



Estate Recovery and Probate Basics

Geneva Finn, DHS

John Rominski, Ramsey County

Laws Governing MA Claims: What

- Minnesota Statutes, Section §256B.15
- Estates Subject to Claim:
 - Recipient's estate who is single at time of death
 - Estate of surviving spouse (including claims against predeceased spouse)
 - No recovery against deceased recipient if survived by a spouse

Laws Governing MA Claims: Where

File claims in the District Court with jurisdiction to probate the estate (or issue a decree of descent)

-256B.15 subd. 1a.

How: Through the county's authority as a creditor

- The County is responsible for Medical Assistance Estate Recovery
 - This authority was delegated by Minnesota Rules, Part 9505.0135.
- The County Attorney represents the County Human Services Agency, which is the creditor in the probate.

How: Through the county's authority as a creditor

The state supervises the county administration of the medical assistance estate recovery program and may intervene in county estate recovery cases.

- If the state is a party, it will be represented by the AGO, unless the AGO delegates that authority.
- The state primarily provides information, support, coordination, and advice.
 - The state also places notice of potential claim liens to secure county claims on real property
 - The state has not delegated its authority to place and recover on MA liens (person still living) or to recover when the state is the beneficiary of a trust or annuity.

Laws Governing MA Claims: When

Most claims barred if not presented (filed) within one year after the death of the decedent. See 524.3-803

This does not apply to MA claims filed under Minnesota Statutes, section 256B.15.

- Counties should be proactive or there may be dissipation of assets the longer the claim is delayed.

Probate vs. Non-probate Assets



Probate Assets

- Real Estate:
homestead, land,
vacation property
- Contracts for
Deed
- Bank Accounts
- Vehicles, RVs,
boats
- Securities,
stocks/bonds,
annuities
- Life Insurance
(payable to estate)

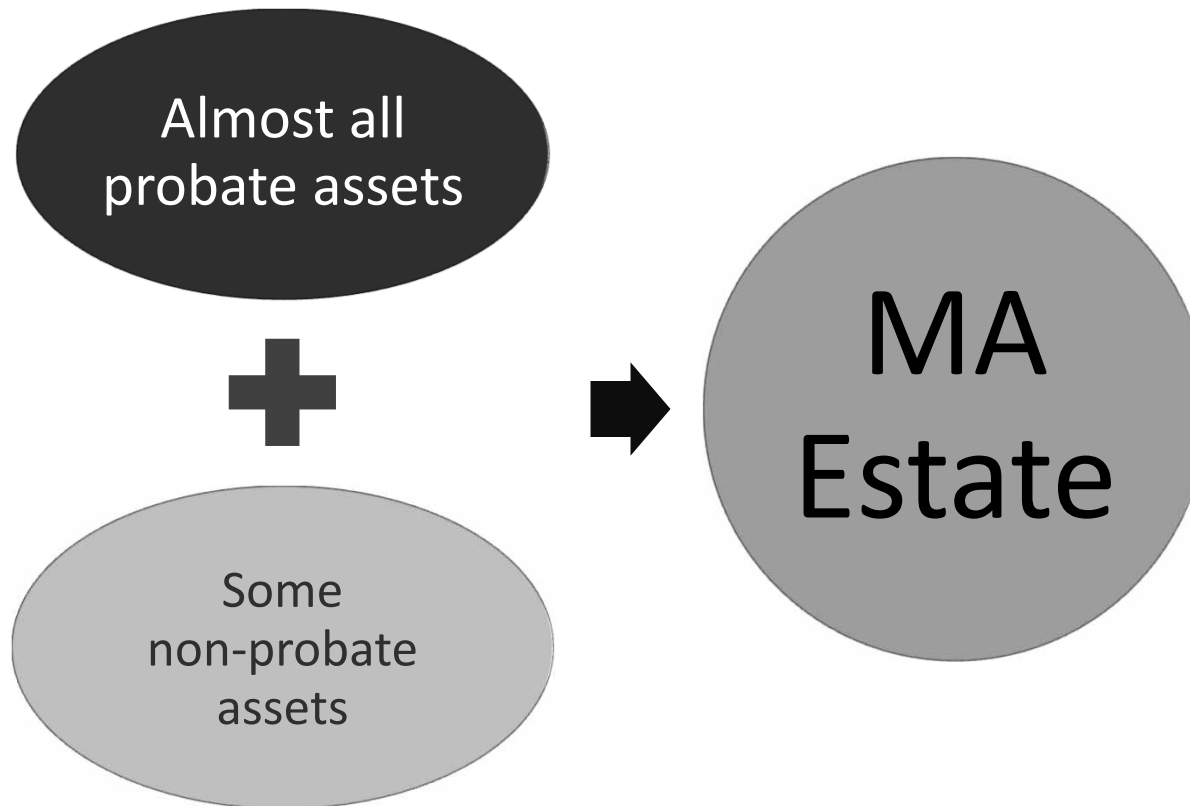
Probate vs. Non-probate Assets



Non-probate Assets

- Assets with joint tenancy or survivorship interests
- POD or TOD accounts
- Life insurance (w/beneficiary)
- Life Estates
- Pensions/Retirement (w/ beneficiary)
- “Other” assets: Living Trust, Royalties

What is the “Estate” for MA Recovery Purposes?



Avoiding Probate
Does Not Mean
Avoiding Estate
Recovery!

Examples of Expanded Estate Recovery

Non-Probate assets that may be included in the MA Estate:

- **Pension/Retirement/"Other" benefits:** When the assets become part of the estate
 - Teachers' Retirement Account; Writer's Guild Royalties
- **Multi-party accounts:** When the MA recipient has an ownership interest (POD, JT accounts, etc.)
- **Trusts** (revocable); Living Wills
- **Real Estate Interests:** Life Estate and Joint tenancies (256B.15, subd. 6)

Small Estate Collections (No real estate)

- Use to collect funds from MA recipient's bank accounts, securities, cash held in safe deposit boxes, royalties, etc.
- Authority to collect under Minn. Stat. 524.3-1201, so long as assets in the estate do not exceed \$75,000
- Serve Affidavit for Collection form on person, bank, or business that has the property
- Vehicle transfers require the affidavit for collection, with death certificate attached, delivered to motor vehicle division

Options for Estates with Real Property:

- If the property is not in sole ownership:
 - DHS can place a NPC; if the property is sold, the state will recover.
 - The county can probate the MA recipient's interest.
- If the property is in sole ownership:
 - Family can probate: The county can remind the family that, even with an insolvent estate, the personal representative and attorney do get paid for their work.
 - County will need to file a claim and may need to contest any disallowance in court.
 - Other creditors can probate.
 - The property can go into foreclosure.
 - The property can go into tax forfeiture.
 - The County can probate.

Is it Worthwhile to Probate the Real Estate?

- **Valuation of the property**

- Assessment data
- Market analysis, broker opinion of value
- Appraisal

- **Encumbrances**

- Mortgage, 2nd mortgage
- Back Taxes
- Judgments or other indebtedness

- **Value of MA claim**

- in relation to potential sale proceeds

- **Other issues:**

- Tenants in home
- Condition of property
- Pending forfeiture / foreclosure
- Multi-party ownership

Classification of Claims 524.3-805

Medical Assistance Claim is 4th priority:

- (1) Administrative Expenses
- (2) Reasonable Funeral
- (3) Debts and Taxes with Preference under Federal Law
- (4) Medical Expenses of last illness Medical Assistance

No Homestead Exemption for MA Estate Recovery

524.2-402 (c)

- Homestead passes to descendants of decedent
- Exempt from claims except for claims filed under 246.53 and 256B.15 (MA Claims)

Insolvent Estates

“Insolvent Estates” are probate or trust estates where the MA claim exceeds the gross value of the estate.

- Common Example:
 - Estate consists of a \$185,000 house
 - MA claim is \$235,000
- Common because the MA recipient’s homestead is the only major asset that is exempt when determining MA eligibility.

Insolvent Estates

- Estate beneficiaries (Usually families) have no incentive to probate/administer insolvent Estates
- Insolvent Estates may go unprobated /unadministered for years

Impact of Insolvent Estates

- Property taxes can go unpaid for years
- City utility bills and costs go unpaid for years
- Homes are unoccupied, become dilapidated, and eventually unsafe
- Cities incur high nuisance abatement costs

Impact of Insolvent Estates

- Decrease the value of surrounding properties, negatively affecting area's property tax basis
- Can attract crime/suspicious activity
- Become a blight on the neighborhood
- Cause pollution/negative environmental impacts
- County receives less money from MA collections
- Limits housing inventory in County

Insolvent Estates

What happens to Insolvent Estates?

- With mortgage
 - Foreclosure
 - County's MA claim is wiped out
- Without mortgage
 - Tax forfeiture
 - Unpaid property taxes and MA claim are wiped out
 - Process takes 3-5 years
 - County incurs the cost of administering the tax forfeiture

Resolving Insolvent Estates

- Counties can probate/administer Insolvent Estates
- Probating provides a method for recovering assets that are discovered years after the MA recipient's death
- The process can bring great value on many levels

Probate Basics

- 45 days after the death of the decedent, any creditor can petition the district court to be appointed personal representative
 - Minn. Stat. § 524.3-203
- This allows a county with a medical assistance claim to be appointed personal representative

Probate Basics: Paying for Probate

Personal representative fees:

- Personal representative has statutory right to reasonable fees for administering the estate
 - Minn. Stat. § 524.3-719
- Personal representative fees are an administrative expense that have priority over other claims
 - Minn. Stat. § 524.3-805
- Allows county to charge personal representative fees

Probate Basics: Paying for Probate

Attorney fees

- An attorney performing services for the estate has a statutory right to have her/his reasonable attorney fees paid from the estate
 - Minn. Stat. § 525.515(a)
- Attorney fees are an administrative expense that have priority over other claims
 - Minn. Stat. § 524.3-805
- Allows CAO to be paid reasonable attorney fees

Probate Process: Preliminary Work

- Death Certificate
- Is there a Will? – Testate or Intestate
 - Try to get original
 - Check with court to see if filed for safe-keeping (may require court order)
- Heirs/devisees – Names & Addresses - Minn. Stat. 524.2-103
- Funeral Expenses
- Family Administrative Expenses

- Is Venue in County?
 - Did decedent reside or own property in County?
- Verify: Has it been 45 days since death?
- Amount of MA Claim
- Estimate of Assets
- Believe Estate to be insolvent

Probate Process: Preliminary Work

- Search property records for mortgages or other liens existing on estate property
- Contact children, relatives, or friends to gauge interest in probating the estate
 - Give them information about the process
- Call probate court to see whether any demands for notice were filed

Probate Process: Choosing the type of Probate

- Formal Probate

- Petition is filed and hearing scheduled (hearing)
 - Estate is insolvent
 - Heirship is sketchy
 - Conflict between heirs/creditors

- Informal Probate

- Application is filed with Registrar (no hearing)
 - Estate is Solvent
 - All heirs known
 - No Conflict between heirs/creditors
 - If issues arise Registrar may require applicant to file formal probate

Types of Administration

- Supervised
 - Acts of PR under Court supervision
 - Court order affirms distributions
 - Court monitors and sends reminders
- Unsupervised
 - PR acts without supervision of Court
 - Distributions made without Court order
 - Court does not monitor or send reminders

County MA Estate Recovery is Formal, Supervised Probate

- Requires Hearing
- Court Affirms Actions of Personal Representative
- Personal Representative protected if following Court Orders
- Court will send reminder notices to the Personal Representative when documents are due

Probate Process: Stage One

Opening a FORMAL probate

(45 days after death)

Probate Process Overview – Stage 1: Petition

County petitions the court to be appointed Personal Representative

- Usually a county employee (director/supervisor/recovery worker) signs the petition on behalf of the county

Probate Stage 1: Forms

- Hearing notice
- Petition (petition to probate will or petition of intestacy)
- Proposed order
- Written statement of Claim
- Letters Testamentary or General Administration
- Acceptance & Oath
- Certificate of Representation
- Confidential Information Form
- Original Will (if testate)
- Statement of Lost or Destroyed Will (if testate and no Will or only copy)
- Renunciations (if necessary)

Probate: Stage 1

File all of the forms with the Court:

- Filing fee is waived
- The court will send you the Notice and Order for Hearing

Stage 1: Notice

Mail Notice of the Hearing on the petition to all the heirs/interested persons:

- Send notice to heirs and known creditors
- Publish notice of the hearing in a legal newspaper- once a week for 2 consecutive weeks
- Complete Affidavit of Mailing

Stage 1: Hearing

- Court conducts hearing and appoints the county human services representative as personal representative
 - Human Services representative will need to appear and testify to the facts stated in the petition
 - You should use formal supervised with no bond

Settling the Estate

(Selling the property and paying the bills)

Settling the Estate – Estate Bank Account

- Personal Representative gets an EIN for the estate and opens a bank account in the name of the estate
 - Apply here: <https://app.irs-ein-tax-id.com/EstateOfDeceasedIndividual>
 - Open a checking account at a local bank
 - Transfer Decedent's accounts into Estate Account
- Request forwarding order for decedent's mail

Settling the Estate: Liquidate Assets

The PR liquidates the estate assets and reduces estate to cash:

- Sale of real property
 - Deed of Sale by Personal Representative
- Sale of personal property
- Deposit cash proceeds from the estate into the estate account

Settling the Estate: Paying Creditors

- Must wait a minimum 4 month period for creditors to submit claims (from time of publication)
- Gather assets and expenses/claims
- Determine who gets paid and if Homestead exemption will be asserted
- Claims with similar priority are pro-rated
- Pay creditors, by check, from the estate account
 - This includes personal representative and county attorney fees
- Final Account shows assets and expenses/claims and who gets paid

Wrapping-Up the Estate

Probate: Preparing to Close the Estate

County creates final account showing all credits and debits to the estate

- Use the court forms
- Final account shows all creditor and whether each creditor will or will not get paid
- You may want to pay some creditors prior to the hearing
- You may want to get court approval to pay other creditors
- Creditors who are not getting paid can object to the final account

Probate: Petition to Close Estate

The County petitions the court to allow the final account and discharge the Personal Representative:

- Documents to be filed:
 - Hearing notice:
 - Sent to all heirs/interested persons
 - Inventory – (due in 6 months)
 - Applicable Schedules (A, B, C, D, E)
 - Final Account (with attachments HUD1)
 - Petition to Allow Final Account, Settle Estate & discharging PR. – (due in 1 year)
 - Order Allowing Final Account, Settling Estate & discharging PR.

Probate: Final Hearing

- Court affirms actions of PR (hopefully)
- Heirs or creditors can appear at hearing to object to final account.
 - Rarely happens as most objections are settled prior to the hearing
- Personal Representative can now distribute funds
 - Court may require receipts/cancelled checks

Special Situations: Special Administration

- Catch all
- No time limit to file
- In emergency, can file without notice, to protect assets
 - May require renunciations
- Assets in Special Administration can be distributed in a probate or Decree of descent
 - Explore possibility of distribution of assets under \$75,000.00 though Special Administration

Special Situations: Decree of Descent

If decedent died more than 3 years ago: file a decree of descent

- Will not decree property to County
- County does not want to be in chain of title
- First sell in Special Administration, then Decree funds from sale

Cheat Sheet: Which Petition to File

- No Will—decedent died less than 3 years ago
 - Petition for Formal Adjudication of Intestacy, Determination of Heirs, and Appointment of Personal Representative
- Will-decedent died less than 3 years ago
 - Petition for Formal Probate of Will and for Formal Appointment of Personal Representative
- Decedent died over 3 years ago
 - Petition for Determination of Descent
- Special circumstance
 - Petition for Formal Appointment of Special Administrator

Resources and Links

- **MN Courts website:** <http://www.mncourts.gov/GetForms.aspx?c=31>

(Probate forms with instructions are available here, as well as resources on various probate topics.)

- **DHS Estate Recovery site:**

<https://mn.gov/dhs/people-we-serve/adults/health-care/health-care-programs/programs-and-services/estate-recovery.jsp>

(Explore topics on estate recovery and liens)

- **DHS MA Estate Recovery Manual:**

https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=SRU-Home

QUESTIONS?

John Rominski: 651-266-3207

John.P.Rominski@co.ramsey.mn.us

Geneva Finn: 651-431-3108

Geneva.Finn@state.mn.us