



2024 ANNUAL CONFERENCE



Minnesota Family Support & Recovery Council
in partnership with Minnesota County Attorneys' Association

County Estate Recovery

Crow Wing County Perspective

Rocky Wells

Assistant Crow Wing County Attorney

rocky.wells@crowwing.gov

County Estate Recovery Crow Wing County Perspective



“When I was a child, I spoke like a child, I thought like a child, I reasoned like a child; when I became a man, I gave up childish ways.”

- *Apostle Paul, First Letter to the Corinthians*

“Now, explain it to me like I’m a four-year-old.”

- *Denzel Washington as Joe Miller in “Philadelphia”*

County Estate Recovery Crow Wing County Perspective



County Estate Recovery Crow Wing County Perspective



RESOURCES I DIDN'T KNOW I HAD

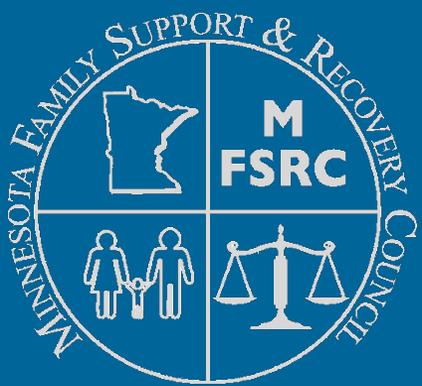
- Knowledgeable collections officer
- Knowledgeable legal assistant
- Minnesota Estate Administration Deskbook w/ CLEPro
- Access to the County's online property records
- MA Estate Recovery Manual (now w/ forms and instructions)
- MN Courts probate forms
- MCAA – DHS Probate Forms for County Attorneys
- DHS Special Recovery Unit

County Estate Recovery Crow Wing County Perspective



SOME OF WHAT WE'VE SEEN

- Orders to Show Cause (languishing probate)
- Petitions for Order Directing PR to Pay Claim (dispute over claim priority)
- Voluntary Lien for Payment of Allowed MA Claim (our introduction to liens under §§ 256B.15, subds. 1i and 1j)
- Objections to Distribution
- Mineral interests



2024 ANNUAL CONFERENCE

Minnesota Family Support & Recovery Council
in partnership with Minnesota County Attorneys' Association



Liens, Trusts, and Fractured Interests

Carl Erickson

Assistant Anoka County Attorney

carl.erickson@anokacountymn.gov



Liens

- Notice of Potential Claim
- County Liens
 - Blind/disabled child
 - Caregiver/sibling
 - Clearance Certificate Condition



Minn. Stat. 256B.15, subd. 1i

Who?

- Child under 21
- Blind Child
- Disabled Child

What?

- Any real property
- No collection from other assets

Enforcement?

- When protected condition no longer exists



Minn. Stat. 256B.15, subd. 1j

Who?

- Caregiver child or grandchild
- Sibling
- *Resided with the decedent*

What?

- Homestead
- Collection from other assets first

Enforcement?

- When property conveyed or no longer the residence of the relative



Caregiver

- Minn. Stat. 256B.15, subd. 4
- Child or grandchild
- Lived with decedent for 2 years immediately before institutionalization and continuously since institutionalization
- Care kept decedent at home rather than in institution
- “Institutionalization” includes HCBS under Elderly Waiver
- Caregiver’s burden to prove by preponderance of the evidence



Similarities

- Valid for 20 years
- Can be authorized by the PR or the court
- Recorded by the county
- Can be foreclosed by action under chapter 581
- Can be voluntarily paid off

Differences

- Whether other collection can occur
- Property the lien can be applied to
- When the lien becomes enforceable

LIEN FOR PAYMENT OF ALLOWED CLAIM
UNDER
SECTION 256B.15, SUBD 1j

Pursuant to Minnesota Statute section 256B.15, Subd 1j, the undersigned hereby gives and grants the County of Anoka on behalf of the commissioner of the Minnesota Department of Human Services (Department) a lien in the amount of _____ (\$ _____) against the interest _____ [decedent] owned at the death in the following described real estate (Property) to secure payment of the County's allowed Medical Assistance claim in the estate of _____ [decedent], Court File No. _____ in the _____ Judicial District, _____ County District Court:

COUNTY OF ANOKA ABSTRACT TORRENS CERT. NO:

[Insert Legal Description]

Property Address:

Parcel ID:

The property is the Decedent's homestead property for purposes of Minnesota Statutes, section 256B.15, and the decedent's interest in the Property at death was (complete all which apply):

1. A life estate equal to _____ % (Enter the Life Estate Percentage factor for decedent's age on their death as shown in the Department's Life Estate Mortality table in the Health Care Program Manual)
2. The Decedent owned an interest in _____ in the Property with _____ other owners as joint tenants on the date of their death. (describe the jointly owned interest and list the number of the others who jointly owned the interest on the date of death) This lien attaches to the portion of the jointly

owned interest in the Property the Decedent would have owned if (s)he and the other joint owner(s) had owned that interest as tenants in common on the date of the Decedent's death.

3. Other (Describe): _____

_____.

This lien bears interest as provided under Minnesota Statutes, section 524.3-806, and is a lien on the interest in the Property described above for 20 years from the date it is recorded or filed as provided under Minnesota Statute, section 256B.15, Subd 1j(b).

Dated: _____

[name]
Personal Representative of the
Estate of _____ [decedent]

OR

Dated: _____

Judge of District Court

THIS INSTRUMENT PREPARED BY:

Nancy Norman Sommer or Carl Erickson
Anoka County Attorney's Office
2100 Third Ave, Suite 720
Anoka, MN 55303
763-324-5550

RECORDER OR REGISTRAR: RETURN THIS LIEN TO THE DRAFTER AT THE ABOVE ADDRESS AFTER FILING OR RECORDING.



Clearance Certificates

- TODDs and Decrees of Descent
- County “may collect, compromise, or otherwise settle the claim with the estate, the petitioner, or the assignees of the property on whatever terms and conditions are deemed appropriate.”
- Tips:
 - Include right to recover on sale or conveyance
 - Include deadline for payment
 - Follow up

CONDITION OR RESTRICTION

This Certificate of Clearance shall constitute a lien on the property described as:

[legal description]

in favor of the County of Anoka in the amount of \$_____ for Medical Assistance expended on behalf of _____. The following terms and conditions shall apply to said lien:

- a. The lien shall become due and payable on the earlier of any of the following events:
 - i. The Property or any part thereof is sold, transferred and/or conveyed in any manner.
 - ii. The Property is subjected to a mortgage or other lien.
 - iii. _____ does not reside in the property.
- b. Upon the happening of any of the events provided for herein the County of Anoka shall have the right to foreclose on the lien in the manner provided for in Minn. Stat. §559.21. This paragraph shall not preclude the County of Anoka from foreclosing on this lien in any other manner provided by law, equity or statute.
- c. This lien bears interest as provided under Minnesota Statutes, section 524.3-806, and is a lien on the property for 20 years from the date it is recorded or filed.





Trusts

- *Hammerberg as trustee for Leonard J. & Margaret T. Schubert Irrevocable Tr., dated June 23, 2005 v. Minnesota Dep't of Hum. Servs., No. A23-0901, 2024 WL 1712748 (Minn. App. Apr. 22, 2024)*
 - Trustee challenged validity of NPC placed on trust property
 - Court of Appeals held:
 - Property in irrevocable living trust was subject to estate recovery
 - Decedent retained an interest in the property despite the trust being irrevocable
 - Looked to right use, occupy, and profit from property, determine beneficiaries by will, and sue trustee



Trusts

- Collect trust documents
 - Might be copy from eligibility assessment
 - Request from trustee – name and address should be on deed to trust
- Determine if decedent retained an interest in the property
- If there is real property, request NPC
- If trustee is uncooperative, consider action under section 501C.0202



Dealing with fractured interests: Partition and Sale

Example 1: *Matrix Asset Solutions, LLC v. Earl Crane et al.*; Hennepin Co. Dist. Ct. File 27-CV-24-6157

- Residential property in Hennepin Co., vacant and falling into disrepair, valued at ~\$200k
- Anoka Co. had ~\$143K in claims on $\frac{1}{4}$ interest; Hennepin Co. had claims on two other fractional interests
- Developer purchased $\frac{1}{4}$ interest, obtained decrees of descent with liens for remaining 3 fractional interests
- Agreed to settle claim for proportion of sale after fees and expenses
- Collected ~\$33K after partition action

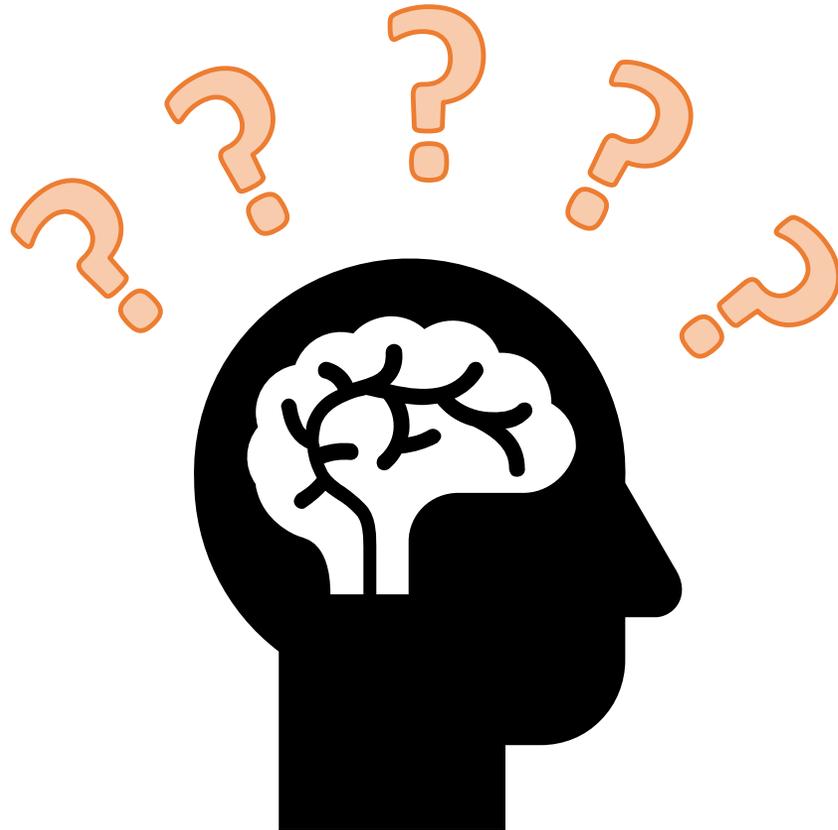


Dealing with fractured interests: Partition and Sale

Example 2

- Property in Lake County owned as tenants in common by decedent, brother (also deceased), and sister-in-law
- MA claim: \$11K
- Property in and out of tax forfeiture
- Decedent's nephew interested in purchasing property, willing to pay off MA claim
- Decree of Descent will be required for decedent and brother, property unlikely to go to nephew

Questions???





2024 ANNUAL CONFERENCE



Minnesota Family Support & Recovery Council
in partnership with Minnesota County Attorneys' Association

Case Study:

In Re the Estate of Norma Helm
14-PR-21-3789

Katie M. Stock

Chief Assistant Clay County Attorney – Civil Division

Minn. Stat. § 256B.15



Subd. 1(a) It is the policy of this state that individuals or couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state.

Subd. 1a. **Estates subject to claims.** (a) If a person receives medical assistance hereunder, on the person's death, if single, or on the death of the survivor of a married couple, either or both of whom received medical assistance, or as otherwise provided for in this section, the amount paid for medical assistance as limited under subdivision 2 for the person and spouse shall be filed as a claim against the estate of the person or the estate of the surviving spouse in the court having jurisdiction to probate the estate or to issue a decree of descent according to sections [525.31](#) to [525.313](#).



Facts:

Norma Helm passed away on March 14, 2021.

Norma's predeceased husband had been the recipient of medical assistance totaling \$322,020.83.

At the time of Norma's death, Norma's estate totaled \$309,142.96 held in an investment account in her name only, which listed her heirs/children as the beneficiaries.

Norma's investment accounts were pay on death accounts, meaning heirs received assets without having to probate her estate.

County Initiated Probate



November 1, 2021: County filed Petition for Formal Adjudication of Intestacy, Determination of Heirs, and Appointment of Personal Representative

- Requested CCSS be appointed as PR

November 12, 2021: Heirs filed Objection and Cross Petition for Formal Probate of Will and Formal Appointment of Personal Representative

- Filed copy of Norma's Will

March 22, 2022: Court issued its Order for General Administration, Determination of Heirs, and Appointment of Personal Representative

- Appointed decedent's daughter/heir as PR

Partially Disallowed Claim and Offer



March 23, 2022: Heirs sent letter to County partially disallowing claim and offering to settle for \$81,133.59 noting this amount could not be traced to nonmarital property

Heirs reassert argument that most of the estate funds are traceable to a nonmarital inheritance received by decedent

County's Petition for Allowance of Claim Previously Disallowed



No formal Notice of Disallowance of claim was filed with Court.

No notice of action on the claim was received by claimant within two months of filing the written state of claim as required under Minn. Stat. § 524.3-806(a), having the effect of an allowance of claim.

Petition for Allowance of Claim Previously Disallowed and Request for Payment filed timely pursuant to Minn. Stat. § 524.3-806(a).

State of Minnesota	District Court
County of: Clay	Judicial District: Seventh
	Court File Number: 14-PR-21-3789
	Case Type: Formal Probate

In Re the Estate of:

Norma Helm
Decedent (Deceased person)

CLAIMANT'S PETITION FOR ALLOWANCE OF CLAIM PREVIOUSLY DISALLOWED AND REQUEST FOR PAYMENT

Claimant, Clay County Social Services, through its undersigned attorney, states:

1. Claimant's address is 715 N 11th St, Suite 106A, Moorhead, MN 56560;
2. I am an interested person as defined by Minnesota law because I have a claim against the estate.
3. On January 12, 2022, Clay County Social Services, Claimant, filed a written statement of claim in the amount of \$322,020.83 with the Court Administrator of this Court.
4. The claim is proper and should be allowed because the claim is for medical assistance paid on behalf of the deceased's predeceased spouse, Harold Helm. See Minn. Stat. § 256B.15.
5. A letter dated June 3, 2022, disallowing the claim was received by the undersigned. No formal Notice of Disallowance was filed with the Court or mailed to the undersigned. This petition for allowance of claim was timely filed under Minn. Stat. § 524.3-806.
6. No notice of action on the claim was received by claimant within two months of filing the written statement of claim as required under Minn. Stat. § 524.3-806(a), having the effect of an allowance of claim.

WHEREFORE, I request the Court:

1. Enter an Order allowing the claim;
2. Fix a time and place for a hearing on this Petition; and
3. Grant such other relief as may be proper.

Heir's Response to County's Petition



Denied “no action” was taken on County’s claim

Argued PR took action prior to appointment, in heir’s objection and cross petition and subsequent correspondence with County

Questioned whether County’s Notice of Claim was filed properly due to procedural errors with initial filing and delayed appointment of PR

Requested evidentiary hearing be held after the deadline to receive creditor claims.

Discovery



County

- County's printout of medical assistance expenditures

Heirs

- Numerous financial statements from various accounts
- Probate documents from decedent's brother's probate
- Records of gifts paid out by decedent
- Real property settlement statements

Evidentiary Hearing:



- At the hearing
 - County called 1 witness, assigned financial worker
 - PR called self and former Attorney-in-Fact for Norma Helm
- Exhibits offered/received
 - County's printout of medical assistance expenditures
 - Numerous financial statements from various accounts
 - Probate documents from decedent's brother's probate
 - Records of gifts paid out by decedent
 - Real property settlement statements

Court's Findings of Fact, Conclusions of Law, and Order



There were irregularities in procedural posture, and coupled with County's knowledge of PR's position with respect to the claim

• Sufficient cause to permit PR to disallow the County's claim

Decedent *did* receive funds from inheritance from her brother

• Inherited funds are considered nonmarital property under Minn. Stat. § 518.003 Sub 3b(a)

Decedent withdrew funds from brother's inheritance and deposited into joint account with her husband

• The "estate" from which the County may recover medical assistance paid to a predeceased spouse is broad and generally includes accounts such as Edward Jones accounts, proceeds are payable on death to Norma's children.

Decedent used funds from sale of marital home to purchase a new home, supplemented with funds from source heirs claimed to be non-marital.

• Court did not find evidence to support the conclusion that funds were traceable to a nonmarital source.
• Nonmarital assets commingled with marital assets may lose its nonmarital status if it cannot be traced to nonmarital source

ORDER

¶65 Pursuant to the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** as follows:

- A. The County has a valid estate recovery claim for reimbursement of medical assistance paid to Harold Helm totaling \$322,020.83.
- B. Pursuant to Minn. Stat. § 524.3-807(a), the Personal Representative shall proceed to pay claims in the order of priority prescribed, after making provision for family maintenance and statutory allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

IT IS SO ORDERED.

Priority Claims



- Minn Stat. § 524.3-805
- (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
 - (1) costs and expenses of administration;
 - (2) reasonable funeral expenses;
 - (3) debts and taxes with preference under federal law;
 - **(4) reasonable and necessary medical, hospital, or nursing home expenses of the last illness of the decedent, including compensation of persons attending the decedent, a claim filed under section [256B.15](#) for recovery of expenditures for alternative care for nonmedical assistance recipients under section [256B.0913](#), and including a claim filed pursuant to section [256B.15](#);**
 - (5) reasonable and necessary medical, hospital, and nursing home expenses for the care of the decedent during the year immediately preceding death;
 - (6) debts with preference under other laws of this state, and state taxes;
 - (7) all other claims.



Settlement in Lieu of Appeal

- Notice of Appeal Timely Filed within 60 days of Trial
 - \$322,020.83 – County's Claim
 - \$309,142.96 – Estate value at time of death (3/14/22)
 - \$286,232.57 – Estate value at time of trial (10/14/22)
 - \$268,168.11 – Estate value after attorney's fees and PR fees paid
- Final Accounting
 - \$235,000 to County
 - \$11,056.04 to each of 3 daughters

Questions?



Katie M. Stock

katie.stock@claycountymn.gov