

Wabanaki Legal News

An Introduction to Lisa Chase, Esq.

Pine Tree Legal Assistance, Inc. would like to introduce Lisa Chase, Esq., the Directing Attorney of the Native American Unit (NAU) at Pine Tree Legal Assistance. Lisa grew up in Aroostook County, having graduated from Caribou High School, and received her Bachelor of Arts in History from the University of Southern Maine. Lisa earned her Juris Doctor from the University of Missouri at Columbia, and has been practicing law for twenty (20) years. She is very excited to fill the position of Directing Attorney for the NAU with a goal to reassess and re-invigorate the focus and energy of Pine Tree's NAU in order to work in a collaborative effort with Tribal Governments and agencies as well as with individual native and indigenous members to bridge a gap in any areas of unmet need for native and indigenous people.

First, a little background. Initially Lisa's career in Missouri entailed corporate representation of small telecommunications companies, electric cooperatives, and one small electric company. Upon her return to Maine in 2005, Lisa has worked for a domestic violence agency, opened her own general practice for ten years and then started with Pine Tree Legal Assistance in February of 2017.

In her general practice, Lisa served as ICWA counsel for the Aroostook Band of Micmac from 2011-2017 where she represented the Band in all matters throughout Maine involving Indian Child Welfare Act matters, working closely with their ICWA Director. During that period, she worked with the ICWA Director and Board in transitioning away from permitting their children to be adopted when re-unification failed, to entering into permanent guardianship agreements with terms that required guardians to ensure the minor children had continuing and meaningful ties with the Band throughout their upbringing, as well as enabling the future re-unification of families when appropriate. Since joining PTLA in 2017, Lisa has also worked with some tribal members who are survivors of domestic violence and domestic abuse. Lisa brings legal experience in a variety of areas, which include: Guardian ad Litem, family law, protective orders, Title IX matters, wills, powers of attorney, consumer law, and Chapter 7 bankruptcies.

A high priority goal for the NAU is to reach out to communities we serve to engage in safe and appropriate listening sessions, and to conduct surveys

Please see **Lisa Chase**, Page 6

A Warm Welcome to Ryan Lolar

Pine Tree Legal Assistance welcomes Ryan Lolar to serve as our staff attorney within the Native American Unit. Ryan grew up in Brewer, ME with his mother. Ryan's mother is an enrolled member of the Penobscot Nation, and his maternal grandfather was an enrolled member of the Penobscot Nation and the Tobique First Nation (Maliseet) in New Brunswick, Canada. Ryan attended Colby College in Waterville, ME where he received a Bachelor of Arts in Philosophy in 2018, then headed out to attend the University of Colorado School of Law where he is scheduled to graduate with his Juris Doctor in May of 2021. Ryan has had a life-long interest in being an advocate for indigenous peoples, especially in Maine.

Ryan has tailored his education and law school experience around his goals, and is on track to graduate with a certificate in American Indian Law, has worked in the University of Colorado School of Law's American Indian Law Clinic, and represented the University of Colorado at the National Native American Law Students Association Moot Court Competition at Berkeley School of Law in California. The American Indian Law Clinic provided opportunities for Ryan to collaborate in developing a 50-state voter rights guide for Indian Country that is now available online (ASK Nan if I can insert a link), and worked on draft reports on violations of indigenous rights under the United Nations treaty bodies in several countries to be submitted to the UN Human Rights Council for an international non-profit partner.

Ryan has engaged in clinics and clerkships that further his innate passion for civil legal justice, especially for indigenous peoples. In addition to his academic and extracurricular activities, Ryan has gained valuable courtroom knowledge and experience through his internship with the Honorable Michael A. Martinez, Chief Judge for the Second Judicial District, Denver, Colorado. While clerking for National Audubon Society in Denver, he worked on a number of public land projects in collaboration with other non-profits and tribal governments, as well as conducting legal research to create better guidance for federal agencies on tribal co-management of public lands. Ryan also clerked in the Office of University Counsel at the University of Colorado where he drafted legal documents and conducted research and gained knowledge on Title IX due process rights, Title VII employment discrimination, rights under the American Disabilities Act, the

Please see **Ryan Lolar**, Page 6

Special Protections Against Evictions During This Pandemic

By Michael Spaulding, Esq.

On September 4, 2020, the Centers for Disease Control and Prevention issued a temporary Order halting certain residential evictions to mitigate transmission of COVID-19. The Order allows tenants who meet certain requirements to delay an eviction until at least December 31, 2020 by providing a signed declaration to their landlord. To delay the eviction, the tenant must:

- Expect to have income less than \$99,000 in 2020, or have received a stimulus check, or not have been required to report income to the IRS in 2019.
- Be unable to pay full rent due to an income loss or "extraordinary" medical bills.
- Have used best efforts to obtain governmental rent assistance.
- Likely become homeless or forced to "live in close quarters" if evicted.
- Promise to "make timely partial payments that are as close to the full payment as the individual's circumstances may permit."
- Promise to pay all accrued rent and fees after December 31, 2020 and to comply with all other obligations of their tenancy.

A tenant who swears to these requirements and provides a declaration to their landlord is considered a covered person. A covered person may be able to delay the eviction if the basis for eviction is not one of the following:

- 1) engaging in criminal activity while on the premises;
- 2) threatening the health or safety of other residents;
- 3) damaging or posing an immediate and significant risk of damage to

property;

- 4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- 5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment.

The Order applies in states, localities, territories, or tribal areas that do not already have a greater level of public-health protection. This baseline of protection prohibits any "landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action" from evicting a covered person from residential property before December 31, 2020.

Although the CDC Order should provide temporary relief, tenants should know the courts have not uniformly applied each provision.

Some courts, for example, may allow the landlord to question the validity of the declaration by cross examination of the tenant. If the landlord successfully shows the tenant was not a covered person, the tenant may be physically evicted before December 31, 2020. As such, the tenant must carefully review the requirements of the declaration. For example, a covered person must state "I have used best efforts to obtain all available government assistance for rent or housing." "Available governmental assistance" means "any governmental rental or housing payments benefits available to the individual or any household member." This requirement - framed in the past tense - suggests the tenant should at least consider, and perhaps apply for, government assistance programs before submitting the declaration. Also, a tenant should carefully review and understand their finances so they can answer hostile questioning about their work hours, recent purchases, and savings.

Please see **Eviction Protection**, Page 2

SOME OF YOUR RIGHTS AS A RENTER IN MAINE

By Matt Dyer, Esq.

Cold weather is coming on and money's tight these days. Here's some tips on staying warm and dry in your apartment till Spring rolls around again.

Under Maine law, your rental home or apartment needs to have a good enough heating system to maintain a temperature of at least 68 degrees when it's cold outside. If you're not feeling the heat, get a thermometer and put it on a chair in the middle of your living room. Note the temperature every couple of hours and write it down. You now have some "proof" as to how cold it's getting. Call or send a message to your landlord first saying "look, I've been tracking the temperatures here for a couple of days and it never gets above 64 degrees, you need to come over here and take a look at the furnace, please". If that gets you nowhere, give your local Pine Tree Legal office a call, and/or call the town code officer (your mileage may vary with that one).

"Wait a second, I pay for electricity in my apartment, and I went to flip a breaker in the circuit box and my neighbor's lights went out!"

You got a bad case of common area metering! It's more common than you might think and it's illegal--not like going to jail illegal, but you don't have to put up with it. Once again call or send a message and let the landlord know what happened. If it's not taken care of right away, give Pine Tree Legal a call. We can probably put a stop to it and maybe get you some of your money back.

"My roof leaks, the tub won't drain, I fell through the front door step, and I got bugs in my bed".

Oh yes, it happens. Maine has a law that says landlords have to maintain their rental properties safe and decent. But, you got to prepare yourself if your going to stand up for your rights. Write a complaint about the problems to your landlord. This can be a text, a Facebook message, a letter, a Christmas card, whatever, but it's got to be dated, and you've got to keep a copy of it somehow in case you need to show a judge. I've been doing this for 26 years and EVERY time I tell a landlord in court "hey, what about the leaks and the tub", they say "first I heard of it was today". Without that Christmas card we are screwed, enough said.

The car broke down, the oil bill was through the roof, the child support check didn't come in and now you can't pay the rent and it's January.

Not good, but don't panic! In most cases, but not all, the landlord has to give you a grace period to try and get caught up. If you don't have a lease you get one for sure. If you have a lease, it will depend what the lease says. Anyway, don't ignore the problem, get ahold of the landlord and let them know you are working on it. Work out a written repayment plan if you can. If you can't work anything out you can stay in the apartment until a judge decides to throw you out. There are many legal defenses to evictions, but you're going to need a lawyer for sure. Call us and see if we can help!

Every town in Maine has to provide rental aid to people in need under the General Assistance Program if you qualify.

There is NOTHING a town hates more than having to pay rent for people in hard times, so they might make it hard, but they have to take an application for help, and they have to follow the law, which is complicated. If you can't pay the rent, or the

electric bill, or the oil bill and you've been spending what money you have on basic necessities, then they should help. Call us here at PTLA if you can before you make an application to the town for aid and we can give you some pointers. If you get denied, you only have 5 days to ask for an appeal, so its best to go in prepared.

"My landlord keeps asking me out and it's creeping the hell out of me."

Oh boy. Just say no! If that's not working and things are going downhill fast give us a call. Landlord's can't go around doing this. It's illegal. Pine Tree has a program to help tenants if this is happening. It's called the Fair Housing Unit. Use it.

Have a nice warm, dry and safe winter. I hope we don't need to hear from you, but if you need us, we'll be here at Pine Tree Legal Assistance, Inc. You got rights believe it or not, but you got to stand up for them. We can't guarantee that we can take every case but we'll do the best we can. Promise.

These tips apply to individuals living in housing off reservation. The Tribal governments in Maine have their own housing code laws for their residential housing that need to be considered separately from the advice given in this article. If you have questions you may call the housing department for the Tribe or call Pine Tree Legal for more specific information pertaining to your housing situation.

Eviction Protection

Continued from Page 1

Also, the Order's limitation on eviction could be interpreted to apply early or late in the eviction process. If the limitation applies early, the case may be continued until after December 31, 2020. If the limitation applies late in the process, say after a judgment is entered, the landlord could cause a physical eviction any day after December 31, 2020. Because of this inconsistency, two covered persons could have very different outcomes based on where they live or their judge.

Lastly, some courts may entertain an argument that the Order prohibits evictions only for nonpayment of rent, but not lease expiration/no cause. Some reporting and a CDC FAQ has contributed to a perception that the Order only applies to nonpayment of rent; however, the text of the Order does not support that position for at least three reasons. First, the Order states that the prohibition on evicting a covered person is "subject to the limitations in the 'Applicability' section," and the Applicability section sets forth the five enumerated reasons mentioned above. Second, the five enumerated grounds for eviction all involved behavioral lease violation, which is not present in a lease expiration/no cause eviction. Third, exempting lease expiration/no cause evictions from the Order's protections would run contrary to the public health purpose of the Order. Compelling as these reasons may be, tenants being evicted for lease expiration/no cause must at least consider the potential for an adverse ruling.

In summary, the CDC Order will provide temporary relief for many tenants who submit the declaration in good faith. The courts, however, may not uniformly apply its provisions. Pine Tree Legal Assistance is available to help tenants navigate these issues through the end of 2020 and early 2021. Pine Tree Legal Assistance has expanded call center hours during this pandemic, please go to www.ptla.org for more information on how to reach us.

How To Reach Us

Pine Tree Legal Assistance, Inc., including its Native American Unit, has currently closed it's walk-in hours out of precaution due to the Covid-19 pandemic. We are available to be reached on our toll free line at 1-877-213-5630; V/TTY 711, or through the expanded call center hours at Pine Tree Legal Assistance, Inc. by calling:

Presque Isle	207-764-4349
Machias	207-255-8656
Bangor	207-942-8241
Augusta	207-622-4731
Lewiston	207-784-1558
Portland	207-774-8211

HOURS:

Monday	12:00 - 2:30 pm
Tues, Thurs, Fri.	9:00 - 11:30 am

We apologize for any inconvenience this may cause, but we hold the health and safety of our clients and staff in very high regard, and look forward to reopening to walk-in service and in-person outreach when it is deemed safe to do so.

The Wabanaki Legal News is published by Pine Tree Legal Assistance, Inc. and is funded in part through a grant from the Legal Services Corporation. The views expressed by the authors in this newsletter are not necessarily shared by Pine Tree Legal Assistance or its staff.

Executive Director of PTLA: Nan Heald, Esq.

Native American Unit
Directing Attorney: Lisa Chase, Esq.

We Want to Hear From You!

If you have comments, articles or ideas on how the newsletter can be helpful to you, please let us know.

Pine Tree Legal Assistance, Inc.
Native American Unit
Lisa Chase, Esq.
273 Main St.
Presque Isle, ME 04769

lchase@ptla.org
207-552-3105

A GUIDE TO CHILDREN'S RIGHTS: ACCESS TO EDUCATION AND STUDENTS WITH DISABILITIES

By Claire Nacinovich, Kids Legal Paralegal

At Pinetree Legal Assistance, Kids Legal assists families in all matters related to children's rights. Our services include advice, brief assistance, as well as extended representation. This may include advice to teenagers who are unaccompanied, or advice to a grandparent who is the primary caregiver for their grandchildren. The majority of our cases pertain to the rights of special education students. Special education students are students who require a customized learning program in order to access their education due to a disability. This article is meant to serve as a brief overview of special education law, process, and procedures to assist parents, and others that support children, in fighting for the best possible school outcomes for kids and their communities.

All children with disabilities have the right to access an education

All students with disabilities have a basic right to access an education. In special education law, this is called "FAPE" (free appropriate public education) This term forms the cornerstone of all special education cases.

Conditions that may qualify a student for special education services

Students qualify for special education under the following categories: autism, deafness, deaf-blindness, developmental delays, emotional disturbance, hearing impairment, intellectual disability, other health impairment, speech/language impairment, or a specific learning disability. The process for determining whether a student qualifies depends both on a diagnosis and also evidence of "adverse affect" on educational performance. It is important to emphasize that disability does not have to be strictly "physical" or "academic" as mental health can just as much impede a student's ability to successfully thrive in school. If you have questions about what may qualify your child, please reach out to Kids Legal.

All children are legally entitled to a meaningful benefit from their education

Special education services are governed by the Individual with Disabilities Education Act, and each state has adopted state regulations to coincide with these federal requirements. The spirit of the law center around the idea that all students, regardless of ability or disability, are entitled, by law, to a meaningful benefit from their education. It is especially important to note that "special education" is meant to be a dynamic program customized to the individual needs of a student, and not simply a "room" or "place" to send students that can not keep up in the mainstream environment.

Every student can and should be challenged in their learning experiences.

The spirit of this law centers around the themes of access and equity. In our work, these themes of access and equity play out most poignantly in terms of expectations we have for students with disabilities. However, these themes also are prevalent to the needs of students from marginalized communities as well. In order to honor the self-worth of every student, the law requires schools and families to work together to create high expectations for children at school. Expectations may include reading proficiently, performing well in school, and progressing in their skills year after year.

Document everything.

Parents should document all phone calls and/or issues that come up for a student throughout the school year, as well as any homework observations or parental concerns as they arise. Any requests made to the school either for testing or a meeting should be made in writing. If it is not in writing, it didn't happen. Even if a student is not identified as a special education student yet, student and parental issues or concerns will be considered more credible by the school district and a hearing officer if it has been well documented.

Attendance or behavior issues and learning disabilities

Attendance or behavior issues may be related to a learning disability that the school has failed to identify, and the parent suspects. If a student is struggling with homework, or to read or complete math problems, it is worth having this student tested for possible learning disabilities. If a school fails to conduct appropriate testing or the parent disagrees with the testing results, they can request an independent evaluation at school expense.

Bullying

Parents or students should report all incidents of discrimination, bullying or harassment to the school in writing. The school has a legal obligation to investigate and provide the parent or student with a written report of their findings. When necessary, the school is also legally obligated to develop a response and plan to address the bullying. If the student has an IEP, the parent should attempt to address any issues of harassment or bullying through the IEP meeting process. The school

district has a legal obligation to create a hostile-free learning environment for all children that is free of discrimination.

Referring your child to special education services

Students with behavior or attendance issues may have hidden disabilities that are contributing to behaviors or lack of engagement in school. While it is better to address disabilities earlier in a student's career, it is never too late for a child or student to access help or services through a referral to special education services. This referral will trigger the school's legal obligation to test the student for any potential disabilities. If parents suspect that their child is struggling either academically or socially, and this is interfering with their education, they can make a referral for special education services.

Parents should put their referral request in writing. A teacher or other school staff are also able to make this referral. Schools have a legal obligation under the law known as "child find" to make referrals to the special education department when a child is falling behind or experiencing challenges in school.

A school district can decide against identifying a student for special education services after testing has been completed. Parents have the right to appeal this decision in what is known as a due process complaint or hearing. Each state will have their own rules and regulations around this process. Parents may also consider securing their own testing through an outside evaluation or an independent evaluation request if they believe the testing conducted by the school was not comprehensive enough or had other flaws.

504 plans

Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities. Section 504 ensures that the child with a disability has equal access to an education. In what is known as "504 plans," a student may receive accommodations and modifications from a school district based on a student's physical or mental health needs. All districts are required to have a 504 coordinator, and any referrals should be made to this person in writing. We suggest any referral be accompanied by a letter of support from a medical professional. If a 504 plan is created, the school will be required to create the plan in writing and provide a copy to the family and all professionals working with the student. A 504 plan generally is based on accommodations that are needed to a student's day or schedule, and are not as comprehensive as an individualized education plan.

IEPs

Once a student is identified as a special education student, the school is legally required to provide an individualized education plan (IEP) for this student. This IEP will contain services and goals as well as a statement of how the student is currently functioning in academics or in other areas. Goals and services are designed to address the needs a student may have due to a disability. Parents are an essential part of a student's IEP team, and are legally entitled to provide input into decisions and determinations.

IEP meetings

At a minimum, schools are required to hold IEP meetings annually. However, a parent can ask for additional IEP meetings at any time to have an opportunity for parents to learn about their child's progress and to provide input into educational decisions for their child.

Written Notices

All determinations made from an IEP meeting should be reflected in the "Written Notice" and potentially in a new IEP if amendments were made to the IEP. A parent can file for due process if no consensus is reached at an IEP meeting based on the determinations made in a written notice. A school is required to provide both an advanced written notice of the meeting as well as a written notice after the meeting detailing the determinations and discussions held at the meeting.

Students with disabilities have a right to FAPE even in a pandemic.

Even if a special education student is home learning remotely, or in school part-time, the school has an obligation to provide FAPE to this student. Any remote learning problems or school problems should still be reported to school in writing and an IEP meeting should be requested to address any concerns or challenges. Referrals, meetings and testing should be continued throughout the pandemic, even if social distancing accommodations need to be made. It is very important for parents to keep careful track of concerns, lack of progress, or requests in writing.

Legal Appeals

Contact your state Department of Education for more information regarding appealing an IEP decision or contact your local legal aid provider. Please also note that often private attorneys will take on a certain portion of their cases "pro bono." This is a highly specialized area of the law, and so you will want to contact a lawyer that has a regular special education practice if possible. Lastly, there is opportunity often for mediation and for a parent to represent themselves without legal counsel. All states will have their own due process regulations and guidelines. KIDS Legal offers assistance for clients who reside in Maine, however, our website can be a valuable resource to anyone on kids and special education issues. Our website link: <http://www.kidslegal.org>

KNOWING YOUR CHILD'S RIGHTS WHEN FACED WITH SCHOOL DISCIPLINE

By Connor Cory, Esq.

A quality education is critical to a young person's ability to develop the skills they need to care for themselves and others as an adult. Yet, too often, that education is disrupted by school suspensions, expulsions or other issues that result in extended removal from the classroom. When it comes to school discipline, it is important that parents and family members know that the law provides certain protections for their children, and students with disabilities have additional legal protections stemming from both federal and state laws. If a child is facing school disciplinary action, there are steps parents and loved ones can take to help advocate to keep the child in school.

What is School Exclusion?

Schools use a variety of disciplinary measures that result in the removal of a child from the classroom. Some obvious examples are out-of-school suspensions and expulsions. These actions result in the child being prohibited from attending school in person. Out-of-school suspensions occur when the student is temporarily not allowed at the school building. In the case of expulsions, the removal can last for up to one school year or can sometimes be for an indefinite period of time.

It isn't always so obvious when a child is being excluded from the classroom, and there are other actions that can result in significant time removed from learning. For example, a school may use in-school suspensions, where the child is allowed at the school building but is sent to a room in the school as a disciplinary measure. Another example is "abbreviated" school days, where the child is in school for fewer hours than their peers. Or perhaps the school regularly calls a parent or caretaker to pick up the student early from school due to behavior concerns. These actions could all fall under the disciplinary umbrella and can constitute school exclusion. It is a good idea to keep track of the dates and times when a child is removed from school even if it is just temporary, and ask school officials to explain their decisions in writing.

The "10-Day" Rule

Generally, schools in Maine can suspend a student for 10 school days or less in one school year without needing to provide a formal procedure for the student to make a case for why they should not be suspended. However, a student facing suspension does still have the right to know what they are being accused of and upon what evidence, no matter how long they are being removed from school. Parents can ask the school to share this type of information with them so they know what the basis is for their child's removal from school.

If the school intends to suspend or expel a student for longer than 10 school days, the student has a right to a formal hearing in front of the School Board. The possibility of school expulsion is a big deal to the student and their future, and consequently students have a constitutional right to due process at expulsion hearings. This means that students have the right to proper notice of the hearing and of the allegations against them, and they have the right "to be heard" which means they can present their own testimony and evidence, and may also cross-examine the school's witnesses. When possible, it is ideal to have an attorney or advocate to represent students in these situations. If you are facing a situation like this, please contact us at KIDS LEGAL.

Additional Protections for Special Education Students

While schools can use many of the same disciplinary measures for both disabled and non-disabled students, there are meaningful limitations to how and when they can remove a student with a disability from school. These legal protections exist to make sure that students with disabilities are not excluded from school because of some aspect of their disability.

For example, if a school plans to remove a student with a disability for more than 10 school days, it must first hold a Manifestation

Determination Meeting with the members of the student's Individualized Education Program (IEP) Team. Special Education students should have IEP Team Meetings at regular intervals to determine the types of support and services they need to access an appropriate education. The IEP Team usually consists of the student's general and special education teachers, a school district representative such as the special education director, and importantly also includes the student's parent or guardian. Often the IEP team will include other specialists or experts, such as a school psychologist or an independent evaluator.

The purpose of the Manifestation Determination meeting is to review the student's alleged concerning behaviors alongside their disabilities, and to decide as a team whether the child's behavior was "substantially related" to their disability. If the answer is yes – that the child's behavior was related to their disability – then that child cannot further be disciplined by the school. The IEP team will also ask whether the student's behavior resulted from the school's failure to implement their IEP. For example, if a student's IEP called for a half-an-hour per day with a school counselor, and that service was not actually provided to the student, the IEP team must consider whether the school's failure to provide those counseling sessions resulted in the child's conduct. These procedures exist to prevent schools from disciplining special education students for an aspect of their disability.

Having a legal advocate at manifestation determination meetings can be very helpful to ensure that the IEP Team is considering the child's disability from various perspectives. Parents and guardians can also make a major difference themselves. As IEP team members, parents or guardians may invite others to attend the meetings, such as a child's outside counselor or case manager. It may be helpful to have these providers or clinicians attend a manifestation determination meeting to provide the team with information about the student's disability and how it shows up, or "manifests", in their day to day life. Parents or guardians may also make observations or offer information about the child's disability, and may ask questions of the student's teachers or other IEP Team members.

If the team ultimately decides that the behavior at issue was not a manifestation of the student's disability, the school may proceed with disciplinary action just as it would if the child was not disabled, although a parent or guardian may request a Due Process Hearing with the state Department of Education if they disagree the manifestation determination.

What Parents and Loved Ones Can Do

While there are a number of legal protections for students, both those with and without disabilities, schools may not always properly observe them. Parents and guardians can advocate for their children by attending meetings, asking questions, keeping a record of disciplinary actions, and insisting on transparency and an explanation of their rights. For parents or guardians that suspect their child might have additional needs at school, making a referral for special education evaluations can be a critical first step towards a more quality education and preserving greater protections when faced with potential disciplinary actions. Kids Legal is available to you at Pine Tree Legal Assistance, Inc. if you need assistance navigating these issues. For additional information, you may also refer to our website at www.kidslegal.org.

TIME TO BUY A CAR? THINGS TO KNOW BEFORE YOU GO

Ross L. Argir, Esq.

Owning a vehicle is a necessity for many families. Having a vehicle allows one the freedom to travel at their own pace (so long as it is at or under the speed limit) and to their own destination. In rural communities, vehicles provide a lifeline for employment and to obtain groceries, medical care, and to access recreational opportunities. However, vehicles have become increasingly expensive and their costs represent an increasing share of a family's budget. It is not unusual for a new vehicle to cost upwards of \$30,000. Though the purchase of a vehicle is one of the most expensive purchases a family will ever make, many consumers do not really understand the car buying process, particularly when it comes to financing offered by car dealerships. This article, though by no means exhaustive, seeks to provide some insight into the process so that one can better understand the car purchasing process and make informed decisions regarding such a purchase. This article will focus on purchases from a dealership, as many of the practices that consumers find confusing or troubling are not present in private sales (which can often be a great way to purchase a used vehicle).

The most important thing to remember when purchasing a vehicle from a dealership is that, with few possible exceptions, the goal of the dealership is to make a profit off the sale and is not to help you find a car that fits your budget and will best meet your needs. Dealerships have several opportunities to make a profit off a sale and consumers should be aware of what tactics may be employed that may harm the consumer financially and what protections the consumer has.

I. The Metal

When purchasing a used car from a Maine dealer, consumers have several protections that they should make sure are honored. First, unless clearly marked as a non-inspectable "tow off" vehicle, vehicles offered for sale by a dealer have to have an inspection sticker that was placed on the vehicle no more than 60 days before. This allows the consumer to know that the car meets the basic safety standards of Maine's car inspection program. It is important to remember that such an inspection does not cover components like the engine or drivetrain. Even if a car is inspectable, consumers should still carefully assess the mechanical condition of the car and take it to a third-party mechanic if there is any doubt. One should not rely on a dealer's promise that the car is inspectable unless it is already inspected.

In addition to the inspection sticker, dealers are required to disclose information about where they obtained the vehicle and its mechanical condition, as known to the dealer, on a sticker placed inside the window of the car called the Used Car Buyer's Guide. This Guide also includes warranty information and information about any documentation fees that may be charged. Knowing that a car is inspectable and knowing where it came from prior to its arrival at the dealer's lot is important. Many cars are purchased by dealers at auction and may have been substantially damaged in the past and repaired in a substandard fashion.

II. The Money

Due to the high cost of cars, new and used, many consumers find it necessary to finance their purchase, often at the dealership. However, what most consumers do not know, is that the financing of consumer's vehicle purchases is often one of the largest profit sources for a dealership. Most dealers immediately assign the car loans (and the risk of default) to a 3rd party finance company. This can give dealers the incentive to put a customer into a car they cannot afford, as the dealership does not bear the risk of the customer defaulting but will reap the gain of a higher priced sale. Further, when a dealer obtains financing for a consumer from a third party lender, it is common practice for the dealer to present the consumer a higher interest rate on the loan than the finance company will actually "buy" the loan at. The dealer then gets a cut of the extra interest generated by the higher interest rate. It is important to remember that interest rates presented by a dealer are often negotiable and that it can often be in a consumer's best interest to see what their own financial institution might offer as an interest rate.

Another common pitfall for consumers purchasing a vehicle is the sale of "aftermarket" products, such as window etching, tire protection, and extended service contracts. These products are often substantially marked up by a dealership and often provide little or no added value to a consumer. Consumers should carefully consider the exact product that they are being offered, ask any questions that they have, and remember that if one really wants the aftermarket product being offered, that the price is almost certainly negotiable. To that end, it is very

important to carefully review any documentation put in front of you to sign. You should always check the total price of the transaction, not just the monthly payment (as payment terms can be extended to make the cost of a vehicle seem lower), check for any charges that you are not familiar with, and verify if the car comes with a warranty or if the dealer has disclaimed all warranties.

This article provides only general overview of parts of the car buying process and it not meant to be an exhaustive guide. For further reading, consumers should consult the Maine Attorney General's Downeaster Common Sense Guide to Automobile Buying and Financing, a truly excellent resource and the source for much of the above information. It is available to download and can easily be found with an online search engine.

VETERAN'S BENEFITS FOR NATIVE AMERICAN VETERANS

By Ryan Lolar, University of Colorado Law School Student

Veterans' Benefits Generally

The U.S. Department of Veterans Affairs, or VA, offers a number of benefits to Veterans. These benefits include "disability, compensation, pension, education and training, health care, home loans, insurance, vocational rehabilitation and employment, and burial." The VA also has additional benefits for elderly Veterans. These benefits include an increased pension for Veterans with additional care costs, or if an individual is confined to their home because of a permanent disability. Further, elderly Veterans may be eligible for programs dedicated to providing long-term care in the Veteran's home or in their community.

The VA also has a number of programs and benefits for other specific groups. These groups include World War II Veterans, Korean War Veterans, Vietnam War Veterans, Gulf War Veterans, Homeless Veterans, Incarcerated Veterans, Former Prisoners of War, Women Veterans, LGBT Veterans, Minority Veterans, and Native American Veterans. The benefits specific to Native American Veterans are covered below.

Native American Veterans' Benefits

In addition to the general benefits and other programs covered above, the VA also has programs dedicated specifically for Native American Veterans. The most prominent of these benefits is called the Native American Direct Loan (NADL) Program. The NADL Program assists Native American Veterans with the financing of purchasing, constructing, or improving a home on Federal Trust Land, or may reduce the interest rate on another VA loan the Veteran already has. This program can be used directly to finance the purchase of a home or can be applied for to help refinance another VA direct loan.

A Native American Direct Loan offers a number of benefits over getting a traditional loan. In many instances, a down payment is not required. There is no need for private mortgage insurance. It limits closing costs relative to traditional loans. It has a low-interest, 30-year fixed rate mortgage. This means that the interest rate on the loan stays the same over the full life of the loan. Currently, the VA interest rate for this program starts at 3 percent. The NADL also allows you to borrow up to the Fannie Mae / Freddie Mac conforming loan limit. Finally, the NADL is a reusable benefit, meaning that you can use it anytime that you need a loan to buy, build, or improve your home.

Anyone who would like to apply for a loan through the NADL program must meet certain eligibility requirements. These requirements are that the tribal government the Veteran is a member of has a Memorandum of Understanding (MOU) with the VA for this program, the Veteran has a valid VA home loan Certificate of Eligibility (COE), the Veteran meets the VA's credit standards, the Veteran can provide proof that they make enough money to cover mortgage payments and other costs associated with owning a home, and the Veteran will live in the home they use the NADL Program to finance.

Where to get More Information

Visit the VA's webpage for VA Benefits: www.benefits.va.gov

Visit the VA's webpage for Native American-specific Veteran Benefits: www.benefits.va.gov/PERSONA/veteran-tribal.asp

Visit the VA's webpage for Elderly Veterans:

www.benefits.va.gov/PERSONA/veteran-elderly.asp

See also Pine Tree Legal Assistance, Inc.'s website at www.ptla.org

The POWER ACT OF 2018 - Watch for the Upcoming Event!

By Lisa Chase, Esq.

The POWER Act is an acronym for the Pro bono Work to Empower and Represent Act of 2018. The U.S. Congress passed this Act to help victims of domestic violence, dating violence, sexual assault and stalking after making multiple findings.

Congress found such violence and behavior occur at extremely high rates at the local, State, Tribal and national levels, and that such violence or behavior harms the most vulnerable members of society, citing a Department of Justice (DOJ) statistic that 25% of women suffer from domestic violence in their lifetime. As noted in our article on Domestic Violence Awareness and Wabanaki People, these rates are much higher for Native American Women. Congress expressed that proactive measures should be taken to provide pro bono legal services to eliminate the violence. A finding was made that pro bono assistance can help with legal representation, access to emergency shelter, transportation, and childcare. Congress noted one study that found 83% of survivors with legal representation were successful in getting orders of protection, whereas only 32% of survivors without an attorney were able to do so.

As a result, Congress found that district court judges should encourage lawyers to provide pro bono services to help victim/survivors escape the cycle of abuse. Furthermore, Congress expressed that communities providing awareness of pro bono legal services will empower survivors to move forward with their lives. Congress mandated that the Chief Judge, or their designee, hold a public event with a state, local, tribal, or territorial domestic violence service provider and a State or local volunteer lawyers project within 1 year after the enactment and annually after that for 4 years. The goal of the event is promoting pro bono services as a critical way to empower survivors and engage citizens to assist survivors.

For districts with Indian Tribes and Tribal Organizations, the Chief Judge, or their designee, is to hold at least one such event during each 2-year period. These events are to be in partnership with an Indian tribe or tribal organization with the intent of increasing the provision of pro bono legal services for Indian or Alaska Native victim/survivors. In Maine, Judge Walker has convened a working group to organize the next Power Act event. The plan was initially for a Spring 2020 event, however, the event was put on hold due to the COVID-19 pandemic. At this time, the working group will be meeting in December with hopes of possibly holding the event in the Spring of 2021, preferably in person, but possibly through a Zoom format.

Problems With the IRS ???

WE MAY BE ABLE TO HELP! Pine Tree Legal Assistance's Low Income Taxpayer Clinic (LITC) offers free representation to qualifying taxpayers.

Facing the following tax problems:

- Outstanding tax debt
- Levies and liens
- Earned Income Tax Credit denials
- Exams and audits
- Innocent spouse relief
- Injured spouse relief
- Tax Court representation

Call 942-8241 to speak to one of our LITC advocates today.
www.ptla.org/low-income-taxpayer-clinic

Lisa Chase

Continued from Page 1

to assess the needs of the native and indigenous people and communities we seek to serve. We have certain services we have historically provided, and it may be that those services continue to be helpful, however, it is possible that there are other areas of need that are not getting the attention and resources that are needed. We are open to hearing what those may be and to discuss whether there is interest in having us collaborate on how to possibly fill some need gaps. We are delighted that our newest hire for the NAU staff attorney position, Ryan Lolar, will be able to join us as an intern his final semester to begin work on these collaboration efforts so that he is in a position to hit the ground running, so to speak, once he has passed the Bar exam.

In the meantime, Pine Tree Legal Assistance has many staff attorneys throughout the state with a variety of legal experience, who often find themselves providing services to members of our native and indigenous communities on issues common to the general population in Maine. With this in mind, our Wabanaki Legal News has a somewhat different feel to it this year – we have focused primarily on articles that address legal issues Pine Tree staff often work on that we hope meet the interest and needs of our readers. Our intent is to return to our traditional news articles next year. However, we would love to hear from our readers, especially any comments about news articles you would prefer! Please reach out to me at: lchase@ptla.org Thank you.

Ryan Lolar

Continued from Page 1

Colorado Governmental Immunity Act, and the Colorado Open Records Act.

Ryan is finishing his third year of law school at University of Colorado Law School in Boulder, Colorado where he is active in the Native American Law Students Association, serves as a student attorney in the American Indian Law Clinic, and has been the lead production editor of the Natural Resources, Energy and Environmental Law Review. During his final academic semester in the spring of 2021, Ryan will be taking classes remotely and happily returning to reside in his home state – Maine. We are excited at Pine Tree to have Ryan join us this spring semester as an intern, then as our NAU staff attorney after passing the Bar exam. While it is unusual for Pine Tree to hire a student who has not completed law school for a staff attorney position, Ryan brings a passion for social justice, compassion and understanding of issues many tribal members face. He has a keen intellect, is a good communicator, and has a strong commitment and value system that fuels his drive for advocating on behalf of tribal members, their communities, and the indigenous population, especially here in Maine.

IMPORTANT NOTICE

If you receive TANF and live on an Indian Reservation, your TANF benefits cannot be terminated because of the five year time limit if over half of the adults on the reservation are not employed.

Call Pine Tree Legal Assistance at:
1-877-213-5630 if you get a letter from DHHS telling you that you have reached the 60 month (5 year) lifetime limit.

You may be exempt from termination.

Domestic Violence Awareness and Wabanaki People

By Ryan Lolar, University of Colorado Law School Student

October was Domestic Violence Awareness Month. Domestic violence continues to be a problem across the United States, but is particularly problematic in Indian Country. According to the National Congress of American Indian's (NCAI) Task Force on Violence Against Women, 34 percent of Native American women are victims of rape in their lifetimes and 39 percent are victims of domestic violence. A part of the problem in Indian Country is the unique jurisdictional barriers that Tribal Nations have to being able to prosecute or assist with domestic violence matters occurring between or against tribal members. In many instances, the U.S. Attorney's Office is charged with prosecuting these cases, but a 2010 GAO study found that U.S. Attorneys fail to prosecute around 67 percent of sexual abuse and domestic violence matters that arrive on their desk from Indian Country.

In Maine, domestic violence continues to be a problem as well. The Maine Coalition to End Domestic Violence reports that in Maine a domestic violence assault is reported to law enforcement every 2 hours and 22 minutes, but that only 56% of nonfatal domestic violence instances are reported nationally. It is important to recognize that this violence is not limited to violence committed by men against women, although that is statistically the most frequently occurring situation. Domestic violence is committed against men, and violence can occur in same-sex relationships and relationships involving non-binary individuals. Wabanaki people, similar to Native people nationally, experience barriers to justice when experiencing domestic violence because of jurisdictional issues. However, some steps are being taken to give Wabanaki tribal governments more jurisdiction:

Maine: H.P. 571 – L.D. 766 (signed into law Mar. 18, 2020)

Over the past year or so, Wabanaki leaders and leaders in the Maine State Legislature met as part of the Maine Indian Claims Task Force to provide recommendations to the Legislature to improve the government-to-government relationship between Maine and the Penobscot Nation, Passamaquoddy Tribe, Aroostook Band of Micmacs, and Houlton Band of Maliseets. The Task Force's final recommendations were released in January of this year and included increasing tribal jurisdiction over domestic violence-related crimes. This resulted in a bill that became law in March of this year. This bill, L.D. 766, states that the Penobscot Nation and Passamaquoddy Tribe can exercise criminal jurisdiction over certain domestic violence-related crimes under the Violence Against Women Reauthorization Act.

Congress: Violence Against Women Act (VAWA) Reauthorization

Another potential change for Wabanaki tribes can come from the Violence Against Women Act Reauthorization. VAWA contains special language about Tribal Nations ability to exercise jurisdiction over certain crimes involving domestic violence. A subsection of the Maine Indian Claims Settlement Act limits the applicability of federal law, like VAWA, unless the Maine Implementing Act is amended in the Maine State Legislature or unless the federal law specifically mentions the Wabanaki tribes. Wabanaki tribal leaders were successful in getting language that includes the Wabanaki tribes in the most recent VAWA Reauthorization. The law has been passed in the House, but is awaiting passage in the Senate. If passed, the VAWA reauthorization will expand the ability of Wabanaki tribal governments to combat domestic violence and empower tribal courts to hear more cases regarding domestic violence.

Resources:

If you or someone you know are experiencing domestic violence, please reach out to:

Wabanaki Women's Coalition

www.wabanakiwomenscoalition.org/

Maine Coalition to End Domestic Violence

www.mcedv.org/

Maine Coalition Against Sexual Assault

www.mecasa.org/

COMMUNITY RESOURCES

AROOSTOOK BAND OF MICMACS:

www.micmac-nsn.gov

Administration, Housing,
Child/Family Services 764-1972 or 1-800-355-1435

Micmac Head Start Program 768-3218
Health Department 764-1792 or 1-800-750-1972

HOULTON BAND OF MALISEET INDIANS:

www.maliseets.com

Administration 532-4273
1-800-564-8524(in state)
1-800-545-8524(out of state)

Maliseet Health Department 532-2240
Maliseet Health Clinic 532-4229
Maliseet Housing Authority 532-9140 or 532-8619
Indian Child Welfare 532-7260 or 866-3103
Social Services and LEAD 694-1874
Domestic and Sexual Violence
Advocacy Center 532-3000 or 532-6401(cell)

PENOBSCOT INDIAN NATION:

www.penobscotnation.org

Administration, Clerk's Office 817-7351
Indian Health Services 817-7400
Penobscot Housing Dept. 817-7372
Penobscot Human Services 817-7492
Indian Island Police Dept 817-7358 (dispatcher)
827-7188/911 (emergency)
827-6336 (business)

Domestic Violence and Sexual
Assault Crisis Hotline 631-4886 (24/7)

Penobscot Tribal Court System

Clerk of Courts 827-3415

PASSAMAQUODDY TRIBE:

PLEASANT POINT www.wabanaki.com

Administration 853-2600 ext. 254
Pleasant Point Health Center 853-0644
Pleasant Point Housing 853-6021
Domestic Violence-Peaceful Relations 853-0092
Emergency: 853-2613
Police Department 853-6100
Social Services 853-2600 ext. 258
Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 853-2600 ext. 251

INDIAN TOWNSHIP (www.passamaquoddy.com)

Administration 796-2301
Indian Township Clinic 796-2321
Indian Township Housing 796-8004
Police Department 796-5296
Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 796-6107

STATEWIDE CRISIS SERVICES

HEALTH & HUMAN SERVICES

DHHS Child Abuse 1-800-452-1999(24 hour)
1-800-963-9490(TTY)
DHHS Adult Abuse and Neglect 1-800 624-8404

DOMESTIC VIOLENCE

Maine Coalition to End DV 1-866-834-HELP (4357)
Deaf or Hard of Hearing 1-800-437-1220
www.mcedv.org

SEXUAL ASSAULT

Maine Coalition Against Sexual Assault 1-800-871-7741 (24/7)
www.mecasa.org

OTHER SERVICES

Maine Crisis Line 1-888-568-1112
Statewide Suicide Referral Line 1-800-568-1112
Poison Control Center 1-800-222-1222

2-1-1 MAINE

2-1-1 MAINE

www.211maine.org

2-1-1 Maine is part of a national movement to centralize and streamline access to health and human service information and resources. The state of Maine has thousands of programs offering all types of health and human services.

COMMUNITY ACTION PROGRAMS bring community resources together such as heating assistance and other utility issues, subsidized housing, child care, and transportation services for disabled people. Call 2-1-1 for your local program.

LEGAL SERVICES

PINE TREE LEGAL ASSISTANCE

www.ptla.org

Pine Tree Legal represents low-income people with legal problems.

Portland: 207-774-8211
Augusta: 207-622-4731
Machias: 207-255-8656
Lewiston: 207-784-1558
Presque Isle: 207-764-4349
Bangor: 207-942-8241
Farm worker Unit: 1-800-879-7463
Native American Unit: 1-877-213-5630

VOLUNTEER LAWYERS PROJECT

www.vlp.org

Call the hotline 1-800-442-4293 or 942-9348
(Mon 1:00-3:30 or Fri 9:00-11:30)

For Intake of legal problems Email: intake@vlp.org
For family law matters go to maine.freelegalanswers.org

LEGAL SERVICES FOR THE ELDERLY

www.mainelse.org 1 (800) 750-5353

If you are age 60 or older, LSE can give you free legal advice or limited representation.

The helpline is open Monday to Friday, 9am to 4pm

DISABILITY RIGHTS CENTER

www.drcme.org 1-800-452-1948 or 626-2774

Advice and legal representation to people with disabilities.

OTHER COMMUNITY RESOURCES

WABANAKI MENTAL HEALTH ASSOC.

www.wabanaki.org 992-0411

Wabanaki provides culturally-sensitive psychological and social services to the Native American populations of Hancock, Penobscot, Piscataquis and parts of Washington Counties.

MAINE INDIAN TRIBAL STATE COMMISSION

www.mitsc.org 207-733-2222

13 Commissary Point Road
Township of Trescott, ME 04652

WABANAKI ALLIANCE

www.wabanakialliance.com

INDIAN COUNTRY COVID-19 (CORONAVIRUS) RESOURCES

Tribal Law and Policy Institute

www.home.tlpi.org/covid-19

Links to information & resources concerning relevant tribal, federal, and state issues, initiatives, & resources for addressing the COVID-19 pandemic in American Indian & Alaska Native communities.

THE TRIBAL RESOURCE TOOL

www.tribalresourcetool.org

Searchable directory of services for all AI/AN survivors of crime and abuse in Indian Country

SOCIAL SECURITY ADMINISTRATION

www.ssa.gov/reach.htm

Statewide 1-800-772-1213
Bangor Area 877-405-1448 - 207-941-8698
Presque Isle Area 1-866-837-2719 - 207-764-2925

MAINE HUMAN RIGHTS COMMISSION

maine.gov/mhrc 624-6290 or Maine Relay 771 (TTY)

EMPLOYMENT INFORMATION

MAINE DEPARTMENT OF LABOR

To file unemployment claims online: www.maine.gov/labor/unemployment

To file unemployment claims by telephone: 1-800-593-7660

Or go to your nearest Career Center: (mainecareercenter.com)

Bangor: 561-4050 Calais: 454-7551
Machias: 255-1900 Presque Isle: 760-6300