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# WARD & OEHLER, LTD.

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## Legal & Title Services

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*Serving clients throughout Southeastern Minnesota in our Rochester and St. Charles offices.*

**Rochester:** 1765 Greenview Drive SW  
**St. Charles:** 819 Whitewater Ave

Summer 2019

(507) 288-5567

### How do Assets Pass Upon Death?

By default, everyone has an estate plan. There is a common misconception that only the wealthy need an estate plan, but the bottom line is that one way or another, your assets will pass to another person or group of people at your death.

There are a few primary ways assets pass upon death: (1) joint ownership, (2) beneficiary designations, (3) testate/intestate succession (probate), or (4) a trust.

Assets owned jointly with another person with right of survivorship will automatically pass to the surviving owner upon your death (i.e. a home owned jointly by a married couple will pass to the surviving spouse on the death of the first spouse). Assets that have a pay-on-death beneficiary will automatically pass to the person named as the beneficiary upon your death (i.e. naming beneficiaries on your life insurance policies or bank accounts allow those assets to pass directly to the named beneficiary upon your death).

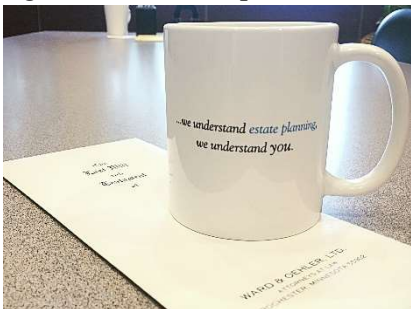
The final ways assets pass is either through testate/intestate succession or a trust. If you die without a will or trust (testamentary documents) the State of Minnesota has default rules by which your assets pass. A will provides the instructions for probate and allows you to name guardians and conservators for your minor children. A trust is a more complex document that often gives you a lot more control over the disposition of your assets.



### When is Probate Required?

The assets owned by a deceased person can be split into two separate categories: probate assets and non-probate assets.

Non-probate assets are those assets that have a beneficiary or pay-on-death designation, have a joint owner who has a right of survivorship, or those assets administered by a trust. These assets pass outside of the probate estate.



Probate assets are everything else: bank accounts without a pay-on-death designation, stock or life insurance policies without a beneficiary designation, real estate not owned jointly or that does not have a transfer-on-death designation, or personal property.

Even if we have assets that are considered a part of the probate estate, sometimes a probate is still not necessary. Minnesota law provides that if the value of the entire probate estate, determined as of the date of death, wherever located, including any contents of a safe deposit box, less liens and encumbrances, is less than \$75,000, then interested persons (as defined by statute) can use a document called an Affidavit for Collection of Personal Property, sometimes also called a Small Estate Affidavit, to collect the personal property of a decedent. Property can be collected as soon as 30 days after the date of death.

Note that this Affidavit for Collection of Personal Property does not apply to estates exceeding the \$75,000 threshold or those where the decedent owned real estate. If real estate is involved (and there is not a joint owner), then the estate must be probated in order to properly transfer title to the real estate.

## Disability Planning: An overview of Special Needs and Supplemental Needs Trusts

As estate planning attorneys, we help our clients identify goals that are important to them and their families and work to ensure that the documents we draft reflect those goals. We discuss everything from income tax, capital gains tax, and estate tax implications to charitable gifting to guardian and conservator designations and more. Many parents want an inheritance for a minor child protected and managed by someone they trust until the minor reaches an age of maturity, but we also want to consider how a distribution may affect a child with special needs. Oftentimes, children and adults with special needs participate in some sort of government health care program or receive some other benefit. Drafting special needs or supplemental needs trusts are an avenue by which to protect a recipient's eligibility for benefits, while also protecting certain assets that may well contribute to an increased quality of life for a person living with special needs that might not otherwise be available while receiving public benefits.

Consider the differences and similarities between a special needs trust and a supplemental needs trust as outlined below:

	<b>Special Needs Trust</b>	<b>Supplemental Needs Trust</b>
<b>At what age can a trust be established for a person with special needs?</b>	Special needs trusts must be established before the beneficiary turns age 65 – a trust established before age 65 remains an excluded asset after the beneficiary reaches age 65.	Supplemental needs trusts must be established before the beneficiary reaches age 65. The corpus of a supplemental needs trust established on or after July 1, 1993, is considered an "available asset" if the beneficiary (1) is age 65 or older; (2) resides in a state institution or nursing facility for six months or longer; and (3) there is no reasonable expectation that the beneficiary will be discharged from the institution or facility.
<b>Who can be the beneficiary?</b>	Special needs trusts must be established for the sole benefit of the beneficiary.	Supplemental needs trusts must be established for the sole benefit of the beneficiary.
<b>What is the intended purpose of the trust?</b>	Special needs trusts may pay for needs not provided by government funded programs. Special needs trusts are used to protect the beneficiary's assets (resources) for his or her lifetime use.	Supplemental needs trusts may pay for needs not provided by government funded programs. Supplemental needs trusts are often used to increase the beneficiary's quality of life, while allowing them to retain their public benefits.
<b>Who may establish the trust?</b>	Special needs trusts established after December 13, 2016 may be established by the beneficiary's parents, grandparents, legal guardian, or the court, and may also be established by the beneficiary on his or her own behalf.	Supplemental needs trusts must be established by someone other than the beneficiary or the beneficiary's spouse.
<b>Who may fund a special needs or supplemental needs trust?</b>	Special needs trusts may be funded with the income or assets of the beneficiary and may also contain assets of other people.  Note: any additions to the trust after the beneficiary reaches age 65 are not considered excluded assets.	Supplemental needs trusts must be funded with the income or assets of someone other than the beneficiary.
<b>Are there any specific disability criteria?</b>	The beneficiary must meet the disability criteria of the Supplemental Security Income (SSI) program at the time the trust is established. A person with a disability as established by the Social Security Administration (SSA) or the State Medical Review Team (SMRT) meets this qualification.	A person with a disability established by SSA or SMRT meets the disability qualification standard. A disability may also be established by the written opinion of a licensed professional who is qualified to diagnose the illness or condition. The licensed professional must determine the beneficiary has a mental illness or condition, which to a reasonable degree of medical certainty, is excepted to: (1) last for a continuous period of 12 months or more; and (2) substantially impair the person's ability to provide for their care or custody.
<b>Are there any required trust provisions?</b>	Special needs trusts must contain a provision that, upon the death of the beneficiary, Minnesota Department of Human Services (DHS) receives all amounts remaining in the trust, up to an amount equal to the total amount of Medical Assistance paid on behalf of the beneficiary.  DHS requires the trust instrument and most recent trust accounting, along with Form DHS-4759, to be sent to the DHS Special Recovery Unit for review.	The beneficiary may not act as the trustee.  A supplemental needs trust may provide for other beneficiaries upon the death of the beneficiary. A supplemental needs trust is not required to include a provision to reimburse the DHS for Medical Assistance benefits paid for on behalf of the beneficiary.

## Community Spotlight

**Rochester Repertory Theatre Company** is a 501(c)3 nonprofit organization whose stated mission is to provide theater productions of the highest quality that will challenge, develop, and enhance the skills of directors, actors, designers, and technicians, while intriguing, challenging, and delighting its audiences. The Rep was founded in 1984 as a 90 seat, “black box” venue. Originally performing in the Broadway Avenue facility, the Rep moved to its current home on Seventh Street in 2007. Recently, the Rep purchased the building and looks to make repairs and expand in the building. Ward & Oehler had the



opportunity to provide legal counsel for this commercial real estate transaction.



The Rep is also a finalist for the Post-Bulletin 2019 Best of the Best in the **Best Live Theater** category. Voting is open until July 14.

Productions for the 2019-2020 season include *Miss Holmes*, *Wandaleria*, *Screwtape*, *Strange Show*, *Red*, *A Comedy of Tenors*, and *Evil Dead The Musical*. Tickets can be purchased online at [www.rochesterrep.org](http://www.rochesterrep.org).

### Knee-High by the Fourth of July

For many the Fourth of July marks the official start of summer. We celebrate our country’s freedom with barbeques, family, and enjoying the great outdoors. However, for farmers the Fourth of July has an additional meaning. The old saying, “knee-high by the fourth of July” is an old adage used by farmers to measure the success of their crops on Independence Day. The soggy spring has been devastating for many farmers across Minnesota.



Corn and soybean planting were two weeks behind the average this year in Minnesota, according to the U.S. Department of Agriculture crop report. As of May, 26.66% of corn was planted and only 35% of soybeans. Many farmers continued to plant into June, risking losing their crops to an early frost. The philosophy being, a

below average harvest is better than no harvest at all. The late start to planting, colder ground temperatures, and the projection for a cooler-than-normal summer are shaping this year’s crop season into being one of the most difficult yet. The corn may not have been quite knee-high by the fourth of July on some Minnesota farms, but we can only hope the wet spring across the Midwest will bring high demand, yielding higher corn prices at harvest for the many Minnesota farmers effected by this year’s wet spring and cool summer.

### Byron Good Neighbor Days July 17-21, 2019

The City of Byron’s annual event, Good Neighbor Days is July 17-21. Enjoy family activities, a car show, food trucks and much more!

Attorney Alyssa Jerde will be at the Ward & Oehler booth at the Vendor Fair Saturday, July 20, from 10:00 a.m. to 2:00 p.m. Stop by to say “hi” and to learn more about our practice areas.

Attorney **Alyssa K. Jerde** received the



*2019 New Volunteer Award at the annual Legal Assistance of Olmsted County Fundraiser this spring. Way to go, Alyssa!*

*Ward & Oehler is committed to serving the community.*

## Office Hours and Locations

**Rochester: 1765 Greenview Drive SW**  
Monday – Thursday 8:30 – 4:30  
Friday 8:30 – 3:30

**St. Charles: 819 Whitewater Ave**  
Tuesday 12:30 – 4:30  
Thursday 9:00 – 12:00  
By appointment

To schedule an appointment in either office, call (507) 288-5567. You can also book appointments online at [www.wardoehler.com/book-online](http://www.wardoehler.com/book-online) for appointments in Rochester.



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## Summer Seminar Schedule

### Long-Term Care Insurance vs. MA Seminar

- **July 31 at 5:30 p.m.**
  - Heartman Insurance - Rochester

### Disability Planning Seminars

- **August 15 at 5:30 p.m.**
  - 125 Live – Rochester

### Long-Term Care Planning Seminars

- **September 24 at 3:00 p.m.**
  - Zumbrota Mazeppa Community Ed  
705 Mill Street  
Zumbrota, MN 55992

*To register for a seminar, please call the office or visit our website to RSVP. For the seminars in Zumbrota, please register through Zumbrota Mazeppa Community Ed.*

## **WARD & OEHLER, LTD.**

1765 Greenview Drive SW  
Rochester, MN 55902

**Interested in subscribing? Give us a call at 507-288-5567 or email Mary Lynn Schiltz at [marylynn.schiltz@wardoehler.com](mailto:marylynn.schiltz@wardoehler.com). and let us know whether you want to subscribe to receive this quarterly publication via mail or email.**