To give to Legal Assistance of Olmsted County, visit

www.laocmn.com/give

Deferring Taxes with a 1031 Exchange

A 1031 exchange, also known as a like-kind exchange is a swap of a property held for "productive use or investment" for property of a like-kind. Property is of like-kind if it is the same type of investment. For example, farm land is often exchanged for other farm land. It could also be certain kinds of livestock for other kinds of livestock or an apartment complex for a commercial building. Usually, an exchange of property will result in a taxable event, but by falling under Section 1031 of the Internal Revenue Code, the event is not taxable and any gain is deferred.

A common scenario for a 1031 exchange is when a farmer identifies a farm he would like to purchase. In order to purchase the farm, the farmer will be selling a different farm. Any gain the farmer receives on the sale of the farm he already owns would normally be taxed at the farmer's capital gains rate. Instead, the farmer uses a 1031 exchange so that the proceeds of the sale are deposited with a Qualified Intermediary, who then transfers the funds to the seller of the new farm. If done properly, the farmer defers any capital gains and does not pay tax on the sale.

While a 1031 exchange can be a great tax planning tool, there are a few critical aspects to a 1031 exchange:

- First, you must contact a Qualified Intermediary before the sale of property.
- You cannot touch any of the cash from the sale of property.
- You have 45 days from the sale of property to identify a replacement property.
- You have 180 days from the sale of property to purchase the replacement property.

The attorneys at [Ward & Oehler](#) regularly advise buyers and sellers in real estate transactions and can serve as a Qualified Intermediary for 1031 exchanges.

Financial Scams to Watch Out For

Minnesota's elderly population will double in the coming decades. A growing concern with the rising amount of elderly Minnesotans is protecting them from financial exploitation. Financial exploitation is the misuse or taking of assets from a vulnerable adult through deceptive methods, coercion, or without legal authority. The best prevention for elderly adults is to be proactive and discuss financial planning with a lawyer, a financial planner, or several trusted family members.

The most common scams to watch out for are:

- **Medicare or healthcare fraud:** requests from suspicious companies to pay unknown medical bills.
- **Charity fraud:** solicited donations to help a charity, many times not local but in response to a national event or disaster. You can always research charities at www.guidestar.org.
- **Electronic and lottery scams:** email messages requesting personal information or funds to claim winnings in a sweepstake or collect assets in a foreign country.
- **IRS scams:** calls from a person claiming to be from the IRS and requesting a wire transfer of large sums of money or sending gift cards with threats that the police are on the way. The IRS will never request payment in a specific way like this and will not threaten to immediately use local police to arrest individuals for nonpayment.
- **Bail bond scams:** being contacted by a person claiming that a loved one has been arrested and needs bond money immediately. Call your loved one and their family to check on them before sending any money.

Most schemes from third parties can be prevented by being watchful and skeptical. Unfortunately, the majority of financial exploitation of the elderly is done by someone the person knows. These exploiters are family members, friends, neighbors, caretakers, and others. Some common methods that these persons use to exploit elderly persons are:

- **Convincing** the elderly person that they have experience, or are an expert in an area, to create confusion over the elderly person's personal finances.
- Using **threats or coercion** to cause the elderly person fear or shame and to isolate them from persons who could help, or simply creating a disingenuous relationship with an elderly person to make them feel appreciated.
- Use alcohol or substance abuse as an excuse to **solicit funds** for rehabilitation services, with no intention of seeking these services.
- Care providers may **overcharge** for personal errands, take elderly persons assets to pay their own bills, create credit lines in elderly's names, or charge for services not provided.
- **Exploit** their legal position as joint account holder, power of attorney, or conservator to take or misuse the elderly person's assets.

Minnesota law also provides protection for elderly persons exploited by a person they know. Under Minn. Stat. § 626.557 a person who has a fiduciary obligation to an elderly person is liable for their exploitation of the elderly person. Likewise, under Minn. Stat. § 609.2335 breaches of fiduciary duty to an elderly person can submit the person to criminal liability.

If you think you are a victim you should contact the local police department or your County Attorney's Office. Additionally, you can call the Minnesota Board on Aging's Senior LinkAge Line at 1-800-333-2433.



Using a Transfer on Death Deed

A **transfer on death deed** is type of deed that only becomes effective after a person has died. It essentially allows Minnesota property owners to put a beneficiary designation on real estate much like they would a bank account or other asset. The transfer on death deed, or TODD, does not alter the property owner's ability to mortgage, sell, or lease the property and it can be changed as long as the owner is competent.

For many Minnesotans, real estate is their only *probate asset*, or asset that would be subject to distribution under a will. When all other assets pass by beneficiary designation, it can be convenient and relatively inexpensive way to have real estate pass via a TODD to avoid probate.

However, there are situations when a TODD may not be appropriate. In situations where the real estate will be sold it can be easier to appoint a personal representative or trustee to sell the asset rather than having it pass to individuals who will then need to all get together (with their spouses) to sell the property. This can be particularly true when the real estate is a home. The home will need to be cleaned and made ready to sell. When the beneficiaries do not get along well or are spread out, it can be easier to centralize this process and the expenses through the probate process or a trust.

A TODD can be a very useful tool in estate planning, though it is not appropriate for every situation. It is important to remember to prepare a TODD for each county in which the owner has real estate.

WHERE WE'VE BEEN

Jason Wagner hosted classes and was a speaker at various events on the topics of Probate, Estate Planning, and Farm Succession Planning in Stewartville, Pine Island, Zumbrota, and Rochester within the past few months.

Bill Oehler shared his perspective on Farm Succession Plans that are effective and practical for new and retiring farmers at a recent farm workshop.

Ward & Oehler, Ltd. was a sponsor for the 12th Annual Fundraiser for Legal Assistance of Olmsted County held on March 10, 2017, and is a sponsor for Elder Network's Spring Fever Gala held on April 22, 2017.

Contact Us

WARD & OEHLER, LTD.
1765 Greenview Drive SW
Rochester, MN 55902
(507) 288-5567

Attorney William Oehler Recognized by Peers for High Achievement

Attorney Oehler has received Peer Review for High Achievement through the Martindale-Hubbell Peer Review Rating. The rating indicates Bill's high ethics and legal ability. Bill has faithfully served clients throughout Southeastern Minnesota in a number of practice areas for over 40 years.



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www.wardoehler.com



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1765 Greenview Drive SW
Rochester, MN 55902

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