



BASSFORD REMELE

Building Trust

A Publication of the Bassford Remele Trust and Estate Litigators

VOLUME 2, ISSUE 1
MARCH 2025

Terrorem From Beyond the Grave: Enforcing Penalty Clauses in Minnesota Trusts and Wills

A-List Assets:
Celebrity Trusts and Estates in the News

Case Law Updates

SEMINAR
2025 The Work Week with Bassford Remele
Annual Employment Law Seminar

BASSFORD REMELE

TIA BLATCHER



Left to right: Tal Bakke, Casey Marshall, Alan Silver, Jessica Kometz, Norman Abramson, Jake Peterson

Nothing in this publication creates an attorney-client relationship between the reader and Bassford Remele, P.A. This publication is an advertising material that contains educational content, but this content is not to be construed as legal advice.

*Our attorneys help
families, individuals,
businesses, and non-profit
organizations handle
conflicts relating to trusts,
wills, estates, guardianships,
conservatorships, and
protective arrangements.*

Welcome to another edition of *Building Trust*

Building Trust is a quarterly publication of the Bassford Remele Trust and Estate Litigation Group designed to bring relevant and timely information to our clients and colleagues.

Through *Building Trust*, we strive to provide insight into the everyday issues faced by attorneys, trust officers, financial advisors, CPAs, beneficiaries, and others that are involved in, or have an interest in, the transfer and administration of family wealth. Each issue contains not only substantive legal content, but also an update on relevant case law and trust and estate stories in the mainstream news.

The transfer of family wealth can be a source of pride and legacy, but when issues and disputes arise, they present unique and difficult challenges. Our attorneys have years of experience resolving these challenges and helping professional fiduciaries, families, individuals, and non-profit organizations avoid issues and resolve disputes when they arise. We routinely manage disputes ranging from simple will contests to some of the most high-profile trust and estate cases in Minnesota. As always, our team is here to support you, your clients, and your practice.

This issue provides an overview of how Minnesota courts interpret and apply penalty clauses in wills and trusts, and how they are examined differently. It also provides recent case law and a section on “A-List Assets,” which reports on celebrity trusts and estates in the news.

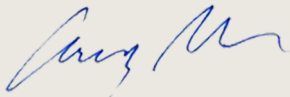
Finally, we have highlighted an important upcoming event that may be of interest to our readers, Bassford Remele’s annual The Work Week Employment Law Seminar, which will delve into the new employment legislation passed this year and the recent changes in laws and policies affecting DEI programs.

We hope you find the information contained in this edition of *Building Trust* useful. Thank you for your time and attention.

Best regards,



Norman M. Abramson
nabramson@bassford.com



Casey D. Marshall
cmarshall@bassford.com

Trust & Estate Litigation
Practice Group Co-Chairs



BASSFORD REMELE

Recent Articles

***Terrorem* From Beyond the Grave: Enforcing Penalty Clauses in Minnesota Trusts and Wills**

By Casey Marshall and Jacob Petersen

A primary goal of estate planning is to avoid conflicts between the beneficiaries/devisees after the death of the grantor, especially conflicts that drag the whole family into court. One method to avoid such battles is the “penalty clause.”

Penalty clauses, also called no contest, forfeiture, or *in terrorem* (“in fear”) clauses, seek to prevent contest of a will or trust instrument by removing the beneficiary who challenges the instrument. Penalty clauses seek to prevent costly and protracted litigation and keep family business out of the public eye.

This article examines how Minnesota courts interpret and apply penalty clauses in wills and trusts. This is still a developing area of law with few cases at the Court of Appeals, especially in the trust context.

Will Penalty Clauses: What is “Probable Cause?”

Penalty clauses in Minnesota wills are governed by the Minnesota Uniform Probate Code § 2-517. That section reads:

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

The rule seeks to prevent fraudsters and undue influencers from scaring away legitimate challenges to a will from other heirs who were cut out of the will.

Section 2-517 begs the question: what is “probable cause?” The Minnesota Supreme Court examined the question in *Hartz’s Estate v. Cade*, 77 N.W.2d 169 (Minn. 1956) (*Hartz III*). There, Decedent’s four first cousins, his closest living kin, challenged the Will that left \$1,000 each to Decedent’s first cousins and the residue to Anna Hoff, Decedent’s housekeeper and personal care

For parties looking to contest or defend an instrument with a penalty clause, it is important to remember that while enforcement is not guaranteed, a penalty clause increases the risk of litigation.

assistant. *In re Hartz’s Est.*, 54 N.W.2d 784, 786 (Minn. 1952) (*Hartz I*). The Will also included a penalty clause that disinherited any challengers. *Hartz III*, 77 N.W.2d at 170.

The cousins, who would split the estate under intestate succession, asserted Ms. Hoff unduly influenced Decedent to leave her the residue. *Hartz I*, 54 N.W.2d at 786. The probate court disagreed with the cousins and admitted the Will to probate. *Hartz III*, 77 N.W.2d at 170. The Personal Representative moved to enforce the penalty clause against the challengers. *Id.* The trial court declined, finding that the challenge was initiated with probable cause. *Id.*

The Supreme Court affirmed and formally adopted the “probable cause” standard, stating that the standard prevents wrongdoers from shielding themselves from scrutiny with a penalty clause. *Id.* at 171 (Minn. 1956). Upon review of the whole case file, the Supreme Court agreed that the challenge was initiated on a good faith belief that Ms. Hoff may have unduly influenced Decedent, even though the district court found otherwise after trial. *Id.* at 172.

The key takeaway of *Hartz’s Estate* is that “probable cause” is a low bar to clear. It requires only that the Will sufficiently stink of lack of capacity, undue influence, or fraud for a challenger to avoid enforcement of a penalty clause, even if the challenger loses at trial.



Penalty Clauses in Trusts

Penalty clauses in trusts are currently in a flux state. They are not specifically governed by Minnesota's Uniform Trust Code or any binding precedent. While legislation has been proposed to apply the "probable cause" standard from the Minnesota Probate Code to trusts in the Minnesota Trust Code, there are no pending bills at the time of writing.

Generally, the terms of a trust instrument (including penalty clauses) will be enforced. See Minn. Stat. § 501C.0105(b). ("The terms of a trust prevail over any provision of [the Trust Code]."); see also *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012) (the court "is to ascertain and give effect to the grantor's intent.").

Therefore, a penalty clause in a trust instrument will generally be enforced as written (although strictly construed). The most recent and thorough treatment of a penalty clause at the Minnesota Court of Appeals was in *In re B.C. Fox Trust, U/A/D, July 1, 1997, as Amended*, No. A21-0770, 2022 WL 1073756 (Minn. App. Apr. 11, 2022). In this unpublished case, grantor's three sons (one through an inter vivos trust) were beneficiaries of the Trust after Grantor's death. *Id.* at *1. The grants were subject to a penalty clause that fully disinherited any beneficiary that "directly or indirectly contests the validity of this trust or the distributions thereof in any manner." *Id.* at *3.

One of grantor's sons unduly influenced his disabled brother to amend his inter vivos trust to make influencing brother the sole beneficiary. *Id.* at *2. A California court found these amendments were motivated by perceived inequities in the disposition of B.C.'s estate and were void. *Id.* at *3. The Minnesota district court declined to enforce the B.C. Fox's penalty clause against influencing brother because he had only influenced the inter vivos trust, which was separate from B.C.'s Trust. *Id.*

On appeal, the Minnesota Court of Appeals first held that penalty clauses in trusts are enforceable as written. *Id.* at *4. It then ruled that the undue changes to the inter vivos trust was an indirect attack on the B.C. Trust's distribution provisions because it changed the ultimate beneficiaries against B.C.'s wishes, even if it did not attack the B.C. Fox Trust directly. *Id.* at *5-6. The Court remanded to the district court with instruction to enforce the penalty clause. *Id.* at *6.

B.C. Fox Trust is unpublished and not binding on the District Courts. However, it is persuasive authority that penalty clauses in trusts are likely to be enforced under current Minnesota law. This is supported by the recent decision by Olmsted County District Court enforcing a penalty clause in *The Gus A. Chafoulis Revocable Trust* (Feb. 24, 2025, Court File No. 55-CV-24-3457), which cited to the *B.C. Fox* case to support its conclusion. While recent cases have enforced them, penalty clauses in Minnesota trusts are not entirely clear until the matter is clarified by legislation or a binding appellate court decision.

Conclusion

Because penalty clause enforcement is a developing area of law, estate planners should advise caution when putting a penalty clause in a trust or will. There is a possibility the clause will not be enforced (especially in the will context). For parties looking to contest or defend an instrument with a penalty clause, it is important to remember that while enforcement is not guaranteed, a penalty clause increases the risk of litigation.

Recent Articles

Case Law Updates

By Jessica Kometz

Proposed Legislation Providing for Portability of the Estate Tax Exclusion

On January 16, 2025, legislation relating to estate taxes was introduced in the Minnesota Senate. Said legislation proposed amending Minn. Stat. § 289A.10 in several ways. First, the amendment provides that an estate tax return would only be required to be filed in the event that a federal estate tax return is required to be filed or “the sum of the federal gross estate and federal adjusted taxable gifts...made within three years of the date of the decedent’s death exceeds \$3,000,000.” Second, the amendment gives a personal representative the ability to elect, on any required tax return, to allow a decedent’s surviving spouse to take into account the decedent’s deceased spousal unused exclusion amount. However, any such election would be irrevocable. If a return is filed, the personal representative would be deemed to have elected portability unless the opposite is affirmatively stated. Third, even if a personal representative is not required to file an estate tax return, the proposed legislation would allow the personal representative to file a return to allow the decedent’s surviving spouse to take into account the decedent’s deceased spousal unused exclusion amount. The proposed legislation was referred to the Taxes Committee where it was laid over. **S.F. No. 30.**

Proposed Legislation Changing the Definition of “Resident Trust”

On January 16, 2025, a bill was introduced that proposes a change to the definition of the term “resident trust” as it relates to trusts that became irrevocable, or were first administered, after December 31, 1995. If a trust, other than a grantor type trust, became irrevocable, or was first administered, after December 31, 1995, it is only a resident trust if either it (1) was created by a will of a decedent who was domiciled in Minnesota on his or her death or (2) is an irrevocable trust whose grantor was domiciled in Minnesota at the time the trust became irrevocable and satisfies two of the following conditions:



(1) a majority of the discretionary decisions of the trustees relating to the investment of trust assets are made in Minnesota; (2) a majority of discretionary decisions of the trustees relating to distributions of trust income and principal are made in Minnesota; or (3) the official books and records of the trust are located in Minnesota. The proposed legislation was referred to the Taxes Committee where it was laid over. **S.F. No. 6.**

Numerous Proposed Changes to the Minnesota Trust Code

On January 23, 2025, a bill was introduced that proposes numerous changes to the Minnesota Trust Code. One such change involves the modification of termination of a noncharitable irrevocable trust. Currently, a settlor’s power to consent to a trust’s modification or termination may be exercised by an attorney-in-fact only to the extent authorized by the power of attorney or the terms of the trust. The proposed legislation would change that standard. Specifically, such power must be expressly authorized by the terms of the trust. If the trust is silent with respect to this issue, an attorney-in-fact may exercise this power if the power of attorney “expressly authorizes the agent to consent to a trust’s modification...” Notably, such power of attorney cannot be a statutory short form power of attorney. The same change is proposed as it relates to an attorney-in-fact’s powers with respect to revocation, amendment, or distribution of trust property.

Another proposed change relates to the limitation on actions contesting the validity of a revocable trust.

Specifically, under the proposed legislation, if a trustee wishes to limit a trust contest by sending a notice of the trust's existence, trustee's name and address, and the time allowed for commencing a proceeding, it must also send a notice of the settlor's death under the same time parameters.

Additionally, it is proposed to place a time limitation on a designated trustee's ability to accept the trusteeship. Currently, a designated trustee who does not accept the trusteeship within a "reasonable time after knowing of the designation" is deemed to have rejected the trusteeship. If the legislation passes, that "reasonable time" cannot exceed 120 days.

Powers of trust protectors are also subject to amendment. Specifically, the proposed legislation takes away a trust protector's power to terminate the trust and the power to veto or direct trust distributions.

Finally, among numerous other changes not discussed here, the proposed legislation provides an additional circumstance under which a parent would be barred from inheriting from their child who died after reaching 18 years of age – if there is clear and convincing evidence that: (1) the parental rights of the parent could have been terminated on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child during the child's minority; and (2) in the year prior to the child's death, the parent and the child were estranged.

The proposed legislation was referred to the Judiciary and Public Safety Committee who recommended that the bill pass with amendments. After amendments, the bill passed unanimously and was referred to the House. **S.F. No. 571.**

Proposed Phaseout of Estate Tax

On February 10, 2025, a bill was introduced in the Minnesota House of Representatives that proposes to phase out Minnesota's estate tax over a period of ten years. Importantly, the proposed phaseout would only apply to estates of decedents dying after June 30, 2025. The proposed legislation was referred to the Taxes Committee where it was laid over for possible inclusion in the Tax Omnibus Bill. **H.F. No. 170.**

Presentations

How to Avoid the Top 10 Litigation Traps for Estate Planners, Minnesota Continuing Legal Education Probate and Trust Law Section Conference, June 16–17, 2025 (Casey Marshall and Jessica Kometz)

Unique Evidentiary Issues, Minnesota Continuing Legal Education Trust and Estate Litigation in Minnesota Seminar, December 2024 (Casey Marshall)

Publications

Unique Evidentiary Issues, Chapter 5, Minnesota Trust and Estate Litigation Deskbook, Minnesota Continuing Legal Education, 1st Ed., 2024 (Casey Marshall)

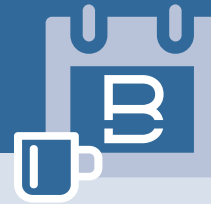


2025 The Work Week *with Bassford Remele*

ANNUAL EMPLOYMENT LAW SEMINAR

WEDNESDAY, JUNE 25, 2025

1:30–4 PM SEMINAR | 4–5 PM SOCIAL



**Please join our Bassford Remele employment team
for our third annual The Work Week with Bassford Remele:
Annual Employment Law Seminar!**

We'll start our 2025 seminar by reviewing the new employment legislation passed this year and the employment-related case law issued by the Minnesota and U.S. Supreme Courts. Next, we'll examine the recent changes in laws and policies affecting DEI programs, providing attendees with the knowledge and strategies needed to adapt initiatives successfully.

Our facilitators will guide you through practical approaches to ensure your DEI efforts remain impactful and compliant. Whether you're an HR professional, business leader, attorney, or DEI practitioner, this session will equip you with valuable insights and actionable tools to navigate the complexities of DEI implementation in this new era. Join us to stay ahead of the curve and learn how to foster an inclusive workplace while adhering to current legal frameworks.

1:30-1:45 PM Registration and Networking

1:45-2:45 PM Legislative and Supreme Court Updates

15-minute snack break

3:00-4:00 PM *Examining DEI: Charting a Course Through Changing Legal Tides*

4:00-5:00 PM Social

LOCATION:

Engage Conference Center and Connect Lounge

Fifth Street Towers | 150 South Fifth Street, Suite 300 | Minneapolis, MN 55402

Complimentary parking—no fee to attend

Bassford Remele is an approved SHRM Recertification Provider and will submit this course for SHRM Professional Development Credits (PDCs) for HR knowledge and competency programs that align with the SHRM Body of Applied Skills and Knowledge® (the SHRM BASK®).

Bassford Remele will also apply for 2.00 CLE credits in MN and WI, including 1.00 elimination of bias CLE credit.

If you have any questions about this seminar, please reach out to any member of the [Employment Law Practice Group](#).

[RSVP HERE](#)





A-List Assets | Celebrity Trusts and Estates in the News

Nevada Court Denies Amendment of Murdoch Trust, Leaving Fate of Murdoch Media Empire Uncertain

By Jacob Petersen

Love it or hate it, it is indisputable that Fox News is a defining force in American media, culture, and politics. Fox News, as well as other conservative outlets like *The Wall Street Journal* and *The New York Post*, are all owned by two companies: Fox and News Corp. In turn, these companies are owned by the Murdoch Family Trust, established by Rupert Murdoch in 1999.

Throughout 2024, the Murdoch Family Trust was subject to intense litigation over its control and the fate of Murdoch's media empire. Rupert and his chosen successor, Lachlan Murdoch, sought to amend the Trust to elevate Lachlan's control after Rupert's death over Rupert's three other children with voting interest: James, Elisabeth, and Prudence. After the other three children objected, the matter went to court in Reno, Nevada.

The court held a multi-day trial in September, 2024, to determine the fate of the Murdoch Family Trust. If Rupert could prove that his changes were in good faith for the benefit of all beneficiaries, his proposed changes would be ratified and Lachlan would become the primary manager on Rupert's death. If the changes were not in good faith, the children would remain in equal control after Rupert's death.

In its sealed opinion filed on December 9, 2024, the Washoe County Probate Commissioner issued its order denying the amendments. The full order is not publicly available at the time of this writing. *The New York Times* obtained a copy and reported its contents.

The court called Rupert's plans to change the Trust a "carefully crafted charade" to cement Lachlan's control, regardless of the impact to the companies or the other beneficiaries. The court concluded that Rupert and Lachlan's maneuverings to appoint new representatives and limit the other siblings' control was not in the best interest of the beneficiaries, but



The battle over the Murdoch Trust demonstrates the importance of maintaining harmony among the beneficiaries.

rather meant to elevate one beneficiary above the others and cement Rupert's vision of maintaining his empire's conservative editorial slant.

The battle over the Murdoch Trust demonstrates the importance of maintaining harmony among the beneficiaries. When the purpose of an irrevocable trust is to cement a specific plan, it is important to keep the grantor, trustee, and beneficiaries on the same page to avoid discord and costly court battles. The second lesson is to have a plan to deal with changing circumstances in long-standing trusts, preferably one that does not require court involvement.

Rupert and Lachlan have vowed to appeal the decision, so this battle is not over. We will continue to monitor this issue and provide you with updates as the case makes its way through Nevada's courts.

Cite: <https://www.nytimes.com/2024/12/09/business/media/rupert-lachlan-murdoch-family-trust.html>

Team Member Intro

JACOB PETERSEN

Where are you from?

Breckenridge, Minnesota

Tell us about your trust and estate litigation practice—what do you do?

I represent people in contested probate and trust matters. I try to help the parties resolve the disputes arising after the death of their loved ones through trial or negotiation. My role in the process is to help my clients on the process to closure.

How would you describe your job to a five-year-old?

I help people fix their problems with each other by talking and writing to convince people that my clients are right.

In 2020, you received the Best Petitioner's Brief award for the Hispanic National Bar Association's Moot Court Competition. Can you tell us about that award?

My teammate and I researched and wrote a brief in favor of rescinding Deferred Action for Childhood Arrivals (DACA) (randomly assigned). Our brief was described as, "innovative," "ingenious," and "a joy to read."

First job?

Manning the front desk at the local swimming pool.

What did you want to be when you grew up?

A biologist or chemist, but it turns out both required a lot of math...

What is the best super power?

Technomancy (ability to magically understand and control technology).

If you could pick up a new skill in an instant, what would it be?

Becoming a poker master.

You can only eat one food for the rest of your life. What is it?

Pizza. Anything can be put on or turned into a pizza, so it's the most versatile choice for a lifetime food.

If you could live in any state, which state would you pick and why?

I already live here: Minnesota. Good schools, abundant natural resources, and great summers.

Favorite place you have ever visited?

Cancun, Mexico.



Favorite family tradition?

Family gift exchange game that gets remarkably competitive.

Have you had your 15 minutes of fame yet?

No.

Do you collect anything?

Board games that I will never have a chance to actually play...

Favorite season?

Nothing beats summertime on a Minnesota lakeshore.

Favorite thing you've bought in the past year?

We recently bought our first house, so that's been a joy and an adventure rolled into one.

Favorite charity you wish more people knew about?

Gray Face Rescue & Retirement, a shelter for senior pets.

What is one thing that people would be surprised to learn about you?

I spent four years as an amateur game designer to design new expansions for a board game that had been cancelled by its publisher.

Wins and Accolades



Alan Silver was named the 2024 Minnesota Trusts and Estate Litigation Lawyer of the Year by *The Best Lawyers in America*. Only a single lawyer in each practice area and designated metropolitan area is honored as the "Lawyer of the Year,"

making this accolade particularly significant. Alan was selected based on impressive voting averages received during the peer review assessments. This is the second time Al has received this honor. He was also named to the Minnesota Super Lawyers and *Minnesota Monthly* Top Lawyers lists. Al is a fellow of the American College of Trust and Estate Counsel.



Tal Bakke was named to Best Lawyers: Ones to Watch in Commercial Litigation. He was also selected to the Minnesota Rising Stars list, an honor no more than 2.5% of the lawyers in the state receive.



Jessica Kometz was named to Best Lawyers: Ones to Watch in Trusts and Estates Litigation and Commercial Litigation. Jessica was also selected to the Minnesota Rising Stars list.



Norman Abramson was named to the 2025 edition of *The Best Lawyers in America*. *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. It was founded with the purpose of recognizing extraordinary

lawyers in private practice through an exhaustive peer-review process.



Casey Marshall has been named as a Top Lawyer by *Minnesota Monthly*, a Super Lawyer by Minnesota Super Lawyers, an Attorney of the Year by *Minnesota Lawyer*, and to the 2025 edition of *The Best Lawyers in America* in Trusts and Estates

Litigation. Casey is active in the Minnesota State Bar Association and is on the Board of Directors of the Twin Cities Estate Planning Council.



Bassford Remele is pleased to announce its continued ranking as a leading Minnesota firm in the 2024 edition of *Chambers USA: America's Leading Lawyers for Business*. The rankings are the result of extensive client interviews and research to assess technical legal ability, client service, commercial vision and business understanding, value, team depth, and other qualities most valued by the client.



Bassford Remele has been recognized in the 2025 edition of Best Law Firms®, a testament to our unwavering commitment to legal excellence. Firms included in the 2025 Best Law Firms list are recognized for professional excellence with impressive ratings from clients and peers. Achieving a ranking in Best Law Firms signifies high-quality legal practice and a depth of legal proficiency. Bassford has received rankings in Trusts and Estates Litigation, Commercial Litigation, Bet-the-Company Litigation, and eighteen other practice areas.



BASSFORD REMELE

612.333.3000 | bassford.com

SAVE THE DATE



The Work Week Annual Employment Seminar

Wednesday, June 25, 2025

Time: 1:30–4 PM | 4–5 PM Happy Hour

Location: Fifth Street Towers, Minneapolis

[REGISTER HERE](#)



BASSFORD REMELE TRUST AND ESTATE TEAM

Norman M. Abramson, Co-Chair
nabramson@bassford.com | 612.376.1614

Casey D. Marshall, Co-Chair
cmarshall@bassford.com | 612.746.1090

Alan I. Silver
asilver@bassford.com | 612.376.1634

Tal A. Bakke
tbakke@bassford.com | 612.376.1678

Jessica L. Kometz
jkometz@bassford.com | 612.376.1647

Jacob P. Petersen
jpetersen@bassford.com | 612.376.1613