

MSBA LEGISLATIVE NEWSLETTER

After a whirlwind weekend and an unusual Sunday evening session, the Legislature adjourned just hours ahead of the May 22 adjournment deadline. Action was taken on many of the major items of the session, with passage of a \$1 billion bonding bill, a scaled-down tax bill, and a \$202 million supplemental budget bill, along with two stadium bills. Overall, this session displayed a sense of productivity and respect between legislators - a positive change from previous years in which legislators could not agree on major issues, leading to partisan gridlock and inaction on many crucial items.

MSBA AGENDA

The [Construction Law](#), [Probate and Trust Law](#) and [Real Property Law](#) sections' proposal, introduced as [H.F. 3073/S.F. 2519](#), authored by lawyer-legislators [Representative Paul Thissen](#) (DFL–Minneapolis) and [Senator Tom Neuville](#) (R–Northfield), was signed by the Governor on May 21, 2006, as Chapter 221. Four amendments were added to the bill during the Senate floor debate. The four amendments include: (1) [S.F. 2541](#), authored by [Senator Mike McGinn](#) (R–Eagan), which provides a procedure for custodians to convey title to real property; (2) [S.F. 3216](#), authored by [Senator Scott Dibble](#) (DFL–Minneapolis), which amends the current 18-month sunset on local ordinances governing condominium conversions; (3) revisions regarding the use and effect of summary real estate disposition judgments in divorce proceedings which was proposed by the [Family Law Section](#) and developed with the [Real Property Law Section](#); and (4) new language to prevent bogus redemption claims.

The [Business Law Section](#) proposal which was introduced as [H.F. 3076/S.F. 2520](#), authored by lawyer-legislators [Representative Tom Emmer](#) (R–Delano) and [Senator Geoff](#)

[Michel](#) (R-Edina), received final passage from the Senate and House on May 20, 2006, and was presented to the Governor on May 22, 2006 as Chapter 250.

LEGISLATIVE SUMMARY

Below is a summary of bills previously identified as being of interest to one or more sections or committees which were passed in the final weeks of the session. Certain bills are repeated under different sections as appropriate.

BUSINESS LAW

The [Business Law Section](#) proposal which was introduced as [H.F. 3076/S.F. 2520](#), authored by lawyer-legislators [Representative Tom Emmer](#) (R-Delano) and [Senator Geoff Michel](#) (R-Edina), received final passage from the Senate and House on May 20, 2006, and was presented to the Governor on May 22, 2006 as Chapter 250.

On May 3, 2006, the Senate gave final passage to the Uniform Securities Act (2002), [H.F. 2514/S.F. 2319](#), authored by lawyer-legislators [Representative Joe Atkins](#) (DFL-Inver Grove Heights) and [Senator Don Betzold](#) (DFL-Fridley). The bill was signed into law by the Governor as Chapter 196.

Legislation to provide for expedited judicial review for financing statements was incorporated into Chapter 260, the Omnibus Public Safety Bill, [H.F. 2656/S.F. 2633](#), which was carried by lawyer-legislators [Representative Steve Smith](#) (R-Mound) and [Senator Jane Ranum](#) (DFL-Minneapolis). The original language was introduced as [S.F. 3049/H.F. 3526](#), authored by lawyer-legislator [Senator John Hottinger](#) (DFL-St. Peter) and [Representative Ray Vandever](#) (R-Forest Lake). The legislation was presented to the Governor on May 22, 2006.

CIVIL LITIGATION

The funeral protest bill, [H.F. 2985/S.F. 2614](#), authored respectively by lawyer-legislators [Representative Steve Smith](#) (R-Mound) and [Senator Don Betzold](#) (DFL–Fridley), was signed by the Governor as Chapter 195 and became effective May 10. In its final form, the legislation requires protestors to remain 500 feet away from a funeral or memorial service. The bill also makes it a crime to intentionally interfere with a funeral process or picket at the private residence of a surviving family member.

[House File 1375/S.F. 1287](#), authored by [Representative Dan Severson](#) (R-Sauk Rapids) and lawyer-legislator [Senator Linda Scheid](#) (DFL–Brooklyn Park), passed as Chapter 202 and was signed by the Governor on May 16, 2006. This legislation requires homeowners to give contractors notice of, and the opportunity to offer to repair, construction defects. The bill was previously amended to address the Minnesota Supreme Court Decision in [Camacho vs. Todd V. Leiser Homes](#), 706 N.W.2d 49 (Minn. 2005). The bill was amended to provide that statutory homeowner warranty claims are not affected by the dissolution of the homebuilder and, if applicable, insurance purchased by the builder is still in force, even if the builder's corporation is dissolved. The bill was further amended to include language from [H.F. 3641/S.F. 3319](#), which establishes competency criteria for construction code inspectors.

On the House floor, [Representative Barb Goodwin](#) (DFL-Columbia Heights) offered an amendment to award attorneys' fees to a prevailing plaintiff, but to the defendant only if the plaintiff's claim was frivolous or made in bad faith. After lawyer-legislator [Representative Scott Newman](#) (R- Hutchinson) offered an amendment to the Goodwin amendment to award attorney fees to the prevailing party, [Representative Goodwin](#) withdrew her amendment.

CONSTRUCTION LAW

The [Construction Law](#), [Probate and Trust Law](#) and [Real Property Law](#) sections' proposal, introduced as [H.F. 3073/S.F. 2519](#), authored by lawyer-legislators [Representative Paul Thissen](#) (DFL–Minneapolis) and [Senator Tom Neuville](#) (R–Northfield), was signed by the Governor on May 21, 2006, as Chapter 221. Four amendments were added to the bill during the Senate floor debate. The four amendments include: (1) [S.F. 2541](#), authored by [Senator Mike McGinn](#) (R–Eagan), which provides a procedure for custodians to convey title to real property; (2) [S.F. 3216](#), authored by [Senator Scott Dibble](#) (DFL–Minneapolis), which amends the current 18-month sunset on local ordinances governing condominium conversions; (3) revisions regarding the use and effect of summary real estate disposition judgments in divorce proceedings which was proposed by the [Family Law Section](#) and developed with the [Real Property Law Section](#); and (4) new language to prevent bogus redemption claims.

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ELDER LAW

Chapter 282, the Supplemental Appropriations bill, [H.F. 4162/S.F. 3781](#), carried by [Representative Jim Knoblach](#) (R-St. Cloud) and lawyer-legislator [Senator Dick Cohen](#) (DFL-St. Paul), was presented to the Governor on May 22. Incorporated into the bill was language bringing the state law in compliance with the recently passed federal Deficit Reduction Act of 2005, including changes regarding the availability and transfer of assets, limits on the value of protected home equity, transfers involving annuities, and limitations on liens and claims against estates.

FAMILY LAW

The [Construction Law](#), [Probate and Trust Law](#) and [Real Property Law](#) sections' proposal, introduced as [H.F. 3073/S.F. 2519](#), authored by lawyer-legislators [Representative Paul Thissen](#) (DFL-Minneapolis) and [Senator Tom Neuville](#) (R-Northfield), which was signed by the Governor on May 21, 2006, as Chapter 221, was amended during the Senate floor debate to provide an expedited process to amend erroneous legal descriptions in summary real estate disposition judgments in divorce proceedings, and specific protection for purchasers for value of a parcel previously erroneously described in a divorce proceeding. The language was drafted by members of the [Family Law](#) and [Real Property](#) sections.

[Senate File 3199/H.F. 3585](#), authored by lawyer-legislators [Senator Tom Neuville](#) (R-Northfield) and [Representative Steve Smith](#) (R-Mound), was passed and numbered Chapter 280. This legislation amends Chapter 164, the child support bill, passed last session with changes to certain custody, paternity, adoption, and child support and maintenance provisions. The legislation incorporates other bills, often in amended form, including: (1) [S.F. 751/H.F. 576](#), paternity presumption provisions; (2) [S.F. 2786/H.F. 2860](#), removal of a child from the state; (3) [S.F. 2989/H.F. 2964](#), communication and contact agreements; and (4) [S.F. 2633/H.F. 2656](#), which will permit litigants to appeal Hennepin County Family Court referees' orders directly to the Court of Appeals under a procedure already approved in Ramsey County.

The Omnibus Public Safety bill, Chapter 260, [H.F. 2656/S.F. 2633](#), carried by lawyer-legislator [Representative Steve Smith](#) (R-Mound) and [Senator Jane Ranum](#) (DFL-Minneapolis), included provisions and penalties regarding order of protection and domestic abuse no contact orders including language from [H.F. 3091/S.F. 2911](#) authored by lawyer-legislators [Representative Doug Meslow](#) (R-White Bear Lake) and [Senator Jane Ranum](#) (DFL-Minneapolis).

PROBATE AND TRUST

The [Construction Law](#), [Probate and Trust Law](#) and [Real Property Law](#) sections' proposal, introduced as [H.F. 3073/S.F. 2519](#), authored by lawyer-legislators [Representative Paul Thissen](#) (DFL-Minneapolis) and [Senator Tom Neuville](#) (R-Northfield), was signed by the Governor on May 21, 2006, as Chapter 221. Four amendments were added to the bill during the Senate floor debate. The four amendments include: (1) [S.F. 2541](#), authored by [Senator Mike McGinn](#) (R-Eagan), which provides a procedure for custodians to convey title to real property; (2) [S.F. 3216](#), authored by [Senator Scott Dibble](#) (DFL-Minneapolis), which amends the current 18-month

sunset on local ordinances governing condominium conversions; (3) revisions regarding the use and effect of summary real estate disposition judgments in divorce proceedings which was proposed by the [Family Law Section](#) and developed with the [Real Property Law Section](#); and (4) new language to prevent bogus redemption claims.

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PUBLIC LAW

Both the House and the Senate have passed [H.F. 3477](#) and [S.F. 3159](#), authored by [Representative Larry Hosch](#) (DFL–St. Joseph) and [Senator Sharon Marko](#) (DFL–Cottage Grove), respectively, which requires municipalities to release letters of credit within 30 days after a construction project is completed. The Governor signed the legislation as Chapter 209 on May 18, 2006.

[House File 3079/S.F. 2648](#), authored by lawyer-legislator [Representative Ron Abrams](#) (R-Minnetonka) and [Senator Ann Rest](#) (DFL-New Hope), passed as Chapter 232. On May 24, 2006, the Governor signed the bill. This legislation limits the liability of a municipality participating in a joint venture or enterprise in response to the decision [Reimer v. City of Crookston](#), 421 F.3rd 673 (8th Cir. 2005). The court ruled that the statutory cap on municipal liability applied individually to each party, but did not apply a single statutory cap for joint

power board under the circumstances in this case. The plaintiff, who obtained a \$12,200,000 jury award, was able to recover the statutory cap from each participant in the joint venture.

In its final form, the bill raises the limit on an individual claim to \$400,000 for claims arising on or after January 1, 2008 and before July 1, 2009, and to \$500,000 for claims arising after July 1, 2009. The bill also provides for a corresponding raise to the cap on liabilities on all claims arising out of a single occurrence from \$1,000,000 to \$1,200,000 for claims arising on or after January 1, 2008 and before July 1, 2009, and \$1,500,000 for claims arising after July 1, 2009. The bill finally provides that a governmental unit that acquires insurance beyond the statutory limits waives its limits on governmental liability to the level of the insurance available. The bill goes into effect on January 1, 2008, and applies to acts or omissions occurring on or after that date.

On May 19, 2006, the Governor signed into law as Chapter 214, the eminent domain legislation, [S.F. 2750/H.F. 2846](#), authored by [Senator Tom Bakk](#) (DFL-Cook) and lawyer-legislator [Representative Jeff Johnson](#) (R-Plymouth). While the legislation makes numerous changes to current condemnation law, four changes are particularly noteworthy. First, the legislation provides that eminent domain may only be used for a public use and defines public use as: (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies; (2) the creation or functioning of a public service corporation (which includes utilities, railroads, airports, and other comparable entities); or (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of public nuisance. The legislation specifically provides that the public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, are not by themselves a public use. Second, the legislation requires

in the future that if a taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance, the condemning authority must show by a preponderance of the evidence that the taking is necessary and for the designated use. Third, compensation for loss of going concern must be paid unless a condemning authority can prove by a preponderance of the evidence that the loss is not due to the taking, that the loss could have been avoided with reasonable measures, or that the going concern compensation would duplicate other compensation. Fourth, property owners will be able to receive their attorneys' fees in certain cases. Where the takings award is more than \$25,000, a property owner may recover its fees if the final award is 20% greater than the condemning authority's last written offer before it files its petition, and shall recover if the final award is 40% greater than the final award.

On May 22, 2006, [S.F. 2934/H.F. 3302](#), authored by [Senator Dave Senjem](#) (R-Rochester) and [Representative Laura Brod](#) (R-New Prague), was presented to the Governor for his signature as Chapter 270. This bill modifies municipal and county planning and zoning provisions to provide standards for preliminary plat approval for a proposed development. On the Senate floor, the bill was amended to incorporate [S.F. 3438/H.F. 3027](#), authored by lawyer-legislator [Senator Brian LeClair](#) (R-Woodbury) and [Representative Mike Charron](#) (R-Woodbury), respectively. The bill permits the continuation of nonconforming uses in counties. The language was further amended to allow only nonconforming homestead and non-homestead residential and seasonal recreational residential properties to be continued.

On May 20, 2006, [S.F. 3023/H.F. 3391](#), authored by [Senator Ann Rest](#) (DFL-New Hope) and [Representative Mike Beard](#) (R-Shakopee), was signed by the Governor on May 24, 2006, as

Chapter 226. The bill subjects watershed districts and soil and water conservation districts to Minnesota Statutes Section 15.99, which establishes timelines for agency action.

[House File 3451/S.F. 2933](#), authored by [Representative Bruce Anderson](#) (R-Buffalo Township) and [Senator Betsy Wergin](#) (R-Princeton), was presented to the Governor on May 22, 2006, as Chapter 269. This new chapter provides standards by which municipalities can require a proposed development to dedicate land for park purposes.

REAL PROPERTY

The [Construction Law](#), [Probate and Trust Law](#) and [Real Property Law](#) sections' proposal, introduced as [H.F. 3073/S.F. 2519](#), authored by lawyer-legislators [Representative Paul Thissen](#) (DFL-Minneapolis) and [Senator Tom Neuville](#) (R-Northfield), was signed by the Governor on May 21, 2006, as Chapter 221. Four amendments were added to the bill during the Senate floor debate. The four amendments include: (1) [S.F. 2541](#), authored by [Senator Mike McGinn](#) (R-Eagan), which provides a procedure for custodians to convey title to real property; (2) [S.F. 3216](#), authored by [Senator Scott Dibble](#) (DFL-Minneapolis), which amends the current 18-month sunset on local ordinances governing condominium conversions; (3) revisions regarding the use and effect of summary real estate disposition judgments in divorce proceedings which was proposed by the [Family Law Section](#) and developed with the [Real Property Law Section](#); and (4) new language to prevent bogus redemption claims.

[House File 3449/S.F. 2887](#), authored by [Representative Karen Clark](#) (DFL-Minneapolis) and [Senator Scott Dibble](#) (DFL-Minneapolis), requires the commissioners of health and the housing finance agency to receive notice of a proposed manufactured home park conversion. The Governor signed the legislation, now Chapter 200, on May 10, 2006.

Legislation to modify both standards and fees relating to the recording of documents with the county registrar or registrar of titles was signed by the Governor on May 21, 2006, as Chapter 222. This legislation was introduced as [S.F. 3105/H.F. 3454](#), authored by [Senator Steve Murphy](#) (DFL–Red Wing) and [Representative Connie Ruth](#) (R–Owatonna).

[House File 1375/S.F. 1287](#), authored by [Representative Dan Severson](#) (R-Sauk Rapids) and lawyer-legislator [Senator Linda Scheid](#) (DFL–Brooklyn Park), passed as Chapter 202 and was signed by the Governor on May 16, 2006. This legislation requires homeowners to give contractors notice of, and the opportunity to offer to repair, construction defects. The bill was previously amended to address the Minnesota Supreme Court Decision in [Camacho vs. Todd V. Leiser Homes](#), 706 N.W.2d 49 (Minn. 2005). The bill was amended to provide that statutory homeowner warranty claims are not affected by the dissolution of the homebuilder and, if applicable, insurance purchased by the builder is still in force, even if the builder’s corporation is dissolved. The bill was further amended to include language from [H.F. 3641/S.F. 3319](#), which establishes competency criteria for construction code inspectors.

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LAWYER-LEGISLATORS

As the 2006 session ends, a number of lawyer-legislators have announced their intention to leave the Minnesota State Legislature. First, we congratulate [Representative Ron Abrams](#) (R-Minnetonka). On April 28, 2006, Governor Tim Pawlenty announced the appointment of [Representative Abrams](#) to the Hennepin County District Court. [Representative Abrams](#) was first elected to the House in 1988. Since 1999, [Representative Abrams](#) has acted as Speaker Pro Tempore and between 1999 and 2004, and he served as Chair of the House Taxes Committee. Throughout his years at the Legislature, [Representative Abrams](#) has been widely recognized for his expertise on tax and public finance issues.

[Representative Scott Newman](#) (R-Hutchinson) has announced that he will not seek reelection and instead will run for district court judge in the First Judicial District. Elected to the House of Representatives for the first time in a 2003 Special Election, [Representative Newman](#) served on the House [Public Safety Policy and Finance Committee](#), as well as the [Transportation](#) and [Education Finance](#) committees.

Two other lawyer-legislators are looking to move their offices from Minnesota to Washington, D.C. On May 6, 2006, [Representative Keith Ellison](#) (DFL-Minneapolis) received the endorsement to be the Democratic candidate in the [Fifth Congressional District](#) to succeed retiring [U.S. Representative Martin Sabo](#). [Representative Ellison](#) is in his second term in the House of Representatives. [Representative Ellison](#) currently serves on both the House [Civil Law and Elections](#) and [Public Safety Policy and Finance](#) committees.

Finally, congratulations are also in order for lawyer-legislator [Senator Michelle Bachman](#) (R-Stillwater) who won the Republican endorsement for the [Sixth Congressional District](#) seat being vacated by current [U.S. Representative Mark Kennedy](#) who is running for the U.S. Senate.

[Senator Bachman](#) was first elected to the Minnesota State Senate in 2002 and currently serves as a ranking minority member on the [Jobs, Energy, and Community Development Committee](#) and also sits on the [Education Committee](#) and [Environment, Agriculture and Economic Development Budget Division](#) of the Senate [Finance Committee](#).

Other Legislators are also leaving to seek another office, albeit the same one, [Representative Matt Entenza](#) (DFL-St. Paul), current House Minority Leader from St. Paul, and [Representative Jeff Johnson](#) (R-Plymouth), chair of the House [Civil Law and Elections Committee](#), are running against each other for Attorney General. [Representative Entenza](#) was first elected to the House in 1994 and became the Minority Leader in 2004. [Representative Johnson](#) has served three terms in the House. In addition to his position as chair of the House [Civil Laws and Elections Committee](#), [Representative Johnson](#) also served on the House [Public Safety Policy and Finance Committee](#).

Several other lawyer-legislators also announced their retirements during the session's closing proceedings. Particularly noteworthy retirements include [Senator John Hottinger](#) (DFL-St. Peter) and [Senator Jane Ranum](#) (DFL-Minneapolis). [Senator Hottinger](#) has served five terms after being elected in 1990. In his first term, [Senator Hottinger](#) chaired the [Early Childhood Policy and Budget Divisions](#) and served on the [Elections](#), [Environment and Natural Resources](#), and [Rules and Administration](#) committees. [Senator Hottinger](#) served as the Senate Majority Leader during the 2005 session. Over the years, [Senator Hottinger](#) was the author of numerous MSBA bills.

Like [Senator Hottinger](#), [Senator Ranum](#) joined the Senate in 1990. [Senator Ranum](#) leaves as the chair of the [Public Safety Budget Division](#) of the Senate [Finance Committee](#).

[Senator Ranum](#) also served on the [State Government Budget Division](#), [Crime Prevention and Public Safety](#), and [Rules and Administration](#) committees.

Also retiring is [Representative Doug Meslow](#) (R-White Bear Lake). [Representative Meslow](#) was first elected to the House in 2002. In his final session, [Representative Meslow](#) served on the [Public Safety Policy and Finance Committee](#) and the [Education Finance Committee](#).

The MSBA thanks these lawyer-legislators for their support over the years and wishes them well in their new pursuits.

[Portions of this report were taken from documents prepared by the Minnesota Legislature and the Minnesota Legislature website.]

This report is not legal advice. You must read each Chapter for its specific terms.