Remembering Jim Fitzsimmons
by Andrea Collin—SBAND Gavel

Jim Fitzsimmons is remembered for his commitment to ‘justice for all’ in North Dakota. The man who devoted his entire legal career to North Dakota’s low-income and underserved populations is being remembered as a national expert who developed one of the most successful statewide legal services programs in the country.

Legal Services of North Dakota Executive Director Jim Fitzsimmons died unexpectedly at the age of 62 on March 30. The outpouring of condolences since his death has come from people across the state and around the country.

“I knew Jim was admired by a lot of people, but I had no idea how many we would hear from,” said Rich LeMay, LSND interim executive director from the agency’s Minot office. “He was nationally known for his expertise in Indian law and admired as a legal services program administrator. Our offices are fully staffed and we are managing well, but it will take some time for us to adjust to working without Jim.”

While he could have taken his legal career in many other directions, LeMay said Fitzsimmons had one single focus. “The only careers he had in his life were road construction while a student and social justice as a lawyer. We don’t see a lawyer doing that very often – devoting his entire career to social justice.”

A Mandan native, Fitzsimmons was raised there and in Dickinson, where he graduated from high school. He earned a bachelor’s degree from the University of North Dakota prior to attending UND Law School. Upon becoming a lawyer in 1976 he began working with North Dakota Legal Services on the Fort Berthold Reservation.

Ed Reinhardt, a senior attorney for LSND who works in the New Town and Belcourt offices, says Fitzsimmons taught him all he knew about Indian law. Another major accomplishment was successfully leading the consolidation of North Dakota’s two legal services programs. “There is often bloodshed with consolidations like this, but ours was smooth.”
The consolidation of North Dakota Legal Services and Legal Assistance of North Dakota began in 2002 and was completed January 1, 2004. Fitzsimmons, who became the executive director of the new consolidated agency, believed that one single agency was the best way to deliver the most cost-effective services in a state. LeMay said many states are unable to accomplish this. “New Jersey has 15 legal services programs, and Minnesota has three or four. South Dakota still has two after efforts to consolidate were unsuccessful. Having one consolidated program is significant.”

As head of LSND, LeMay said Fitzsimmons put a great emphasis on equal access across the state. “He wanted the same services available to people in Wahpeton and Crosby, Park River and Bowman. While some state offices have staff with particular specialties in law, Jim set the model that all offices provided the same services. This gave people in the state unparalleled access to legal services. Not many other states offer the access that North Dakotans have in free legal services.”

Reinhardt said Fitzsimmons never lost his focus on clients. “As long as he was executive director, he still carried a caseload because he said he didn’t want to lose touch with the clients. He said it made him a better administrator.”

Watford City lawyers Ross Sundeen and Dennis Johnson worked with Fitzsimmons throughout their careers. “I first met Jim when I clerked for him in 1992 in a shared position with Dennis’s office that was funded with interest from an IOLTA grant,” said Sundeen. “I was able to observe first hand that whether with people, politics or the law, Jim had tremendous integrity that allowed him to selflessly achieve results for the common good of others, regardless of race or creed. I saw this time and again over two decades.”

Sundeen believes what defined Fitzsimmons as a lawyer was that “he followed his heart and passion. He could have done any number of other jobs in the legal profession.”

Johnson recalled that Fitzsimmons was the first lawyer he met when he returned to his hometown of Watford City to practice law in 1980. “His priorities were always the constitution, due process and fairness,” said Johnson. “He had great empathy for those who did not have something or when someone who did have something tried to take advantage of someone who didn’t. He had a great sense of right and wrong. He didn’t tolerate bullying from anyone – attorneys, judges, prosecutors or politicians. When it did happen, he worked as hard as he could to bring right back to the table.”

His great passion for due process is what Sundeen says he will remember most about Fitzsimmons. “Whether he won or lost, he wanted to see due process achieved. He would always side for the downtrodden, the underdog. He was a true child of the Sixties. His character was formed in the civil rights movement and it never left him. He was a brilliant man and could have done anything, but he never aspired to anything else. They don’t make people like that anymore.”

Duane Houdek, who worked for Fitzsimmons for several years beginning in 1982, believes his lasting legacy will be his lifelong commitment to providing access to justice for the poor and disenfranchised across North Dakota. Now the executive secretary of the North Dakota Board of Medical Examiners, Houdek observed throughout his career how deftly Fitzsimmons built up North Dakota’s system of legal services. “He worked very hard to incorporate the private bar in the delivery of these services, as well,” said Houdek. “He was very much a part of the building of a robust legal services system in North Dakota.”

Sundeen also noted Fitzsimmons’ strategy to reach out to a private attorney when he could not take on a case. “He would find someone who would agree with him that there was an injustice in something and take on a case pro bono. He knew what buttons to push with other lawyers.”
Thank You for Your Expressions of Sympathy

This issue of the Sentinel is dedicated to our former Executive Director Jim Fitzsimmons and is published as we remember his birthday the 29th of May.

The program has received over $1800 in memorials with the intent to continue Jim’s mission of providing legal assistance to the low income and elderly population in North Dakota. We welcome additional contributions to the “Fitzsimmons Fund” which can be sent to LSND at 418 E Broadway #7, Bismarck, ND 58501.

Thank you to all who have expressed your sympathy to us as a staff. We do appreciate all of your kind words of consolation and encouragement.

Bush Prize Grant

As you are no doubt aware, LSND was awarded the 2014 Bush Prize for Community Innovation. LSND has increased legal service delivery for low-income, disadvantaged and elderly populations across North Dakota by transforming its intake process into a nationally recognized, streamlined system.

A video has been prepared by the Bush Foundation on LSND and can be viewed by going to our LSND website—legalassist.org, clicking on FaceBook (you don’t need an account), then clicking on the area that shows the video. The video was dedicated in memory of Jim Fitzsimmons.

Johnson said several times a year Fitzsimmons would call him to ask about an area of law he practiced. “‘Let me bounce something off you’, he would say,” said Johnson. “I always took his calls because I knew it would be something very interesting, even though it usually involved my taking on a pro bono case. But he didn’t call for himself, it was always to help someone else.”

Besides his family and his legal career, Johnson said Fitzsimmons’ one other great passion was major league baseball. “He knew all the teams and the stats on each player. Nearly every spring he took a trip with his family to Arizona to take in pre-season games.”

The void left by Fitzsimmons’ death is being felt by many. “LSND has lost something that will never be replaced,” said Reinhardt. “We now must figure out a way to carry on his legacy.”

The high quality of legal services in North Dakota is Fitzsimmons’ legacy, believes Sundeen. “Not only was Legal Services his job, it was who Jim was. He was North Dakota Legal Services. That’s where his soul was.”

The tribute that Don Saunders of the National Legal Aid and Defenders Association in Washington, D.C. shared at the time of his death reflects the respect held for Fitzsimmons nationally.

He wrote, “The light shines a little dimmer in Indian legal services with Jim's untimely passing. I enjoyed the privilege of working with and admiring Jim for over 20 years. He was a beacon of justice for Native American rights, and the rights of all disadvantaged people, not just in his beloved North Dakota, but on the national stage as well.”

“Our community is challenged in many ways, but that never dampened Jim's spirit, compassion or leadership for the causes in which we believe. To all his family, friends and colleagues, please take solace in your loss with the understanding that his career has left a mark on many who strive every day for basic human rights across the nation.”
Ever wonder what these legal terms mean? Here is a listing to help you understand legal ease.

- **Agent**—Person authorized to act on behalf of another person.
- **Answer**—The written response by a Defendant to a complaint.
- **Beneficiary**—Person who receives money, property, or other benefit from a trust or a will.
- **Bequest**—A gift in a will.
- **Circumstantial Evidence**—Evidence that is indirect. That implies something occurred, but does not directly prove it.
- **Clerk of Court**—Administrative part of the Court that maintains the Court’s records. All documents that are required to be “filed” are filed with this office.
- **Complaint**—*Criminal*—formal written charge that a person committed a criminal offense. *Civil*—document from the plaintiff which states the claims against the defendant.
- **Continuance**—A grant by the court for an extension of time.
- **Default**—Defendant who was served with a Complaint but does not Answer may be found in default.
- **Defendant**—The parties the plaintiffs claim injured them in violation of law (civil). The party that is accused of committing a crime (criminal).
- **Domicile**—The permanent residence of a person.
- **Filing Fee**—A fee of money paid to the Clerk of Court to file a complaint.
- **Garnishment**—Taking a person’s property held by a third party (like an employer or a bank) to pay a judgment. Taking wages from an employer is the best known form of garnishment.”
- **Guardian**—A person appointed by the court to make personal decisions for a protected person.
- **Hearing**—A hearing resembles a trial but is more relaxed. A hearing is generally held in a courtroom and is open to the public. It is a formal meeting of the parties for the purpose of resolving some of the issues before the court.
- **Heirs**—Persons who are entitled to inherit property of the deceased.
- **Judgment**—A written order of the judge’s decision or the jury’s verdict and the remedies, if any, that are ordered.
- **Notary Public**—Public officer who is authorized to administer oaths and to attest to the authenticity of signatures.
- **Plaintiff**—The person who files a civil lawsuit with the Court.
- **Power of Attorney**—A document giving a person the right or authority to make binding decisions for another.
- **Probate**—Generally includes all matters and proceedings pertaining to the administration of estates, guardianships, etc. It is also a court procedure where a will is proved to be valid or invalid.
- **Pro se**—A party in a lawsuit that represents himself or herself. Proceeding pro se means proceeding without a lawyer.
- **Proof of Service**—A document stating how and when service of a summons and complaint or other legal document was made on the other party.
- **Reply**—A written response in opposition to a motion made by the other party, or the answer to a counterclaim made by the other party.
• **Restitution**—Part of the order or judgment of a civil case or part of a sentence in a criminal case. Restitution is to return the property or monetary value of the loss.

• **Sanction**—Punishment the court may impose on a person in certain situations. For example, a person refuses to obey a court order, or refuses to respond to discovery requests. A sanction can be monetary or even result in a lawsuit being dismissed.

• **Small Claims Court**—Cases for the recovery of money where the value does not exceed $15,000.

• **Statute of Limitations**—The amount of time a person has to file a lawsuit after the injury or, in some cases, after the person becomes aware of the cause of the injury.

• **Subpoena**—Document issued which requires a person (non-party) to appear at a proceeding, hearing or trial.

• **Summons**—A document that must be served with the original complaint in order to start a lawsuit.

• **Testator**—The person who makes a will.

• **Venue**—Place where the lawsuit is filed.

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**LSND is on Facebook!**

Follow us and we’ll keep you up-to-date with our news and information. It is a chance for you to let us know what you think, too. We always appreciate your comments.

If you are already set up with a Facebook account, simply head to our Facebook page (Legal Services of North Dakota), and click the ‘like’ button. If you don’t have a Facebook account yet, you can sign up for a free account and then follow the directions above.
Thirty-eight million Americans live with severe disabilities. Through our Faces and Facts of Disability campaign, Social Security provides a platform for those individuals living with severe disabling conditions to tell their stories and the importance of the Social Security disability program. This month, the spotlight is on Larry, who began receiving disability benefits after developing congestive heart failure.

The Social Security Disability Insurance program provides Larry with financial and medical benefits that pay for doctors’ visits, medicines, and treatments. Through a special work program, he can work part-time while receiving benefits. Larry sees the aid he gets from Social Security as an asset, not a crutch. He hopes that he’ll someday be able to return to full-time work and independently support himself.

Disability can happen to anyone, including you. The facts are sobering for any age group. One-in-four 20-year-olds become disabled before reaching retirement age and may need to rely on Social Security benefits.

To learn more and hear stories about people living with disabilities, please visit our Faces and Facts of Disability site at: www.socialsecurity.gov/disabilityfacts

Think of Retiring?
Tips from Social Security Administration

Some things to consider:
Retirement can have more than one meaning these days. It can mean that you have applied for Social Security retirement benefits or that you are no longer working. Or it can mean that you have chosen to receive Social Security while still working, either full or part-time. All of these choices are available to you. Your retirement decisions can have very real effects on your ability to maintain a comfortable retirement.

If you retire early, you may not have enough income to enjoy the years ahead of you. Likewise if you retire late, you’ll have a larger income, but fewer years to enjoy it. Everyone needs to try to find the right balance, based on his or her own circumstances.

Longevity:
You may need your income to be sufficient for a long time, because people are living longer than ever before, and generally women tend to live longer than men.

- The typical 65 year old today will live to age 83
- One in four 65 year olds will live to age 90; and
- One in ten 65 year olds will live to age 95

Once you decide on the best age for you to actually retire remember to complete your application three months before the month in which you want retirement benefits to begin.

You should also apply for Medicare before reaching age 65. www.socialsecurity.gov/medicareonly is the site.
Domestic violence is a pattern of behavior where one person in an intimate relationship coerces, dominates, and isolates another person in the intimate relationship in order to maintain power and control over that person and over the relationship. Domestic violence is learned behavior. It typically involves controlling behavior encompassing different types of abuse including physical, economic, mental and emotional abuse. It is the perpetrator, not substance abuse, not the victim, and not the relationship, that causes domestic violence.

Anyone may be a victim of domestic violence. Domestic violence can occur in dating or in long-term relationships and affects all communities regardless of race, ethnicity, religious affiliation, culture, economic status, age, ability, immigration status, HIV status, sexual orientation, or gender identity.

In order to understand the dynamics of a particular domestic violence case it is important to understand the broader continuum of violence in which these cases occur. By conservative estimates, 1.5 million women in the United States are assaulted by their intimate partners every year.\(^1\) Nationally, one in four women will experience domestic violence in her lifetime.\(^2\) Although women are the victims of the majority of domestic violence crimes, men are also victims; these same studies reveal that 835,000 men are physically assaulted by an intimate partner annually in the United States.\(^3\) The need for protection from domestic violence cannot be underestimated.

Domestic violence impacts every aspect of a victim’s life and thus has legal implications that go beyond punishing the perpetrator of the criminal acts themselves. By having a better understanding of the context in which the domestic violence occurs, judges are able to better assess lethality and craft remedies that are most appropriate to ensuring the safety of the victim(s) of the abuse and accountability of the perpetrator, thereby contributing to safer communities.

It is critical for all judges, not only those who handle criminal cases, to understand the dynamics of domestic violence and its impact on its victims. The violence a victim experiences may impact the victim’s ability to obtain legal immigration status in the U.S., to remain in school, or gain custody of children. For example, in North Dakota, a victim of domestic violence may be able to break a residential rental lease if the victim feels unsafe staying at home, without paying the remainder of the lease.\(^4\)

Footnotes:
2. Id.
3. Id.
4. N.D.C.C. §47-16-17-1 (a victim of domestic violence may terminate a residential rental lease if the victim has a protection order and fears imminent domestic violence).

From the Desk of Linda Isakson, Council of Abused Women’s Services, ND

In North Dakota many of the hotline calls come into local domestic violence and sexual assault programs crisis line. In 2014, 20 local programs answered 1225 hotline calls providing callers with information, referral and a pathway to services. Additionally, 4816 new victims of domestic violence sought direct services from advocates at local programs and 900 primary victims of sexual assault were served. Local crisis lines receive calls not only from their own service area but from across the country as well. Victims of abuse often call hotlines looking for information and support to assist them in making life changing decisions. They are valuable tools in reducing the incidents of domestic and sexual violence. Resources can be found at www.cawsnorthdakota.org under the Find Help tab.
Background
Established by Congress in 1974, the Legal Services Corporation (LSC) promotes equal access to justice by funding high-quality civil legal assistance for low-income Americans. LSC is the single largest funder of civil legal aid for the poor in the country.

LSC is a grant-making organization, distributing more than 90% of its federal appropriation to eligible nonprofits delivering civil legal aid. LSC awards grants through a competitive process and currently funds 134 independent legal aid organizations with approximately 800 offices throughout the United States and its territories.

LSC’s grantees serve thousands of low-income individuals, children, families, seniors, and veterans in every congressional district.

LSC grantees handle the basic civil legal needs of the poor, addressing matters involving safety, subsistence, and family stability. Most legal aid practices are focused on family law, including domestic violence and child support and custody, and on housing matters, including evictions and foreclosures.

LSC conducts robust oversight of its grantees. To ensure grantee compliance with statutory and regulatory requirements and sound financial management practices, LSC conducts regular on-site fiscal and programmatic compliance reviews and investigations. LSC also assesses the quality of legal services our grantees deliver and provides training and technical assistance.

LSC Leadership
LSC is governed by an 11-member Board of Directors, each of whom is appointed by the President of the United States and confirmed by the Senate to serve a three-year term. By law the Board is bipartisan; no more than six members may be of the same political party.

The current Board includes leaders from across the country with a wealth of professional experience at major law firms, law schools and civil legal aid providers; two Board members are client representatives.

The Board is responsible for hiring the President of the Corporation; the President oversees LSC’s staff and is responsible for the final approval of all awards made to the Corporation’s grantees. LSC’s senior management has considerable experience in both the public and private sectors.

“The American ideal is not for some justice. It is, as the Pledge of Allegiance says, ‘Liberty and justice for all’….Can there be a just society when some do not have justice? Equality, equal treatment, is perhaps the most fundamental element of justice.”

United States Supreme Court Justice Antonin Scalia at LSC’s 40th Anniversary Conference, September 2014.
The IRS Won’t Call You, But the Scammers Will
Materials Provided by AARP

Since the start of the tax season, you’ve likely seen the news about fraud targeting taxpayers, including people in North Dakota.

Tax identity theft and the IRS imposter scam are two of the tax crimes making headlines. Tax Identity Theft. What is it? Your personal information, including your Social Security number, is used by someone else to file for a fraudulent tax refund. If someone files a fraudulent tax return using your identification, and then you file your return, the IRS will contact you by mail. The letter will state that more than one return was filed using your Social Security number. The IRS will never contact you by phone, email or text message. You can check the legitimacy of any IRS mailing by calling 800-829-1040.

Your personal information can be stolen in a number of ways, including theft of mail or tax returns, corrupt tax preparation services, or phony emails from imposters.

To avoid tax identity theft:
· Mail tax returns as early in the tax season as possible before the cons beat you to it.
· Never give your Social Security number or other personal information to phone callers.
· Shred personal and financial documents.
· Know your tax preparer.
· Check the status of your refund after filing at irs.gov/Refunds.

IRS Imposter Scam
What is it? An intimidating and sophisticated phone scam, callers claim to be IRS employees and say you owe taxes. They might threaten to arrest you if you don't pay immediately, know all or part of your Social Security number, rig caller ID to make it look like the call is from the IRS, or tell you to put the money on a prepaid debit card and tell them the card number.

The IRS will never call to demand immediate payment about taxes owed without first sending you a notification by mail. The IRS will not ask for credit or debit card numbers over the phone. And the IRS will not threaten to bring in local police or other law enforcement to arrest you for nonpayment. If you have any doubts about a phone call you receive, call the IRS directly at 800-829-1040.

IRS Wants You to Know About Schemes, Scams and Cons
“If it sounds too good to be true, it probably is!” Don't become a victim to any scheme that offers instant wealth or exemption from your obligation as a United States citizen to file tax returns and/or pay taxes. Some of these schemes can literally cost you your life savings. Others can result in your prosecution and imprisonment if you knowingly participate in them.

You Can Donate to Legal Services of North Dakota

As a nonprofit organization, Legal Services of North Dakota (LSND) relies on contributions to continue providing free legal services to low-income persons and our many advocacy projects. Any donation, large or small, supports the vital role we play in the struggle for equal justice. LSND is a 501 (c)(3) organization, meaning that all contributions are fully tax deductible. You can make checks payable to Legal Services of North Dakota which can be sent to us at:

Legal Services of North Dakota
418 E Broadway #7, Bismarck, ND 58501
Common Law and North Dakota

Each state has its own laws regarding marriage and “common-law” relationships.

To be married in North Dakota, a couple must go through a marriage ceremony led by someone who has the legal power to marry people, such as a judge, justice of the peace, or religious official.

Living together in North Dakota in a marriage-like relationship is often called “cohabitation.” This does not create a marriage in this state. In some states, like Montana, living together for a certain period of time can create a common law marriage.

It does not matter what you call your common-law partner. You might call them your “partner,” “spouse,” “husband,” or “wife.” No matter what term you use or how long you live together, you don’t become married in North Dakota unless you go through a legal marriage ceremony.

In states that recognize “common-law” marriage, the law gives varying legal rights to common-law partners depending on how long they’ve been together or whether they have a child together.

Don’t guess, check with an attorney who is knowledgeable in this area of the law.
Community Benefits

- Keeping individuals in their home longer saves dollars. Home care or basic care rather than nursing home care can save up to $3,000 per month.

- Alternatives to Guardianship, such as Power-of-Attorney or Social Security appointments are significantly less costly than court appointments.

- Assisting with financial affairs prevents exploitation of needed assets, legal difficulties, and unnecessary shutoff actions from utility companies.

- Improved mental and physical capabilities resulting from proper nutrition and medical services helps keep individuals in their homes longer.

- Identification and sale of assets to purchase needed services saves tax dollars.

- Accessing family members to assist with costs of medical, social, and legal services saves tax dollars.

- Improved living conditions and home repair and maintenance prevents rodent and insect infestation, fire danger and helps maintain value.

- Avoidance of unnecessary medical procedures results in financial savings.

Courtesy of
Guardian and Protective Services, Inc. of Bismarck
http://www.gapsinc.org/guardian_and_protective_services.htm
What is the North Dakota Supreme Court?

The North Dakota Supreme Court is the highest court in the State, consisting of five Justices, including a Chief Justice. The North Dakota Supreme Court is primarily a court of appeals. An appeal is not a new trial. Parties in an appeal before the Supreme Court may not offer any evidence that was not presented to the district court. The Court decides appeals strictly on the basis of the record of the proceedings in the district court, the written briefs filed by the parties, and argument of those briefs.

The North Dakota Supreme Court also has original jurisdiction to issue writs. There are several types of writs. Writs are highly unusual remedies and are rarely issued by the Court. An application for a writ does not replace a timely-filed appeal. The filing requirements for supervisory writs are governed by Rule 21 of the North Dakota Rules of Appellate Procedure. Writs are not discussed further in this guide.

References: N.D.C.C. §§ 32-22; 32-33; 32-34; and 32-35.

Where is the North Dakota Supreme Court Located?

The Supreme Court is located in the State Capitol in Bismarck, North Dakota. The Court's regular business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Any questions about an appeal should be directed by letter, telephone call, or email to the Clerk's office as follows:

Clerk of Court
Supreme Court of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0530
(701) 328-2221
(701) 328-4480 (fax)
supclerkofcourt@ndcourts.gov

All communication with the Supreme Court must be conducted through the Clerk's Office. No party is permitted to contact an individual Justice regarding any case.

Is there Internet Access to the North Dakota Supreme Court?

Information about the North Dakota Supreme Court may be accessed through the Internet: http://www.ndcourts.gov. The Court's website contains timely news items about the Court and other legal organizations, and provides links to the Court's calendar, opinions and notices, and case docket information, including links to briefs, court rules, profiles of the Justices, and information about the Court's standing committees.
North Dakota law imposes numerous obligations upon landlords to properly repair and maintain rental property. First, a landlord must comply with applicable building and housing codes materially affecting health and safety. Local, state, and/or federal building and housing codes may apply depending on the type of housing or assistance in question. Building codes are sets of rules that specify minimum standards for structures to be built or remodeled in order to protect public health, safety, and welfare. Housing codes are sets of rules that specify minimum standards for occupancy, repair, maintenance, and condition of dwellings to protect public health, safety, and welfare.

Second, a landlord must make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. A dwelling may be uninhabitable if the walls are substantially damaged or improperly constructed, floors or roofs have an improper weight distribution or strength to be reasonably safe, it has been so damaged by fire, wind, or other causes as to endanger health, safety, and welfare, it has inadequate sanitary facilities, or it has inadequate or unsafe electrical wiring or heating facilities.

Third, a landlord must keep all common areas of the premises in a clean and safe condition. Common areas include sidewalks, hallways, laundry rooms, parking lots, or other areas commonly used by tenants. Notably, it is a tenant’s responsibility to keep the unit itself as clean and safe as the premises permits.

Fourth, a landlord must maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.

Fifth, a landlord must provide and maintain appropriate garbage receptacles and arrange for their removal. A tenant is responsible for periodically removing all garbage from the tenant’s unit and disposing of it in a clean and safe manner.

Sixth, a landlord must supply running water and reasonable amounts of hot water at all times and reasonable heat, unless the dwelling is not constructed for that purpose or it is within the exclusive control of the tenant and the applicable public utility company or it is unavailable due to a supply failure by an applicable public utility company.

In North Dakota, a private landlord and tenant may mutually agree in writing that a tenant perform certain landlord obligations. For a single-family home, the landlord and tenant may agree in writing that the tenant will perform the landlord’s obligations to provide and maintain the garbage, water, and heat utilities and perform specific repairs, maintenance, alterations, and remodeling. However, the transaction must be entered into in good faith.

In other types of housing, a landlord and tenant may mutually agree that the tenant perform specific repairs, maintenance, alterations, or remodeling if certain requirements are met. First, the agreement between the parties must be entered into in good faith. Second, the terms of the agreement must be set out in a separate writing from the lease agreement and must be signed by both the landlord and tenant. Third, the landlord must provide the tenant adequate consideration such as money in exchange for the tenant’s additional obligation(s). Fourth, the work cannot be necessary to cure the landlord’s noncompliance with its obligation to provide and maintain garbage utilities. Fifth, the agreement cannot diminish or affect the landlord’s obligation to other tenants in the premises. Lastly, the landlord cannot treat performance of the work in the separate agreement as a condition to any obligation or performance of any lease agreement.

It is important to note that in some housing programs, state or federal laws may not allow a landlord and tenant to shift a landlord’s repair and maintenance obligations to a tenant. A tenants should exercise caution in agreeing to perform a landlord’s obligations. It can be costly and burdensome to repair and maintain property and may affect a tenant’s possible future claims and defenses against a landlord in the event of a legal dispute.

See Legal Services of North Dakota’s upcoming Fall newsletter to learn how a tenant may request a landlord to perform repairs and maintenance of rental property, a tenant’s remedies if a landlord should fail to comply with its obligations, and the possible effects of those tenant remedies if exercised.
Listed below are the cities and locations where Legal Services of ND conducts legal outreach. The dates and times vary; however, if you check our web site at [www.legalassist.org](http://www.legalassist.org), under the Legal Outreach Calendar you will find a current schedule complete with dates and times.

*Outreach involves our attorneys and paralegals going into the rural areas of our state to provide needed legal help and community education.*

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<tr>
<td>Williston</td>
<td>Heritage Center</td>
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