

# Minnesota Department of Human Services

## Benefit Recovery Section

### Special Recovery Unit

Saint Paul, Minnesota

October 9, 2013

**Jordana Koja-Volk**

*Staff Attorney*

**Greg Lulic**

*Lien Specialist*



Minnesota Department of **Human Services**

# Presentation Overview

- Federal Law Requirements on Estate Recovery
- State Law Requirements on Estate Recovery
- Liens
  - MA Liens and NPC
  - MA and NPC Process
  - Exceptions/Undue Hardship Waivers
- Recovery on Trusts and Annuities
- Transfer on Death Deeds
- Affidavit of Collection
- MA Collection Incentive
- Questions



# Federal Law Requirements

- Federal Medicaid Program
  - Liens allowed prior to death (TEFRA, 1982)
  - States required to carry out Medicaid recovery program. (OBRA, 1993)
  - Requirement that the state be named a beneficiary on annuities. (DRA, 2005)
  - A deceased's individual's estate shall include all real and personal property and other assets as defined in State's probate law. (42 USC §1396p(b)(B)(4))
- A claim is allowed only when an individual is 1) 55 years of age and older, and 2) is institutionalized with no reasonable expectations of being discharged. (42 U.S. Code §1396p)
  - Recovery is not allowed when the recipients is survived by 1) a community spouse, 2) a sibling resides in the home for a year, and 3) a child resides in the home for 2 years and provided care.



# State Law Requirements

- Same estate definition as the federal law. (§524.1-201)
- In 2003 and 2009, Minnesota expanded the definition of “estate” as allowed under federal statute.
  - It clarified the ability to recover in the estate of the surviving spouse. It recognized marital property interest as a legal title interest for purposes of MA estate recovery.
  - It limited recovery to the value of property in the estate that was marital property or jointly owned property at any time during marriage
- A claim is allowed when the MA recipient was 1) over 55 years of age, and 2) of any age residing in a MA institution for 6 months or longer and could not reasonably be expected to return home.
- A claim is delayed if survived by a surviving spouse, or a child under the age of 21, or a child of any age who is permanently disabled.



# Minnesota Liens

- Two types of liens are used in MN
  1. TEFRA/pre-death liens: Known in MN as MA liens. Allowed to encumber real property while the recipient is alive and in a LTC facility. Certain restrictions apply.
  2. Post-death lien: In MN known as Notice of Potential Claims (NPCs). Created to recover against real estate that would be outside of probate (life estate, joint tenancy). Can be filed for post death recovery.



# MA Liens

- Covered under Minnesota Statute §514.980-§514.985.
  - Filed by DHS Special Recovery Unit after a request is sent by the County
- Allowed when an individual received MA and owns property in Minnesota on or after the time when:
  - Recipient was institutionalized in a LTCF
  - Inpatient in a hospital
  - ICF-DD



# MA Liens

- The lien applies to life estates and jointly owned interest in land
  - (collection after the recipient death is only allowed on life estate and jointly owned interest created on or after August 1, 2003).
- A statute authorizing liens to recover Alternative Care payments are repealed effective July 1, 2005.
  - However, this does not affect county's ability to file claims in estates to recover AC payments for services provided to deceased recipients on and after July 1, 2003.



# MA Liens

- A MA lien attaches to and becomes enforceable against specific real property as of the date all of the following conditions have been met:
  1. The Department has made MA payments on behalf of the recipient;
  2. The Department has obtained verification from the recipient's attending physician that the recipient cannot reasonably be expected to be discharged and return home;





# MA Liens

## Enforceable (con't)

3. The recipient has been provided with notice of the lien and an opportunity for an administrative hearing under **Minn. Stat. § 256.045**;
4. The lien notice has been filed in the county recorder's office or memorialized on the certificate of title for the property; and
5. All restrictions against the enforcement of the lien have ceased to apply



# MA Liens

## ■ Exceptions:

- It is a homestead of the recipient's spouse;
- It was the homestead of the recipient and the following people reside in the property:
  - Recipient's child who is under 21;
  - Recipient's child who is permanently disabled, regardless of age;
  - Recipient's child who is blind, regardless of age
  - A sibling who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization; or
  - A child who resided in the recipient's home for at least two years immediately before the recipient's institutionalization and continuously since the date of institutionalization and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and that the care permitted the recipient to remain in the home rather than the institution.



# MA Liens

- A MA lien lapses and/or becomes unenforceable against a property it describes after ten years from the date it attaches.
  - The Department may renew the lien for an additional ten years from the date it would otherwise expire.



# Notice of Potential Claim (NPC)

- An NPC lien arises when the Department makes MA payments on behalf of the MA recipient.
- The NPC may be filed anytime before or within one year after the MA recipient dies.
  - A NPC filed prior to the recipient's death shall not take effect and shall not be effective as notice until the recipient dies.
  - An NPC filed after the recipient dies shall be effective as a lien from the time of filing.



# Notice of Potential Claim (NPC)

- The Department may file an NPC with respect to a person's interest in real property located in Minnesota whenever it has an actual or potential claim for recovery under **Minn. Stat. § 256B.15.**
- An NPC applies to all real property the recipient holds interest in; this includes life estate and jointly held interest in land



# Notice of Potential Claim (NPC)

- If the recipient died single and a claim could be filed under 256B.15, then an NPC can be filed and collected upon against the interest in the real property owned by the recipient.
- An NPC may be filed on the interest in real property of a deceased recipient that is **survived by a spouse, minor child**, or a child of any age who is totally and **permanently disabled** according to SSI criteria.
  - However, the NPC can not be enforced or collected upon until after the exemption no longer applies.



# Notice of Potential Claim (NPC)

- An NPC may be filed on the interest in real property of a deceased recipient that is survived by a child who resided in the decedent medical assistance home for at least 2 years immediately before the date of institutionalization of the parent and who established they provided care which permitted the parent to reside at home rather than the institution.
  - The NPC may not enforced or collected upon until after the exemption no longer applies or on the sale of the property.



# Notice of Potential Claim (NPC)

- An NPC may be filed on the interest in real property of a deceased recipient that is survived by a sibling who resided in the deceased recipient's home at least 1 year before the decedent's institutionalization and continuously through out.
  - The NPC may not enforced or collected upon until after the exemption no longer applies or on the sale of the property.





# Notice of Potential Claim (NPC)

- The NPC shall constitute a lien in favor of DHS against the recipient's interests in the real estate it describes for a period of 20 years from the date of filing or the date of the recipient's death, whichever is later.
- All amounts a county receives to satisfy an NPC must be forwarded to DHS for deposit in the state treasury. Counties may not retain any part of any amount they receive by any means in payment of an NPC.



# Lien Process

- Filing liens start at the county level through completing an MA lien worksheet (DHS 3203) and sending it to SRU



# MA Lien Worksheet

- **Information needed on the worksheet to start the MA Lien / NPC process**
  - MA Lien – as much information as possible, including required documents
  - NPC – exemption or date of death along with required documents





## Minnesota Health Care Programs (MHCP)

**Medical Assistance Lien and Notice of Potential Claim (NPC) Worksheet****PART I. Recipient Information/Attending Physician Information**

|                          |               |                |               |   |              |   |
|--------------------------|---------------|----------------|---------------|---|--------------|---|
| LAST NAME                |               | FIRST NAME     |               | MI  | MAXIS CASE # | PMI #                                   |
| SOCIAL SECURITY NUMBER   | DATE OF BIRTH | MARITAL STATUS | MA START DATE | IS RECIPIENT DECEASED<br><input type="checkbox"/> No <input type="checkbox"/> Yes |              | IF YES, DATE OF DEATH (Skip to Part II) |
| LONG TERM CARE FACILITY  |               |                |               |   |              | PHONE NUMBER<br>- -                     |
| ATTENDING PHYSICIAN NAME |               |                |               |   |              | PHONE NUMBER<br>- -                     |
| PHYSICIAN STREET ADDRESS |               |                | CITY          |   | STATE        | ZIP CODE                                |

**PART II. Homestead Property** (Submit even if Homestead is excluded for eligibility)

Is the property Homestead or was homestead immediately prior to entering an LTC facility?

☐ Yes ☐ No (If no, skip to Part III)If yes, is ownership interest in ☐ Life Estate ☐ Joint Tenancy ☐ Tenants in Common ☐ Sole OwnershipDoes homestead exemption apply? ☐ No ☐ Yes **If yes, mark all applicable exemptions below:****Exemptions** – Property occupied by:☐ Spouse☐ Child under 21 years of age **OR** child of any age who is blind or permanently disabled according to the Supplemental Security Income (SSI) Program or State Medical Review Team SMRT)☐ Child who resided in the homestead for at least two years before the date the recipient received MA medical institution services, provided care that permitted the recipient to live without medical institution services **AND** said child continues to reside in home☐ Sibling who has ownership interest

Comments: \_\_\_\_\_

**PART III. Non-Homestead Property** (No MA Lien/NPC exemptions for non-homestead)Does the recipient have ownership interest in non-homestead property? ☐ Yes ☐ No (If no, skip to Part IV)If yes, is ownership interest in ☐ Life Estate ☐ Joint Tenancy ☐ Tenants in Common ☐ Sole Ownership

Comments: \_\_\_\_\_

**PART IV. Protected Asset Under LTC Partnership**Has the recipient designated this property as a protected asset under LTC Partnership? ☐ No ☐ Yes

If yes, value of asset protection: \$ \_\_\_\_\_

**Send a copy of this worksheet AND required attachments to:**

Minnesota Department of Human Services  
 Special Recovery Unit, MA Liens  
 PO Box 64995  
 St. Paul, MN 55164-0995  
 Phone: 651-431-3204  
 Fax: 651-431-7431

|                  |                     |  |
|------------------|---------------------|--|
| FINANCIAL WORKER | PHONE NUMBER<br>( ) |  |
| COUNTY AGENCY    | DATE                |  |

**REQUIRED ATTACHMENTS:** Attach a copy of at least one of the following: deed, current tax statement, parcel number, legal description or address with name of county. Required for both homestead and non-homestead property.

# Lien Worksheet

- The process:
  - SRU (recovery unit) receives a lien work sheet (DHS-3203) requesting lien to be filed, the recipient owns interest in real property in MN
    - Include a copy of the deed
    - Include a tax statement



# Parcel / Tax Information

## Parcel Search Results

Page 1 of 1

As of :  
9/24/2012

Parcel Number: 23-1359-000

Payable Year: 2012

[General Info](#) | [Tax Info](#) | [Current Receipts](#) | [Special Asmts](#) | [Unpaid Tax](#) | [History](#) [E-payment](#)

Taxpayer/Owner Information

Taxpayer #2720

2014年11月15日 星期六

Top: photo of the author; Bottom: photo of the author's mother, Mrs. Mary Ann (nee) Smith, who was born in 1892 and died in 1982.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

... ..

## General

MP #23-1359-000 Re/Mh: REAL ESTATE

|                 |               |              |             |             |             |
|-----------------|---------------|--------------|-------------|-------------|-------------|
| <b>Twp/City</b> | <b>School</b> | <b>Water</b> | <b>Fire</b> | <b>Debt</b> | <b>Agri</b> |
| 23              | 777           | 0            | 0           | 0           | 0           |

### Description

|             |            |              |            |              |
|-------------|------------|--------------|------------|--------------|
| <b>Sect</b> | <b>Twp</b> | <b>Range</b> | <b>Lot</b> | <b>Block</b> |
| 5           | 121        | 39           | 0          | 0            |

**BENSON-ACRE LOTS 40%**

PT NE1/4 OF NW1/4 BEG AT A PT 833.8 FT N  
FROM THE NW COR OF BK 9, 2ND RY ADDN THEN  
E 300 FT THEN S 60 FT, THEN E 20.1 FT,  
THEN N 212.9 FT, THEN W 111.4 FT, THEN S  
18.1 FT, THEN W 208.7 FT, THEN S 134.8 FT  
TO THE PT OF BEG

**Property Address**

1004 13TH STREET N

Escrow

0

Deeded Acres: 0.00

[Another Search](#) | [Back to ParcelList](#)



## Legal descriptions from 4 deeds

### EXHIBIT A MEDICAL ASSISTANCE LIEN # 15756

All that part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ -NW $\frac{1}{4}$ ) of Section Five (5), Township One Hundred Twenty-one (121), Range Thirty-nine (39), described as follows, to-wit: Commencing at the Northwest corner of Block Nine (9), Second Railway Addition to the City of Benson; thence from said point in a Northerly direction along the East line of 13th Street in the City of Benson for a distance of 968.6 Feet; thence Easterly at a right angle to said 13th Street a distance of 320 Feet more or less, to the West line of 12th Street in the City of Benson; thence Southerly along the West line of said 12th Street a distance of 194.8 Feet; thence Westerly at a right angle to said 12th Street for a distance of 320 Feet more or less to the East line of said 13th Street; thence Northerly along the West line of 13th Street a distance of 194.8 Feet to the point of beginning.

**AND**

That part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ -NW $\frac{1}{4}$ ) of Section Five (5), Township One Hundred Twenty-one (121), Range Thirty-nine (39), described as follows, to-wit: Beginning at a point 773.8 Feet Northerly from the Northwest corner of Block Nine (9), Second Railway Addition to the City of Benson, Swift County, Minnesota, on a prolongation of the West line of said Block Nine (9), being the same line as the East boundary line of 13th Street in said City of Benson; thence Easterly at a right angle to said 13th Street for a distance of 320 Feet more or less to the West line of 12th Street in the City of Benson; thence in a Northerly direction along the West line of said 12th Street for a distance of 194.8 Feet; thence at right angle to said 12th Street in a Westerly direction for a distance of 320 Feet more or less to the East line of said 13th Street; thence in a Southerly direction along the East line of said 13th Street for a distance of 194.8 Feet to the point of beginning.

### EXCEPT THESE 2 PARCELS BELOW:

That part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ -NW $\frac{1}{4}$ ) of Section Five (5), Township One Hundred Twenty-one (121), Range Thirty-nine (39), described as follows, to-wit: Beginning at a point 773.8 Feet Northerly from the Northwest corner of Block Nine (9), Second Railroad Addition to the City of Benson, Minnesota, on a prolongation of the West line of said Block Nine (9), being the same line as the East boundary line of 13th Street in the City of Benson; thence Easterly at right angles for a distance of 300 Feet, more or less, to the West boundary line of 12th Street in the City of Benson; thence Northerly at right angles for a distance of 60 Feet; thence Westerly at right angles for a distance of 300 Feet, more or less, to the East boundary line of 13th Street in the City of Benson; thence Southerly at right angles along the East boundary line of 13th Street a distance of 60 Feet to the point of beginning.

That part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ -NW $\frac{1}{4}$ ) of Section Five (5), Township One Hundred Twenty-one (121), Range Thirty-nine (39), described as follows: Commencing at the Northeast corner of Block Nine (9), Second Railway Addition to the City of Benson, Minnesota; thence Northward on the West boundary line of 12th Street a distance of 673.8 Feet to a point which is the point of beginning, to-wit: Starting at the last above mentioned point and continuing on the last above mentioned line a distance of 294.8 Feet; thence at a right angle, to the right a distance of 20 Feet; thence at a right angle to the right on a line parallel to the West line of 12th Street a distance of 294.8 Feet; thence at a right angle to the right a distance of 20 Feet to the point of beginning, containing .14 acres more or less.

## Ownership interest

|   |  |
|---|--|
| <u>Milton J. Swenson</u><br>County Auditor<br>by <u>Don</u><br>Deputy   | on <u>9 DECEMBER 1987</u><br>and was duly recorded as document<br>No. <u>298CR301</u><br>Ralph A. Swenson County Recorder<br>by <u>Ralph A. Swenson</u> Deputy |
| STATE DEED TAX DUE HEREON: \$ <u>3.30</u>   |  |
| Date: <u>December 3</u> , 19 <u>87</u>  |  |
| FOR VALUABLE CONSIDERATION, <u>Marie G.</u> , a single, unmarried widow<br>Grantor(s),<br>hereby convey (s) and quitclaim (s) to <u>Luyerna L.</u> , <u>Helen K.</u> , <u>Leroy A.</u> ,<br><u>Alaine A.</u> , <u>Richard H.</u> , <u>David F.</u> , and <u>Jerry W.</u> , Grantee(s),<br>real property in <u>Blue Earth</u> County, Minnesota, described as follows: |  |
| South 20 acres of East-half (E 1/2) of Northeast Quarter (NE 1/4) and<br>Northeast Quarter (NE 1/4) of Southeast Quarter (SE 1/4), Section 36,<br>Township 107, Range 2S, Blue Earth County, Minnesota.   |  |
| A one-seventh (1/7) undivided interest to each of the above-named grantees.   |  |
| Grantor hereby reserves a life estate for herself in the subject land.  |  |
| The consideration for this conveyance is less than \$1,000.00.  |  |





# Lien Worksheet

- The Process (continued):
  - SRU reviews and verifies recipients' personal information; investigates if a lien can be recorded against the recipient's interest in real property
  - If yes, SRU enters all information into the database and the file is created



# Lien Worksheet

- Process (continued):
  - If it is a MA lien:

SRU sends a letter to the recipient's attending physician to verify that the recipient is not expected to return home. After SRU receives verification, a lien is created and 1<sup>st</sup> notice of lien imposition is sent by mail to the recipient or authorized representative and a copy to the county case manager
  - If not an MA lien:

The case manager is contacted about why a lien cannot be filed



# General Letter of Explanation



Minnesota Department of Human Services

To Whom It May Concern:

This letter summarizes how Medical Assistance (MA) Lien recoveries may or may not be made on certain types of property for recipients of paid MA benefits. The Department of Human Services (DHS) is permitted to file a lien against real property located within the State of Minnesota when interest is held by a recipient who is institutionalized and receives MA benefits. The purpose of the lien is to recover the State's cost of these MA benefits provided for the recipient. The State's Special Recovery Unit handles these recoveries.

#### **Life Estates**

DHS may make a recovery if there is a real estate transaction during the life estate holder's lifetime once an MA Lien is recorded against a life estate interest. The recovery is limited to the lesser of MA benefits paid or the value of the life estate interest. Life Estate interest is calculated based on the age of the recipient using the Social Security Administration's Life Estate Mortality Table.

#### **Joint Ownership**

DHS may make a recovery if there is a real estate transaction during the lifetime of the joint interest holder named in the MA Lien once an MA Lien is recorded against the jointly owned interest. The recovery is based on MA benefits paid against the value of the joint interest (E.G.: 2 equal joint interests = 50% interest, 3 equal joint interests = 33.33% interest). DHS may recover the lesser of the amounts.

#### **Prior to August 1, 2003**

MA Liens of record, against life estates and jointly owned interests in property established prior to August 1, 2003, become unenforceable and are no longer liens on those interests when the recipient named in the recorded lien dies.

#### **After August 1, 2003**

MA Lien Laws from the 2005 legislative session continue life estates and jointly owned interests after the death of the interest holder if that interest was established after August 1, 2003. In those situations, DHS will make its recovery.

If you have any questions regarding the enclosed information, please contact me at the number below.

*Denise*

Denise M. Meyer  
MA Lien Administrator Sr.  
Special Recovery Unit  
651-431-3158  
denise.meyer@state.mn.us



# MA Lien

***MINNESOTA MEDICAL ASSISTANCE PROGRAM  
NOTICE OF LIEN IMPOSITION***

*Minnesota Statutes 1993, sections 514.980 to 514.985*

***John Johnson  
Country Manor  
520 – 1<sup>st</sup> St. NE  
Sartell, Mn 56377***

***Date: June 29, 2012  
Lien No. 15647  
Social Security: 5792***

***Dear Mr. Johnson:***

This is to notify you that the Minnesota Department of Human Services will place a lien on your real property. This is based on your receipt of medical assistance payments made for your benefit by the Minnesota Medical Assistance Program beginning **November 1, 2011**. It is also based on medical verification from your attending physician that you are not reasonably expected to be discharged from the medical institution you are in.

Your interest in the real property you own, and that of your spouse, if still living, is subject to or affected by the rights of this agency to be reimbursed for medical assistance benefits.

The Medical Assistance lien will be filed against your real property 30 days from receipt of this notice. Following is/are the legal description (s) of your real property subject to a lien:

COUNTY: **Hennepin**      ABSTRACT:    X      TORRENS:    ☐      Ctf. No.    ☐

**All of your right, title and interest in and to:**

☐



## APPEAL RIGHTS:

If you do not agree with this action, you may appeal. To initiate an appeal, send a very short letter to the Appeals Office stating your disagreement with the state filing a lien on your real property. You must submit this letter within 30 days of receiving this notice. (The agency can accept your appeal for up to 90 days after the date of this notice if you show good cause for not appealing within the 30-day limit.)

If you do not appeal within 30 days (or 90 days if you have good cause), you may not appeal anything concerning this lien later on.

If you decide to appeal, send your letter to this address:

Appeals Office  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55155-3813

An appeal hearing will be held in your county or over the telephone. You will receive a notice telling you the date, time, and place of the hearing.

THIS LIEN FILED BY:

On behalf of the MINNESOTA DEPARTMENT OF HUMAN SERVICES

THIS FORM DRAFTED BY:

Denise M. Meyer  
Minnesota Department of Human Services  
P.O. Box 64995  
St. Paul, MN 55164-0995  
651-431-3158

## CERTIFICATE OF MAILING AND OF NO APPEAL

I, Denise Meyer, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, I mailed copies of the Notice above to the Medical Assistance recipient named and to the named authorized representative of the Medical Assistance recipient (if any) by certified mail to the last known address (es) set out above:

I further certify that the applicable time to appeal the imposition of this lien has expired and no appeal has been taken, or that all appeals have been decided in favor of the State's imposition of this lien.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(Signature) \_\_\_\_\_

(Printed Name) Denise M. Meyer \_\_\_\_\_

(Title) MEDICAL ASSISTANCE LIEN ADMINISTRATOR SR. \_\_\_\_\_



# Lien Worksheet

- **Process (continued) – if an MA lien:**
  - File is dated 30 days from receipt of the certified card. Interested parties have 30 days to appeal the lien.
  - After 30 days have passed with no appeal, the lien is mailed to the county recorder. SRU does not notify the county case manager when the lien is actually mailed to the recorder.



# Lien Worksheet

## ■ **Process (continued): NPC**

If an NPC is required instead of an MA lien:

- A copy of the NPC with a cover letter is mailed to the recipient, the authorized representative and county case manager. Original is sent to the county recorders office.
- The NPC becomes a lien only after the MA recipient dies and can be filed up to one year from the recipient's death.
- The NPC is governed by Statute 256B.15 and has a much greater potential for exceptions than the MA Lien. If the county has filed a claim in the estate of the deceased MA client. The State delegates the authority to recover the MA expenditures back to the county.



# Basic Recovery Process when there is a lien

- A title search is done that reveals our lien or other interested parties know there is a lien
- Our office is contacted and we ask:
  - What's the purchase price?
  - If the sale price has a large divergence from the estimated market value (EMV) we ask if an appraisal has been done.
  - When is the property closing?

We request a HUD 1 or settlement statement to determine the correct reimbursement amount.





# Basic Recovery Process

## SRU:

- Reviews the HUD (all reasonable costs associated with the sale are generally allowed)
- Compares the net sale proceeds with the amount that has been paid by MA (claims) for the recipients care and recover the lesser of the amounts
- Sends a payoff letter to the realtor, title company, family or attorney
- Receives the check and releases the lien
- Notifies the case manager of the recovery



# Undue Hardship Waivers

- What constitutes undue hardship: The claim can only be satisfied by the sale of the asset in question and the following occurred at least 180 days prior to death continued through the date the hardship is finally granted.
  - Assets are used by applicant to produce income in trade, profession or occupation;
  - Assets are necessary part of applicant's trade, profession or occupation;
  - Trade, profession or occupation is applicant's sole source of income; **AND**
  - Applicant has worked continuously and exclusively in trade, profession or occupation.



# Undue Hardship Waivers

- Waiver exists if an estate claim could not be paid except by a sale of decedent's real estate and:
  - Applicant actually and continuously occupies the real estate as his/her only dwelling place for at least 180 days before decedent's death and continues to occupy dwelling through the date the hardship is granted; **AND**
  - Real estate was classified as homestead property for tax purposes pursuant to Minn. Stat. § 273.124 through the entire time referred to above.
- *This is determined on a case-by-case basis. A written statement from the applicant stating how long he/she resided there, how the utilities are titled, and checking with the recorder's office*



# Undue Hardship Waivers

- Actions which exclude a waiver:
  - Illegally divested or diverted assets in order to avoid recovery; or
    - The hardship can not be created by the applicant
    - If granted, the waiver must benefit the applicant



# Undue Hardship Waivers

- Not considered an undue hardship:
  - Sibling who lives in homestead at least one year before recipient's institutionalization and continuously since date of institutionalization; or
  - Child or grandchild who lives in homestead at least two years before institutionalization and continuously since date of institutionalization and who can establish by a preponderance of evidence that care permitted recipient to reside at home.
- *Considered exception to immediate recovery from an individual's homestead*



# Undue Hardship Waivers

- Using 42 USC 1396p, Hardship Waivers, CMS provided guidance on what can be recovered in an American Indian and Alaska Native's estate within State Medicaid Manual 3810.
- Minnesota followed by providing guidance under the Department's Health Care Manual at 19.50
  - Mirrors the federal guidance



# Undue Hardship Waivers

## ■ Procedure:

- Notice of an MA claim filed in an estate must be given to all heirs or devisees of the decedent whose identity can be discovered.
  - Must include procedures for applying for a hardship waiver
  - Counties must make a reasonable effort to learn the names and current addresses of each of the decedent's heirs and devisees.



# Undue Hardship Waivers

- Contents of the Notice of Claim
  - Statement of claim
  - Notice of right to apply for hardship
  - Statement of what constitutes undue hardship
  - Procedures and Instructions for application of undue hardship
  - Information regarding appeal rights and procedures





# Recovery on Trusts and Annuities

- Revocable Trusts or Living Trusts
  - A client-funded trust is revocable if the grantor reserves the right to revoke, cancel, rescind, repeal the trust. The corpus is counted as available to the client.
  - It does not avoid an MA claim. These trusts most commonly contain a provision that directs the trustee to pay all claims and expenses at the grantor's death.
  - When the grantor in a conveyance personally reserves, for the grantor's own benefit, an absolute power to of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned. (Minn. Stat. § 502.76).
  - Open probate, order to allow assets in trusts into probate. County may have to create a civil lawsuit in district court to get a judgment against the trust.



# Recovery on Trusts and Annuities

- Special Needs Trust
  - The trust must specify that upon termination of the trust, DHS will receive all amounts remaining in the trust up to an amount equal to the total benefits paid through Medical Assistance (MA) on the beneficiary's behalf.
- Pooled Trusts
  - The trust must specify that upon termination of the trust, DHS will receive all amounts remaining in the beneficiary's sub-account ***that are not retained by the trust*** up to an amount equal to the total medical expenses paid through Medical Assistance (MA) on the beneficiary's behalf.



## Special Needs & Pooled Trusts Verification & Annual Accounting Requirements

- Verification at Application
  - Once you/or county attorney determines that the trust is an SNT or Pooled trust, request a copy of the trust instrument and most recent trust accounting.
  - Complete the *Special Needs/Pooled Trust Referral Form (DHS-4759)* and send it to the DHS Special Recovery Unit (SRU) with a copy of the trust and most recent accounting.
- *All recoveries from trusts will go to the State.*



*Minnesota Health Care Programs*

# Special Needs/Pooled Trust Referral Form

## Recipient Information

|                                      |                   |                          |
|--------------------------------------|-------------------|--------------------------|
| RECIPIENT NAME (FIRST, MIDDLE, LAST) | MAXIS CASE NUMBER | RECIPIENT MHCP ID NUMBER |
|                                      |                   |                          |

## County Information

|                    |   |
|--------------------|---|
| RESPONSIBLE COUNTY | SERVICING COUNTY (IF DIFFERENT THAN RESPONSIBLE COUNTY) |
|                    |   |

## Trust Information

|                |   |  |
|----------------|---|--|
| NAME OF TRUST  | TYPE OF TRUST (check one)<br><input type="radio"/> SPL Needs <input type="radio"/> Pooled |  |
| TRUSTEE'S NAME | TRUSTEE'S PHONE NUMBER  | COPY OF TRUST IN RECIPIENT'S CASE FILE             |
|                |   | <input type="radio"/> Yes <input type="radio"/> No |



# Recovery on Trusts and Annuities

## ■ Annuities

- Annuity must name DHS as the Preferred Remainder Beneficiary (PRB).
- As the PRB, DHS may receive up to total amount of MA paid on behalf of the individual or the individual's spouse when a death benefits becomes payable under the terms of the annuity contract.
- DHS's interest is a secondary to any of the following persons who have been named a death beneficiary of the annuity:
  - Spouse, if not living in a medical institution;
  - Children who are under the age of 18; and
  - Children of any age who are permanently disabled according to the SSI criteria.



# Annuity Verification Process

- Local agencies confirm state is named as the preferred beneficiary and send the form to the state.
- State receives annuity paperwork from the local agencies and records the annuity in the state's database.
- In case the State is not named the beneficiary, the state works with the annuity company to have the state named as beneficiary.
- Local agencies or annuity companies inform the state on the death of the MA recipient.
- State sends paperwork to annuity companies to recover on the amount designated to the State



# Transfer on Death Deeds (TODD)

- A way to convey real property to one or more grantees upon the death of the grantor without the cost of probate or granting interest prior to death.
- The interest transferred to the grantee after the death of the grantor is subject to all encumbrances the property was subject to during the grantor's lifetime, including any MA claims not satisfied by the grantor's estate.



# TODDs

- Any person claiming an interest in the real property conveyed by a TODD must apply to a county agency where the real estate is located for a clearance certificate to release the public assistance claim and lien on real property.
- County can force the sale by petitioning to the probate court where the property is located or in the county where a probate is pending for an order allowing for the sale of the real property, and subtracting the MA claim amount from the net sale preceeds.





# Affidavit of Collection

- **Right to Collect Claim by Affidavit**
  - The state or a county with a claim for recovery of MA payments arising under **Minn. Stat. § 256B. 15** can use the affidavit of collection provided for under **Minn. Stat. § 524.3-1201** to collect the deceased recipient's personal property in satisfaction of its claim.



# Affidavit of Collection

- **When Right Arises: Extent of Right:** The right to collect a decedent's personal property by affidavit:
  1. Arises beginning 30 days after the decedent's death
  2. Exists only when the decedent's entire estate consists of personal property with a net value of \$50,000.00 or less, no request for appointment of personal representative is pending or has been granted in any jurisdiction and the claimant is entitled to payment or delivery of the property.
  3. Extends to the decedent's personal property in safety deposit boxes, their interest in multiple party accounts, nursing home accounts, and debts owing to the decedent.

**Minn. Stat. § 524.3-1201; Minn. Stat. § 55.10; and Minn. Stat. § 524.6-207**



# Affidavit of Collection

## ■ How Recovery is Made:

- The state or a county with a claim for recovery of MA can collect its claim by presenting the party indebted to the decedent or in possession of their personal property with a certified copy of the death certificate and duplicate copies of an affidavit stating:
  - The net value of the entire probate estate does not exceed \$50,000.00;
  - 30 days have elapsed since the decedent's death
  - if the property to be turned over is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to **Minn. Stat. § 55.10, Subd. 4(h)**;
  - No application or petition for the appointment of a PR is pending or has been granted in any jurisdiction;
  - The claiming successor is entitled to payment or delivery of the property; and
  - If presented to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account.



# MA Collection Incentive

- Recovery of Regular MA
  - Increased federal share equals 50% and non-federal share equals 50%.
  - Currently counties are entitled to one-half of the nonfederal share of the MA collection from estates that are directly attributable to county effort.
    - Participation Rates: Federal: 50%, State: 25%, County: 25%
  - Counties are entitled to 10% of the collection from Alternative Care directly attributable to the county effort.



# MA Collection Incentive

## MA Expansion (AX) Group

- From Jan. 1, 2014, 100 % FFP for on-going operation costs for MA (AX) Group.
- **MA County Recoveries Expansion Group (AX)**

| Participation Rate                   | Federal % | State % | County % |
|--------------------------------------|-----------|---------|----------|
| Estate, Recipient Ineligibility (AX) | 100.00    | 0.00    | 0.00     |
| Non-Recipient Contribution (AX)      | 100.00    | 0.00    | 0.00     |
| Recipient Contribution (AX)          | 100.00    | 0.00    | 0.00     |



# MA Expansion Group

- The Minnesota Department of Human Services has issued a new bulletin: **#13-32-09 Financial Information to Assist Counties with Preparation of Calendar Year 2014 Human Services Budgets**

[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16\\_177289.pdf](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_177289.pdf)



# Contact SRU

## Property Liens:

|            |                 |              |
|------------|-----------------|--------------|
| <b>A-G</b> | Jan Curran      | 651-431-3154 |
| <b>H-M</b> | Denise Meyer    | 651-431-3158 |
| <b>N-R</b> | Greg Lulic      | 651-431-3152 |
| <b>S-Z</b> | Kristen Lorsung | 651-431-3115 |

## History Requests:

|          |              |
|----------|--------------|
| Dan Mata | 651-431-6512 |
|----------|--------------|

## Policy Questions:

|                   |              |
|-------------------|--------------|
| Dale Klitzke      | 651-431-3108 |
| Jordana Koja-Volk | 651-431-5805 |

