

▼ **Domestic Abuse Dissolutions**

In dissolutions involving domestic abuse, the difference between a 518B.01 order for protection (OFP) and orders restraining abuse issued within the dissolution proceeding itself can be very important. A Sec. 518.131 order is not a final order. It cannot immediately be appealed and it does not preclude the parties from litigating the same issues later. A 518B.01 order, however, is final. If you fail to file a timely motion to amend findings in the OFP proceeding and/or fail to timely appeal, then you will be collaterally estopped from challenging those findings in the dissolution proceeding. In addition, both 518B.01 and 518.131 provide that an OFP cannot be vacated or modified in a dissolution proceeding. If you want an order in the dissolution proceeding to “override” the OFP, you should also file a motion to vacate or modify the OFP, which can be consolidated with the hearing in the dissolution proceeding.



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▼ **Vehicle Forfeiture**

The driver of a vehicle that was subject to forfeiture for the commission of designated offenses may have the vehicle forfeited to the authorities even if not convicted of one of the stipulated crimes. A recent ruling of the Minnesota Court of Appeals upheld forfeiture of a vehicle driven by an intoxicated driver who pled



guilty to third-degree DWI, which is not an offense designated by Minn. Stat. §169.63, which authorizes forfeiture of vehicles. The driver had also been charged with refusal to take a sobriety test, which is a designated offense, but that charge was dismissed when he pled guilty

to the nondesignated offense. But the Court of Appeals, in *Mastakoski v. 2003 Dodge Durango*, 738 N.W.2d 411 (Minn. App. 2007), held that the elements of the refusal-to-test charges were established, even though criminal charges were dismissed as part of a plea bargain. Because the commission of a designated offense, regardless of conviction, suffices under the forfeiture statute, the vehicle was lawfully forfeited. (See also *Akkouche v. 1999 Chrysler Concorde*, 2007 WL 2600861 (Minn. App. 2007) (unpublished).)

Drivers seeking to avoid forfeiture of vehicles for drug or DWI offenses should recognize the need to prevail in the underlying criminal proceeding and not



be lulled into believing that a plea to some nondesignated offense averts forfeiture of the vehicle. Government authorities may be able to obtain forfeiture following criminal conviction or by establishing facts showing the criminal offense, even if there is no criminal conviction.

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▼ **Adopted Adults**

Adoption by a trust beneficiary of an adult “child” could wreak havoc with a testator’s intent by allowing distribution to persons never intended or contemplated. This is especially true if the trust is old, irrevocable, and the settlor is dead. Evidence of the circumstances surrounding the adoption could reveal the beneficiary’s motive in adopting the adult “child,” but such evidence will generally not be admitted or be controlling. It is the settlor’s intent, as determined

by the four corners of the trust instrument, which is controlling. If the trust instrument explicitly provided for adopted children, it would not matter what the circumstances or motivation surrounding the adoption were, or that the adopted “children” were adults.

But many trusts are old and provide for distribution to a broad class of remote beneficiaries, such as “issue” or “heirs.” Absent clear language in the trust instrument

excluding them, by name or by class, adopted adult “children” will take just as any other adopted children. This was the ruling of the Minnesota Court of Appeals in *In the Matter of the Trust Created Under Agreement with George B. Lane dated December 30, 1935, et al.* 660 N.W.2d 421 (Minn.App. 2003).

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▲ **Special Assessments**

If a client wants to appeal a special assessment, the time limits are very short. First, a written objection to the proposed assessment must be filed either with the city clerk before the assessments are adopted, or with the mayor at the hearing when the assessments are adopted. If this objection is filed, then the assessments may be appealed in the 30-day period after the assessments were adopted. Missing either of the deadlines is fatal to a claim.

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