



BASSFORD REMELE

# Building Trust

A Publication of the Bassford Remele Trust and Estate Litigators

VOLUME 1, ISSUE 2

NOVEMBER 2024

**Behind the Curtain:**  
Attorney-Client Privilege

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

**Seminar**  
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Construction Summit

BASSFORD REMELE

TIA BLATCHER



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

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.

# 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 the attorney client privilege as it applies in trust and estate disputes, including a review of the current status of the testamentary exception and the fiduciary exception. It also provides recent case law and a section on “A-List Assets,” which reports on celebrity trusts and estates in the news.


We have summarized several recognitions our trust and estate practice group members recently received. These include Tier 1 in “2025 Bet-the-Company Litigation” and “Trusts & Estates Litigation” by *The Best Lawyers in America*®. Bassford Remele was also recognized as a leading Minnesota firm in Commercial Litigation in the 2024 edition of *Chambers USA: America’s Leading Lawyers for Business*. Finally, we have highlighted some important upcoming events that may be of interest to our readers, including Bassford Remele’s Mechanic’s Lien Seminar, which will delve into the complexities of how mechanic’s lien foreclosure proceedings impact financial institutions.

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

Best regards,



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Trust & Estate Litigation  
Practice Group Co-Chairs



# Recent Articles

## Behind the Curtain: Attorney-Client Privilege Exceptions in Trust and Estate Disputes



In trust and estate litigation, maintaining privacy is generally of the utmost importance. Most people prefer to keep their financial matters and testamentary intentions away from prying eyes, relying on the protections of the attorney-client privilege. However, certain exceptions can launch these private exchanges into the spotlight, particularly during disputes over wills, trusts, or the conduct of fiduciaries.

This article outlines two significant exceptions to attorney-client privilege in trust and estate litigation: the testamentary exception and the fiduciary exception. Understanding these exceptions is critical for beneficiaries, fiduciaries, and the attorneys who guide them.

### **The Testamentary Exception: Unveiling the Settlor's/Testator's Secrets**

Attorney-client privilege is typically a robust protection, but unique concerns arise upon the death of a settlor or testator. The testamentary exception arises when there are ambiguities in the trust instrument or when the deceased's testamentary capacity or being subjected to undue influence or fraud are called into question.

When a settlor or testator dies, their will or trust document often serves as the final word on their intentions. However, ambiguities, conflicting interpretations, and capacity and undue influence issues can lead to litigation. In these situations,

the testamentary exception may compel a drafting attorney to disclose communications with their client.

Consider a situation where a will is contested by family members who believe it does not reflect the true wishes of the decedent. The court, seeking clarity, may compel the decedent's attorney to testify about discussions they had regarding the will's provisions, changes made to the will, or the decedent's mental state at the time of drafting.

The rationale behind this exception is that the deceased client is no longer alive to clarify ambiguous terms, confirm that the document reflects the client's true intent, or is free of undue influence and that the client had the requisite capacity. The drafting attorney's knowledge becomes a valuable insight into the deceased client's intent and abilities.

Beyond the need for precise and clear estate planning to minimize ambiguities and potential disputes, the drafting attorney needs to carefully consider what notes to take and what evidence to include in their file to support a potential challenge to the estate planning documents. This can include detailed notes of why a provision was included or documenting that the client discussed the estate plan with the drafting attorney alone without family members present. Videotaping or recording meetings or document executions with the client can also be considered.

Additionally, drafting attorneys can gather outside evidence for their files to support capacity and overcome undue influence claims. Minnesota law recognizes evidence such as the client's ability to play cards or conduct business transactions around the time of the estate planning documents execution. See *Matter of Congdon's Est.*, 309 N.W.2d 261 (Minn. 1981). Knowing that your file may be discoverable pursuant to the testamentary privilege is an important consideration for drafting attorneys particularly when a potential contest appears probable.

Most people prefer to keep their financial matters and testamentary intentions away from prying eyes, relying on the protections of the attorney-client privilege.

### **The Fiduciary Exception: Trustees, Personal Representatives, and Their Lawyers**

The fiduciary exception is another notable exception to attorney-client privilege in certain jurisdictions. This exception is rooted in the concept that a fiduciary, such as a trustee or personal representative, has a duty to act in the best interests of the beneficiaries and that the trust or estate paid for this advice. The fiduciary exception is grounded in the idea that fiduciaries are accountable to the beneficiaries they serve.

When a fiduciary seeks legal advice in their fiduciary capacity, the beneficiaries may have the right to access those communications and legal opinions, particularly when the advice pertains to the administration of the Trust. See *In re Williams*, 2000 WL 1920038 (Henn. Cty Dist. Ct. April 14, 2000) (documenting discovery order compelling the disclosure of in-house counsel's files related to administration of trust, which was affirmed when the Court of Appeals denied two separate writs of prohibition to overturn that order).

Consider a trustee who consults an attorney about managing the trust's assets. If the beneficiaries suspect the trustee of mismanagement, they might seek to review the communications between the trustee and their attorney on administrative advice. Under the fiduciary exception, the court may order disclosure despite the attorney-client privilege.

The fiduciary exception serves to uphold the principles of transparency and accountability in fiduciary relationships. Beneficiaries, as the true parties in interest, have a right to understand how decisions affecting the trust or estate are made.

This exception ensures that fiduciaries cannot hide behind attorney-client privilege to shield administrative decisions pertaining to the trust that beneficiaries generally have a right to know. This exception to the privilege is generally not applied to advice a fiduciary seeks to defend itself from claims asserted by beneficiaries. It should be noted that this exception can only apply to discovery requests of beneficiaries and not third parties, including creditors.

Importantly, not all jurisdictions recognize the fiduciary exception to attorney-client privilege. Minnesota, for example, has not formally recognized this exception even though district courts have at times effectively applied it.

Fiduciaries are strongly advised to be aware of this exception to the privilege when working with trust counsel. To avoid this potential disclosure of attorney-client communications, they can engage separate counsel to address their concerns about fiduciary liability or have the trust counsel open separate matters – one for administrative work and one for litigation to avoid a commingling of communications problem.

### **Conclusion**

Trust and estate litigation often treads the delicate line between maintaining privacy and ensuring justice. While attorney-client privilege is a cornerstone of legal confidentiality, exceptions like the testamentary and fiduciary exceptions highlight circumstances where full transparency may prevail.

For any party to a trust or estate dispute, and the attorneys advising them, awareness of these exceptions is critical. As the legal landscape continues to evolve, staying informed about the nuances of privilege and its exceptions will be essential for those navigating the complexities of trust and estate litigation.

In the end, while we strive to keep our secrets safe, the law recognizes that sometimes, the greater good requires a peek behind the curtain.

**[This article can be accessed on the Trust and Estate Litigation page at bassford.com.](#)**

# Recent Articles

## Case Law Updates

By Jessica Kometz

### Statutory Change in Immunity for Guardians

On May 24, 2024, Governor Walz approved legislation that significantly changes prior law relating to immunity for guardians. Prior to the enactment, Minn. Stat. § 524.5-313(c)(2) provided that if a guardian were to fail to meet their duty to provide for the care, comfort, and maintenance needs of the person subject to guardianship, such failure shall constitute grounds for removal. Despite being grounds for removal, “the guardian shall have no personal or monetary liability...” Now, however, that language has been removed. Instead, new language exists in Minn. Stat. § 524.5-315(e) that provides that, while the same failure shall constitute grounds for removal, “the guardian shall not be held liable for acts or omissions made in the discharge of the guardian’s duties except for acts or omissions that result in harm to the person subject to guardianship and that constitute reckless or willful misconduct, or gross negligence.” This change in liability is effective August 1, 2024 and “applies to causes of action accruing on or after that date.”



### Transfer of Interest by Intestate Succession is a Breach of a Consent-to-Transfer Clause

The appellants entered into a contract for deed with their son that contained language prohibiting the sale, assignment, or “otherwise transfer” of the son’s interest in the property without the written consent of the appellants. The appellants’ son died intestate a few years after executing the contract for deed. The personal representative of the son’s estate later informed the appellants that he intended to sell some of the property that was subject to the contract for deed. The appellants responded by cancelling the contract for deed. The district court found that the intestate transfer of the son’s interest to his own young child violated the consent-to-transfer provision in the deed and materially breached the contract for deed. The Court of Appeals reversed. The Supreme Court, however, agreed with the district court. The parties did not dispute whether a “transfer” occurred when the son died. The dispute related to whether the contract for deed required an affirmative action by the son in order to be considered a transfer. The Supreme Court indicated that there was nothing





in the consent-to-transfer provision that limited the word “transfer” to only transfers resulting from the son’s purposeful acts. Therefore, the Supreme Court held that the word “transfer” encompassed both voluntary and involuntary transfers, including those that occurred by operation of law. For this reason, the Supreme Court found that the consent-to-transfer provision was breached when the son’s interest in the farm passed to his own young child by intestate succession.

***Kuhn v. Dunn***, —N.W.3d—, No. A22-1298, 2024 WL 3168349 (Minn. June 26, 2024).

### **Testimony of Second Attesting Witness Not Required to Probate Will**

A charity petitioned to formally probate a decedent’s will—which left everything to charity and specifically excluded the decedent’s daughter. The decedent’s daughter objected on the basis that the will was not validly executed. Specifically, the will was not self-proved and contained only the decedent’s signature, the notary’s signature, and an indecipherable signature from an unknown third-party. At the hearing, a second charity presented testimony from the notary who confirmed that he signed and notarized the will. The daughter presented testimony from a handwriting expert who testified that she did not know whether the indecipherable marking was a signature, but that it could be a stylized signature. The district court admitted the will to probate and found that the charity fulfilled the evidentiary requirements for a contested proceeding relating to a will that was not self-proved. The daughter appealed. The Court of Appeals affirmed the district court and held that the district court did not misapply the law by admitting the decedent’s will to probate without extrinsic evidence about the second witness.

***In re Estate of Abrahamson***, No. A23-1127, 2024 WL 2131696 (Minn. Ct. App. May 13, 2024).

## Presentations

***Unique Evidentiary Issues, Trust and Estate Litigation Seminar***, Minnesota Continuing Legal Education, December 4, 2024 (Casey Marshall)

***Common Ethical Issues in Representing Closely Held Businesses, Lying, Cheating & Stealing Seminar, Secrets and Solutions for Handling Messy Business Disputes***, October 2024 (Casey Marshall)

***Ethical Considerations for the Use of AI by the Long-Term Care Litigator***, Defense Research Institute, September 2024 (Tal Bakke)

***Ethics: Conflicts of Interest in Representing Closely-Held Businesses***, Business Law Institute, May 2024 (Casey Marshall)





# Mechanic's Lien: A Primer



## YOU'RE INVITED

Join us for a practical, how-to seminar on mechanic's liens in Minnesota. This comprehensive workshop will cover everything you need to know about the mechanic's lien process from start to finish. This seminar is designed to equip you with the knowledge and tools to navigate the complexities of mechanic's liens effectively.

Attendees will learn crucial strategies to preserve their lien rights and efficiently collect payment for work performed or supplies provided when payment is not made.

Whether you're a contractor, subcontractor, or supplier, this seminar will provide valuable insights to protect your interests and improve your bottom line. **For those in the financial services sector, the seminar will delve into the complexities of how mechanic's lien foreclosure proceedings impact financial institutions.** Don't miss this opportunity to stay ahead in your industry and optimize your business operations.

**DATE:** Thursday, December 12, 2024

**TIME:** Noon-5:00 PM

**LOCATION:** Bassford Remele, 100 South 5th Street, Suite 1500  
Minneapolis, Minnesota, 55402  
*Complimentary parking*

### AGENDA:

- 12:00-12:30 Registration and Lunch
- 12:30-1:30 Pre-Lien Considerations
- 1:45-2:45 Foreclosure of the Lien and Trial Considerations
- 3:00-4:00 Post-Trial Enforcement and Considerations
- 4:00-5:00 Happy Hour and Networking

### Continuing Education Credit:

This course is pending approval by the Minnesota Department of Labor and Industry for 3.00 hours for Residential Building Contractor continuing education. This course is pending approval for 3.00 CLE credits in Minnesota and Wisconsin.

### REGISTRATION:

No fee to attend.

[Register here](#)







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

### Temporary Injunction Stalls Sale of Graceland. “It’s Now or Never.”

By Jessica Kometz

In early May, Nassau Investments & Private Lending LLC (“Naussany”) scheduled a non-judicial sale of Graceland based upon a deed of trust purportedly signed by Lisa Marie Presley encumbering Graceland as security for a \$3.8 million loan. Shortly thereafter, Riley Keough, Lisa Marie’s daughter, filed a lawsuit seeking to stop the sale. Riley claimed that Lisa Marie never borrowed \$3.8 million from Naussany and further claimed that the documents suggesting the contrary were forgeries. After preliminary motion practice, a Memphis court granted a temporary injunction and halted the foreclosure sale of Graceland, finding that Riley could be successful in arguing that the documents at issue were forgeries. The court further found that the public interest was best served by halting the foreclosure sale, given Graceland’s prominence in the community.

This case highlights the usefulness of temporary injunctions in the trust and estate context. The Promenade Trust, which owns Graceland, is likely the most valuable asset in Lisa Marie’s estate. Had the foreclosure sale of Graceland gone forward, not only would the valuable asset have been lost, but Lisa Marie’s Estate and the Promenade Trust likely would have been involved in substantial litigation to attempt to recover the same. Could the same tactic work in Minnesota? Possibly.

In determining whether to issue a temporary injunction, Minnesota courts weigh five factors (the *Dahlberg* factors): “(1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief”; “(2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial”; “(3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief”;



This case highlights the usefulness of temporary injunctions in the trust and estate context.

“(4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal”; and “(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.” *First & First, LLC v. Chadco of Duluth, LLC*, 999 N.W.2d 553, 557-58 (Minn. Ct. App. 2023). After weighing these factors, our office has seen district courts enter temporary injunctions in the trust and estate context, particularly in the context of the sale of unique or valuable property. Keep this tool in mind when you are navigating the administration of a trust or an estate!

Cite: <https://www.npr.org/2024/05/21/1252665511/elvis-graceland-foreclosure-sale-lawsuit-riley-keoughelvis-graceland-foreclosure-sale-lawsuit-riley-keough>

# Team Member Intro

## CASEY MARSHALL

### Where are you from?

Hawley, Minnesota.

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

I represent both fiduciaries and beneficiaries in disputes over trusts and estates. I view my primary role to be facilitating resolution, preferably by agreement from all involved.

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

I help people resolve disagreements that they can't resolve on their own.

### In 2017, you were part of a group that received the Attorney of the Year Award from *Minnesota Lawyer*. Can you tell us about that award?

I worked on a team that handled a dispute over the contamination of corn grown in the United States with GMO corn that was not approved for import into certain countries, specifically China. As a result, China stopped purchasing U.S. corn. We were able to obtain a favorable result on behalf of U.S. farmers.

### First job?

I worked on a farm.

### What did you want to be when you grew up?

A fishing guide.

### What is the best super power?

Time travel.

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

Playing guitar.

### Have you ever met anyone famous, and who?

Michael Keaton and Jeff Bridges.

### You can only eat one food for the rest of your life.

#### What is it?

This sounds horrible. I could eat eggs every day without getting tired of them, so eggs.

### What is a weird food you have tried?

I'll eat anything. Internal organs are weird, but not too bad.



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

I like Oregon and New Mexico, for different reasons. In both cases, I like the mountains.

### Favorite place you have ever visited?

Alaska.

### What is on your bucket list?

Too many things to name (or complete).

### Favorite family tradition?

Getting a Christmas tree and watching *Elf* and *Christmas Vacation* the weekend of Thanksgiving.

### Have you had your 15 minutes of fame yet?

No.

### Do you collect anything?

Vinyl records.

### Favorite season?

Fall.

### Favorite thing you've bought in the past year?

I just bought a new Dutch oven and I'm obsessed with it.

### Favorite charity you wish more people knew about?

Backcountry Hunters & Anglers.

# 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 AI has received this honor. He was also named to the Minnesota Super Lawyers and *Minnesota Monthly* Top Lawyers lists. AI 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 EVENTS



### **Mechanic's Lien: A Primer**

Thursday, December 12, 2024 | Noon-5 PM

Join us for a practical, how-to seminar on mechanic's liens in Minnesota. This comprehensive workshop will cover everything you need to know about the mechanic's lien process from start to finish.



### **SAVE THE DATE**

#### **Bassford Remele Construction Summit**

Thursday, February 6, 2025 | Noon-4 PM

[Register here](#)



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