

# Probate & Trust Law Newsletter

A Publication of the Probate & Trust Law Section of the Minnesota State Bar Association

## A Word From the Chair

The winter issue of the *Probate & Trust Law Newsletter* highlights proposed legislation for the next legislative session, forthcoming Section events, and new Section initiatives. The newsletter also includes a discussion of memorial funds in Minnesota.

The purpose of the newsletter is to serve as a medium through which the Probate & Trust Law Section and the Minnesota estate planning bar can communicate. The newsletter is published semi-annually, once in the winter and once in the summer. The newsletter consists of articles on legal developments and legislative updates, announcements of Section activities and events, and information regarding Section contacts. We welcome your comments and the submission of articles or announcements for future newsletters.

## Important Numbers for 2006

<u>Federal Estate/GST Tax Exemption</u>	\$2,000,000
<u>Federal Gift Tax Exemption</u>	\$1,000,000
<u>Minnesota Estate Tax Exemption</u>	\$1,000,000
<u>Annual Gift Tax Exclusion</u>	\$12,000
<u>Maximum Federal Gift/Estate Tax Rate</u>	46%
<u>GST Tax Rate</u>	46%
<u>Maximum Minnesota Estate Tax Rate</u>	16%
<u>Maximum Federal Income Tax Rate</u>	35%

## Legislative Update

*(Peter S. Hatinen)*

The Council of the Probate & Trust Law Section approved proposed legislation for the 2006 legislative session. The proposals are uncontroversial and consist of technical and administrative modifications. The proposals have been added to the Real Estate Section's bill for administrative convenience. A summary of the Probate & Trust Law Section's proposals follows:

### A. Minn. Stat. § 253B.23, subd. 2(c)

The proposed legislation would remove the reference to a "special guardian" in Minn. Stat. § 253B.23, subd. 2(c). This proposal reflects the fact that, following the adoption of the Uniform Guardianship and Protective Proceedings Act in 2003, the concept of a special guardian is no longer recognized under Minnesota law.

### B. Minn. Stat. § 523.3-301(1)(ii)

Another proposal in the bill would amend Minn. Stat. § 523.3-301(1)(ii) by removing the requirement that all applications for the informal probate of a will or the informal appointment of a personal representative include the social security number of the decedent. This proposal represents a trend toward protecting the privacy of persons identified in court filings.

### C. Minn. Stat. § 524.3-803(a)

The final proposal would correct the reference to Minn. Stat. § 524.1-201 in Minn. Stat. § 524.3-803(a). Minn. Stat. § 524.3-803(a) makes reference to the definition of "claims" set forth in Minn. Stat. § 524.1-201(4). However, there is no paragraph (4) under Minn. Stat. § 524.1-201, presumably because the Minnesota legislature adopted some, but not all, of the definitions contained in the Uniform Probate Code and left gaps for definitions that were not picked up. Therefore, the bill would amend the reference to

Minn. Stat. § 524.1-201 so that it refers to paragraph (6), rather than paragraph (4), which reflects the numbering scheme adopted by the Minnesota legislature.

## **Memorial Funds**

*(Gina Nelson)*

Following a tragic event, one often encounters appeals to send donations to a memorial fund. Estate planners are occasionally called upon to establish memorial funds and should be aware of the laws regulating them. This article sets forth a roadmap for establishing and administering memorial funds in Minnesota.

Memorial Funds are explicitly recognized in Minnesota Statute § 501B.012. Memorial funds are considered custodial trusts under Minnesota law, and Minnesota Statute § 501B.012 provides that they are to be established in the manner set forth in Minnesota Statute § 529.17. According to Section 529.17, in order to create a memorial fund, one must execute and deliver to the custodial trustee an instrument containing terms substantially similar to the following:

“I, (name of transferor or name and representative capacity if a fiduciary), transfer to (name of trustee other than transferor), as custodial trustee for (name of beneficiary) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the Minnesota Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).” In essence, to establish a memorial fund one must simply execute an instrument that identifies (i) a trustee other than the transferor, (ii) a beneficiary, and (iii) a distributee in the event that the fund is terminated.

Chapter 529 of the Minnesota Statutes governs custodial trusts and sets forth the rules regarding the transfer of funds to and the administration of such trusts. However, Minnesota Statute § 501B.012 contains an exception to Chapter 529 with respect to the contribution of assets to memorial funds. Minnesota Statute § 501B.012

provides that after a memorial fund has been established, a custodial trustee may accept contributions without complying with the formalities of Chapter 529 so long as “the transferor manifests a reasonable expression of intent to make the transfer, together with a reasonable form of delivery of the property.” Therefore, contributions can be made in any form so long as the contributed property is clearly intended to pass to the memorial fund, and not to the trustee. For example, a check made payable to the “XYZ Memorial Fund” could be delivered to the trustee and would satisfy the requirements of Minnesota Statute § 501B.012.

As a practical matter, many banks will provide a form that complies with Minnesota Statute § 529.17, as well as any additional paperwork necessary to create and fund a memorial fund. Bank officials interviewed by the author suggest that deposits to a memorial fund be made to the “custodial trustee for (name of beneficiary) under the Minnesota Uniform Custodial Trust Act,” but reported that they will accept deposits, in accordance with the statute, in any manner that clearly evidences the intent to make a transfer to the memorial fund. Moreover, it should be noted that some banks may require the custodial trustee to be a business entity, such as a church or other non-profit organization. Given the transitory nature of memorial funds, banks may also require that the custodial trustee have at least one existing account with the bank before agreeing to open a memorial fund for the trustee.

Once a memorial fund is established, Minnesota Statute § 529.05 mandates that each beneficiary of the fund has an equal, undivided interest in the fund and, except with respect to married beneficiaries, no beneficiary has a right of survivorship unless the instrument creating the fund creates such a right.

Minnesota Statute § 529.06 provides that the trustee is to follow the directions of the beneficiary with respect to the management, control, investment, or retention of the custodial property. In the absence of any directions, the trustee is to administer the property in

accordance with the prudent investor rule. It should be noted that Minnesota Statute § 529.13 provides that, unless the instrument governing the memorial fund provides otherwise, the trustee is entitled to reimbursement for expenses and reasonable compensation for services. Moreover, Minnesota Statute § 529.14 requires the trustee to provide accountings to parties interested in the memorial fund (i) once a year, (ii) upon the request of an interested party, (iii) upon the resignation or removal of a trustee, (iv) and upon the termination of the trust.

Minnesota Statute § 529.08 provides that the trustee is to pay to the beneficiary or expend for the beneficiary's benefit so much or all of the custodial property as the beneficiary may direct. If the beneficiary is incapacitated, the trustee is to expend so much or all of the trust property as the trustee considers advisable for the use and the benefit of the beneficiary and individuals who were supported (or who were entitled to legal support) by the beneficiary when the beneficiary became incapacitated.

Minnesota Statute § 529.11 provides that the liability of custodial trustees to third parties is limited in most circumstances. In general, third parties can proceed against the trustee only in a fiduciary capacity, and not in an individual capacity. However, if the custodial trustee enters into a contract without revealing his or her status as trustee, or if the custodial trustee is individually responsible for a tort committed in the course of administering the trust, the trustee can be held personally liable.

Finally, Minnesota Statute § 529.11(c) provides that a beneficiary is not liable to a third party for obligations arising from beneficial ownership of the custodial property or for a tort committed in the course of the administration of the custodial trust unless the beneficiary is personally in possession of the trust property. However, given the general power of appointment the beneficiary holds over the custodial property, it appears that the funds of a memorial trust are generally subject to claims of the beneficiary's creditors.

Given the ease with which memorial funds can be created and funded, they can be of great utility when collecting and administering donations for an individual or family in need.

### **In Memoriam**

This past year Jerry Dygert and Jim Boos, two former members of the Probate and Trust Law Section Council, passed away. The Council would like to take this opportunity to recognize their significant contributions to the work of the Section. Jim was a dedicated member of the Section Council for many years and brought to it the perspective of the greater Minnesota practicing bar, which was valued greatly by the Council. Jerry was a past chair of the Council and served for many years on the Council's Legislation Committee. He was generally acknowledged as a leading authority on legislative matters and his contributions on behalf of the Section to the legislative process were invaluable. The Section is honored to recognize the involvement of these two former members. Their contributions will continue to be felt in the future actions of the Council.

### **Hurricane Katrina Relief**

The Minnesota State Bar Association continues to respond in several ways to the needs of the Gulf Coast legal community as a result of Hurricane Katrina. If you are interested, there are three specific opportunities for you to contribute to that effort:

A. Contribute Funds. – The Minnesota State Bar Association Foundation is contributing funds both for humanitarian efforts and, through the various state bar association foundations, to assist with the rebuilding of the legal infrastructure. You may contribute to that effort by sending a check payable to the MSBA Foundation. If you want to designate those funds for the efforts to rebuild the Gulf Coast legal infrastructure, you should note that with your contribution. You should send your contribution to Minnesota State Bar Foundation,

600 Nicollet Mall, Suite 380, Minneapolis, MN 55402-1039 (Attn: Katrina Relief).

B. In-Kind Donations. – If you have used office furniture, computers, or other material that can assist displaced attorneys in the Gulf Coast states, the MSBA is collecting and shipping those materials. For more information about in-kind donations, please contact Sheryl Ramstad at (651) 296-2806 or [sheryl.ramstad@taxcourt.state.mn.us](mailto:sheryl.ramstad@taxcourt.state.mn.us).

C. Pro Bono Opportunities. – To the extent that Minnesota receives evacuees from the Gulf Coast states, the MSBA is preparing to have the resources to provide pro bono legal services to those evacuees. If you are interested in participating, please contact Caroline Palmer at (612) 278-6308 or [cpalmer@mnbar.org](mailto:cpalmer@mnbar.org).

### **Grassroots Initiative**

Be a resource to the bar and the lawmakers who represent you! The MSBA encourages you to register with its grassroots action center. The purpose of the grassroots initiative is to develop a database of lawyers in each legislative district and to notify them of current issues impacting the justice system and the legal profession. The MSBA anticipates that the grassroots initiative will enable members to participate in the development and execution of policies that affect their communities. Read about the grassroots initiative and register at [www2.mnbar.org/grassroots/](http://www2.mnbar.org/grassroots/)

### **Greater Minnesota Probate & Trust Law Study Group**

In 2005, the Probate & Trust Law Section began a new initiative to identify opportunities for its Greater Minnesota members to participate in study groups. While such study groups have existed in the Twin Cities for a number of years, many of our Greater Minnesota members have indicated that it can be difficult to identify study groups.

Last fall, the Greater Minnesota Involvement committee created a study group on a trial basis. The group consists of eight section members from various locations around the state, and it meets for a MSBA facilitated telephone conference from 9:00 to 10:00 AM on the first Wednesday of each month. Discussion topics have included (1) homestead real estate tax credit treatment for people with multiple residences, (2) protecting the family farm or cabin for the next generation, and (3) the use of beneficiary designations in estate planning.

The initial study group is chaired by Brad Hanson of the Quinlivan & Hughes P.A. law firm in St. Cloud. If you are interested in joining this study group or would like more information about this initiative, please call Brad Hanson at (320) 251-1414 or email him at [bhanson@quinlivan.com](mailto:bhanson@quinlivan.com). It is anticipated that the [www2.mnbar.org/sections/probate-trust/index.htm](http://www2.mnbar.org/sections/probate-trust/index.htm) website will be used as a clearing house for information regarding study groups around the state.

### **Save the Date**

The 2006 Probate & Trust Law Section Conference has been scheduled for Monday, June 19, and Tuesday, June 20, at the Minneapolis Convention Center. Four nationally recognized speakers are confirmed: Natalie Choate will speak on planning with retirement assets, Duncan Osborn will speak on asset protection, Bob Fleming will speak on end of life planning, and Eric Manterfield will speak on marital deduction planning.

### **Meet the Referees**

The Litigation Committee of the Probate & Trust Law Section is pleased to announce that it is sponsoring a luncheon during which the referees of the Hennepin and Ramsey County Probate Courts will discuss probate litigation. This unique learning opportunity is expected to

take place in April. Announcements will be mailed when a date has been confirmed.

If you are interested in joining the Litigation Committee and participating in the development of future committee activities, call Alan Silver at (612) 376-1634, or email him at [alans@bassford.com](mailto:alans@bassford.com).

### **Technology Committee**

The Probate & Trust Law Section is pleased to announce that Richard Bunin and Derrick Doerr have agreed to co-chair the Technology Committee. Rick and Derrick plan a dramatic overhaul of the Section's website that will transform it into a valuable resource for the estate planning community. Rick and Derrick initially plan to post articles and links to websites that that may be of interest to members. Please email Rick ([rbunin@buninlaw.com](mailto:rbunin@buninlaw.com)) or Derrick ([ddoerr@swensonanderson.com](mailto:ddoerr@swensonanderson.com)) if you have any articles or websites that would be of interest to estate planners.

Be sure to bookmark the practice-related links page of the Section's website ([www2.mnbar.org/sections/probate-trust/links.htm](http://www2.mnbar.org/sections/probate-trust/links.htm)), and visit some of the newly linked pages, such as:

--[www.hg.org/estate.html](http://www.hg.org/estate.html): a guide to foreign and domestic estate and trust law

--[www.ssa.gov](http://www.ssa.gov): the Social Security Administration's homepage

--[www.abanet.org/rppt/home.html](http://www.abanet.org/rppt/home.html): the ABA's Real Property, Probate, and Trust Law Section homepage

--[www.actec.org](http://www.actec.org): the American College of Trust and Estate Counsel homepage

--[www.mnbar.org/consumer.htm](http://www.mnbar.org/consumer.htm): the Minnesota Bar Association's consumer information homepage

--[www.itpa.org](http://www.itpa.org): the International Tax Planning Association homepage

--[www.mindspring.com/~scottr/will.html](http://www.mindspring.com/~scottr/will.html): a page with a broad range of material about living wills and advance health care directives

--[www.irs.gov](http://www.irs.gov): the Internal Revenue Service homepage, which contains general tax information and forms

--[pmstax.com/afr/index.shtml](http://pmstax.com/afr/index.shtml): the Pillsbury Withrop Shaw Pittman website that contains current and historical AFRs and 7520 rates

--[www.taxes.state.mn.us/taxes/estate\\_trust/index.shtml](http://www.taxes.state.mn.us/taxes/estate_trust/index.shtml): the Minnesota Department of Revenue page that has tax forms and estate tax calculators

--[www.courts.state.mn.us/lprb](http://www.courts.state.mn.us/lprb): the Minnesota Office of Lawyers Professional Responsibility homepage

--[www.guidestar.org](http://www.guidestar.org): a page that contains various information about non-profits, including files of charities' annual 990 returns

### **Probate & Trust Section Council Meeting Dates**

The Council is scheduled to meet on the following days:

March 16, 2006

April 20, 2006

May 18, 2006

All meetings begin at 3:30 and are held at the Minnesota State Bar Association Offices Boardroom at 600 Nicollet Mall in Minneapolis.

### **The Gene Daly Award**

The Gene Daly Award is periodically conferred upon Section members who have made a strong, positive impact on the practice of estate planning in Minnesota. Faith Ohman was given the award in 2005. If you would like to nominate someone for the award, please contact Andrea Breckner.

### **Probate & Trust Section Committees**

Several Committees develop and implement various programs of the Probate & Trust Law Section. Volunteers interested in becoming involved in a committee are encouraged to contact the chair of the committee on which they

wish to serve. The Section committees and their chairs are as follows:

**Education**, Thomas J. Woessner  
**Legislation**, Mary E. Shearen and Robert A. McLeod  
**Newsletter**, Peter S. Hatinen  
**Litigation Committee**, Alan Silver  
**Federal Taxation**, Scott Nelson  
**Consumer Protection/Publications**, Mavis J. Van Sambeek  
**Greater Minnesota Involvement**, Bradley W. Hanson  
**Technology**, Richard Bunin and Derrick Doerr  
**Gene Daly Award**, Andrea Breckner  
**Ethics and Professional Responsibility**, Susan J. Link

### **Probate & Trust Law Section Council**

#### Officers

**Chair:** G. Warren (Kip) Steincross  
Wells Fargo & Company  
Wells Fargo Center, 17 FL  
MAC #N9305-172  
Sixth and Marquette  
Minneapolis, MN 55479  
Phone: (612) 667-2334  
Fax: (612) 316-0805  
warren.steincross@wellsfargo.com

**Vice Chair:** Bradley W. Hanson  
Quinlivan & Hughes PA  
400 South First Street, #600  
St. Cloud, MN 56302  
Phone: (320) 251-1414  
Fax: (320) 251-1415  
bhanson@quinlivan.com

**Secretary:** Melinda K. Greer  
Dorsey & Whitney LLP  
50 South Sixth Street  
Minneapolis, MN 55402  
Phone: (612) 340-8735  
Fax: (612) 340-8827  
greer.melinda@dorsey.com

**Treasurer:** Thomas J. Woessner  
Rider Bennett, LLP  
33 South Sixth Street, Suite 4900  
Minneapolis, MN 55402  
Phone: (612) 340-8940  
Fax: (612) 337-7640  
twoessner@riderlaw.com

#### Immediate Past Chair

David J. Shannon  
Faegre & Benson LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Phone: (612) 766-8826  
Fax: (612) 766-1600  
dshannon@faegre.com

#### Section Council Members

Jennifer S. Anderson  
Thiel, Campbell, Gunderson & Anderson  
5200 Willson Road, #411  
Edina, MN 55424  
Phone: (952) 920-8444  
Fax: (952) 920-8334  
janderson@thielfirm.com

Rodney (Rod) Anderson  
Rodney D. Anderson Law Offices  
206 S. Broadway, Suite 404  
Rochester, MN 55904  
Phone: (507) 529-2204  
Fax: (507) 288-6190  
anderson.rodney@rdalaw.net

Todd D. Andrews  
Andrews Law Office  
5200 Willson Road, #150  
Edina, MN 55424  
Phone: (952) 836-2724  
Fax: (952) 836-2725  
tdalaw@pro-ns.net

Andrew M. Baese  
Briggs and Morgan, P.A.  
2200 First National Bank Bldg.  
332 Minnesota Street  
St. Paul, Minnesota 55101  
Phone: (651) 808-6444  
Fax: (651) 808-6450  
abaese@briggs.com

Michael Cowles  
Fryberger, Buchanan, Smith & Frederick, P.A.  
302 West Superior Street – Suite 700  
Duluth, MN 55802  
Phone: (218) 725-6821  
Fax: (218) 725-6800  
mcowles@fryberger.com

Jane E. Kiker  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Phone: (612) 766-7803  
Fax: (612) 766-1600  
jkiker@faegre.com

Susan J. Link  
Maslon Edelman Borman & Brand  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Phone: (612) 672-8349  
Fax: (612) 642-8349  
susan.link@maslon.com

Robert A. McLeod  
Lindquist & Vennum P.L.L.P.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Phone: (612) 371-3272  
Fax: (612) 371-3207  
rmcleod@lindquist.com

Thomas H. Rauenhorst  
U.S. Trust Company  
1400 U.S. Trust Building  
730 Second Avenue South  
Minneapolis, MN 55402  
Phone: (612) 336-1376  
Fax: (612) 336-1388  
thomas\_h\_rauenhorst@ustrust.com

Dale J. Schoonover  
Fredrikson & Byron, P.A.  
200 South Sixth Street – Suite 4000  
Minneapolis, MN 55402  
Phone: (612) 492-7189  
Fax: (612) 492-7077  
dschoonover@fredlaw.com

Mary E. Shearen  
Best & Flanagan LLP  
225 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Phone: (612) 341-9716  
Fax: (612) 339-5897  
mshearen@bestlaw.com

Mavis J. Van Sambeek  
Lindquist & Vennum P.L.L.P.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2205  
Phone: (612) 371-2497  
Fax: (612) 371-3207  
mvansambeek@lindquist.com

Subcommittee Members, Liaisons

Jacqueline McGlamery  
Practice Development Director  
Minnesota State Bar Association  
600 Nicollet Mall, Suite 380  
Minneapolis, MN 55402  
612-278-6340; fax 612-333-4927  
jmcglamery@mnbar.org

Peter S. Hatinen, Newsletter  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Phone: (612) 492-7319  
Fax: (612) 492-7077  
phatinen@fredlaw.com

Michael Ostrem, New Lawyer Liaison  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Phone: (612) 766-7446  
Fax: (612) 766-1600  
mostrem@faegre.com