

## Moss & Barnett Opens St. Cloud Office

Moss & Barnett has opened a new office in St. Cloud, Minnesota.



## Recent Supreme Court Decisions Highlight Need for Estate Planning and Family Lawyers to Collaborate

by Jana Aune Deach and Susan A. King



## The Predicament of the Accidental Landlord

by Stuart V. Campbell

A property owner who provides a living space to family members or friends without intending to create a formal landlord-tenant relationship could nonetheless become considered a landlord under the law.



# Moss & Barnett

Firm Newsletter | Summer 2018

## Moss & Barnett Opens St. Cloud Office

*Five lawyers and five professional staff will focus on business law, transactions, and estate planning*

We are pleased to announce that effective July 1, 2018, the partners, associates, and professional staff of the St. Cloud office of Stinson Leonard Street have joined Moss & Barnett. The firms are cooperating on a smooth and amicable transition.

Brian J. Schoenborn, William R. Syverson, and Robert L. Schumann will join Moss & Barnett as shareholders. Shannon M. Wiger will join the firm as Business Development Director. Kendra K. Bader and Alex R. Schoephoerster will join the firm as associates.

"We are pleased to welcome our new colleagues and their outstanding professional staff to Moss & Barnett," said Brian Grogan, President of Moss & Barnett. "This team's expertise and commitment to client service will further strengthen our private business, real estate, wealth



Left to right: Attorney Kendra Bader, Office Services Coordinator Michelle Lawrenz, Attorney Alex Schoephoerster, Paralegal Jena Albright, Attorney Bill Syverson, Paralegal Anna Leonard, Attorney Brian Schoenborn, Paralegal Sandy Fussy, Attorney Rob Schumann, and Business Development Director Shannon Wiger

preservation, and estate planning groups. We are particularly excited to open our new St. Cloud office and become part of the vibrant communities in that area."

"We are delighted to join Moss & Barnett," said Brian J. Schoenborn, "which we believe is better aligned with the strategy of our St. Cloud office. As our St. Cloud team assessed the needs of our clients and

friends, and the opportunities for growth and impact, it became obvious that Moss & Barnett was the perfect fit. It is a firm filled with outstanding attorneys with ideal capabilities, who care deeply for their clients and provide superior service. They also provide strategic counsel to their clients and are very entrepreneurial and forward thinking."

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**Brian J. Schoenborn** counsels individuals, families, and business owners on business succession planning, wealth preservation, and estate and trust administration. He also provides general counsel representation to private and family businesses within the manufacturing, high technology, and sports and entertainment industries. He advises on business transactions, business growth and development, and real estate development, and he is deeply involved in and advises on sports business and sports facility development throughout the Midwest. Brian received his J.D., *cum laude*, from the University of Minnesota Law School, and his B.A., *summa cum laude*, from St. Cloud State University.

**William R. Syverson** advises clients on general corporate and business law matters, including financing, operations, contracting, strategic planning, taxation, and mergers, acquisitions, and joint ventures. He received his J.D. from the University of North Dakota and his B.S. from Northern State University.

**Robert L. Schumann** advises family businesses and closely held private companies on start-up planning and business formation, business reorganization, business sales and acquisition, family succession planning, and other matters. He has extensive experience in representing both buyers and sellers in merger and acquisition transactions, including both stock and asset transactions. Rob received his J.D., *cum laude*, from the University of Minnesota Law School and his B.A., *magna cum laude*, from St. Cloud State University.

**Shannon M. Wiger** is committed to helping the next generation of businesses develop and thrive, along with collaborating with colleagues, clients, and partners across all industries to achieve shared success. She is passionate about facilitating connections that add value, allow clients to capitalize on opportunities, and further grow their businesses. She serves on several boards regionally, including the Central Minnesota United Way, Greater St. Cloud Development Corporation, McNeely Center for Entrepreneurship, and is an Advisor at Great North Labs. She is also deeply engaged in several Greater Minnesota initiatives focused on economic impact, including co-chairing Hockey Day MN 2018, multiple historic redevelopment projects in the St. Cloud area, and is a co-founder of the Great North Gener8tor and Fifth Ave Live projects in St. Cloud, Minnesota. She will continue to be based in St. Cloud, but will lead the entire firm's business development and client relationship functions.

**Kendra K. Bader** counsels businesses and entrepreneurs on all stages of business formation and governance, and she advises privately held companies through the full range of legal issues they confront on a regular basis, including shareholder relationships, statutory compliance, drafting and review of agreements, and other general

legal and business concerns. She received her J.D. from Gonzaga University School of Law and her B.A. from the University of North Carolina at Chapel Hill.

**Alex R. Schoephoerster** advises clients in the areas of corporate law, general business practices, and estate planning. He provides general counsel services to private and family-owned companies, and he represents business clients in a variety of corporate and transactional matters including start-up and formation, corporate governance and operating agreements, selling the business and acquiring new businesses, and business succession planning. Alex received his J.D., *cum laude*, from the University of Minnesota Law School and his B.A., *magna cum laude*, from Saint John's University.

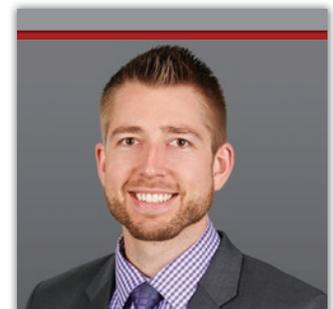
**We are very pleased to welcome the entire St. Cloud Team to Moss & Barnett!**


**Brian Schoenborn**

**Shannon Wiger**

**Bill Syverson**

**Kendra Bader**

**Rob Schumann**

**Alex Schoephoerster**

## Moss & Barnett is Pleased to Recognize Todd J. Anlauf and James J. Vedder

**Todd J. Anlauf**, a member of our multifamily and commercial real estate finance, real estate, and banking and commercial transactions teams, has been inducted into the Lambda Alpha International Land Economics Society (LAI) and its Minnesota Chapter in recognition of his professionalism, leadership, integrity, and commitment to excellence in all aspects of the land use development process in the Greater Minneapolis/St. Paul Region.



Todd Anlauf

Todd represents financial institutions throughout the United States in their commercial real estate lending investments. He negotiates, structures, documents, and closes complex transactions, including multiple property portfolio loans, multiple jurisdiction portfolio loans, and leasehold financing transactions. Todd has broad experience handling complex loans for a full range of properties, including multifamily, hotel, office, industrial, retail, medical office buildings, medical facilities, golf courses, marinas, and commercial condominiums.

LAI is the global network for distinguished professionals in all fields related to land economics and the use and development of land. LAI is committed to promoting best practices and making a difference in our communities. The 2,000-plus international members of LAI make valuable connections locally and with peers worldwide. The Minnesota Chapter offers thought-provoking programs and activities with top speakers, relevant forums, and networking events.

**James J. Vedder**, a member of our family law team, has been named to the Courage Kenny Foundation Board of Directors. Jim's term begins June 1, 2018. Moss & Barnett attorney and chair of our family law team, **Susan C. Rhode**, also serves on the Courage Kenny Foundation Board as its Vice Chair and Secretary.



Jim Vedder

Jim assists clients with the resolution and settlement of the division of marital and non-marital assets, division of closely held businesses, spousal maintenance, child support, and custody issues. He has substantial experience in settling and trying complex marital dissolution cases and advises clients in all areas of family law. Jim is a Fellow in the American Academy of Matrimonial Lawyers and is a Family Law Executive Committee Member of the Hennepin County Bar Association. In addition, Jim serves as an adjunct professor at a local Minnesota law school in their Family Law Lab and also serves on Moss & Barnett's board of directors.

Courage Kenny Foundation supports the work of Courage Kenny Rehabilitation Institute, serving people with disabilities and others in need of rehabilitation care. Courage Kenny Rehabilitation Institute, part of Allina Health, provides a continuum of inpatient and outpatient rehabilitation and community services. The Institute's goal is to maximize quality of life for people of all ages and all abilities.

## New Service Team Focuses on Construction Law

We are pleased to announce an expansion of the firm's service offering with the creation of a new practice area devoted to **Construction Law**.

This team of attorneys, including preeminent construction lawyers **Curt Smith** and **Aaron Dean** who have more than 50 years of construction law experience between them, advises on both public and private construction projects – from design and planning to contract negotiation, preparation, bidding and review, construction, surety/bond issues, and insurance coverage and claims. We counsel clients on dispute avoidance and resolution as well as resolving issues with regulatory authorities, including OSHA and licensing boards.

We advise a full range of construction industry participants, including owners, architects, engineers, contractors, material suppliers, and subcontractors.

The firm's Chief Executive Officer, Tom Shroyer, noted: "Although we have been practicing construction law throughout our history, the establishment of our new Construction Law Practice Area reflects the amazing growth of demand for our services in this area, as well as the expansion in the number and sophistication of our service offerings to the industry. This new practice area enables us to more readily share knowledge, experience and resources, and to deliver enhanced service and value to our construction industry clients."

To learn more, visit [LawMoss.com/construction-law](http://LawMoss.com/construction-law)

## Recent Supreme Court Decisions Highlight Need for Estate Planning and Family Lawyers to Collaborate

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**Jana Aune Deach** practices exclusively in the area of family law. She assists clients in matters including child support, custody settlement and litigation, premarital agreements, spousal maintenance, complex non-marital tracing, complex property division, and settlement negotiations.

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**Susie King** is a member of our wealth preservation and estate planning team focusing her practice in the areas of estate planning, probate, trust, guardianship / conservatorship, and elder law. Her experience covers a broad range of services from the simple estate plan to administration of complex estate or trust matters.

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At Moss & Barnett, our estate planning and family law attorneys work closely to address issues that may arise before or after marriage. Without this coordination among advisors, issues can be overlooked resulting in unintended, often negative consequences for the client. Two recent decisions – one by the United State Supreme Court and one by the Minnesota Supreme Court – underscore the importance of this collaboration.

### Automatic Revocation of Beneficiary

The first case involved a challenge to a Minnesota law that automatically revokes

any beneficiary designation made in estate documents to the former spouse, Minn. Stat. § 524.2-804, subd. 1 (2016) (the “revocation-upon-divorce statute”). What is more, this dispute went all the way to the United Supreme Court – highlighting the importance of updating the core estate plan, but also beneficiary designations, following a marital dissolution.

In *Sveen v. Melin*, 138 S.Ct. 1815 (2018), the Court ruled that this law does not violate the contract clause of the Constitution. After Mark and Kaye married, Mark bought a life insurance policy naming Kaye as the primary beneficiary, designating his two children from a prior marriage as contingent beneficiaries. In 2002, Minnesota adopted its revocation-upon-divorce-statute. After ten years of marriage, the couple divorced. Mark did not update the beneficiary designations on his life insurance policy, and the divorce decree did not specifically address this policy. Four years later, Mark died, the revocation-upon-divorce statute automatically revoked Kaye’s beneficiary status, and the two children became the primary beneficiaries. Kaye objected that the revocation unconstitutionally impaired Mark’s contract rights in the insurance policy.

As judiciously noted by the Supreme Court, “All good trust-and-estate lawyers know that “[d]eath is not the end; there remains litigation over the estate.” Litigation is exactly what occurred. The insurance company filed an interpleader action with the district court to determine whether the revocation statute applied. The two children won in the trial court, but the

U.S. Court of Appeals for the Ninth Circuit reversed the district court, holding that the revocation-upon-divorce statute impermissibly impaired the contract because it was enacted four years after the policy took effect. The U.S. Supreme Court, in an opinion by Justice Elena Kagan, noted that while the statute did change the beneficiary designated by the policyholder, someone who gets divorced does not *usually* want to have their former spouse remain as the beneficiary while pointing out that if a policyholder wants to keep a former spouse as the beneficiary following a divorce, he or she simply needs to notify the insurance company and update a form. Thus, the law falls within the “minimal paperwork burden” that the Supreme Court has allowed other laws to impose without violating the contracts clause.

This case highlights the importance of updating one’s estate plan following major life events such as a divorce. Beneficiary designations are often overlooked in the dissolution process, and the failure to properly update your beneficiary designations may result in unintended distributions. It is imperative that the family law attorney coordinate with an estate planning attorney to ensure not only that the client’s wishes are met, but also that the client is adhering to the terms of the dissolution.

### Enforceability of Premarital Agreements

Minnesota’s highest court recently weighed in on the enforceability of premarital agreements (or “antenuptial agreements”) that apply to property accumulated after marriage (“marital property”). In *Kremer v. Kremer*, 912 N.W.2d 617 (Minn. 2018), the

## Recent Supreme Court Decisions Highlight Need for Estate Planning and Family Lawyers to Collaborate - Continued from Page 4

Minnesota Supreme Court held that common law provides the test for measuring the procedural fairness of a premarital agreement that deals with *marital* property. Prior to *Kremer*, it was generally understood that the statutory test under Minn. Stat. § 519.11, subd. 1, applied to *all* premarital agreements (executed on or after August 1, 1979), regardless of whether the agreement addressed the distribution of non-marital property, marital property, or both.

The couple in *Kremer* had planned a destination wedding in the Cayman Islands. The soon-to-be husband approached his fiancée just three days before they were scheduled to leave for their wedding with a fully prepared agreement that he had signed. He made it clear to his fiancée that if she did not sign the agreement the wedding would be canceled. The couple's family members had already paid for their travel to the wedding, and some of them were on their way to the Cayman Islands. The soon-to-be wife was not able to meet with the attorney she had previously used. She was able to meet with another attorney and signed the agreement. The couple left for their wedding the next day and were married. When the wife later filed for divorce, she challenged the enforceability of the premarital agreement.

The Minnesota Supreme Court began its analysis of procedural fairness by determining whether any portions of the agreement addressed non-marital property. Any such provisions would have been subject to the less strict statutory test, which requires: (1) full and fair disclosure of each party's earnings and property; and (2) that each party had an opportunity to consult with legal counsel of his or her choice. Because the couple's premarital agreement only made general references to "property" and did not clearly distinguish between "marital" and "non-marital" property, the Supreme Court held the entire agreement was subject to the more stringent common law test.

Under the common law test, a premarital agreement is procedurally fair if: (1) there was a full and fair disclosure of the parties' assets; (2) the agreement was supported by adequate consideration; (3) both parties had knowledge of how the terms of the agreement impacted their rights; and (4) the agreement was not procured by undue influence or duress.

In *Kremer*, the Minnesota Supreme Court concluded that the couple's agreement failed the procedural fairness analysis under the common

law test. Specifically, the Court held the agreement lacked adequate consideration and was procured by duress due to the timing of the wedding and the husband's "threat to call off the wedding." As a result, the premarital agreement was invalid and unenforceable.

*“The couple had planned a destination wedding in the Cayman Islands. The soon-to-be husband approached his fiancée just three days before they were scheduled to leave with a fully prepared agreement that he had signed.”*

In practice, most such agreements address the characterization and division of both non-marital and marital property. Thus, if the enforceability is challenged, it is generally safe to assume that at least some portion of the agreement will be analyzed under the multi-factor common law test and not the less exacting statutory test for procedural fairness.

Spouses who entered into a premarital agreement before the *Kremer* decision may want to have an attorney review their agreement and surrounding circumstance to determine if it has any legal deficiencies. If the pre-*Kremer* agreement is seriously defective, it may be necessary for the couple to enter into a post-marital agreement to amend their original agreement.

It is important to have both a family law attorney and an estate planning attorney review provisions in a premarital agreement to ensure that the agreement meets both the statutory and common law requirements. Without this collaboration, portions of the agreement can be deemed invalid.

### Conclusion

The *Sveen* and the *Kremer* cases underscore the importance of collaboration between estate planning and family law attorneys. Long-standing premarital agreements can be found invalid or result in unintended consequences, and beneficiary designations may be changed by operation of law. These cases also demonstrate the **need for ongoing review and updating of estate plans** to be sure that they have not been affected by later developments in the law – and to ensure that they still meet the goals of the parties.

## Four New Attorneys Have Joined the Team

**Shannon E. Cook** has joined the firm's multifamily and commercial real estate finance and real estate teams. Shannon's practice is primarily focused on representing lenders who originate and sell loans secured by multifamily projects to secondary market investors Fannie Mae and Freddie Mac. As part of this practice, Shannon prepares and negotiates loan documents,



Shannon Cook

reviews legal opinions, examines title, survey, and other due diligence, and works with all transaction parties to ensure a smooth closing. Prior to joining Moss & Barnett, Shannon was an attorney at a boutique business law firm, focusing on real estate, tax, and related litigation matters. She is an active member of the Minnesota State Bar Association and the Hennepin County Bar Association. She is also a Mitchell Mentor, advising and assisting first-year law students at Mitchell Hamline College of Law. Shannon received her J.D. from William Mitchell College of Law, where she earned her Law and Business Certificate, and her B.S., from the University of Minnesota-Twin Cities.

**Aylix K. Jensen** has joined the firm's creditors' remedies and bankruptcy team. Aylix practices primarily in the areas of compliance and litigation relating to the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Telephone Consumer Protection Act, and additional federal and state laws and regulations. Prior to joining Moss & Barnett, she was a law clerk to the Honorable Lawrence R. Johnson in the Tenth Judicial District and a judicial extern to the Honorable Michael J. Davis in the United States District Court for the District of Minnesota. Aylix received her J.D. from the University of Minnesota Law School and her B.A. from the University of Minnesota-Twin Cities.



Aylix Jensen

**Katie P. Pivec** has joined the firm's real estate and infrastructure teams. Katie focuses her practice primarily on zoning, municipal law, and commercial leasing. She is a member of a team serving one of the largest wireless communications companies in the nation, and in that capacity, counsels client stakeholders on myriad issues. Prior to joining Moss & Barnett, Katie practiced



Katie Pivec

for several years as a transactional attorney, focusing on the needs of closely held business clients. She also worked in-house for a large technology company as a research attorney and for a commercial real estate management group. Katie received her J.D., *magna cum laude*, from the University of Minnesota Law School and her B.A., *cum laude*, from Newcomb College, Tulane University.

**William J. Straus** has joined the firm's multifamily and commercial real estate finance and real estate teams. Bill primarily represents life insurance companies, banks, and other financial institutions in connection with the origination and servicing of mortgage loans secured by multifamily housing projects, retail centers, office buildings, industrial facilities, and other types of commercial real estate. He also advises clients on the closing and sale of loans to agency investors Freddie Mac and Fannie Mae on the secondary mortgage market. Prior to joining Moss & Barnett, Bill worked in the commercial mortgage lending department of a Fortune 500 company. He



Bill Straus

received his J.D., with distinction, from the University of Nebraska College of Law and his B.S., *summa cum laude*, from St. Cloud State University. During law school, Bill was a Senior Member of the Nebraska Moot Court Board, received the Business Transactions Certificate, and won the McGrath North Mullin & Kratz Excellence in Legal Writing Award.

## **ALERT:** Attention Businesses with Online Sales

On June 21, 2018, the U.S. Supreme Court issued its highly anticipated decision in the case of *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018), allowing states to require online retailers to collect sales tax – even in areas where they do not have a physical presence. Remote sellers of taxable products and services need to immediately evaluate whether they are prepared to register to collect and remit taxes wherever a material portion of their products are or may be delivered. While many taxing jurisdictions will still need to pass revised regulations in light of *Wayfair*, the assumption should be that all will jump on board quickly with “economic nexus” legislation similar to South Dakota’s test of at least \$100,000 in sales or 200 transactions. Mid-sized companies with small physical footprints but broad sales may be hit hardest by the administrative burdens triggered by this decision.

## **ALERT:** Minnesota Supreme Court Case May Change Taxation of Minnesota Trusts

On July 18, 2018, the Minnesota Supreme Court issued its highly anticipated decision in the case of *Fielding v. Commissioner of Revenue*, 2018 WL 3447690, determining that Minnesota’s attempt to tax trust income based solely on the grantor’s residence at the time the trust becomes irrevocable is unconstitutional.

In 2009, Reid MacDonald established four separate trusts for his children and transferred shares of a Minnesota S corporation to each trust. On December 31, 2001, the trusts became irrevocable, and, based on the fact that Reid was a Minnesota resident at this time, the trusts were deemed “Resident Trusts” under Minnesota law. As a result of their classification as Resident Trusts, nearly all the income earned by the trusts was subject to Minnesota income tax.

In 2014, the trusts sold their shares of the Minnesota S corporation and deposited the sale proceeds in investment accounts owned by the trusts. Because the trusts were Resident Trusts according to Minnesota law, they were subject to Minnesota income tax on the sale of the S corporation stock and on all the income generated by other investments owned by the trusts.

The trusts filed their 2014 Minnesota income tax returns under protest, asserting that the statute classifying them as Resident Trusts was unconstitutional. The trusts then filed amended tax returns and claimed refunds for the difference between the taxes owed as Resident Trusts and the taxes owed as nonresident trusts — a tax savings of more than \$250,000 for each trust. The trusts argued that they lacked sufficient contact with Minnesota to be taxed as Minnesota Resident Trusts noting that when the stock was sold, the trustee who oversaw the administration of the trusts resided in Texas and maintained the trust records in Texas, the investment accounts were administered in California, and three of the four beneficiaries resided in states other than Minnesota.

The Supreme Court ultimately determined the grantor’s status as a Minnesota resident when a trust became irrevocable – without more factual basis – was insufficient to indefinitely subject the trust to Minnesota income tax. Absent additional relevant contacts to Minnesota, such as ownership of tangible property located in Minnesota, trustee contact with the state, and trust administration activities conducted in Minnesota, the law characterizing the trusts as Resident Trusts is inconsistent with the Due Process Clause of the United States Constitution.

In light of the *Fielding* decision, any trust that became irrevocable when the grantor was a Minnesota resident should be reviewed to determine whether the trust is properly classified as a Minnesota Resident Trust.

***If you would like assistance in assuring best practices in either of these areas, please contact your attorney at Moss & Barnett.***

## Moss & Barnett Spirit of Giving

*While we pursue our professional goals, we also endeavor to improve the quality of life in our communities and around the world. Members of the Moss & Barnett team apply the same dedication to service by making significant contributions of their time and resources to charitable organizations important to all of us.*

**M&B Cares participated in four service projects this past spring and summer.**

### Happy Hour Squared

On April 19, 2018, Moss & Barnett employees, family members, and friends rolled up their sleeves and participated in an innovative monthly event dubbed “**Happy Hour Squared**,” held at The Brave New Workshop Theatre (BNW) in downtown Minneapolis. BNW has partnered with Finnegan’s, Inc. (charitable beer company) to reinvent happy hour, with the goals of feeding the hungry and serving the community. Over 2,000 sandwiches were handed off to **Allan Law’s MRD 363 Days Food Program** to feed the hungry on the streets that night. To learn more about Mr. Law and his 363 Days Food Program, visit [363days.org](http://363days.org).



Pictured from left to right (back row): Cindi Littlejohn, Jay Littlejohn, Peter Engebretson, Jana Aune Deach, Michael Bondi, Christine Bondi; (middle row) Kelly McGinty, Cheryl Riggs, Shelly Doerr, Nick Tautges, Katherine Pasker, Pat Egdorf; (front row) Nancy Kiskis, Gina DeConcini, Andrea Szondy, Lindsay Case (not pictured: Jeff Kaphingst)

### 4th Expeditionary Medical Unit Care Packages

M&B Cares has “adopted” the 30 members of the **4th Expeditionary Medical Unit** (4th EMU) which is currently stationed in Iraq. On May 9, 2018, Moss & Barnett employees put together 30 care packages filled with cookies, movies, magazines, books, office supplies, toiletries, and other items to show our support for these courageous men and women who serve our country. Our connection to the 4th EMU is through Nicholas D. Tautges, Chief Personnel Specialist (U.S. Navy) and Moss & Barnett’s Accounts Payable Specialist. Nick has been deployed three times (Qatar, Kuwait, Bahrain, and Afghanistan were duty stations) and is currently a member of the U.S. Navy Reserve. Most of the deployed members of the 4th EMU are a part of Nick’s U.S. Navy Reserve unit, the Expeditionary Medical Facility (EMF) Great Lakes One, which is Headquartered at Naval Station Great Lakes, Illinois, and train together on Annual Training and other exercises during the year.



Pictured from left to right: Natasha Lenz, Nick Tautges, Josh Oie, Andy Malec, Mark Peterson, and Kevin Busch (not pictured: Jana Aune Deach, Gina DeConcini, Carin Del Fiacco, Carla Garber, Deb LaTerza, Lori O’Donnell, Debbie Weinstock, and our Moss & Barnett team members who donated items to fill the care packages)

The members of the 4th EMU have been deployed to provide medical assistance to U.S. fighting forces on the ground in Iraq and Syria and to make arrangements for further medical transport to a permanent hospital out of country, if necessary. Additionally, they provide medical assistance to local nationals who have been devastated by the continued conflict in their country. The deployment is for nine months boots on ground. The 4th EMU will soon be replaced by the

5th EMU, which is also from EMF Great Lakes One, and is a testament to the hard work and dedication of the citizen Sailors who continue to Mobilize in support of contingency operations in Iraq and Syria from the Midwest.

During each of Nick's deployments, Moss & Barnett colleagues put together monthly care packages for Nick and his fellow service members. M&B Cares will now continue that tradition by sending care packages to the members of the 4th EMU throughout their deployment to let them know how much we appreciate them and how grateful we are for their dedication and service.

### Cooks for Kids

On June 28, 2018, Moss & Barnett employees and family members were honored to volunteer with the **Cooks for Kids** program to purchase, prepare, and serve a meal to the families at the Ronald McDonald House – Children's Hospitals & Clinics of Minnesota, Minneapolis. **Ronald McDonald House Charities-Upper Midwest**, in partnership with the community, provides a comfortable and caring home-away-from-home that supports keeping families together and



Pictured from left to right: Maureen Montpetit, Debbie Weinstock, Susie King, Dan O'Donnell, Carin Del Fiacco, Cheryl Sheldon, Lori O'Donnell, and Jana Aune Deach

reduces stress during a child's serious illness. Its four Twin Cities sites provide complimentary lodging, meals, and a community of support to families facing a child's serious illness, injury, or disability. To learn more about Ronald McDonald House Charities-Upper Midwest, visit [rmhtwincities.org](http://rmhtwincities.org).

### Breaking Free

Moss & Barnett employees and friends enjoyed serving a picnic lunch to the clients and families of **Breaking Free** at their annual barbecue held on July 28, 2018, at Newell Park in St. Paul, Minnesota. There were games and prizes for the kids and face painting, too. A good time was had by all.



Pictured from left to right: (back row): Peter Engebretson, Sarah Ahlquist, Amy Stech, Kelly McGinty, Brittney Miller, and Aylis Jensen; (front row) Shelly Doerr and Andrea Szondy

Breaking Free is a Minnesota-based non-profit and social justice/social change organization founded in 1996. Every year, Breaking Free helps over 500 women escape systems of prostitution and sexual exploitation through advocacy, direct services, housing, and education.

Moss & Barnett has a long-standing tradition of partnering with Breaking Free. Every year, the firm's women attorneys "adopt" Breaking Free families for the holidays, helping to ensure that these families have a joyful holiday. In addition, members of the firm donate various daily items in need such as pots and pans, silverware, and women and children's clothing throughout the year as needed.

***We are very grateful to have our Moss & Barnett team members, family members, and friends get behind these important community initiatives and to give generously of their time, talent, and financial support.***

## The Predicament of the Accidental Landlord

By Stuart V. Campbell | 612.877.5450 | [Stuart.Campbell@lawmoss.com](mailto:Stuart.Campbell@lawmoss.com)



**Stuart Campbell** is a member of our litigation team assisting businesses and individuals with their litigation needs, such as commercial and business disputes and other areas.

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The recent lawsuit over the eviction of Michael Rotondo attracted national and international news coverage. Rotondo is a 30-year-old whose parents had to sue to get him to move out of a bedroom in their home – prompting criticism of Rotondo for freeloading on his parents.

Rotondo's case illustrates the predicament facing unintentional landlords – property owners who provide a living space to family members or friends without intending to create a formal landlord-tenant relationship. The problem is that, whether the property owner intends to become a landlord or not, when they share their dwelling they can inadvertently create a landlord-tenant relationship in the eyes of the law, giving rise to unanticipated responsibilities and liabilities. As long as the parties get along, an informal relationship can work out fine, but, as Michael Rotondo's parents found out the hard way, when conflict develops, the absence of a rental agreement can create a real headache for the unintentional landlord.

Commercial landlords document their landlord-tenant relationships in written leases and factor the price of potentially evicting tenants into the monthly rent. When the landlord is careful to comply with the law, the cost of a simple eviction proceeding

is often low since factual support will be lacking for legally meritorious defenses such as allegations that the premises were not livable (the "covenant of habitability"); waiver by acceptance of rent; retaliation; or improper notice. Things are not always so easy for those who do not document their relationships with a time-tested contract.

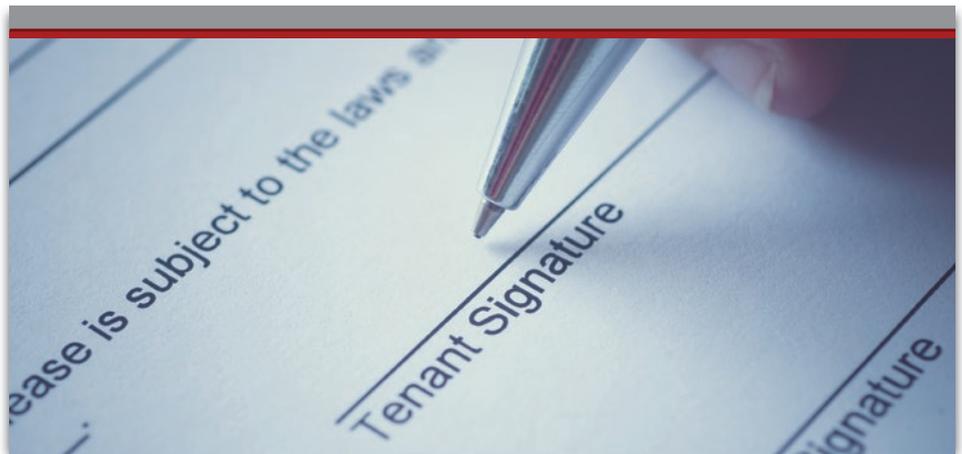
Chapter 504B of the Minnesota Statutes, and the state's common law on landlord-tenant relationships, contains a number of "traps for the unwary" that can create broad defenses in eviction cases, especially where the landlord has not formalized the terms of the legal relationship.

A tenant determined to fight an eviction who is not subject to a written lease is often able to delay the proceedings by insisting upon judicial review or even by forcing a trial. The results of these proceedings can be very frustrating for landlords. Sometimes, a tenant delaying eviction is able to come up with enough money to exercise the legal right to "cure" the non-payment of rent by paying the entire past-due amount. The result is that a landlord might incur legal fees, suffer the stress of a trial, and even win an order for eviction – only to be forced to continue living with an unwanted

tenant until after giving new notice to quit the premises at the next opportunity for termination.

It can be awkward to ask a family member or friend to sign a lease when they are moving in, but it is worth the trouble to consult with a lawyer to help ensure that everything goes smoothly. When an accidental landlord and an unintended tenant disagree about a move-out date or some other key factor in the tenancy, the two parties often seem to remember the terms of their verbal lease quite differently, and each will often have a different interpretation of text messages, emails, or other written records that have less formality than a legal contract.

Accidental landlords do not think they are landlords, but if they blindly assume that a judge will see things their way, they are taking a serious risk. Michael Rotondo's parents probably did not think they would ever need to go to court for an eviction when they let their 30-year-old son live in their spare bedroom. Letting a friend or loved one temporarily live in a home is a generous act – but the wise may temper their altruism with a dose of prudence before making a copy of the keys.



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*\* Moss & Barnett is especially pleased to congratulate Jana Aune Deach and Susan C. Rhode, who ranked in the Minnesota Top 50 Women and Top 100 Super Lawyers lists for 2018, and to James J. Vedder, who ranked in the Top 100 Super Lawyers list for 2018.*



**Cindy J. Ackerman**



**Bradley R. Armstrong**



**Kevin M. Busch**



**Mitchell H. Cox**



**Jana Aune Deach**



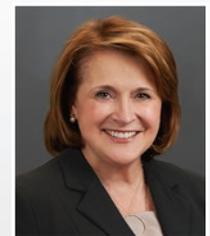
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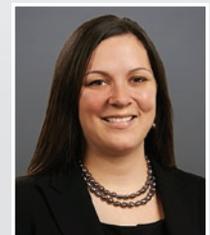
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