



**2024 ANNUAL CONFERENCE**  
 Minnesota Family Support & Recovery Council  
 in partnership with Minnesota County Attorneys Association

# Estate Recovery in Probate

Mark Eekhoff - Staff Attorney, DHS - SRU

10/10/2024 MFSRC Annual Conference 1

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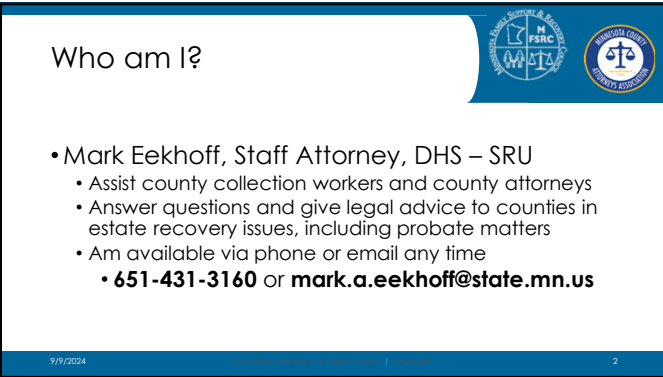
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## Who am I?

- Mark Eekhoff, Staff Attorney, DHS – SRU
  - Assist county collection workers and county attorneys
  - Answer questions and give legal advice to counties in estate recovery issues, including probate matters
  - Am available via phone or email any time
    - **651-431-3160** or **mark.a.eekhoff@state.mn.us**

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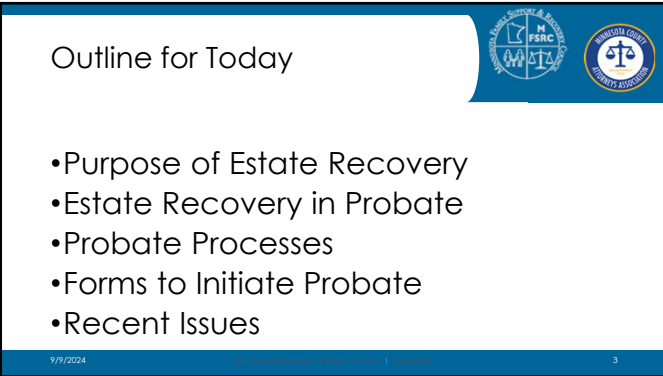
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## Outline for Today

- Purpose of Estate Recovery
- Estate Recovery in Probate
- Probate Processes
- Forms to Initiate Probate
- Recent Issues

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**Estate Recovery: WHY?**

- Federal and state law require it.
- To keep MA solvent so qualified individuals can continue to receive benefits. The other option would be to raise taxes.
- 256B.15 subd. 1: It is the policy of the state that people who participate in MA use own assets to pay their share of cost of care during or after enrollment in MA
  - During enrollment: Eligibility issues, uncompensated transfers
  - After enrollment: Estate Recovery! That's US!

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**Estate Recovery: What's the Point?**

- It is better for the county than the alternatives.
  - Tax forfeiture
  - Foreclosure
  - Not getting money back that you spent
- Consistency
- County gets a percentage of the recovered funds.

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**Example**

- County has MA claims for \$200,000
- Real estate worth \$100,000 in deceased MA recipient's name
  - Estate is insolvent, so unlikely that family/heirs will probate
- Funeral costs are \$5,000
- No back income taxes are owed

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**Example A: County Probates Estate**

- County probates estate and spends:
  - \$2,500 of county worker time; and
  - \$2,500 of county attorney time (billed at local attorney rate)
- County receives **\$27,500**
  - \$5,000 for time administering estate off the top, plus
  - \$22,500 (25% of the remaining \$90,000 (funeral deducted first))
  - State receives \$22,500 and feds receive \$45,000

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**Example B: County Hires Private Atty to Probate Estate**

- Private attorney probates estate for \$5,000
  - County liaises with attorney, but attorney administers estate
- County receives **\$23,750**
  - \$5,000 paid to private attorney off the top
  - \$5,000 paid for funeral
  - County receives \$23,750 (25% of the remaining \$95,000)
  - State receives \$23,750 and feds receive \$47,500

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**Example C: Do Nothing**

- No one paying taxes on the real estate
- Real estate goes into tax forfeiture
  - By the time this process ends, condition has deteriorated
  - Real estate only sells for \$50,000
- County receives very little (*Tyler v. Hennepin County*)
  - Real estate not on tax rolls in the meantime
  - Adjoining property values reduced, no preservation of housing
  - Tax forfeiture process is much longer than probate, and more costly

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**Example D: Do Nothing, plus Mortgage**

- No one paying mortgage payments on the real estate
- Bank takes foreclosure action
  - By the time the process ends, condition has deteriorated
  - Real estate only sells for \$50,000
  - Bank takes all of this money to pay remaining mortgage balance
- County receives \$0, and:
  - Property value reduced, so reduced future tax income
  - Adjoining property values reduced

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**Foreclosures**

- Impact of foreclosure on estate recovery:
  - Value of real estate usually reduced because of poor condition
  - Amount offered at foreclosure sale is usually less than FMV
  - Foreclosure timeframe includes statutory redemption periods

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**Probate**

- The legal process for administer a deceased person's estate - reviewing the assets of the deceased person and determining inheritors
  - Court process following statutory procedure
  - Minn. Stat. Chapter 524 & 525
- Required if the total value of the decedent's estate is over \$75,000, or if there is real estate

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**County Estate Recovery:  
Types of Probate**



- County Estate Recovery in probate can be split into three categories, each with their own potential issues and challenges:
  - Cases where another party is personal representative
  - Cases where a county worker is the personal representative
  - Others: TODD-transferred property, special administrations, determinations of descent

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**Another Party is Personal Representative**



- Before Probate: file Demand for Notice
- After Probate opened: always file Written Statement of Claim
- Communicate with PR to sort out issues
- Commonly-seen issues:
  - PR disallows claim
  - Foreclosure
  - General mishandling of the estate

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**PR Disallowances**



- If PR disallows claim:
  - First, communicate with them or their attorney if represented. Most times, disallowances are based on PR confusion or misunderstanding.
  - If they insist on disallowing, file Petition to Allow Claim Previously Disallowed
    - Contact me!
    - Court will hold a hearing on the petition and decide

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**PR Mishandling Estate**

- If the PR is mishandling the estate, you may file to be appointed special administrator.
- Examples of mishandling:
  - Selling real estate for less than FMV
  - Not paying MA claim before distributing to heirs
  - Not collecting debts owed to the estate
  - Giving up and not doing anything

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**Foreclosures**

- If bank is foreclosing on property and another party is PR, file motion with court to stop the foreclosure and sell on the market.
- May need to ask court to take over as PR or appoint special administrator if the original PR is not working to maximize the value of the estate.

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**Whether to Probate: Factors to Consider**

- Likely alternatives if no probate
- Likely amount of sale proceeds
  - Value of Property
  - Condition of Property
  - Liens on Property
- County gets reimbursed for time and attorney fees before anything else gets paid out from probate proceeds

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**Using Outside Counsel for Probate**



- Using Outside Counsel for Probate Actions vs. Doing it Yourself
  - Advantages to using outside counsel:
    - They are experts in the field
    - They will not take up much of your time to get the job done
  - Disadvantages to using outside counsel:
    - They will charge for their services, which (if estate is insolvent) will mean less money for the county since attorney fees are paid before the county
    - May be difficult to find outside counsel, depending on your county

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**Using Outside Counsel for Probate**



- Using Outside Counsel for Probate Actions vs. Doing it Yourself
  - Advantages to doing it yourself:
    - Your admin and attorney fees can be charged to the estate and are paid out before the county's MA claim, so you will make money for the county
  - Disadvantages to doing it yourself:
    - You and your county attorney are very busy and may not have the bandwidth to do it
    - You and your county attorney may not have the requisite expertise in probate law – BUT I am here to help answer questions, give my opinion, and give guidance and legal advice during the probate process.

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**Probate Process: Information Required**



- Death Certificate
- Is there a Will?
  - Yes: Testate
  - No: Intestate
- Heirs and Devisees – Names and Addresses
- Funeral Expenses
- Family Administrative Expenses (if any)
- Venue In County
- 45 days since death for you as creditor to probate
- Amount of MA Claim
- Estimate of Assets
- Whether Estate will be Solvent

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**Probate Process: Formal v. Informal**



- **Formal Probate**
  - Petition is filed and hearing scheduled (hearing)
    - Estate is insolvent
    - Heirship is sketchy
    - Conflict between heirs/creditors
- **Informal Probate**
  - Application is filed with Registrar (no hearing)
    - Estate is Solvent
    - All heirs known
    - No Conflict between heirs/creditors
    - If issues arise Registrar may require applicant to file formal probate

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**Probate Process: Supervised v. Unsupervised**



- **Supervised**
  - Acts of PR are supervised by the court
  - Court order affirms actions and distributions
  - Court monitors and sends reminders
- **Unsupervised**
  - PR acts without supervision of the court
  - Distributions made without court order
  - Court does not monitor or send reminders

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**Our Advice: Always Formal Supervised**



- Requires Hearing
- Court Affirms Actions of PR
- PR protected (if following Court Orders)
- Court will send reminder notices to PR when documents are due

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**Probate Process**

- Steps in the Probate Process: Initiating Probate
  - Contact higher priority interested parties
  - Fill and file forms to initiate probate
  - Notify interested parties
  - Publish notice
  - Attend initial hearing, get letters

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**Probate Process: Forms to File**

- Petition
- Proposed order
- Affidavit of Mailing and Notice
- Letters Testamentary or Letters of General Administration
- Acceptance & Oath
- Certificate of Representation
- Death Certificate
- Confidential Information Form
- Original Will (if there is one)
- Statement of Lost or Destroyed Will (if there was a will)
- Renunciations (if necessary)
- Written Statement of Claim

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**Probate Process: Service**

- Court provides hearing date
  - Serve heirs and known creditors
- Service by publication must also be done
  - Publication for two consecutive weeks in local paper approved by registrar

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**Probate Process: Administering Estate**



- Request forwarding order for decedent's mail
  - Have mail forwarded to you
- Apply for Estate Tax ID#
  - <https://sa.www4.irs.gov/modiein/individual/index.jsp>
- Open estate bank account
- Collect Assets
- Sell Real Estate

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**Probate Process: Administering Estate**



- Steps in the Probate Process: Managing Probate
  - File motion and attend hearing to take steps
  - Take steps to liquidate assets and pay estate debts

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**Probate Process: Closing**



- Closing Probate:
  - Once assets are liquidated and debts are paid, fill closing documents, including final accounting
  - File closing documents
  - Attend closing hearing

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Probate Process

- What if things don't go smoothly?
  - Contact me!
  - Keep lines of communication open with all parties

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Other Probate Actions

- TODD-transferred real estate
- Special Administration
- Determination of Descent

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TODD-Transferred Real Estate

- A claim still exists against real estate transferred via TODD
- Beneficiaries should ask for Certificate of Clearance, which will list MA claim if there is one
- If beneficiaries do not sell property, you can file petition to sell it. Threat of this may get beneficiaries to pay.
- Best practice to file petition to be named special administrator as well

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**Determination of Descent**

- If Decedent passed away more than three years ago, cannot file petition to probate estate normally
- Must file petition for determination of descent
- Similar process to initiating a probate action, but get a Decree of Descent and no letters
- Generally no more than one hearing in court

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**Special Administration**

- Special Administrator can be appointed quickly if estate assets need to be preserved or protected and:
  - There is no PR yet
  - PR can't/won't act

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**Probate Forms**

- Fillable pdf version of forms published in eDocs on DHS website.
  - Need a link to get to them, not searchable – Each form has its own link
- Instructions for some forms are in the Estate Recovery Manual
  - Links to forms in instructions

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Probate Forms

- Word version of forms on MCAA website
  - <https://mcaa-mn.org/general/custom.asp?page=DHSProbate>
- Forms available:
  - Initiating probate
  - Forcing sale of TODD-transferred real estate
  - Allowing claims previously disallowed
  - Special Administration

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Probate Forms

- More forms for different court actions being drafted and will be uploaded as they become available
  - Decree of Descent
  - Closing Probate

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Recent Issues: Notice of Estate Recovery

- MA applicants receive notice of estate recovery in their application materials
- MA-LTC applicants receive another notice when applying for LTC services
- DHS sent an additional letter to LTC recipients in 2016
- Key: Be prepared to show documentation that notice was given, and contact SRU if any issues come up

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Capitation Payments:  
*Ecklund*

- Appeals Court in *In Re: the Estate of Joanne Mary Ecklund, Decedent* found that capitation payments are not recoverable, but the payments MCOs made for services were recoverable.
- Case is before the MN Supreme Court
- Will keep you posted on results
- Meanwhile, claims histories follow the decision

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Liens on Real Estate in Trusts:  
*Hammerberg*

- HSJ found that NPC could be placed on real estate held in trust
- District court disagreed, said that the lien could not be placed
- Appeals court ruling on 4/22: Reversed district court decision. Appeals court said that the lien is valid on real estate held in irrevocable trust. Nonprecedential.

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Probate

QUESTIONS?

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**Thank You!**

**Mark Eekhoff**  
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