

Elder Law News

A Publication of the Minnesota State Bar Association Elder Law Section

May 2003

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www.mnbar.org

A Word from the Chair

By: *Stuart Bear*



It has been a busy past few months for the Elder Law Section.

In the recent Minnesota legislative session, a number of proposals were presented, directly impacting Medical Assistance eligibility requirements and estate recovery issues. As a result, our executive committee took action,

with the unanimous support of the governing law council, to oppose these legislative proposals, and respond to The Centers for Medicare and Medicaid Services (CMS), an agency of the federal government, expressing opposition to a waiver request submitted by the Minnesota Department of Human Services (MDHS), seeking a waiver of federal guidelines to allow Minnesota legislation to become effective law.

I want publicly to thank a group of committed Elder Law attorneys, who spearheaded the work of the Elder Law Section in opposing the legislative proposal, as well as those Elder Law attorneys who took the time to write responses to DHS and CMS to express their concerns with the waiver request. I especially want to thank Cathryn Reher for her work in drafting the response to the waiver request and Julian Zweber, the chair of the Elder Law Section Legislative Committee, for his tireless efforts and deep commitment to matters which affect the practice of Elder Law in the State of Minnesota. We all owe a debt of gratitude to Cathryn and Julian.

For more information on submitting comments to the waiver request, please visit the Elder Law Section website at www.mnbar.org.

Another matter of great importance to our section during the past year has been our commitment to strategic planning. Our strategic planning committee, led by Monica Lewis, has worked to enable our section to meet objectives consistent with the mission of our section, resulting in greater value to our members. This includes analyzing ways to communicate with section members more effectively and in a more timely manner; refining the mission of our section; developing a mechanism to evaluate issues as they affect our section members; and developing a framework to pursue legislative initiatives and, if necessary, change through litigation. In all, the strategic planning committee has done important and timely work this past year, and will continue to do so into the future.

My term as serving as chair of the section has lasted for two years. It will come to an end at our annual meeting at the bar convention in June. I want to take this opportunity to thank our officers for this past year, Lori Guzman, vice chair; Laurie Hanson, treasurer; and Cindy Capin, secretary. I also want to take this opportunity to thank our members of the governing law council, who through their efforts, enabled us to identify and analyze a variety of issues in an intelligent and thoughtful manner. Finally, I want to thank the members of our section, for enabling me to serve as the chair the past two years. It has been a very enjoyable experience and it has been my pleasure to serve as the section chair.

MSBA Elder Law Section Governing Council Nomination Slate 2003 – 2004

The Nomination Committee of the Governing Council of the Elder Law Section of the Minnesota State Bar Association respectfully submits to the Council the following slate of candidates to serve as officers and members for the 2003 – 2004 program year. This slate of nominees will be voted on during the Elder Law Section Annual Meeting at 3:00 p.m. immediately proceeding the Elder Law CLE at the MSBA Convention, Thursday, June 19th at the Hyatt Regency in downtown Minneapolis.

Officers

(to serve one-year terms):

Chair	Lori L. Guzman
Vice-Chair	Mary S. Hagen
Secretary	Cynthia Capin (second one-year term)
Treasurer	Jeffrey W. Schmidt (first one-year term)

Members to be elected

(to serve two-year terms):

Vicki M. Ahl	Stuart C. Bear	Kathy Eveslage
Mary S. Hagen (officer)	Richard D. Hawke	James Marks
Jeffrey W. Schmidt (officer)	Monica Lewis	Prof. Jennifer L. Wright
Cynthia Capin (officer)	Barbara F. Goldstein	Gina M. Nelson (student rep.)
Bob Russell	Sharon Kirts	

The following members have one year remaining on their two-year terms.

These individuals are not part of the election slate and they are listed here for informational purposes only:

Lori L. Guzman (officer)	Laurie A. Hanson (officer)	Robert Chesley
Suzanne M.C. Sandahl	Mark G. Wermerskirchen	Jonathan Dyrud
Julian J. Zweber	Mark Anderson	
Steve Overom	Bonita Kallestad	
Thomas R. O'Connell	Cathryn D. Reher	

Tonya M. Zdon Gabbard will not be serving the second year of her two-year term as she is moving to Chicago. Her service to this Council is greatly appreciated and will be missed.

Nomination Committee

Jeffrey W. Schmidt (Chair)	Mary S. Hagen
Lori L. Guzman	Don Sjoström

MSBA Elder Law Section

presents...

The State of Estate Recovery in Medical Assistance - *Gullberg* and Beyond

MSBA Convention

Thursday, June 19, 2003

3:30 p.m. - 5:00 p.m.

(Immediately following the Elder Law Section

Election of the 2003-2004 nominated Governing Slate)

Hyatt Regency

Downtown Minneapolis

(www2.mnbar.org/convention)

Randy F. Boggio, a recognized elder law attorney and frequent lecturer, will speak on the current state of estate recovery efforts by medical assistance. The discussion will follow on the ramifications of the *Gullberg* decision and the relation of county and state agencies. Mr. Boggio will also address new legislative proposals by Minnesota Department of Human Services regarding increased estate recovery efforts.

1.50 CLE credits approved.

Legislative Report

By: Julian J. Zweber, Chair, Legislative Committee

On Thursday, May 29, 2003, the Legislature finally passed the Omnibus Health and Human Services Finance bill for fiscal years 2004 and 2005. The new legislation will make dramatic adjustments to many social welfare programs, including medical assistance.

Effective for estates of decedents who die on or after August 1, 2003, medical assistance estate recovery will be expanded to permit claims against life estate and joint tenancy interests after the life tenant or joint tenant dies. This change will apply to interests created prior to the effective date of the new law.

The Commissioner of Human Services will also be directed to seek a waiver of federal law to allow Minnesota to impose much harsher penalties for uncompen-

sated transfers. The look-back period would be extended to six years. Uncompensated transfers would be accumulated. The penalty period for accumulated transfers would begin to run only after the applicant applies for medical assistance and satisfies all of the other requirements for medical assistance eligibility. These changes would not apply to transfers which occur prior to July 1, 2003.

Additional information about these changes will be distributed as the details of the new act become available.

MA Estate Recovery to Include Alternative Care Benefits

By: Julian J. Zweber, Chair, Legislative Committee

Effective July 1, 2003, alternative care benefits provided on or after July 1, 2003, will be included with medical assistance claims against estates under Minn. Stat. § 256B.15. The expansion of estate claims is included in

the Omnibus Health and Human Services Finance bill passed on May 29, 2003. The state will file liens against the real property of individuals who receive alternative care to secure payment of the estate claim.

Uniform Guardianship ACT Becomes Effective August 1

By: Robert A. McLeod, Co-chair, Probate and Trust Law Section Legislative Committee

On April 11, 2003, Governor Pawlenty signed the Uniform Guardianship and Protective Proceedings Act (UGPPA).¹ UGPPA is a complete restatement of guardianship and conservatorship law in Minnesota. While UGPPA completely restates the substantive law on guardianships and conservatorships, the Minnesota version has been revised to substantially retain our current practices and procedures. There are some significant differences, however, which will be explained in this article.

UGPPA will be codified as Minnesota Statutes, Sections 524.5-101 to 524.5-502. The new act will be phased-in over a period of one year, beginning on August 1, 2003.² Any petitions before the court on August 1, 2003, may be completed under the old law. Existing orders and letters of office will remain in full force and effect. Existing bonds and powers of attorney (under M.S. 524.5-505 (2002)) shall remain in full force and effect. On the later to occur of (1) September 1, 2003, or (2) the anniversary date of each existing appointment, the court may issue new letters of guardianship or conservatorship.³ To facilitate these changes, forms are being developed for general use by the practicing bar. A form to be used to request the court to issue new letters, and forms such as petitions, orders and accounts, are currently under review by the state forms committee and should be available to practitioners before August 1, 2003.

UGPPA has changed some basic nomenclature for protective proceedings. Under UGPPA, there will only be Guardians of the Person, and Conservators of the Estate. Thus all guardianships will be for wards, while all conservatorships will be for "protected persons." Under UGPPA, no one will be declared incompetent.

UGPPA consists of five parts or articles. Article One is numbered in 524.5-1XX. This article contains definitions and some procedural matters.

Article Two, found at 524.5-2XX, provides for guardians of minors.

Article Three, found at 524.5-3XX provides for a guardian of a ward.

Under this article, the ward may be either a minor or an adult. This article adds some flexibility to guardianships which does not exist under current law. For example, if a child has a condition that will require the child to remain under guardianship indefinitely, then a guardianship may be established under Article Three instead of Article Two. In that case the guardianship will continue when the child attains age 18. We will no longer be required to close the guardianship when a minor reaches 18 and start a new guardianship for the adult person.

Article Four provides the rules for conservatorship. A conservatorship under UGPPA will only be for management and conservation of property. The rules for the sale of real property will remain much the same as under current law and will be found at 524.5-418A. Other provisions were added to establish priorities for the payment of claims, mimicking the probate claims statute⁴ and to establish priorities among competing candidates seeking appointment as conservator.⁵

Article Five provides for the payment of fees⁶ and provides for proceedings in forma pauperis.⁷

The UGPPA is intended to substantially adopt current Minnesota practice within the framework of the Uniform Act. With regard to guardian and conservator powers, our current statutes have been inserted directly into the UGPPA. For example, the guardian powers under 524.5-313 are substantially identical to existing statutes providing for powers of a guardian/conservator of the person. The intent is to have the existing case law and practice apply to the new law as it relates to guardians. The conservator powers under 524.5-418 are also substantially identical to existing statutes providing powers for a guardian/conservator of property. Again, the intent is to have existing case law and procedures apply to the new law.

There are a few significant new developments under the new act.

- Under the new act, an ancillary guardianship/conservatorship may be established.
- Under the new act, the conservator has power to enter into contracts.⁸

- The guardian is given the power to enter into contracts only if there is no conservator with the same power.⁹
- The guardian has the power to revoke the agent of a health care directive although the guardian may not revoke the directive.¹⁰ Absent a court order to the contrary, a health care decision by the guardian takes precedence over a health care decision by a health care agent.¹¹
- The conservator may engage in estate planning for the protected person. This provision, found in 524.5-411, is a significant change in Minnesota law. Any such activity will require a court order with notice to all affected persons. More will be written on this point in the future.

Several seminars are planned in the near future to facilitate training and explanation of the new law. In the meantime, questions may be directed to Robert A. McLeod, Lindquist & Venum, 612-371-3272, rmcleod@lindquist.com.

Notes

¹ See S.F. 112, enacted as Laws 2003, Ch. 12.

² S.F. 112, Article 2, Section 5.

³ Id, paragraphs (b) and (e).

⁴ 524.5-429.

⁵ 524.5-413 (524.5-309 for guardians).

⁶ 524.5-502.

⁷ 524.5-501.

⁸ 524.5-418(c)(5).

⁹ 524.5-314(c)(8).

¹⁰ 524.5-315(c).

¹¹ id.

Real Estate Issues for the Probate Practitioner

Top Ten Real Estate Questions

By: Suzanne M. Sandahl

1. How do I find the correct real estate legal description?

- A. Obtain copy of deed by which decedent came into title.
- B. Look for a Certificate of Title.
- C. Check the abstract (probably needs updating)
- D. Title insurance policy or binder.
- E. Review the real estate tax statement.

2. How is title held and what do I do about it?

- A. Sole name – Probate
- B. Joint tenancy – Affidavit of Survivorship and c.c. of Death Certificate
- C. Tenancy in common – Probate partial interest
- D. Life estate – Affidavit of Survivorship and c.c. of Death Certificate
- E. Remainder interest – Probate
- F. In a trust – Trustee’s Deed, Certificate of Trust, Affidavit of Trustee

3. Is the property Torrens or Abstract?

- A. Torrens: In Hennepin County, call the Registrar of Titles Office 612-348-3070, give them the legal description and ask them if the property is abstract or torrens.
- B. Abstract: If you have an abstract in your hand, you can assume it is abstract property but you can still verify with the Torrens Office that the property is abstract anyway.
- C. Abstract and Torrens.

4. Did the deceased owner of the property have a spouse?

- A. If there is a surviving spouse, the spouse must join in any deed.

Minnesota Statutes §507.02 reads:

“If the owner is married, no conveyance of the homestead . . . shall be valid without the signature of both spouses. . . A husband and wife, by their joint deed, may convey the real estate of either. A spouse, by separate deed, may convey any real estate owned by that spouse, except the homestead,

subject to the rights of the spouse therein; and either spouse may, by separate conveyance, relinquish all rights in the real estate so conveyed by the other spouse.”

- B. Issue: How do we know which real estate is homestead?

- (1) Affidavits as evidence, Minnesota Statutes §507.29. Establishing homestead status is not a permitted use of affidavit.
- (2) Court Order.

5.. What do we do when the spouse has not joined in a deed?

- A. Obtain a deed executed by both husband and wife.
- B. Wait 15 years if the original deed is of record. Minnesota Statutes §519.101 and §507.021 provides a 15 year cure if the instrument is of record and no action is commenced and no *lis pendens* filed within 15 years of the date of the filing.
- C. Treat it as null and void.
- (1) “Where a deed to a homestead is not executed by one of the spouses, the transfer is wholly void, not merely voidable, regardless of equities of matter.” *First Fiduciary Corporation v. Blanco*, 1979, 276, NW 2d, 30.
- (2) “This statute has been often construed by this court, and we invariably have held that alienation of the homestead, except to secure the purchase price thereof, by a married man without the signature of his wife is void for all purposes, not simply voidable. *Murphy v. Renner*, 1906, 99 MN, 348, 109 NW 593.

6. What county is the land located in and why does it matter?

Updated County Practices as of February 25, 2003:

- A. 6 Counties which will not accept an informal probate if there is real estate involved.

County	County Seat	Telephone No.
Crow Wing	Brainerd	218-824-1310
Kanabec	Mora	320-679-6400
Lac Qui Parle	Madison	320-598-3536
Lake	Two Harbors	218-834-8330
Mahnomen	Mahnomen	218-935-2251
St. Louis	Duluth	218-726-2506

B. Counties with one or more additional requirements for informal probates with real estate:

Key:

1. local attorneys prefer formal administration when the assets include real estate.
 2. require the application and/or the statement of informal probate to contain the legal description.
 3. will accept informal probate if there is an attorney involved.
 4. no probate registrar, final decision up to the judge.
 5. will accept informal application, but must close formally.
 6. will accept informal application if real estate will be sold; must convert to formal if property is to be distributed.
 7. may accept informal application; check with registrar.
 8. attorney can mail in application; pro se applicant must bring in application.
 9. personal appearance or interview required.
 10. will not accept informal application when the estate is insolvent.
 11. will not accept informal application when there are minor devisees.
 12. depends on value of the estate.
 13. will accept informal application only if real estate is being sold to third party because Registrar of Titles will not accept determination of heirs made by the Probate Registrar; must go formal if real estate is distributed to heirs.
 14. will not accept an intestate probate with surviving spouse, minor children, and homestead; require supervised formal probate.
- C. Counties which will accept an informal probate if there is real estate involved, but have additional requirements:

County	County Seat	Telephone No.	Addl. Rqmts.
Aitkin	Aitkin	218-927-7350	3
Becker	Detroit Lakes	218-846-7305	1, 2
Beltrami	Bemidji	218-759-4128	1, 2
Big Stone	Ortonville	320-839-2537	2
Brown	New Ulm	507-233-6673	7, 12
Carlton	Carlton	218-384-4281	10, 11
Carver	Chaska	952-361-1420	9
Cass	Walker	218-547-3300	2, 9
Chisago	Center City	651-213-0485	8
Clay	Moorhead	218-299-5065	10
Clearwater	Bagley	218-694-6177	7
Cook	Grand Marais	218-387-3000	4, 7
Cottonwood	Windom	507-831-4551	2,
Dakota	Hastings	651-438-8124	2
Douglas	Alexandria	320-762-2381	2
Faribault	Blue Earth	507-526-6273	9
Fillmore	Preston	507-765-3356	3
Goodhue	Red Wing	651-267-4800	3
Grant	Elbow Lake	218-685-4825	2
Hennepin	Minneapolis	612-348-8783	9, 10, 11, 14
Houston	Caledonia	507-725-5806	7
Hubbard	Park Rapids	218-732-5286	2
Isanti	Cambridge	763-689-2292	3, 7
Jackson	Jackson	507-847-2566	9
Koochi-ching	International Falls	218-283-1164	7
Lake of the Woods	Baudette	218-634-1388	2
Lincoln	Ivanhoe	507-694-1355	2, 4
Lyon	Marshall	507-537-6736	5
Marshall	Warren	218-745-4816	5
Morrison	Little Falls	320-632-2941	2, 3
Mower	Austin	507-437-9474	8
Murray	Slayton	507-836-6163	6
Nobles	Worthington	507-372-8263	2
Norman	Ada	218-784-7131	5
Pennington	Thief River Falls	218-683-7023	12
Polk	Crookston	218-281-2332	11
Pope	Glenwood	320-634-5222	7
Ramsey	St. Paul	651-266-8148	13
Red Lake	Red Lake Falls	218-253-4281	2, 3
Rice	Faribault	507-332-6107	2, 9
Rock	Luverne	507-283-5020	2
Roseau	Roseau	218-463-2541	2
Sherburne	Elk River	763-241-2800	2
Stearns	St. Cloud	320-656-3620	2, 7
Steele	Owatonna	507-451-8040	3, 7
Stevens	Morris	320-589-7289	2, 8, 10
Traverse	Wheaton	320-563-4343	2
Wadena	Wadena	218-631-7633	4, 7
Waseca	Waseca	507-835-0540	2, 11
Washington	Stillwater	651-430-6263	10, 11
Watonwan	St. James	507-375-1236	7
Wilkin	Breckenridge	218-643-7172	2
Yellow	Granite Falls	320-564-3326	7
Medicine			

- D. Counties which will accept an informal probate if there is real estate involved and have no additional requirements:

Count	County Seat	Telephone No.
Anoka	Anoka	763-422-7397
Benton	Foley	320-968-5205
Blue Earth	Mankato	507-389-8308
Chippewa	Montevideo	320-269-8550
Dodge	Mantorville	507-635-6260
Freeborn	Albert Lea	507-377-5156
Itasca	Grand Rapids	218-327-2870
Kandiyohi	Willmar	320-231-6206
Kittson	Hallock	218-843-3632
LeSueur	LeCenter	507-357-2251
Martin	Fairmont	507-238-3285
McCleod	Glencoe	320-864-5551
Meeker	Litchfield	320-693-5230
Mille Lacs	Milaca	320-983-2561
Nicollet	St. Peter	507-931-6800
Olmsted	Rochester	507-285-8484
Otter Tail	Fergus Falls	218-739-2271
Pine	Pine City	320-629-6781
Pipestone	Pipestone	507-825-6730
Redwood	Redwood Falls	507-637-4020
Renville	Olivia	320-523-3680
Scott	Shakopee	952-496-8208
Sibley	Gaylord	507-237-4051
Swift	Benson	320-843-2744
Todd	Long Prairie	320-732-4460
Wabasha	Wabasha	651-565-3012
Winona	Winona	507-457-6380
Wright	Buffalo	763-682-7535

Caveat: You should always call the county to confirm current requirements and acceptability of informal probate documents.

E. Hennepin County Statistics:

	1999	2000	2001	2002
Supervised Probate	224	199	99	86
Unsupervised Probate	275	233	291	242
Informal Probate	1342	1320	1483	1389
Trusts	143	118	159	186
Guardianship/Conservatorships	409	396	617	655
Special Administrations	39	24	35	34
Others:	20	27	170	159
Protective Orders, Disclaimers, Deaths of Absentees				

7. Do I need to examine the real estate title for land held in an estate?

- A. If property will be sold – it depends.
- B. If property will be decreed to the heirs or deeded informally by the personal representative to the heirs – yes.

8. How do we value a life estate in a probate administration?

- A. Present value of a life estate = life interest actuarial factor that corresponds with:
 - (1) the applicable §7520 interest rate for the month in which the valuation date falls, and
 - (2) the age of the person whose life measures the interest (use date of birth to determine closest age)

X value of the property

- B. Applicable interest rate under §7520 is 120% of the federal midterm rate for the month for the month in which the valuation date falls.
- C. The IRS issues revenue rulings monthly listing the applicable federal interest rates. The rulings are published in the Internal Revenue Bulletin for the first week of the month.
- D. Bulletins are accessible on the IRS web site: www.irs.gov
- E. Example: Homestead valued at \$200,000.00 as of February 15, the date of death. Surviving spouse with a life estate interest was born March 1, 1923, and is currently 79 years of age. She will be 80 on March 1. The §7520 interest rate for February is 4%. The life estate value on the table at 4% interest is .26403. (see Attachment A)

$$\begin{aligned} \text{Present value of life estate} &= .26403 \times \\ &\$200,000.00 = \$52,806.00. \\ \text{Remainder interest} &= \$147,194.00 (\$200,000.00 - \\ &\$52,806.00). \end{aligned}$$

- F. Note: the IRS Tables are different from the Medical Assistance Tables used by DHS for valuing asset transfers.

9. Decedent sold the property before he died, how soon can we convey title?

- A. Minnesota Statutes §524.3-711 provides that a personal representative appointed in an informal proceeding shall not be empowered to sell, encumber, lease or distribute any interest in real estate owned by the decedent until 30 days have passed from the date of the issuance of the letters.

- B. Minnesota Statutes §524.3-302 does not authorize the Probate Registrar to issue a written statement of informal probate until at least 120 hours have elapsed since the decedent's death. If the decedent died on March 1, 2003, the first date on which the application could be filed is March 6, 2003. Most counties will not issue letters until the affidavit of mailing has been filed and the court has received the notice from the publisher that the publication order has been placed. If the mailing was done on March 6 and the affidavit of mailing was filed with the court on March 6 together with the publication order, the earliest the letters would issue would be March 6, 2003. The Hennepin County Examiner's Office indicated they would not count the first day the letters issued but approve a sale on the 31st day after letters were issued. In this example, April 6 would be the first date that the personal representative could convey real estate in Hennepin County.

10. What are the new disclosure rules and do personal representatives have to comply with them?

- A. If the property is being transferred to heirs or devisees and not sold, the personal representative does not need to complete a disclosure. MN Stat §513.62(6)
- B. If the property is being sold through a realtor, the realtor will normally provide a disclosure form for the seller.
- C. If the estate is selling the property "for sale by owner," the personal representative will have an obligation to complete a disclosure form unless any of the following occurs:
- (1) disclosure waived by buyer and seller – MN Stat §513.68
 - (2) the real estate is not residential – MN Stat §513.62(1)
 - (3) the property is not single family – MN Stat §513.60(4)
 - (4) the transfer is pursuant to Court Order – MN Stat §513.62(3)
 - (5) the property is sold to a tenant in possession – MN Stat §513.62(3)
- D. Under Minnesota Statutes §513.63(1), the seller must provide a written disclosure to a prospective buyer. It must be made in good faith and based upon the best of the seller's knowledge

at the time of the disclosure. If the personal representative has never lived in the property and has no personal knowledge of the property, I would recommend that the personal representative indicate on the disclosure form the following language:

"Property is being sold by an estate. The personal representative has never lived in the property and has no personal knowledge about the property. Buyers should conduct their own inspection."

- E. The general items which must be disclosed include the following: All material facts pertaining to adverse physical conditions in the property of which the seller is aware that could adversely and significantly affect:
- (1) an ordinary buyer's use and enjoyment of the property; or
 - (2) any intended use of the property which the seller is aware.
- F. The seller need not disclose the fact that the residential property:
- (1) was owned or occupied by a person infected with a human immunodeficiency
 - (2) was the sight of a suicide, accidental death, natural death or perceived paranormal activity
 - (3) is in a neighborhood containing any adult family home, community-based residential facility or nursing home.
 - (4) Further, the seller need not disclose any information regarding an offender who is required to register under Minnesota state law if a seller provides a written notice that information about the predatory offender registry and persons registered with the registry may be obtained by contacting the local law enforcement agency where the property is located or the department of corrections.
 - (5) In addition, if a written report that discloses information has been prepared by a qualified third party and provided to the buyer, the seller need not disclose information relating to the physical condition of the real property unless the seller knows material facts which contradict information obtained in the written report.

These disclosure requirements were effective January 1, 2003, and apply to any purchase agreements entered into on or after that date.

Spousal Liability for Debts

By: Kathleen M. Eveslage, Southern MN Reg Legal Services

Q.) Do I have to pay my spouse's bills?

A.) In most cases, the answer to that question is "no". Under Minnesota law, one spouse is usually not liable to a creditor for the debts of the other spouse. This can be very comforting to know if one spouse has trouble staying within a budget. However, the law lists two types of debts that you would be responsible for, even if it was your spouse's obligation.

Q.) What are the two exceptions?

A.) First, you would be liable for household articles and supplies bought for the family and used by the family. But, you are only liable if you are living with your spouse when the items are purchased. The second exception makes you liable for any necessary medical services your spouse receives. Again, this section only applies if you are living together. Also, the language about medical services was just added to the law. Therefore, you would only be responsible for bills for medical services your spouse received after August 1, 2001. Remember, if you and your spouse live in separate households, you are not responsible for these debts.

Q.) Are there any other ways that I could be responsible for my spouse's debts?

A.) Yes, you could be liable if you signed a contract or other agreement accepting financial liability. As an example, both partners generally have to sign a note to get a mortgage on a jointly owned home. If you sign a credit card agreement along with your spouse, you would be responsible for repayment. You accept responsibility when you sign a contract.

Q.) Is there anything I can do if I signed a credit card agreement with my spouse but now want to end my liability?

A.) Yes, the law also says that either spouse can close a credit card account or other unsecured line of consumer credit. You must give the creditor written notice to close the account. Of course, you would still be liable for any charges made before the account was closed. You cannot end your liability for a secured debt, such as a mortgage, using this law.

Q.) What should I do if a creditor tells me I am responsible for my spouse's debts?

A.) The best thing you can do is know your legal rights. Most creditors probably think that you are liable for your spouse's debts just because you are married. This spousal liability law only applies to couples living in Minnesota. Many credit card companies do business from other states and may not be familiar with our state law. Even if they do know about the law, some creditors will try to get you to make payments if your spouse stops paying. Tell the creditor about Minnesota law and demand proof from them that you are liable for the debt. If you are not living with your spouse, the only way you could be liable for any of your spouse's debts is if you signed a contract. The creditor would have to give you a copy of your signature on the agreement to show that you are liable.

Q.) What should I do if the creditor sues me and I am not responsible for the debt?

A.) If you are sued, it is very important that you respond. If you ignore the legal papers, the creditor could get a judgment (court order) against you. If that happens, you may have to pay even if it is not your debt. It is very important that you give the creditor a written Answer to the lawsuit, especially if you are not liable for the bill. An Answer is a legal document that tells the creditor why you believe you are not liable. In these types of cases you would only have twenty (20) days to give the creditor your Answer. You should contact an attorney or your local legal services office as soon as you get the papers.

Q.) What should I do if the creditor reports the debt to a credit bureau or credit reporting agency?

A.) There is a federal law, the Fair Credit Reporting Act, that offers some protections. You can tell the credit bureau that the information in your credit report is wrong. They then have to reinvestigate, usually within thirty (30) days. Any information that is wrong, or that cannot be verified by the creditor, must be removed from your report. You can also make the credit bureau tell everyone who has received your report that incorrect information has been removed.

Q.) Is there anything I should know about when I challenge my credit report?

A.) Yes, if the creditor does not know about Minnesota's law, they may tell the credit bureau that the information they gave the bureau is correct. It would be a good idea to contact the creditor first and tell them why you feel you are not liable. Ask them to provide you with a copy of the credit card agreement to show that you signed the contract. You can also ask them to prove that the debt was for necessary medical services or household supplies used by the family if you still live with your spouse. If the creditor acknowledges that you are not responsible for the debt, the bureau would have to

remove the information from your report. In addition, you have a right to include a statement (100 words or less) explaining why you disagree with your report if the bureau does not remove the debt from your report after they reinvestigate.

The Senior Law Project provides free legal assistance to low-income elderly living in Washington, Dakota, Ramsey, Carver and Scott counties. Residents of Washington, Dakota and Ramsey counties may reach the project at (651) 224-7301 Monday through Friday between the hours of 9:00 A.M. and noon. Carver and Scott county residents may call (952)440-1040 for assistance.

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