



MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2019 ANNUAL CONFERENCE

## Estate Recovery and Probate Basics

Geneva Finn, DHS  
&  
John Rominski, Ramsey County

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Laws Governing MA Claims:



- Minnesota Statutes, Section §256B.15
- Estates Subject to Claim:
  - Recipient's estate who is single at time of death
  - Estate of surviving spouse (including claims against predeceased spouse)
  - No recovery against deceased recipient if survived by a spouse
- File claims in the District Court with jurisdiction to probate the estate (or issue a decree of descent) 256B.15 subd. 1a.

• NOTE: Most claims barred if not presented (filed) within one year after the death of the decedent. See 524.3-803 **This does not apply to MA claims filed under M.S. 256B.15**; however, counties should be proactive or there may be dissipation of assets the longer the claim is delayed.

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Probate vs. Non-probate Assets





**Probate Assets**

- Real Estate: homestead, land, vacation property
- Contracts for Deed
- Bank Accounts
- Vehicles, RVs, boats
- Securities, stocks/bonds, annuities
- Life Insurance (payable to estate)

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Probate vs. Non-probate Assets

## Non-probate Assets

- Assets with joint tenancy or survivorship interests
- POD or TOD accounts
- Life insurance (w/beneficiary)
- Life Estates
- Pensions/Retirement (w/beneficiary)
- "Other" assets: Living Trust, Royalties

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What is the "Estate" for MA Recovery Purposes?

Almost all probate assets

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Some non-probate assets

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MA Estate

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Examples of Expanded Estate Recovery

Avoiding Probate Does Not Mean Avoiding Estate Recovery!

**Non-Probate assets that may be included in the MA Estate:**

- **Pension/Retirement/"Other" benefits:** When the assets become part of the estate
  - Ex:// Teachers' Retirement Account; Writer's Guild Royalties
- **Multi-party accounts:** When the MA recipient has an ownership interest (POD, JT accounts, etc.)
- **Trusts** (revocable); Living Wills
- **Real Estate Interests:** Life Estate and Joint tenancies (256B.15 subd. 6)

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**Small Estate Collections  
(No real estate)**



- Use to collect funds from MA recipient's bank accounts, securities, cash held in safe deposit boxes, royalties, etc.
- Authority to collect under Minn. Stat. 524.3-1201, so long as assets in the estate do not exceed \$75,000
- Serve Affidavit for Collection form on person, bank, or business that has the property
- Confirm MA recipient's ownership interests
- Vehicle transfers require the affidavit for collection, with death certificate attached, delivered to motor vehicle division
- Investigation / follow-up / payment instructions

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**Options for estates with real estate:**



- If the property is not in sole ownership:
  - DHS can place a NPC; if the property is sold, the state will recover.
  - The county can probate the MA recipient's interest.
- If the property is in sole ownership:
  - Family can probate: The county can remind the family that, even with an insolvent estate, the personal representative and attorney do get paid for their work.
    - County will need to file a claim and may need to contest any disallowance in court.
  - Other creditors can probate.
  - The property can go into foreclosure.
  - The property can go into tax forfeiture.
  - The County can probate.

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**Is it Worthwhile to Probate the Real Estate?**



- **Valuation of the property**
  - Assessment data
  - Market analysis, broker opinion of value
  - Appraisal
- **Encumbrances**
  - Mortgage, 2<sup>nd</sup> mortgage
  - Back Taxes
  - Liens or other indebtedness
- **Value of MA claim in relation to potential sale proceeds**
- **Other issues:**
  - Tenants in home
  - Condition of property
  - Pending forfeiture / foreclosure
  - Multi-party ownership

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**Insolvent Estates**

“Insolvent Estates” are probate or trust estates where the MA claim exceeds the gross value of the estate

- Common Example:
  - Estate consists of a \$185,000 house
  - MA claim is \$235,000
- Common because the MA recipient’s homestead is the only major asset that is exempt when determining MA eligibility



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**Insolvent Estates**

- Estate beneficiaries have no incentive to probate/administer insolvent Estates
- Insolvent Estates go unprobated/unadministered for years



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**Impact of Insolvent Estates**

- Property taxes can go unpaid for years
- City utility bills and costs go unpaid for years
- Homes are unoccupied, become dilapidated, and eventually unsafe
- Cities incur high nuisance abatement costs



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**Impact of Insolvent Estates**

- Decrease the value of surrounding properties, negatively effecting area's property tax basis
- Can attract crime/suspicious activity
- Become a blight on the neighborhood
- Cause pollution/negative environmental impacts
- County receives less money from MA collections
- Limits housing inventory in County



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**Insolvent Estates**

What happens to Insolvent Estates?

- With mortgage
  - Foreclosure
  - County's MA claim is wiped out
- Without mortgage
  - Tax forfeiture
  - Unpaid property taxes and MA claim are wiped out
  - Process takes 3-5 years



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**Resolving Insolvent Estates**

- Counties can probate/administer Insolvent Estates
- Provides a method for recovering assets that are discovered years after the MA recipient's death
- The process can bring great value on many levels



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**Probate Basics**



- 45 days after the death of the decedent, any creditor can petition the district court to be appointed personal representative
  - Minn. Stat. § 524.3-203
- This allows a county with a medical assistance claim to be appointed personal representative

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**Probate Basics**



Personal representative fees

- Personal representative has statutory right to reasonable fees for administrating the estate
  - Minn. Stat. § 524.3-719
- Personal representative fees are an administrative expense that have priority over other claims
  - Minn. Stat. § 524.3-805
- Allows county to charge personal representative fees

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**Probate Basics**



Attorney fees

- An attorney performing services for the estate has a statutory right to have her/his reasonable attorney fees paid from the estate
  - Minn. Stat. § 525.515(a)
- Attorney fees are an administrative expense that have priority over other claims
  - Minn. Stat. § 524.3-805
- Allows CAO to be paid reasonable attorney fees

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FamilyTreeNow.com

### Probate Process – Preliminary Work



- Obtain death certificate(s)
- Search for an obituary
  - Websites like familytreenow.com can find addresses
- Search for will and any codicils
  - Try to get original
  - Check with court to see if filed for safe-keeping (may require court order)

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### Probate Process – Preliminary Work



- Search property records for mortgages or other liens existing on estate property
- Contact children, relatives, or friends to gauge interest in probating the estate
  - Give them information about the process
- Call probate court to see whether any demands for notice were filed

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### Probate Process



Type of probate administration dictated primarily by two questions:

- Is there a properly executed will?
  - Determines whether there will be a testacy or intestacy proceeding
- When did the decedent die?
  - More than three years after death, the probate will be a determination of descent proceeding under Minn. Stat. § 525.31.
    - Minn. Stat. § 524.3-108
- **Probates should be formal** (petition vs. application)

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Probate Process: Stage One



Opening a FORMAL probate  
(45 days after death)

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Probate Process Overview – Stage 1: Petition



- County petitions the court to be appointed Personal Representative
  - Usually a supervisor signs the petition on behalf of the county
  - Use Formal probate forms:
    - Petition
    - Order and notice of hearing
    - Acceptance of Appointment and Oath by Individual (notarize)
    - Order of Formal Probate and Formal Appointment of Personal Representative
      - If there is a will: Letters testamentary
      - No will: Letters of General Administration

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Probate: Stage 1



File all of this with the Court

- Filing fee is waived
- The court will send you the Notice and Order for Hearing

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**Stage 1: Notice**



Mail Notice of the hearing on the petition to all the heirs/interested persons

- Send notice to heirs and known creditors
- Publish notice of the hearing in a legal newspaper- once a week for 2 consecutive weeks
- Compete Affidavit of Mailing

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**Stage 1: Hearing**



Court conducts hearing and appoints the county human services representative as personal representative

- Human Services representative will need to appear and testify to the facts stated in the petition
- Bond (best not to request if for yourself...)
- Certified copies of Letters Testamentary

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**Probate: Stage 2**



**Settling the Estate**  
(Selling the property and paying the bills)

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Process Overview – Stage 2



- Personal Representative gets an EIN for the estate and opens a bank account in the name of the estate
  - Apply here: <https://app.irs-ein-tax-id.com/EstateOfDeceasedIndividual>
  - Open a checking account at a local bank
  - Transfer Decedent's accounts into Estate Account

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Probate Stage 2: Liquidate Assets



- The PR liquidates the estate assets and reduces estate to cash
  - Sale of real property
    - Deed of Sale by Personal Representative
  - Sale of personal property

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Probate Stage 2



Deposit cash proceeds from the estate into the estate account

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### Probate Stage 2: Pay Creditors



- Pay costs, expenses, and claims from the estate by check
  - This includes County PR fees and county and county attorney costs
  - File full/partial satisfaction of claims with the court

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### Probate- Stage 3



### Wrapping-Up the Estate

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### Probate: Stage 3



- County creates final account showing all credits and debits to the estate
- Use the court forms

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Probate: Stage 3



The County petitions the court to allow the final account and discharge the Personal Representative

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Probate: Stage 3



Send notice of a hearing on the petition to all heirs/interested persons

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Probate: Stage 3



Court conducts hearing on the final account, approves it, and discharges the personal representative of the estate

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**Resources and Links**

- **MN Courts website:**  
<http://www.mncourts.gov/GetForms.aspx?c=31>  
(Probate forms with instructions are available here, as well as resources on various probate topics.)
- **DHS Estate Recovery site:**  
<https://mn.gov/dhs/people-we-serve/adults/health-care/health-care-programs/programs-and-services/estate-recovery.jsp>  
(Explore topics on estate recovery and liens)
- **DHS MA Estate Recovery Manual:**  
[https://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYN\\_AMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=SRU-Home](https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYN_AMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=SRU-Home)



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**QUESTIONS?**



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