

▲ **Post-Judgment Discovery**

Before an amendment to Minn. Stat. §550.011 became effective on August 1, 2009, if a judgment was docketed for at least 30 days and not satisfied, only the district court could order the judgment debtor to complete a financial disclosure form. It can take weeks for the court to issue its order for financial disclosure. With the recent amendment to the statute, the judgment creditor's attorney—as an officer of the court—may directly demand disclosure from the judgment debtor.

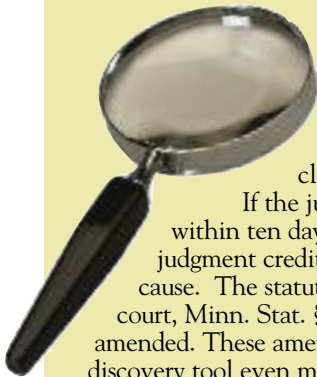
If the judgment debtor fails to disclose within ten days after receiving the demand, the judgment creditor may request an order to show cause. The statute applicable to conciliation court, Minn. Stat. §491A.02, subd. 9, was similarly amended. These amendments make a cost-effective discovery tool even more efficient.

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▲ **Settlement Negotiations**

Statements made by attorneys during settlement negotiations cannot be the basis for a defamation lawsuit in Minnesota. The Minnesota Court of Appeals recently ruled that the absolute privilege for communications made during a “judicial proceeding” extends to settlement negotiations. *Ehrman v. Adam*, 2009 WL 2746749 (Minn. App. 2009) (unpublished). The offending statement was made by an attorney to an adverse claims adjuster, questioning the validity of a power of attorney presented by the claims adjuster and asserting that it does not pass the “smell test.” Although the remark was

viewed as unprofessional, the appellate court upheld the absolute privilege for defamation and upheld dismissal of the lawsuit. The court indicated the privilege is necessary in order to encourage “full and frank” exchange of views during settlement negotiations and avoid deterring



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this case frees them from fear of liability for comments made during settlement discussions. Nonetheless, lawyers should be careful before making defamatory statements outside the court and judicial proceedings, and as a matter of professional propriety, be cautious in how they frame accusations of impropriety against other parties. While they may not be liable for defamation while making such statements during settlement negotiations, insufficiently-calibrated comments can be inflammatory, impair settlement possibilities and bring about disrespect for the counsel making the comment and the profession in general.

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▲ **Usury & Contracts for Deed**

It has long been the case that Usury applied only to loans, including contracts for deed, of less than \$100,000 and, with average home prices, usury was typically not an issue. However, while the general rule for usury continues to apply only to loans of less than \$100,000, effective August 1, 2008, the threshold under which usury applies to contracts for deed was raised to \$300,000. In addition, the index to which the contract-for-deed usury rate is tied has been dropping to a level where it might start impacting contract-for-deed transactions.

Under current law, all contracts for deed under \$300,000 are subject to a floating maximum rate tied to

specified Federal National Mortgage Association (FNMA) yields. The general maximum rate on contracts for deed is the FNMA yield plus 4 percent, which is currently 8.414 percent for January 2010. The maximum rate for contracts for deed, with a duration of ten years or less, for the purchase of subdivided land or timeshares is 3 percent above that general maximum, or currently 11.414 percent for January 2010 (and this maximum rate can never exceed 15.75%). The current rates are published on the Minnesota Department of Commerce's website at <http://www.state.mn.us/portal/mn/jsp/content.do?subchannel=-536881744&programid=536903090&sc3=null&sc2=-536886084&id=-536881351&agency=Commerce>.

No contract for deed is unenforceable solely because of usurious interest, but contract purchasers can recover from sellers up to five times the usurious portion of interest paid, plus attorneys' fees. Finally, like all other loans, usury cannot be raised by a contract-for-deed purchaser which is



an entity, such as a corporation, partnership, limited liability company, etc. See Minn. Stat. §§47.20, subds. 2(2), 4a(a) and (c), 13a; 83.20, subds. 11 and 13; 334.01, subd. 2; 334.022.

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Have a bit of sage advice for a newcomer to your area of practice? Send us your “tips & traps”! Your colleagues will be grateful. Email suggestions, cautions, and tales of woe to [bb@mnbar.org](mailto:bb@mnbar.org)