

Briefings

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TN TOP 5

Reasons to Consider Relationship Agreements

The last thing on your mind when you're about to move in with or marry your significant other is what will happen if you break up. Here are five good reasons to consider a cohabitation agreement, a prenuptial agreement or a post-nuptial agreement:

1. Estate Planning. Attorneys frequently recommend that spouses "equalize" their assets as a way of minimizing estate taxes. This may require the transfer of nonmarital property from one spouse to another. A post-nuptial agreement can help ensure that such property remains yours in the event of a divorce. Many couples entering into marriage have children from prior relationships. A prenuptial agreement can help to ensure that your children or other family members share with your spouse in any inheritance that you leave.

2. Protection of business assets or inheritances. A prenuptial or a post-nuptial agreement may be used to designate significant assets as separate property, including allocation of any debt associated with them. For example, if the wife starts a business during the marriage, the couple can agree through a post-nuptial agreement that the business belongs to the wife, as do any debts relating to the business.

3. Protection of separate property that is commingled. Minnesota has an anti-"palimony" statute that prohibits enforcements of unwritten

cohabitation agreements. Many people who live together share expenses and property, most notably the home in which the couple lives. Often, one partner owns the home but both partners contribute to the mortgage payment, repairs, etc. A cohabitation agreement can ensure that both parties' contributions are protected.

4. Protection from one another's debts. Even if both parties have minimal assets, agreements can help protect you from future liability for your partner's existing debts. These agreements also can set forth who will be responsible for joint credit card debt and certain types of debts (such as student loans or mortgages).

5. Communicating your expectations. Rather than thinking of agreements as romance killers, consider them an opportunity for you and your partner to plan for certain aspects of your life together before the situations arise. Talking today about your debts, assets and family needs can help avoid fights stemming from assumptions that were never discussed.

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Do You Have a Case?

Considerations before heading into litigation

Of all the ways to make a quick buck, filing a lawsuit is not one of them. First, there is nothing quick about lawsuits and second, there are a number of hurdles between the starting line and ultimate recovery. Lawsuits are an important and effective way to seek justice and recovery; however, there are a number of things you will want to consider before heading down that road.

The first thing to do is a cost/benefit analysis. You want to avoid ending up in the middle of a lawsuit only to realize the cost of it far outweighs any potential recovery. Although your attorney may be able to estimate the hours it will take, costs can be driven up by the opposing side's actions, some of which can't be anticipated or prevented by your attorney. With few exceptions, as a result of the "American Rule," each party is responsible for paying their own attorneys' fees and your ultimate recovery, should you get one, will be less the amount of those fees.

There are also limitations in many cases on the amount of damages you are entitled to receive. Some actions will only cover out-of-pocket expenses, while others have caps. Be sure you know going in what you are eligible to receive and remember, that does not mean you are guaranteed that amount.

A big factor that is often overlooked is your time and energy to get through the process. Even though your attorney will handle the bulk of the work, there is still a great deal required of you such as: providing information, documents, reviewing discovery and appearing for depositions, mediation or a trial. How much time will you be able to take off of work? Are you willing to wait for your case to wind through the court system? Even if you win in the end, the judgment is only a piece of paper and unless the opposing party is cooperative and pays you, you may have to spend more time and money trying to collect your award. In addition, though you may have anticipated an adversarial relationship with the other party in the suit, stress on your personal relationships can also take a toll during the sometimes lengthy process.

There are a myriad of other considerations as well, including: complex statutes of limitations, which can vary from 6 months to 10 years; the location in which your dispute will be heard, which

if not local could require you to find an attorney in another state; and whether your dispute is subject to arbitration. Furthermore, have you considered that the person or entity you bring suit against might bring a counterclaim against you? Even if they don't have merit, it will still be more of your time, money and energy.

Lawsuits are an important tool of resolving disputes between you and another party. Sometimes they are inevitable, necessary or seeking justice at any cost seems worth it. In those instances, the attorneys at Thomsen & Nybeck are ready and able to provide you with ardent and thoughtful representation. However, before you start the process consider the many factors that can, and often will, come into play in any lawsuit. Contact the attorneys at Thomsen & Nybeck to discuss the risks and benefits of litigation, as well as potential alternatives.

The Minnesota judicial system is facing serious challenges due to the past and proposed budget cuts on an already stressed and overburdened system. Minnesota Supreme Court Chief Justice Eric Magnuson issued a written statement shortly after Governor Pawlenty's budget plan was released stating, "We appreciate the difficult task that the Governor faces in allocating too few state resources. However, cuts at this level will mean significant reductions in service and even further delays in processing civil and criminal cases."

Currently Minnesota courts have 9% fewer staff than they need with more cuts needing to be made to meet the 5% budget cut. Some cases now aren't heard for years, and in the future some cases might not get heard at all. Others cases suffer because they have witnesses that simply don't remember what happened that long ago. The ramifications of a court system so understaffed will affect everyone from someone trying to enforce a contract through a civil suit to judges waiting for a public defender to show up and represent a client.

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Dave McGee contributed to this article. Dave practices in the Litigation areas of General Civil, Commercial, Construction, Insurance and Real Estate, as well as Real Estate Law and Townhome and Condominium Law. dmcgee@tn-law.com or (952) 835-7000

Steps to Take to Avoid Unpaid Association Dues

The current blight of foreclosures has left many community associations wondering what can be done to protect themselves from the escalating issue of unpaid dues in the future. No association has the ability to control who moves in or if a property goes into foreclosure, but you can take precautionary steps to protect your association when unpaid dues become a problem. Some steps we recommend you take are:

- Make it a point to form a welcoming committee and get to know who has moved in to your community. Where do they work? Did they buy or are they renting? Who is the owner? What is their contact information? Knowing this will give you a starting point.
- Don't assume they've received the association information. Present the new owners with your own packet clearly outlining the association dues and the governing documents of the association. Ignorance is not an excuse for nonpayment.
- Offer a discount for monthly payment plans with an automatic withdrawal from their checking or savings account. Think of other incentives you could offer for prompt or full payment of their dues.
- When talking to debtors, let them know that dissatisfaction is not cause for nonpayment. Other forms of resolution can be sought, but payment of

dues is not optional. Make it clear nonpayment of their dues directly affects their neighbors, as now their neighbors are paying for their snow plowing, lawn mowing and other maintenance.

- Perhaps the biggest predictor of whether you will have a problem collecting dues is your past history of collection. If Mary knows her neighbor John didn't pay his dues and there were no ramifications, there is little incentive for her to pay. Word of mouth works both ways. If members know you take quick and serious action against those who do not pay, dues are much more likely to be paid. Once Thomsen & Nybeck completes collection on an association's delinquent accounts, the association often does not need further legal assistance for several months, if not years.

When these steps don't work and you need legal assistance, there are actions Thomsen & Nybeck can take to help an association recover unpaid dues, even following mortgage foreclosure. Knowing the different laws controlling associations, including the Minnesota Common Interest Ownership Act (MCIOA), and being familiar with interpretations of association governing documents, we can send demand letters, file liens and either sue for a money judgment or foreclose the lien.

Being proactive is always better than being reactive in these situations. However, when you still need assistance, we are here to help.

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Gretchen Schellhas contributed to this article. Gretchen is CEO of the firm and focuses her practice in the areas of Community Association Law and General Civil Litigation, including Family Law. gschellhas@tn-law.com or (952) 835-7000

NEWS & NOTES



Thomsen & Nybeck launched a **Minnesota Legal Update Blog**, which can be found at <http://tnupdate.wordpress.com/>.

Be sure to check in or set up an RSS subscription to view updates and information provided by the firm's attorneys.



Attorney **Ryan Wood (1)** and his wife Sarah welcomed a baby girl, Molly (pictured at top right), in February.



In March, attorney **Brad Boyd (2)** and his wife Eva also welcomed a baby girl, Abby (pictured at bottom right).



For the second consecutive year, Thomsen & Nybeck has a team of runners participating in the upcoming TC 1 Mile event.



On May 28, Attorney **Dave McGee (3)** is speaking at the 11th Annual Real Estate Trends Seminar on the topic of avoiding appraisal malpractice suits.



On April 4, Attorney **Jack Bouquet (4)** presented at the Community Association Training Services Legal Conference on Assessments and Reserves.

Attorney **Deb Newel (5)** became a member of the board of directors of Missions, Inc., a nonprofit social service organization with residential and community programs in Hennepin and Ramsey Counties.

ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen & Nybeck, P.A.

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PRACTICE AREAS

Thomsen & Nybeck has in-depth experience and knowledge in the following practice areas. Call us at (952) 835-7000 to discuss your concerns or to determine if you have a case.

Business Law
Construction Defect Litigation
Corporations & Partnerships
Criminal Law
Employment Law
Estates, Wills and Trusts
Family Law

Financing Litigation
Personal Injury
Real Estate
Taxation
Townhome & Condominium Law
Wind Energy

“Large enough to be effective.
Small enough to care.”