

WARD & OEHLER, LTD.

Attorneys at Law

*Robert Ward
William Oehler
Jason Wagner
Alyssa Jerde*

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(507) 288-5567

LAW FIRM NEWS CORNER

Jason Wagner was recently appointed a title insurance agent with **Attorneys Title Guaranty Fund, Inc.** Through ATGF, Jason is able to issue title insurance policies for lenders and purchasers of real estate transactions.

Ward & Oehler has joined **WealthCounsel**, a membership-based estate planning organization with over 4,000 attorneys across the United States. Through membership with WealthCounsel, our attorneys are able to provide the most comprehensive and cutting-edge estate plans possible.

ESTATE AND GIFT TAX UPDATE FOR 2018

President Trump signed the new tax bill into law on Friday, December 22, 2017, making for some big changes in federal estate tax planning. Under the new law, the federal estate tax exemption will be substantially increased for tax years starting in 2018. Instead of exempting \$5.6 million per individual for 2017 (\$11.2 million per couple), **the federal estate and gift tax exemption is now \$11.2 million per individual** (up from \$5.49 million in 2017). The federal estate tax still also includes provisions for “portability,” which allows couples to double their exclusion amount of the first spouse to die. This allows married couples to protect up to \$22.4 million without worrying about federal estate tax liability. These exemption amounts are scheduled to increase with inflation each year until the year 2025 when the amounts are scheduled to revert back to 2017 levels.

While Minnesota has no gift tax (though gifts made within three years of death can be included in the gross estate), we saw changes to the Minnesota estate tax exemptions in 2017. This new legislation increased the exemption to **\$2.1 million per individual in 2017 and \$2.4 million per individual in 2018**. The exemption amount is set to increase by \$300,000 per year until 2020, when the exemption will reach \$3 million. The exemption limit is the amount an individual can leave to heirs without paying

estate or gift tax. Tax rates range from 13 percent to 16 percent in 2018, with the top rate being applied to the amount of the taxable estate over \$10.1 million.

The Minnesota qualified farm land deduction is \$2.6 million in 2018. This deduction is revised each year so that it equals the difference between \$5 million and the Minnesota estate tax exemption in the year of death. Though the amount of the deduction gradually decreases as we approach the year 2020 when the deduction will be set at \$2 million, an overall higher exemption amount means Minnesota farmers have more flexibility in their estate plans. To qualify for this deduction, the decedent or the decedent’s spouse must have owned the qualifying property for three years before the date of death, and the heirs must own the land – and the land must continue to be classified as agricultural property for property tax purposes – for a period of three years after death. A failure to follow these rules will result in a recapture tax equal to 16 percent of the value of the property.

The federal annual exclusion for gifts has also increased from \$14,000 in 2017 to \$15,000 in 2018. For calendar year 2018, gifts of up to \$15,000 to any person are not included in the total amount of taxable gifts for that year. This means that no gift tax return will be required for the gift and the gift will not be pulled back into the estate. Married couples can double the annual exclusion amount, meaning that they can gift up to \$30,000 to any person without worrying about gift taxes.

Should a Trust Own Farm Land? Not according to MN's Property Tax Laws.

After establishing a trust, the next step is to properly fund your trust. Often, you may see farm land that is owned by trusts. **In many cases, farm land should not be owned by trusts given the current property tax laws.**

Every farm has a property tax classification. Most farmers' farm land will be classified as "Agricultural Homestead". The Ag Homestead classification allows farmers to receive a tax break on the property taxes they pay to the county. In general, any farm land the farmer owns and farms will receive Ag Homestead. Farm land that is at least 40 acres and within 4 cities or townships of the home farm can also be "linked" to the home farm and also receive the Ag Homestead classification if it is owned by the exact same ownership entity.

Here's the problem when trusts own farm land: ***farm land owned by two separate trusts is not owned by the exact same ownership entity!*** It is not uncommon for a husband and wife to each have their own trusts and for each trust to then own 50% of the farm land. This results in the farm land being owned by two ownership entities, whereas a husband and wife owning property individually are treated as one ownership entity. This means that only one trust is allowed to receive Ag Homestead and that the land in the other trust will *not* receive Ag Homestead. In the example above, 50% of the land would lose its Ag Homestead classification.

The only saving grace for farmers in this situation is that the county assessors have not evenly applied this rule, despite clear guidance from Minnesota Revenue for them to do so. ***Our attorneys have been watching this issue and working around it for several years. We have also been working with other estate planning attorneys throughout Minnesota to change this law so that married couples can retain the Ag Homestead classification even if they split the ownership into their separate trusts.*** In fact, the Minnesota State Bar Association advocated for this in the most recent legislative session. Unfortunately, this proposed change in the law did not make it into the final budget bill so, as it stands, it is our view that a farm couple should not split the ownership of their farm land into two separate trusts.

Our approach is to draft each estate and farm succession plan based on the facts and circumstances of each client. We stay up-to-date and informed with laws that may impact our clients and their estate plans and adapt our approach accordingly for the long-term success of every estate plan.



Staff Corner: Welcome Becky!

Born and raised in St. Charles, Becky Henry joined our law firm in 2017, bringing to us her Winona County farm background and office experience (Merchants Bank, Excel Manufacturing, Mayo Clinic, a St. Charles law firm) and doubling our administrative staff. Becky knows everyone in rural Winona County and can "talk farming" with the best of our farm clients and friends. Becky lives on a Jennie O turkey farm between Dover and Eyota with her partner, Dale. They enjoy snowmobiling, riding the side x side, boating, and camping in their popup. Becky has three adult sons and one grandson (who just celebrated his sixth birthday!).

With over 15 years of experience working in a small law office, Becky helps with phone/reception duties, appointment coordination, document preparation, billing, and overall office administration—we think you will find her to be a friendly voice and face and a great addition to the Ward & Oehler team!

Again, welcome, Becky!

Community Spotlight: Minnesota Dairy Initiative

Minnesota Dairy Initiative is a nonprofit organization whose mission is to “help existing and potential dairy producers succeed through team-based on-farm education, resources and networking.” MDI runs a program led by other dairy producers and professionals to coordinate the delivery of on-farm services to help improve Minnesota’s dairy industry.



Each participant in the program works with a team of 3-6 members that may include veterinarians, farm business management educators, lenders, crop consultants, nutritionists, another producer, and more. The team can assist dairy producers with estate planning/farm succession planning, current production, reproduction, feed management and nutrition, grant opportunities, family communication, facility improvement/expansion and more. The program is available to all dairy producers, regardless of size or production, and is flexible to the needs of each participant.

MDI partners with the Minnesota Department of Agriculture, the University of Minnesota Extension, MnSCU, Minnesota Milk Producers Association, and the Sustainable Farming Association, and administers grant for its programs in six regions in Minnesota.

To learn more about the Minnesota Dairy Initiative and its great work, visit them online at www.mn-dairy-initiative.org.

Have you Taken These Steps to Protect Your Rental Property?

If you own rental property, you want to be sure you have taken the right steps to protect your investment. It is no surprise that one of the risks of being a landlord of commercial or residential property is the threat of lawsuits. An injured guest or tenant or a lease dispute could all end up in expensive litigation. However, a well thought out rental property plan and estate plan can hedge against this risk. Here are a few quick tips that can help save you in the event of a lawsuit and ensure your rental property is coordinated with your estate plan.

Protecting Your Assets: First and foremost: adequate insurance for these risks is always the best and first line of defense. Sometimes, however, the insurance policy’s limit is not sufficient to cover damage awarded by a court. When this happens, the next place the prevailing party looks to for satisfaction of judgment is the property owner’s personal assets. To protect your personal assets, you need to do more.

Using a Business Entity as Protection: Owning property through a business entity, like a limited liability company (LLC), can protect your personal assets against seizure. However, merely filing paperwork to create an LLC isn’t enough. The LLC must be treated as a true business entity and all reports, filings, bank accounts, and other formalities must be met at all times in order to benefit from the liability protection of the business entity. You also need to be sure your rental properties are properly transferred into the LLC. Additionally, when meshing your rental property ownership with your estate plan, you must consider who can manage your assets if you’re unable to do so.

Transferring Rental LLC to Your Trust: Once the rental property is transferred into the LLC, you can simply name your revocable living trust as the owner of your LLC. This will ensure that your trustee can continue to manage the rental property in the event of your incapacity or death without the time and expense of going through a conservatorship or probate process. You can also spell out your wishes and goals for the rental property after your death in your trust so your family is best equipped to manage it.

You’ve worked hard over the years to build and acquire your rental property, along with your other assets. Make sure that your estate plan takes every one of your assets into account so that you and your family receive the most benefits and protection.

Our Year in Review

2017 was a busy year! In addition to being joined by Attorney Alyssa Jerde and legal assistant Becky Henry, here are some things we worked on:

- Drafted and implemented over 240 estate plans.
- Administered many estates and trusts, with total value administered being over \$50 million.
- Handled farm succession plans in Dodge, Fillmore, Goodhue, Mower, Olmsted, Wabasha, and Winona Counties.
- Assisted with over \$60 million in real estate transactions through title examinations, title insurance, and closings.
- Provided over 150 hours of pro bono legal services and community involvement.

Thank you for placing your trust in us in 2017!

***Save the Date - February 7, 2018
7:00 – 8:30 p.m.***

Estate Planning and Estate Tax Update at Rochester Area Foundation

Join us for a free information seminar on February 7, 2018 at 7:00 p.m. Our attorneys will walk you through the core concepts of sound estate planning and give you an update on how the new tax law impacts your estate plan.

Here is your chance to:

- Learn about Wills vs. Trusts
- Learn about Healthcare Directives
- Get up to speed on the new tax law
- Ask your questions in an open forum

Please RSVP by calling the office.

Ward & Oehler, Ltd.
(507) 288-5567
www.wardoehler.com

WARD & OEHLER, LTD.

1765 Greenview Drive SW
Rochester, MN 55902

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