

▼ **Firearms Bans**

A common misstep by criminal defense lawyers is to ignore the lifetime ban on firearms that results from conviction for misdemeanor crimes of domestic violence (MCDV). 18 U.S.C. 922 (G)(9) prohibits any person who has been convicted of MCDV from



owning or possessing firearms and ammunition (but interestingly, not including bows or black powder weapons).

The key elements of an MCDV are 1) the use or attempted use of physical force or the threatened use of a deadly weapon; 2) committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, or by a person who is or has cohabited with, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note that this does not necessarily include boyfriends or girlfriends. Also, simply threatening use of force does not trigger the ban as it must be a threat of deadly force. There is no exception for military or law enforcement personnel. This means a conviction for a MCDV will often end a military or police officer's career.

Finally, be careful telling your client the ban can be expunged. If the state didn't take away the right to possess firearms (and they normally don't for misdemeanors), an expungement of the conviction can't restore the right under federal law.

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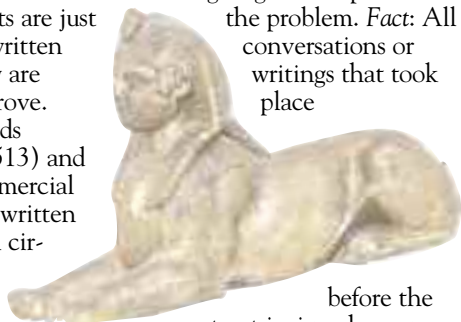
▲ **Contract Myths**

Myth: Oral (unwritten) contracts are not valid.

Fact: Oral contracts are just as enforceable as written contracts, but they are more difficult to prove.

The statute of frauds (Minn. Stat. Ch. 513) and the Uniform Commercial Code do require a written contract in certain circumstances. The writing requirement of the statute of frauds is different from the issue of whether a contract exists. The writing that is required by the statute is not the contract. Rather, it is the written evidence of the contract. See *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998).

Myth: If there is a problem with a contract, the negotiations that took place before signing can help resolve the problem. **Fact:** All conversations or writings that took place



before the contract is signed merge into the contract and cannot be used. (There are some limited exceptions.) "Oral evidence of discussions, negotiations, or understanding is not admissible to vary or to contradict terms of an unambiguous or integrated contract." *Jara v. Buckbee-Mears Co.*, 469 N.W.2d 727, 730 (Minn.

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App. 1991) (citing *Jansen v. Herman*, 230 N.W.2d 460, 463 (Minn. 1975).

Myth: If the other side breaches the contract, you can recover attorney fees. **Fact:** Attorney fees will not be recoverable in a contract action unless they are specifically provided for in the contract or authorized by statute. See *Schwickert, Inc. v. Winnebago Seniors Ltd.*, 680 N.W.2d 79 (Minn. 2004).

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▼ **LLCs & Asset Protection**

The limited liability company (the "LLC") is widely used as the business entity of choice by many clients for a number of reasons, including its asset-protection benefits. If a creditor of an LLC member attempts to seize the LLC member's interest (or the assets of the LLC for that matter) she will have to deal with the "charging order" roadblock. The charging order is found in Minnesota at Minn. Stat. §322B.32. In general, the charging order limits a judgment creditor's remedies against the LLC member by prohibiting the judgment creditor from seizing or selling the LLC member's LLC interest, and by extension seizing or selling the LLC's assets. The creditor simply becomes an "assignee" with respect to the LLC. The primary right of the judgment creditor is to receive any (cash) distributions from the LLC that might otherwise be made by the LLC to the LLC member. The judgment creditor does not have a right to be an LLC member, to vote, to inspect LLC books and records, or to receive LLC financial information. These

limitations on a judgment creditor's rights presume there has not been a fraudulent transfer under state or federal law. The charging order remedy was created to prevent business disruption by preventing the judgment creditor from "meddling" in LLC business affairs. In most cases it has been successful in doing so. However, if the LLC member files for federal bankruptcy protection different rules may apply. In *In Re: Ehmann* 319 B.R. 200 (Bankr. D. Ariz. 2005) a debtor who owned an interest in an Arizona LLC (Fiesta Investments, LLC) filed for Chapter 7 bankruptcy liquidation. The trustee in bankruptcy brought a lawsuit against the LLC claiming that the bankruptcy trustee was a (substitute) LLC member and that the assets of the LLC were being wasted, misapplied, or diverted for improper purposes. The court sided with the bankruptcy trustee. It held that the bankruptcy trustee had all the rights and powers with respect to Fiesta Investments, LLC that the debtor held at the commencement of the case, and that the appointment of a receiver to dissolve and liquidate the LLC in order to satisfy the creditors of the LLC member/debtor might be appropriate.

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