

▼ **Estate Tax Exemptions**

The federal estate-tax-exempt amount is currently \$3.5 million (2009), and the highest estate-tax marginal rate is 45 percent (2009). Therefore, in most cases, on death, an individual's estate will pass to heirs free of federal estate tax if the fair market value of their assets (including life insurance), less applicable estate tax deductions (e.g. marital and charitable deductions), is \$3.5 million or less. Most of the recent proposals in Congress dealing with the federal estate tax provide for a continuation of the current estate, gift, and transfer tax system, with the estate-tax exemption and estate-tax rate remaining at



2009 levels. Minnesota, however, has a separate estate tax, and no gift tax. Minnesota's estate-tax-exempt amount has been frozen since 2001 at \$1 million, yielding a "Minnesota tax gap" between the federal and state exemptions of \$2.5 million in 2009. The Minnesota estate tax on the Minnesota tax gap is roughly \$229,200—not an insignificant amount! In most

cases, this Minnesota tax gap can be eliminated if the individual decedent was married at death, had appropriate asset titling and ownership, and had the "right" kind of will and estate plan in place. However, many wills (and estate plans), especially those dated prior to 2001, have formula provisions that create a "bypass," "family," or "credit-shelter" trust on the first death equal to the federal estate tax exemption. These old wills and plans may inadvertently generate a very large Minnesota estate tax on the death of the first spouse. This problem has been with us since 2001, but the concern is more heightened in 2009 (and future years) for the following reasons: 1) the Minnesota estate tax exposure is much larger than in prior years; 2) the value of many client's estates has eroded with the economic downturn; and, 3) liquidity and preserving cash (by avoiding the payment of expenses and especially tax) is very important in these difficult economic times. Finally, paying such a large tax on the death of the first spouse may have a significant negative psychological impact on the survivor. Prudent practitioners should review all of their client's wills and estate plans at this time to see if they have formula provisions tied to the federal estate-tax exemption; and if so, determine if these need to be revised.

**William Forsberg**

Leonard, Street and Deimard  
Minneapolis  
William.Forsberg@leonard.com

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)

▼ **Association Dues Following Foreclosure**

Lenders commonly overpay homeowners' association assessments when they sell foreclosed property. Foreclosing a first mortgage terminates the association's lien for assessments arising prior to the date of the foreclosure sale. Under Minn. Stat. §515B.3-116(b) a new association lien equal to six months of assessments is imposed on the day following the last day of the mortgagor's redemption period.

The former owner is personally liable for unpaid association assessments arising prior to the date of the foreclosure sale. However, the association has no lien on the property, other than the lien for six months of association assessments. Therefore, the association cannot require the payment of the prior balance in order to clear title.

A lender selling a previously foreclosed property should verify on the closing statement that it is not being overcharged for association dues. If there are excess charges, the lender or its foreclosure counsel should contact the association or its management company to request a corrected payoff. If the association is unwilling to provide a corrected payoff, the closing can proceed with the amount in dispute escrowed with the insuring title company pending resolution, whether by agreement or declaratory action.

**Mark Petersen**

Gurstel, Staloch & Chargo, P.A.  
Golden Valley  
[m.petersen@gurstel.com](mailto:m.petersen@gurstel.com)

▼ **Employment Eligibility Enforcement.**

United States Immigration and Customs Enforcement

(ICE) is taking aim at employers' compliance with the employment eligibility verification regulations (i.e., the I-9 form). In a single day this summer, ICE sent out more Notices of Inspection for I-9s than it did in all of 2008.

All U.S. employers are required to complete an I-9 form verifying the identity and the employment authorization for each new employee hired since 1986. Although the form may appear simple, there are many technical rules, including a requirement that the employer determine whether the documents provided by the prospective employee are genuine and whether the documents confer work authorization. For new hires, the employer is expected to use the form and instructions that went into effect on April 1, 2009, available at [www.uscis.gov](http://www.uscis.gov).

Employers without rigorous compliance policies and training often have inaccurate I-9s that can expose them to civil and even criminal liability. Mistakes filling out the form can subject the employers to civil fines per violation. Increased civil fines and imprisonment become possible for employers who with actual or constructive knowledge employ unauthorized workers.

**George Maxwell**

Borene Law Firm P.A.  
Minneapolis  
[gmaxwell@borene.com](mailto:gmaxwell@borene.com)

