

In Brief Presents Get to Know Us: Barna, Guzy & Steffen Family Law

Attorneys

Beverly K. Dodge

Beverly Dodge is a shareholder and focuses her practice on all aspects of Family Law. She has been practicing Family Law for over 20 years, although this area of law was not her first choice in law school. Bev says circumstances led her into doing family work and, "I wouldn't trade it for another area of practice for any amount of money now. I love my job." When not otherwise busy with her passion for Family Law or her own family, Bev enjoys 4-wheeling, reading and crossword puzzles.

Elizabeth A. Schading

Elizabeth Schading is a shareholder and specializes in Family Law. In addition to her litigation practice, Liz is a Rule 114-qualified Family Law Mediator. She also offers Parenting Time Expeditor services. Liz believes that lasting agreements are reached with compromise, through good faith mediation and negotiation. However, in those cases that simply cannot be resolved, she is a courtroom advocate well-versed in the law and is able to present your case in a straightforward, convincing fashion.

Douglas G. Sauter

Doug Sauter is a shareholder and has been repeatedly recognized as a "Super Lawyer" in Family Law. As one of Minnesota's most experienced lawyers he is known for his litigation skills and financial expertise. Doug is also a former prosecutor and represents clients facing serious criminal problems. This strong combination of skills and experience is extremely valuable for clients when a Family Law matter also involves allegations of abuse or related criminal misconduct. He has practiced for over 30 years and is also admitted to the U.S. District Court of Minnesota.

William D. Siegel

Will joined the firm in 2000 and recently became a shareholder. He focuses his practice on all areas of Family Law, including, but not limited to adoption, alimony and spousal support, custody and visitation. He was admitted to the Minnesota bar in 1997 and past employment positions include working as a clerk in the Minnesota Court of Appeals, for Hon. Randolph W. Peterson, 1997-2000. Will is also currently serving as Secretary for the Anoka County Bar Association.

Careen H. Martin

Careen joined BGS as an associate in Family Law in July of 2007. Careen is a former associate at Rider Bennett and has also worked in the Hennepin County Office of the Public Defender. She was admitted to the Minnesota bar in 2006 and the U.S. District Court of Minnesota in 2007. She is a 2006 graduate of University of Minnesota Law School, J.D., cum laude.



Back Row Left to Right:

Elizabeth Schading, Douglas Sauter, William Siegel, Terry Pahl, Loretta Moore, Jennifer Cleveland, Beverly Dodge

Front Row Left to Right: Heather Alstad, Careen Martin, Lisa Stanek, Jennifer Johnson

Paralegals

Loretta M. Moore

Loretta has worked in the legal field for over 25 years. For the past 13 years she has focused on the area of Family Law. She joined BGS along with Doug Sauter and Jennifer Cleveland with the merger of Douglas G. Sauter & Associates and Barna, Guzy & Steffen Ltd. in 2001. She currently works in conjunction with Family Law attorneys handling legal issues ranging from divorces to complex Family Law issues.

Terry R. Pahl

Terry worked for the State of Minnesota in the Administrative Law Process for 11 years. When the state systems were changed, Terry applied at BGS. At that time, BGS was looking for a paralegal in Family Law and PI. Though Terry had intended to apply for the PI position, he was an excellent match for our Family Law department and joined the team in 1999. His experience also includes 19 years as a paralegal in the U.S. Army Reserves and currently he holds the rank of Sergeant Major.

Jennifer J. Johnson

Jennifer has worked in the legal field for over thirteen years, beginning with four years of personal injury experience and spending the last nine years in Family Law. She has been with BGS since 1999. Jennifer works closely with the Family Law attorneys and clients they represent and handles a variety of Family Law matters.

Heather Alstad

Heather is the newest Paralegal at BGS. She currently also attends the University of Minnesota School of Social Work-Saint Paul Campus where she is a first year Direct/Clinical practitioner student. She graduated from Hamline University with a B.A. in Legal Studies with a minor in Political Science. For the past four years she has been an active Hennepin County Guardian ad Litem to the Juvenile Court system. Heather became interested in Family Law because of the direct impact and services provided to clients and how those services help clients lead healthy and productive lives.

Secretaries

Jennifer L. Cleveland

Jennifer began working in the legal profession as Deputy Clerk of Court in Pennington County. Marriage led her to the Twin Cities metro area and she eventually began working as a secretary with Doug Sauter in 1988. When Doug's firm merged with BGS' in 2001, Jennifer came along and has been working with the Family Law team or over 6 years now. She enjoys working with a compassionate team whose focus is helping clients with personal legal issues.

Lisa L. Stanek

Lisa began working as a legal secretary in 1987 and has worked at 5 different law firms over the past 20 years. She joined the team at BGS in 2006 and enjoys working in the Family Law and Criminal sections of our firm. "I feel working in a law firm is very fulfilling and offers new interesting work on a continual basis," says Lisa.

IN BRIEFSM

Identifying and Proving Your Non-Marital Property

By Careen H. Martin



Clients involved in a divorce usually have a lot of questions about how property will be divided in the dissolution. Perhaps the wife bought the house before the marriage and never put the husband's name on the deed. She thinks the house belongs solely to her. Or maybe the husband had a separate bank account which was in his name only during the marriage. He thinks all the money in the account belongs to him. In dissolutions, there are only two types of property, regardless of whose name is on the account or which spouse actually paid for the property. There is marital property and there is non-marital property. The question then becomes whether property is marital or non-marital.

All property acquired during the term of the marriage is marital property subject to division in a dissolution, unless the property falls under one of the categories of non-marital property. Non-marital property is defined by Minnesota Statute § 518.003, subd. 3b:

- "Non-marital property" means property, real or personal, acquired by either spouse before, during, or after the existence of their marriage, which
 - (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;
 - (b) is acquired before the marriage;
 - (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), and (e);
 - (d) is acquired by a spouse after the valuation date; or
 - (e) is excluded by a valid antenuptial contract.

Property which fits in any of these categories is classified as non-marital, and is not subject to division in a dissolution. This seems relatively straight-forward. However, many assets will often have both marital and non-marital components, like a house purchased before a marriage, but with a mortgage paid off after the marriage with marital funds. In cases such as these, the burden of proof to prove the non-marital interest is upon the party seeking the non-marital designation. This means that the person seeking to have the property

declared non-marital will have to prove the non-marital status by tracing the property back to pre-marital times or to a gift or inheritance.

The marital versus non-marital question often arises when one spouse deposits non-marital funds into a joint bank account. Depositing non-marital funds into a joint bank account does not necessarily mean the property becomes marital. If an individual can show a "readily traceable" tie between the non-marital deposit and the purchase of an asset, the individual has a good chance of proving his non-marital claim. For example, if a couple gets married and the wife deposits \$5,000 of her non-marital funds into a joint account, then withdraws a similar amount to buy furniture for the new house, there is a good chance of proving the non-marital aspect of the asset. However, since it is up to the wife to prove her non-marital claim, she would need to provide bank statements and receipts to show her deposit, withdrawal, and asset purchase.

Non-marital tracing can also arise with parents' gifts to a spouse, or to both spouses. For example, say the husband's parents give the couple money. If the check is made out to the husband only, that is strong evidence for proving the gift is non-marital. If the check is made out to both the husband and the wife, a court will be more likely to find the gift is marital. Testimony regarding the intent of the donor or other relevant facts can also affect whether or not a court will find the gift to be non-marital.

Home ownership is yet another area where non-marital tracing plays a significant role in the division of assets during dissolution. For example, if an individual owns a home before marriage and then continues to make payments on the home after marriage, the individual will be given the benefit of the increase in her investment resulting from housing market appreciation. To determine the non-marital interest, courts rely on what is called the Schmitz percentage, named after a Minnesota Supreme Court case. The Schmitz percentage is the non-marital payment divided by the original cost. Original cost means either the cost of the home when purchased, if during the marriage, or the fair market value of the home as of the date of marriage if purchased before the marriage. To illustrate, say a person bought a house before marriage for \$100,000 and put \$10,000 down. The Schmitz percentage would be 10 percent. The person's non-marital

interest would be the Schmitz percentage (10 percent) of the current fair market value. If the current fair market value of the home is \$200,000, the person's non-marital interest would be 10 percent of \$200,000, or \$20,000.

Another consideration is if capital improvements have been made to the home. Capital improvements are improvements such as an addition or a new garage. Capital improvements are not repairs, appliances, curtains, etc. If capital improvements have been made to the home with marital assets, the non-marital interest is the Schmitz percentage divided by the current market value, less the cost of the improvements. Using the above example, if the current value of the home is \$200,000, but the parties spent \$10,000 on an addition, the non-marital interest would be 10 percent of \$190,000, or \$19,000.

Again, the burden of proof to prove a non-marital interest is on the party asserting the interest.

Therefore, it is helpful to have certain evidence to trace a non-marital interest on a home purchased before the marriage. Closing statements, checks, or check registers can show the amount of money paid in. It will also be necessary to have an appraisal to show the fair market value as of the date of marriage and the current fair market value. Since most people do not have their homes appraised when they get married, sometimes a tax statement can be used to determine the value as of the date of marriage. Independent fee appraisers can also be used to establish fair market value at the time of marriage.

When a home is purchased during the marriage using non-marital funds, an individual will need the closing statement or purchase agreement and canceled checks to show the non-marital contribution. The individual will also need to have savings account records, investment records, evidence of inherited funds received during the marriage, or evidence of a gift received during the marriage (a canceled check or a gift tax return) to show that the money used to purchase the home was non-marital.

Non-marital property questions also come up quite frequently in retirement accounts and pension plans. Defined benefit pension plans which were earned in part before the marriage are partly non-marital and partly marital. Usually the number of years worked to earn the pension during the marriage is compared to the number of years worked before or after the marriage to determine the ratio. Thus, if an individual worked for a company 10 years before marriage and 20 years after marriage, the marital value of the pension would be the value of the pension multiplied by 2/3.

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Identifying and Proving Your Non-Marital Property *(Continued from page 1)*

Retirement plans such as IRA/SEP accounts, 401(k) plans, Keogh plans, and profit sharing plans can be easily valued as of a given date by the plan administrator. The value as of the date of marriage is the non-marital value. The increase from the date of marriage to the present is the marital value. Where capital gains can be determined separate from the interest or dividend income, the non-marital interest is the value as of the date of marriage, plus the capital appreciation of the assets as of the date of marriage up to the present.

Under certain circumstances, the non-marital value of the retirement asset is the value of what would be in the plan at present if the participant

had made no contributions during the marriage. However, the case on which this rule is based, the White case, limited the rule to cases where the increased value of the funds was not available to the parties as a liquid asset and the participant's role was passive with respect to fund growth. Therefore, many courts might find that the rule does not apply to 401k plans.

In dissolutions, all assets earned or acquired during the term of the marriage are subject to equitable division. What this means is that a court will divide the assets fairly, but not necessarily equally. Generally, the only assets that are not subject to division are non-marital assets.

Therefore, the value of your non-marital assets can substantially affect the final property division in your dissolution. To maximize your non-marital claims it is important to keep receipts, bank statements, cancelled checks, closing statements, and other financial documents. It is also important to hire a knowledgeable attorney to help you identify and prove your non-marital claims.

Careen Martin is an associate at BGS practicing in Family Law. If you have any questions regarding this article please contact Careen at 763-783-5193.

Why Mortgage Fraud Hurts Us All *By Thomas P. Malone*



In the Summer In Brief newsletter, I described some of the types of mortgage fraud being found in today's market. I suspect many read the article and then put it down, thinking that mortgage fraud has nothing to do with them. This assumption is wrong; mortgage fraud affects each

of us and it is important for everyone to be aware.

At first glance the fraud seems only to affect a few, mainly the mortgage company. Though it may admittedly be hard to find sympathy for a mortgage company, consider that, like all corporations, it is composed of people who have spouses who love them and children to raise into adulthood.

But mortgage fraud's wounds go far deeper than only the mortgage company or the mortgagor who eventually gets foreclosed. As anyone who has been watching the stock market can attest, mortgage fraud hurts anyone with investments or a 401k. The recent huge losses in the stock market are, at least in large part, attributable to the surge of mortgage foreclosures, which in significant part are the result of fraud of one type or another.

Mortgage fraud also hurts communities. It adversely impacts the tax base of the city and creates areas of empty houses, which in turn cause chaos and decay in the neighborhood.

Nearly every house in Minnesota that is the subject of foreclosure may also be delinquent in the payment of property taxes on that house. This diminishes the collection of taxes and reduces the tax base for the community. Less taxes collected means less money for the city to spend on infrastructure, schools, parks and all the other things that make communities viable and exciting places to live. Further, most houses which are the subject of foreclosure sit, at least for some period of time, empty. That alone attracts problems such as decay and intrusion by those who may not have the best interests of the neighborhood at heart.

Then too, a large number of vacant houses can drive down property values in the surrounding neighborhood. Beyond the obvious esthetic considerations, the excess of vacancies creates more supply, and increased supply with static demand drives prices down. The current depression in housing can be seen as a classic situation in which supply has overwhelmed demand which in turn has caused prices to "tank."

So the current spate of mortgage foreclosures, caused in part by fraud on a very large scale, is depressing tax bases, causing panic in the financial markets which in turn is depressing investment accounts and is also causing an increase in the housing market supply which in turn is lowering prices of other properties on the market. In addition, the glut of foreclosures has caused a loss of "players" in the mortgage industry as many of them

simply go out of business. This will make mortgages harder to get which will lessen "effective demand;" look for housing prices to go lower still. Those who elect to "ride it out" in their present houses may be victimized by a declining neighborhood caused by the surplus of empty, deteriorating homes surrounding them, which in turn may attract criminal and nuisance elements.

In short, nothing good for any of us can come out of mortgage fraud. We all need to band together and stop it. What can we do? All of us can be alert to the signs: rapidly "flipping" houses, exaggerated appraisals, deals that seem "too good to be true." We can avoid being involved in such deals ourselves and think in terms that "we are all in this together," instead of "everyone for himself." We can also alert authorities if we are approached by people who promise us "a free lunch." Becoming aware of and helping to stop mortgage fraud when we can, will help keep ourselves, our neighbors and our neighborhoods from becoming victims of scam artists who's main objective is to take money and run. This money may not come out of your pocket directly, but the negative effects of mortgage fraud will cost us all in the end.

Thomas Malone is a shareholder at BGS practicing in Litigation and Employment Law. If you have questions regarding this article and/or the growing problem of mortgage fraud, please contact Tom at 763-783-5134

Now Is the Time to Look at Child Support *By Elizabeth A. Schading*



It's time to take a look at your child support, either how much you pay, or how much you receive.

Minnesota law has changed, and child support is now calculated using both parents' incomes. Having a non-joint child in your home is now also considered, as is the payment of spousal maintenance. The amount of

parenting time is also a factor.

As of January 1, 2008, the new calculations apply to everybody. So, if applying the new formula results in a child support order that is a change of at least 20% and at least \$75.00 of what you pay or receive now, up or down, you may request a modification.

Child support will be based on gross income, not net. To do the calculation, you will need to know your gross income, and the gross income of the other parent. The law has not changed in regard to exclusion of current spouse's income.

You will also need to know how much the health and/or dental insurance costs for the children. Thus, if you carry family insurance, you will need to know how much the insurance would cost just for a single employee, so the difference for the children's portion can be segregated out and inserted in the formula. The formula calculates each parent's contribution to the payment of the premium, and well as the percentage of contribution to the payment of the children's uninsured medical and dental expenses.

(Continued on Page 3)

Child Support *(Continued from page 2)*

The cost of child care is still used in the formula, and each party's contribution to the payment of child care costs becomes part of total support.

The custody label, either sole physical custody or joint physical custody, does not determine the amount of support. Now, actual parenting time matters in the calculation. For the most part, it's based on overnights. Most non-custodial parents will fall into the 10% to 45% parenting time adjustment of 12%. If your parenting time is less than 10%, there is no adjustment. If parenting time is between 45.1% to 50% for both parents, then parenting time is considered equal, and a significant adjustment will be made.

Children born of other relationships are factored into the formula. The calculation considers the amount of child support you pay for non-joint children, and it will also give a credit for up to two non-joint children who reside in your home.

The Family Law attorneys at Barna, Guzy & Steffen, would be happy to do these calculations for you. If you make an appointment for a child support review, you will need:

- Current paycheck stubs for both parties, or some other verification of gross income

Your Car is Sinking: Now What? *By John T. Buchman*



The recent tragedy of the 35W bridge collapse and the floods in southeast Minnesota remind us all of unexpected dangers we face. Many of us have wondered, at one time or another, what would we do if our car ended up under water.

While it is relatively rare, experts indicate that 300 people die each year in this country when their cars ended up under water. I have checked a number of sources and, while experts differ, the most consistent advice was as follows:

- 1. Don't panic.** I know this is easy to say when someone is sitting behind a desk coming up with advice and much harder when you are the one in the car that is sinking. However, it is absolutely essential to have a plan in mind and keep your head clear.
- 2. Roll down your windows as soon as you can.** While many people are afraid to allow more water in, an open window is the easiest way to get out of a car. Most power windows will work until the car has been in the water for several seconds.
- 3. Do not try to open up the door right away.** The surrounding water pressure is greater than the pressure inside the vehicle and you will only waste energy and air and increase a feeling of being panicked by trying to open the door too soon. Every source I checked indicated to wait until the car is half full of water or more before trying to open up the door. Scientists indicate that once the car is partially full of water, the pressure will be equalized and it is

- Information on cost of child care
- Knowledge of the cost of health and dental insurance, with enough information so that the children's portion of the premium can be determined
- Knowledge of the amount of child support that is being paid for non-joint children
- Knowledge of the number of court-ordered overnights, or the amount of significant court-ordered non-overnight parenting time
- Knowledge of the amount of court-ordered spousal maintenance paid in this proceeding, or paid in any previous proceeding
- It would be helpful to provide a copy of the child support order which is currently in effect

If you are calling for an appointment, please request an initial consultation for a child support review.

Elizabeth Schading is a shareholder at Barna, Guzy & Steffen, Ltd. and practices in Family Law. She specializes in divorce, custody and support, Parenting Time Expediting, and Family Law Mediation. To contact Liz Schading please call 763-783-5144.

easier to open up the door.

4. Many experts suggested packing a tool in the car in a stable, secure location so it doesn't move (perhaps a glove box) to break a window to create an escape path. Some specialized tools are available commercially. Sources identify "Life Hammer™" and "Res-Q-Me Tool™" as examples. Many automobile parts stores will have similar tools. These can be used to break the window and/or cut out your seatbelt. The experts also recommend not trying to break the windshield which is generally made of thicker, harder glass but rather breaking a side or rear window.

Keep in mind that experts also indicated that the vehicle usually sinks from the front end first due to the heavier weight of the engine and a vehicle may rotate or twist as it sinks. Some experts recommended keeping your hand on a door or steering wheel to keep your bearings in the vehicle as it sinks and perhaps rotates.

Hopefully, you will never need to use this advice. However, here in Minnesota with ice fishing and other winter activities that often bring us out on to the frozen lakes, it is probably good to spend a few moments thinking about what you would do in case you or your loved ones end up in deep water.

John Buchman is a shareholder at Barna, Guzy & Steffen, Ltd. and practices in the areas of Personal Injury and Products Liability. John has over 20 years of experience handling complex cases. If you would like more information regarding the above article or any personal injury request, please call John directly at 763-783-5121 or email jbuchman@bgs.com

BGS PEOPLE

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Riann O. Meyer

Law Clerk/Personal Injury

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Small Enough to Know You*

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