

DOING BUSINESS QUESTIONNAIRE

U.S.A - MINNESOTA

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The information contained in this document is current as of August, 2009.

I. BACKGROUND

Please list a few useful numbers and web sites such as the Secretary of State, the clerks of the State and Federal Courts and the State Development Authority.

Minnesota Business Resources

State Government	See website for directory	www.state.mn.us
Secretary of State	651-296-2803	www.sos.state.mn.us
Judicial Branch	651-296-2581	www.courts.state.mn.us
Attorney General	651-296-3353	www.ag.state.mn.us
Legislative	See website for directory	
House	651-296-2146	www.house.leg.state.mn.us
Senate	651-296-0504	www.senate.leg.state.mn.us
Department of Employment and Economic Development	651-259-7114	www.deed.state.mn.us
Business Publications	Online	www.minnesotasbao.com/publications.htm

Unemployment Insurance Employer Account Number	Online	www.uimn.org
Department of Commerce	651-296-4026	www.commerce.state.mn.us
Licensing Division	651-296-6319	
Securities Registration	651-296-4973	
Department of Labor and Industry	651-284-5005	www.doli.state.mn.us
Department of Health	651-201-5000	www.health.state.mn.us
Department of Public Safety	651-201-7000	www.dps.state.mn.us
Alcohol & Gambling Enforcement	651-201-7500	www.dps.state.mn.us/alcgamb/alcenf/alcenf.html
Department of Revenue	See website for directory	www.taxes.state.mn.us
Minnesota Tax Number	Online	www.mndor.state.mn.us/er/ctrl/WelcomeController
Department of Agriculture	651-201-6000	www.mda.state.mn.us
Department of Motor Vehicles	See website for directory	www.dps.state.mn.us/dvs

Please also explain how the state statutes are designated.

State statutes are organized by chapters and sections. Chapters are grouped according to their broad subject matter. For example, Chapters 300 to 319B relate to Corporations and Chapters 321 to 323A relate to Partnerships.

Within each broad grouping, individual chapters pertain to specific subjects (i.e., Chapter 302A relates to Business Corporations, Chapter 303 relates to Foreign Corporations and Chapter 309 relates to Social and Charitable Organizations).

Each chapter is comprised of sections. Each section further drills down to the specific subject matter. For example, in Chapter 302A Business Corporations, Section 302A.111 pertains to Articles, Section 302A.115 pertains to Corporate Name and Section 302A.121 pertains to Registered Agent and Registered Office.

Online Minnesota statutes are available at: www.leg.state.mn.us

Throughout this guide, Minnesota Statutes will be represented by Minn. Stat.

II. Business Entities

1. What are the common forms of business entities?

- a. Corporations (Minn. Stat. Chapters 302A and 303)
- b. Nonprofit Corporations (Minn. Stat. Chapter 317A)
- c. Limited Liability Companies (Minn. Stat. Chapter 322B)
- d. Partnerships (Minn. Stat. Chapter 323A; Uniform Partnership Act of 1994)
- e. Limited Partnerships (Minn. Stat. Chapter 321; Uniform Limited Partnership Act 2001)
- f. Sole Proprietorships

2. What are the requirements for formation of each?

- a. Corporation:

Registration as a corporation requires articles of incorporation to be filed with the Minnesota Secretary of State. The articles of incorporation must include: (i) the name of the corporation; (ii) the address of the registered office of the corporation and the name of the registered agent, if any, at that address; (iii) the aggregate number of shares that the corporation has authority to issue; and (iv) the name and address of each incorporator. Other statutory provisions that govern a corporation can only be modified in the articles of incorporation or in a shareholder control agreement (refer to Minn. Stat. § 302A.111).

The corporation must obtain a federal employer identification number (“FEIN”) from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue. Both of these tax identification numbers can be obtained using the online applications at:

www4.irs.gov/modiein/individual/index.jsp

www.mndor.state.mn.us/er/ctrl/WelcomeController

The corporation must also register with the Minnesota Department of Employment and Economic Development after first wages are paid.

- b. Non-Profit Corporations:

Registration as a non-profit corporation requires articles of incorporation to be filed with the Minnesota Secretary of State. The articles of incorporation must include: (i) the name of the corporation; (ii) the address of the registered office of the corporation and the name of the registered agent, if any, at that address; (iii) the name and address of each incorporator; and (iv) a statement that the corporation is organized under Chapter 317A. Other statutory

provisions that govern a non-profit corporation can only be modified in the articles of incorporation or in the bylaws (refer to Minn. Stat. § 317A.111).

The non-profit corporation must obtain a FEIN from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue. Refer to Corporations above for tax information website links. The non-profit corporations must also register with the Minnesota Department of Employment and Economic Development after first wages are paid.

c. Limited Liability Companies (“LLC”):

Registration as an LLC requires articles of organization to be filed with the Minnesota Secretary of State. The articles of organization must include: (i) the name of the LLC; (ii) the address of the registered office of the LLC and the name of the registered agent, if any, at that address; (iii) the name and address of each organizer; and (iv) a statement of the period of existence for the LLC if other than perpetual duration. Other statutory provisions that govern an LLC can only be modified in the articles of organization or a member control agreement (refer to Minn. Stat. § 322B.115).

The LLC must obtain a Minnesota tax identification number from the Minnesota Department of Revenue and a FEIN from the Internal Revenue Service, unless the LLC is a single-member LLC, it elects to be taxed as a sole proprietor, does not have employees, is not required to file tax information returns, does not have a retirement plan for themselves and is not required to pay federal excise tax. In this case, a social security number is sufficient to use as the FEIN. Refer to Corporations above for tax information website links. A Minnesota LLC must also register with the Minnesota Department of Employment and Economic Development after first wages are paid, unless the LLC is not required to file tax information returns, does not have employees, does not make taxable sales or it does not owe use tax on purchases.

d. Partnerships:

A general partnership is the association of two or more persons who carry on as co-owners a business for profit, whether or not the persons intend to form a partnership. A general partnership is governed by Minn. Stat. Chapter 323A, also referred to as the Uniform Partnership Act of 1994. (Refer to Minn. Stat. § 323A.0202 to determine whether a partnership is formed.) A statement of partnership may be filed with the Minnesota Secretary of State. Refer to Minn. Stat. § 323A.0303 for the rules governing the statement of partnership. The general partnership must register its business name as an assumed name with the Minnesota Secretary of State.

The general partnership must obtain a FEIN from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue. Refer to Corporations above for tax information website links. The general partnership must also register with the Minnesota Department of Employment and Economic Development after first wages are paid and obtain all necessary business licenses and permits.

e. Limited Partnerships (“LP”), Limited Liability Partnerships (“LLP”), and Limited Liability Limited Partnerships (“LLL”):

Registration as an LP requires a certificate of limited partnership to be filed with the Minnesota Secretary of State. The certificate of limited partnership must include: (i) the name of the LP, which must comply with Minn. Stat. § 321.0108; (ii) the street and mailing address of the designated office and the name, street and mailing address of the agent for service of process; (iii) the name, street and mailing address of each general partner; (iv) whether the LP is an LLLP; and (v) any additional information required by Article 11 of the Uniform Limited Partnership Act 2001.

Organization of an LP may include adoption of a partnership agreement, which governs the relations among the partners and between the partners and the partnership. Refer to Minn. Stat. § 321.0110 for additional provisions regarding a partnership agreement.

The LP must obtain a FEIN from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue. Refer to Corporations above for tax information website links. The LP must also register with the Minnesota Department of Employment and Economic Development after first wages are paid and obtain all necessary business licenses and permits.

Registration as an LLP requires a Limited Liability Partnership Statement of Qualification to be filed with the Minnesota Secretary of State. The Statement of Qualification must include the partnership name, the address of the principal place of business (if the business does not have an office in Minnesota, then the name and address of the agent of the partnership in Minnesota) and a statement that the partnership elects to be an LLP. Refer to Minn. Stat. Chapter 323A for additional provisions.

LLPs and LLLPs are subject to the same tax requirements as an LP.

f. Sole Proprietorships:

There are no statutory requirements to form a sole proprietorship. However, sole proprietorships must obtain a FEIN from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue if the business has employees, even if those employees are family members. Refer to Corporations above for tax information website links. Sole proprietorships must also register with the Minnesota Department of Employment and Economic Development after first wages are paid, provide workers' compensation insurance, register for sales and use tax and obtain all necessary business licenses and permits.

3. What are the less common forms of business entities, e.g. business trusts?

Less common forms of business entities include:

- a. Limited Liability Partnerships (Minn. Stat. Chapter 323A; Uniform Partnership Act of 1994)
- b. Professional Firms (Minn. Stat. Chapter 319B)

- c. Cooperatives and Cooperative Associations (Minn. Stat. Chapters 308A and 308B)

4. What are the requirements for formation of these?

- a. Limited Liability Partnerships:

Refer to section 2(e) above for registration requirements and other information related to Limited Liability Partnerships.

- b. Professional Firms:

Professional firms are subject to the law under which the entity is formed in Minnesota and also subject to the Minnesota Professional Firms Act, Minnesota Statutes, Chapter 319B. Formation documents or a later amendment to the original formation documents must be filed with the Minnesota Secretary of State to elect to invoke the Minnesota Professional Firms Act. Refer to Minn. Stat. § 319B.03 for additional information. Governance of professional firms is governed by the same statutes as non-professional firms under which they are formed. The difference is a professional firm may provide services provided under the Minnesota Professional Firms Act, Minn. Stat. § 319B.02, subd. 19.

- c. Cooperatives and Cooperative Associations:

Registration as a cooperative requires articles of incorporation to be filed with the Minnesota Secretary of State. The articles of incorporation must include general and specific information about the cooperative. Refer to Minn. Stat. § 308A.131 for the provisions. Registration as a cooperative association requires articles of organization to be filed with the Minnesota Secretary of State. The articles of organization must include: (i) the name of the cooperative; (ii) the purpose of the cooperative; (iii) the name and address of each organizer; (iv) the duration of the cooperative if it is not perpetual duration; and (v) the designated registered office and agent of the cooperative. Refer to Minn. Stat. Chapter 308B for addition provisions.

Cooperatives must obtain a FEIN from the Internal Revenue Service and a Minnesota tax identification number from the Minnesota Department of Revenue. Refer to Corporations above for tax information website links. Cooperatives must also register with the Minnesota Department of Employment and Economic Development after first wages are paid and obtain all necessary business licenses and permits.

5. What is required to be filed with the State in order to be in good standing, e.g. names of officers, directors, partners, etc.?

- a. Corporations:

Domestic and foreign corporations are required to file an annual renewal by December 31 with the Minnesota Secretary of State. Corporations in good standing can file online at online.sos.state.mn.us/abr/corp_annual_filing.asp. Required information includes the corporation name, registered office address, registered agent and the principal office address, the

name and business address of the chief executive officer and a check-off if the corporation owns, leases or has a financial interest in agricultural land or land capable of being farmed.

b. Nonprofit Corporations:

Non-profit corporations are required to file an annual renewal by December 31 with the Minnesota Secretary of State and can file online at online.sos.state.mn.us/abr/corp_annual_filing.asp. Required information includes the corporation name, registered office address, registered agent and the principal office address, the name and business address of the corporate president and a check-off if the corporation owns, leases or has a financial interest in agricultural land or land capable of being farmed.

c. Limited Liability Companies (“LLC”):

LLCs are required to file an annual renewal by December 31 with the Minnesota Secretary of State and can file online at online.sos.state.mn.us/abr/corp_annual_filing.asp. Required information includes the LLC name, registered office address, registered agent and the principal executive office address, the name and business address of the chief manager and a check-off if the LLC owns, leases or has a financial interest in agricultural land or land capable of being farmed.

d. Limited Partnerships (“LP”), Limited Liability Partnerships (“LLP”) and Limited Liability Limited Partnerships (“LLL”):

LPs and LLPs are required to file an annual renewal by December 31 with the Minnesota Secretary of State. An LP can file online at online.sos.state.mn.us/abr/corp_annual_filing.asp. Required information includes the LP or LLP name, chief executive office address (i.e., the principal place of business), registered agent and registered office address and a check-off if the LP owns, leases or has a financial interest in agricultural land or land capable of being farmed. LLLPs have no reporting requirements in addition to those required of LPs.

e. Cooperatives:

Cooperatives formed under Minn. Stat. Chapter 308A and cooperative associations formed under Minn. Stat. Chapter 308B are required to file a periodic registration by December 31 each odd numbered year with the Minnesota Secretary of State and can file online at online.sos.state.mn.us/abr/corp_annual_filing.asp. Required information includes the cooperative name, registered agent and registered office address, address of the principal place of business, name and address of the chief executive officer and a check-off if the cooperative owns, leases or has a financial interest in agricultural land or land capable of being farmed.

6. What industries are heavily regulated, e.g. banking, insurance?

Contact the Minnesota Department of Commerce for additional information about the following regulated industries:

Appraisers, athletic agents, banks, credit unions, trusts, collection firms, debt related services, financial lenders, franchises, insurance, money transfer services, mortgage originators and servicers, real estate, securities and telecommunications.

Alcohol is regulated by the Minnesota Department of Public Safety Alcohol and Gambling Enforcement and Minn. Stat. Chapter 340A.

The above list of regulated industries is not intended to be all-inclusive. Other industries do and may require licenses and permits to conduct business in Minnesota.

7. What are the significant consumer protection laws?

Consumer protection is provided under Minn. Stat. Chapters 325F and 325G. The Minnesota Attorney General's office is also the chief policy maker and enforcer of Minnesota's consumer protection laws.

III. Tax Matters

1. What are the applicable state law provisions regarding significant business and personal tax, such as:

a. Corporate Income Tax:

Minnesota Income and Finance Tax, Chapter 290, Minn. Stat. §§ 290.01 *et seq.*

Corporations carrying on a trade or business in, or deriving income from sources in Minnesota are required to pay an annual franchise tax on the corporation's taxable net income and alternative minimum taxable income for the taxable year.

The franchise tax rate is currently 9.8%. Minn. Stat. § 290.06.

In addition, corporations are subject to a minimum fee of between \$100 and \$5,000 if the sum of the corporation's Minnesota property, payroll and sales exceeds \$500,000.

b. Stock or Franchise Tax:

As discussed above, Minnesota imposes a franchise tax on corporations doing business in Minnesota measured by taxable net income and alternative minimum taxable income. In addition, if the sum of the corporation's Minnesota property, payroll and sales is in excess of \$500,000, the corporation is subject to a minimum fee.

c. Sales and Use Tax:

Minnesota General Sales and Use Taxes, Chapter 297A, Minn. Stat. §§ 297A.61 *et seq.*

Except as specifically provided to the contrary, Minnesota imposes a sales tax on the gross receipts from sales at retail of tangible personal property, or the lease or rental of tangible personal property, and on the furnishing of specified services.

Effective July 1, 2009, the sales and use tax rate is 6.875%. Minn. Stat. § 297A.62.

d. Property Taxes, real and personal:

The general provisions concerning property tax in Minnesota are set forth in Chapter 272, Minn. Stat. §§ 272.01 *et seq.* Minnesota property taxes are assessed, levied and collected at the local level. All real property in Minnesota is taxable unless otherwise exempt. Intangible property, inventory and most personal property are not subject to property tax in Minnesota.

e. Mortgage or Document taxes:

Minnesota Mortgage Registry Tax; Deed Tax, Chapter 287, Minn. Stat. § 287.01 *et seq.*

A deed tax is imposed on each deed or instrument by which any real property in Minnesota is granted, assigned, transferred or otherwise conveyed. Minn. Stat. § 287.21. The tax applies to the net consideration. When the net consideration exceeds \$500, the deed tax is 0.0033 of the net consideration (.0034 for Hennepin County (Minneapolis and surrounding suburbs) and Ramsey County (St. Paul and surrounding suburbs)).

A tax is imposed on the privilege of recording a Mortgage. The tax rate is 0.0023 of the debt or the portion of the debt that is secured by the mortgage (.0024 for Hennepin County (Minneapolis and surrounding suburbs) and Ramsey County (St. Paul and surrounding suburbs)). The tax is imposed on the Mortgager. Minn. Stat. § 287.035

f. Other Transfer Taxes:

None

g. Estate, Probate, Inheritance Taxes:

Minnesota estate tax, Chapter 291, §§ 291.005 *et seq.*

2. What, if any, are the other taxes of significance to business entities?

S corporations and entities taxed as partnerships that are doing business in Minnesota are subject to a minimum fee of between \$100 and \$5,000 if the sum of the entity's Minnesota property, payroll and sales exceeds \$500,000. *See* Minn. Stat. § 290.0922.

IV. Property Law:

1. What are the types of ownership estates in real property?

Minnesota recognizes a variety of estates in real property, which estates are set forth in Minn. Stat. §§ 500.01-500.30. In most Minnesota commercial and residential real estate transactions, the estate transferred is fee simple absolute, leasehold, or easement.

2. What are the common forms of deeds?

In Minnesota, the most common forms of deeds are warranty deed, quit claim deed, and limited warranty deed. A basic form of a warranty deed and a quit claim deed is found in Minn. Stat. § 507.07. Minnesota's legislature recently created transfer on death deeds, which are intended for estate planning. Transfer on death deeds (described in Minn. Stat. § 507.071) allow a deed to be recorded without an immediate conveyance. Instead, the recorded transfer on death deed will effectively convey real property upon the death of the property's owner unless revoked before such death by a recorded revocation instrument.

3. What type of estate is created by the grant of a mortgage?

Minnesota recognizes the lien theory of real estate security.

4. What special provisions should or must be included in mortgages?

A statutory short form of mortgage is contained in Minn. Stat. § 507.15. All mortgages must contain the requisite information and content to comply with Minnesota's Real Property Recording Act (Minn. Stat. §§ 507.0941-507.47). In addition, mortgages must contain: (i) granting language (e.g. "grant, bargain, sale, release and convey"), (ii) the "initial amount of the debt" pursuant to Minn. Stat. § 287.03, (iii) a power of sale clause pursuant to Minn. Stat. § 580.01 (which should empower the lender to foreclose by action or advertisement), (iv) the maturity date of the secured debt, (v) a list of events of default, (vi) an acceleration clause, and (vii) a fixture financing statement. If the mortgage secures a construction loan, an affirmative statement that the mortgage "is a construction loan as that term is used in Minn. Stat. § 336.9-313(1)(c)" should be inserted. Other standard mortgage covenants and clauses should also be included.

5. Will deeds or mortgages executed in another State be accepted for recording and be enforceable?

Yes, provided that such instruments comply with Minnesota's Real Property Recording Act (Minn. Stat. §§ 507.0941-507.47).

6. What is the process for recording transfer documents?

Minnesota real property is either registered (Torrens) or not registered (abstract). Original transfer documents for Torrens property must be filed with the county's registrar of titles. Original transfer documents for abstract property must be filed with the county's recorder. The transfer document must be accompanied (in most cases) by a Minnesota Certificate of Real Estate Value, a payment of county recording/filing fee, and a payment of state deed tax. A well disclosure statement may also be required under Minn. Stat. §1031.235.

7. Describe the mechanic's lien process.

Strict compliance with Minn. Stat. §§ 514.01 – 514.221 governing notice, process, filing and sale requirements is required to perfect, maintain and foreclose on any mechanic's lien rights.

8. How are liens created in personal property?

Liens in personal property generally arise under Minnesota law in one of three ways: (1) consensual liens arise by agreement (governed by Article 9 of the Minnesota UCC); (2) statutory liens arise in accordance with applicable state or federal statutes (e.g. tax liens); and (3) judgment liens arise at the time of levy upon the personal property. There are myriad statutory liens (also known as secret liens), so a listing of such liens in this outline is not practical. For a more detailed discussion of Minnesota statutory liens please see Chapter 16 of the Debtor Creditor Handbook and Formbook by James Baillie (Ninth Edition, Minnesota Continuing Legal Education, 2008). The mechanics of levying on personal property (and therefore giving rise to a judgment lien) under Minnesota law depends upon the type of personal property. For a more detailed discussion of levying on specific types of personal property please see Chapter 6 of the Debtor Creditor Handbook and Formbook.

9. Are there significant non-uniform provisions of your State's version of Article 9 of the UCC?

Minnesota's version of Article 9 of the UCC does not contain significant non-uniform provisions.

V. Environmental Law

1. What agency or agencies regulate environmental compliance?

The Minnesota Pollution Control Agency ("MPCA") has the primary responsibility for enforcing state environmental statutes and regulations (www.pca.state.mn.us). The Minnesota Department of Natural Resources ("MDNR") is responsible for enforcing natural resource laws (www.dnr.state.mn.us).

2. What steps are necessary to accomplish the sale of:

a. Real estate?

There are no mandatory statutory environmental investigation or transfer clearance requirements in Minnesota. Parties in commercial real estate transactions often perform environmental due diligence on real property prior to closing, including a Phase I Environmental Site Assessment and, where necessary, Phase II investigation. Phase II investigation may trigger statutory agency reporting requirements. Regulatory assurances can be obtained from the MPCA for approved investigation or cleanup work within approximately 3-12 months after completion of investigation or work.

b. An ongoing business?

In addition to assessment and investigation of real property, as noted above, environmental due diligence involving an ongoing business often includes regulatory review of operational permits, including for example, regulatory compliance status and transfer or re-issuance requirements.

3. What is the time necessary to obtain such approvals?

Time frames necessary to transfer environmental permits vary depending upon the permit. Environmental permits involving more technical requirements, e.g., air emission permits, require lengthier advance notice to the applicable regulatory agency.

4. What are the administrative enforcement or appeal processes available?

The MPCA and MDNR have both administrative and judicial remedies, including penalty assessment and civil/ criminal enforcement.

VI. Labor and Employment

1. Are there whistle blower or similar laws?

An employer may not discharge, discipline or discriminate against an employee because the employee or a person acting on behalf of an employee reported in good faith a violation or suspected violation of any federal or state law to an employer or to any governmental body or law enforcement official. An employer may also not discipline, discharge or discriminate against an employee for refusing to participate in any activity that the employee believes violated any state or federal law, rule, or regulation. *See* Minn. Stat. § 181.932, subd. 1.

2. Are there State anti-discrimination laws that supplement or complement federal laws?

The Minnesota Human Rights Act provides that it is an unfair employment practice for any employer to refuse to hire or maintain a system of employment which unreasonably excludes a person seeking employment, discharge an employee, or discriminate against a person with respect to hiring, tenure, compensation terms, upgrading conditions facilities, or privileges of employment based upon race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age. *See* Minn. Stat. § 363A.08, subd. 2.

3. What are the basic laws regarding wages, vacation pay and sick pay?

Employers must pay minimum wages and overtime pay to certain employees for hours worked. Because the Federal Fair Labor Standards Act (“FLSA”) covers employees of enterprises whose workers are engaged in interstate commerce, or handle, sell or otherwise work on goods or materials that have been moved in or produced for interstate commerce, most employers and employees in Minnesota are governed by FLSA. Even if the employer assumes that its business is covered under FLSA, the employer still needs to be aware of Minnesota provisions if such provisions are more favorable to the employee.

Minnesota employers also are not required by law to provide vacation time to their employees; however, paid vacations are almost universally provided to employees. Employers should notify employees how vacation days accrue, whether vacation days can be carried over from year-to-year, and whether vacation is forfeited if unused at the end of the year.

Many employers also permit employees to accrue a certain number of sick days per year. The employers are advised to publish this policy and to also indicate whether sick days may be carried over year-to-year or whether they are forfeited if unused at the end of the year. In addition, the employer should clearly indicate that there will be no pay for unused sick days at termination of employment, if that is the employer's policy.

4. Is there a State family leave law?

Yes. An employer employing 21 or more employees at a single worksite is considered a covered employer. An individual who has worked for at least one year for the employer and worked at least half-time in the twelve-month period preceding the leave will be considered an eligible employee. Leave can be taken in conjunction with (a) the birth or adoption of a child ("parental leave"); or (b) the illness or injury of a child, where the employee's attendance with the child is necessary and consistent with the employer's sick leave policy for employees ("sick childcare leave"). See Minn. Stat. §§ 181.940, subd. 2; 181.9413, subd. 1.

5. What is the current law with respect to wrongful discharge?

Minnesota recognizes the rule of employment at-will, which means that in the absence of a collective bargaining agreement or other employment contract, an employer can discharge an employee at any time for any legal reason, with or without malice, and the employee can resign at any time for any reason, with or without notice. Although most employees are employed at-will and can be terminated for any legal reason, they cannot be terminated for an illegal, discriminatory, or retaliatory reason, such as a violation of the Minnesota Human Rights Act, the Americans with Disabilities Act or the Minnesota Fair Labor Standards Act.

6. Are polygraphs, drug tests or other pre-employment screenings permitted?

Under Minnesota law, employers may not directly or indirectly request or require an applicant or current employee to take a polygraph, voice stress analysis, or any other test purporting to test the honesty of the applicant or employee. See 29 USC 2002 *et seq.* (2007); Minn. Stat. § 181.75, subd. 1. This prohibition relates to tests which measure physiological changes and does not apply to written honesty tests. See State by Spannaus v. Century Camera, Inc., 309 N.W. 2d 735 (Minn. 1981).

Minnesota employers may require a job applicant to undergo a drug and alcohol test if the job offer has been made to the applicant and the same test is required of all applicants conditionally offered employment for the same position. See Minn. Stat. § 363A.08, subd. 6. The employer must have a written drug and alcohol testing policy which contains information required under Minnesota law.

7. What provisions are enforceable and unenforceable in non-competition agreements and restrictive covenants?

Confidentiality obligations and agreements to assign inventions are almost always included in non-compete agreements. Such agreements are enforceable against former employees and independent contractors. See Webb Publ's. 6 v. Fosshage, 426 N.W. 2d 445

(Minn. App. 1988). Because Minnesota law generally disfavors non-compete agreements, it is important that the language in each contract be appropriately drafted to protect the specific interest of the employer in each circumstance. If there is a question about the fact of, or adequacy of, consideration, the agreement may not be enforceable unless the employee signs a new agreement promising not-to-compete and receives new consideration. Courts determine if restrictions are reasonable in scope and time based on their evaluation of individual contracts. When restrictions are determined to be overly broad, a court may modify the agreement by substituting reasonable geographical scope and time limitations. *See Davies & Davies Agency, Inc. v. Davies*, 298 N.W. 2d 127 (Minn. 1980). In egregious cases of employer overreaching, the courts will refuse to enforce a non-reasonable agreement at all.

8. What are the State law requirements in the case of a plant closing or other mass layoff?

Plant closings, substantial layoffs or relocations of operations are subject to the Federal Worker Adjustment and Retraining Notification (“WARN”) Act. In addition, Minnesota employers must report to the Minnesota Commissioner of Employment and Economic Development names, addresses and occupations of employees affected by plant closings, substantial layoffs or relocation of operations. *See* Minn. Stat. § 116L.976.

9. For what employment related obligations can officers and directors be held liable?

The law controlling companies incorporated in Minnesota generally holds that the shareholders, officers and directors owe duties of good faith and loyalty to each other and to the corporation. *See* Minn. Stat. §§ 302A.251, subd. 1, 302A.361. Frequently, these duties are described as being “fiduciary” in nature. In making decisions regarding the conduct of business matters, it is therefore important for the controlling officers, directors and shareholders to evaluate, on a case-by-case basis, whether their chosen course of action may violate any of their duties to the shareholders or to the corporation.

VII. Intellectual Property

1. What are the State laws applicable to trade secrets?

Minnesota Trade Secrets Act, Minn. Stat. §§ 325C.01 *et seq.*, is the state's version of the Uniform Trade Secrets Act. The preclusion provision preempts many common law claims, except for breach of contract.

2. What are the State laws applicable to trade names?

State deceptive trade practices, consumer fraud, and unfair competition laws would be "applicable" to trade names. Also, Minnesota has a state "name challenge" procedure, which is statutory, where if someone is given a corporate name by the Secretary of State that you think is confusingly similar to yours, you can challenge it in an administrative proceeding before the Secretary of State, and it is appealable *de novo* to the district court.

3. Are there other State laws that apply to intellectual property?

The inventor's statute, Minn. Stat. § 181.78, provides that an employer cannot require an employee to assign or offer to assign his invention if no employer equipment or investment is used and the employee is working in his/her own time. The body of common law related to non-competition agreements might apply, as well. Minnesota is a blue pencil state.

Minnesota trademark law is found at Minn. Stat. §§ 333.20 *et seq.* Trade name registrations are covered by the same provisions (Minn. Stat. § 333.20 and § 333.21). There are provisions regarding acquiring common law rights (Minn. Stat. § 333.30), fraudulent use and registration (Minn. Stat. § 333.44), and damages due to false statements (Minn. Stat. § 333.27).

4. How do such laws interact with Federal laws relating to intellectual property?

Patent and copyright are preempted by Federal Law. Minn. Stat. Sec. 181.78 requires specific language in order to assign inventions in hired-to-invent agreements. The federal Computer Fraud & Abuse Act interacts with the state trade secrets statute. The federal Lanham Act borrows its limitations period from comparable state law (in Minnesota, this is called the "Deceptive Trade Practices Act").

VIII. Dispute Resolution

1. Describe the court structure of your State.

An individual looking for information about the structure of the Minnesota judiciary can be found at the website www.mncourts.gov. The following information is excerpted from this website.

There are three levels of courts in the Minnesota judicial system: the trial court, the Court of Appeals and the Minnesota Supreme Court. A trial court is located in the county seat of each county. A number of counties also have satellite courts to handle the large caseload of urban areas. At the trial court level, different divisions serve different public needs. They are: conciliation, juvenile, probate, criminal, civil, and family court. Conciliation court is sometimes called the people's court, or small claims court. In this court there are no attorneys. Cases can be appealed from the trial court level to the Minnesota Court of Appeals, which was created as the state's error-correcting court. The Court of Appeals has 19 judges who are appointed by the governor, then elected to six-year terms. This court does not re-try cases, but looks at the record to review what happened at the trial, to see if any errors were committed.

The seven justices of the Minnesota Supreme Court review cases from the Court of Appeals, the Workers' Compensation Court of Appeals, the Tax Court, the Lawyers' Professional Responsibility Board and the Board of Judicial Standards. Election contests and first-degree murder cases are automatically appealed to the Supreme Court. The Supreme Court is not required to hear all the cases before it, and will often let a previous judgment stand. The Supreme Court reviews matters on certiorari, meaning it reviews cases to set precedent, to clarify legal issues, to resolve statutory conflicts, and to answer constitutional questions.

There are also federal courts located in Minnesota. These courts hear cases involving federal questions. The federal system is organized much like the Minnesota system. Appeals from the federal district court are heard in St. Louis, and then can be appealed to the U. S. Supreme Court.

2. Please identify any specialized courts.

Minnesota Tax Court (www.taxcourt.state.mn.us)

Minnesota Workers' Compensation Court of Appeals
(www.workerscomp.state.mn.us)

3. Is there an automatic stay of judgment during the appeal period or must a stay be sought and granted?

"Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceedings in the trial court but the appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve," in the type of cases specified in Minn. R. Civ. App. P. 108.

4. Are bonds or other forms of surety required a) for appeals or b) in connection with other actions?

In order to prevent enforcement of judgment during the pendency of an appeal, a bond or some other form of security is typically required. *See* Minn. R. Civ. App. P. 108. In addition, parties are typically required to post a bond when moving for injunctive relief such as a temporary restraining order unless a reason to be approved by the court exists alleviating the need for the security.

5. How are legal actions commenced?

A civil action is commenced against each defendant (a) when the summons is served upon that defendant, or (b) at the date of acknowledgement of service if service is made by mail, or (c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on the defendant or the first publication thereof is made. *See* Minn. R. Civ. P. 3.01

6. Are there rights and remedies available to a plaintiff pre-judgment?

In certain circumstances, earnings or monetary non-earnings may be garnished prior to entry of judgment if no answer has been interposed e.g. the debtor/defendant is in default 40 days after the service of the Summons and Complaint. In addition, in certain circumstances, a plaintiff may obtain pre-judgment attachment against the property of a debtor.

7. Do the Federal Rules of Civil Procedure apply to state court actions?

A district court in Minnesota will typically use the Minnesota Rules of Civil Procedure when deciding procedural issues. From time to time, if a state rule is silent on an issue, the state court may look to analogous federal law as instructive.

8. What is the discovery process?

Parties are permitted to take depositions, and make requests for admissions, written interrogatories and documents. The scope of permissible discovery allowed in civil actions in Minnesota courts is defined by Minn. R. Civ. P. 26-37.

9. How are cases assigned, geographically and by judge?

Cases are assigned in the county in which they are brought. At any given time, judges at the district/trial court level are handling a civil or criminal block of cases. Cases are assigned in each county by lottery.

10. What is the average length of time from commencement of an action to trial?

The timeframe for any civil action can vary significantly depending upon the complexity of the action. As a general rule of thumb, a standard general commercial litigation lawsuit may take 12-13 months from commencement to trial. The National Center for State Courts has published information regarding case processing time standards (CPTS) for Minnesota and other states. Information regarding CPTS can be found at the website www.ncsconline.org/cpts/cptsState.asp.

11. What is the expected cost of litigation?

The cost of litigation for a civil action can vary considerably and is contingent upon the several factors, including but not limited to the subject matter and complexity of the matter, number of parties, and the degree of discovery and motion practice the parties engage in, in addition to the length of the trial and whether the trial is a jury or bench trial. A general commercial lawsuit could range anywhere from \$75,000 to several hundred thousand dollars or more depending on these factors.

12. What procedures exist to encourage pre-trial resolution, e.g. imposing costs on the losing party, offers of judgment, ADR, etc.?

Except in certain circumstances provided by statute, Minnesota follows the general "American" rule of law regarding fees, whereby parties are responsible for their own fees regardless of the outcome of the lawsuit. Parties are required to identify to the court their preferred method of alternative dispute resolution when providing their information statements. If the parties cannot agree on a form of alternative dispute resolution, the parties will often be ordered to participate in mediation at some point in the case prior to trial.

13. Describe the foreclosure process: procedure, extent of court involvement, time, cost, defenses, ability to evict occupants, etc.

Lenders may foreclose on mortgages in default using either a judicial or non-judicial foreclosure process. The judicial process, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage, the lender desires to obtain a deficiency judgment or there is some other title issue that needs to be addressed by a court. Generally, after the court declares a foreclosure, the property will be auctioned off to the highest bidder.

Non-Judicial Foreclosure:

The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage and the value of the property appears adequate to cover the amount of the debt. A “power of sale” clause is the clause in a mortgage in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. Where such a power of sale exists, the sale of property may be executed by the lender. The time, place and terms of sale are as specified in the mortgage. However, a non-judicial foreclosure may only occur if: 1) no lawsuit to collect on the mortgage is already underway; 2) the mortgage and any assignments of the mortgage to new lenders have been recorded; and 3) a notice has been given six weeks before the foreclosure.

Foreclosure generally proceeds as follows:

1. A notice of sale containing the borrower and lender(s) name, the original loan amount and current amount of default, the date of the mortgage, a description of the property and the time, place and date of the foreclosure sale, must be served upon junior lienholders requesting notice and published for six weeks in the county where the property is located.
2. The sheriff of the county in which the property is located must conduct the sale on the date specified in the notice of sale. The property is sold to the highest bidder, who will receive a certificate of sale.
3. The debtor or junior lienholders will have a period to redeem the property from the sale by paying the amount of the sheriff’s certificate.

Note that there are additional provisions for foreclosure of homestead and agricultural land. *See* Minnesota foreclosure statutes at Minn. Stat. Chapters 580, 581 and 582.

14. What are the limitation periods for common causes of action, e.g. tort, intentional tort, contract?

Statutes of limitation for breach of contract and general torts like fraud and misrepresentation are six years. *See* Minn. Stat. § 541.05 which provides a six year statute of limitation for various types of actions. Statutes of limitation for libel, slander and actions for recovery of wages are two years. *See* Minn. Stat. § 541.07 which provides two- or three-year statute of limitation for various types of actions. There are many different statutes of limitation

for different torts and causes of action and the Minnesota Statutes and a local attorney should be consulted for limitation questions.

15. How broadly do your courts interpret jurisdiction?

Minnesota Courts interpret jurisdiction pursuant to Minn. Stat. § 543.19 and within the bounds of the Minn. R. of Civ. Pro.

16. Are punitive damages available? What are the standards and limitations?

Punitive damages are controlled by Minn. Stat. § 549.20, which provides that they may be awarded in certain circumstances.

17. Is there an "unfair trade practice" or similar law that permits damages to be multiplied?

Minnesota has a uniform deceptive trade practices law, Minn. Stat. § 325D.45, which allows parties to seek their attorneys' fees and costs for a violation in addition to remedies otherwise available against the same conduct under the common law or other statutes of the state. In addition, there are numerous other specific statutes for similar unfair or deceptive trade practice violations.

18. What are the procedures for *pro hac* admission?

Counsel not licensed to practice in the State of Minnesota must associate with counsel licensed to practice in Minnesota. *Pro hac vice* admission is accomplished by the filing of a motion with the district court in which the non-Minnesota-licensed attorney seeks to be admitted. Once admitted *pro hac vice*, however, the attorney must remain associated with Minnesota-licensed counsel, and the general rules of practice require that the Minnesota-licensed counsel (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel. A template Motion for Admission *Pro Hac Vice* form may be found at www.mncourts.gov/rules/general/GR_Tit.I_form5_1-1-07.pdf. Additional information regarding *pro hac vice* admission in Minnesota may be found at Minnesota Rules of Appellate Procedure, Rule 143.05, subd. 1. Admission Required; Admission *Pro Hac Vice* (www.courts.state.mn.us/rules/appellate/rcap.htm#a14305) and Minnesota District Court Rules of Practice, Rule 5. Appearance by Out-of-State Lawyers (www.courts.state.mn.us/rules/general/GRtitleI.htm#g5).

19. Is there a reputation or description that applies to your juries generally?

Jury reputations can vary from district to district and court to court.

IX. Creditors Rights

1. How are judgment liens created and enforced on real and personal property?

A judgment does not become a lien on personal property until the time of levy upon the property. *See* Minn. Stat. § 548.10. Any personal property capable of manual delivery must be levied upon by an officer taking it into custody. The sheriff levies upon personal property by leaving a copy of the writ of execution in a notice specifying the property levied on with the person holding it; or if a debt with the judgment debtor; or, if stock or an interest in stock in a corporation, with its president, secretary, treasurer, cashier, officer or managing agent.

A judgment becomes a lien on real property at the time the judgment is docketed in the county, except that the lien is not effective upon Torrens property until filed with the appropriate registrar of titles. *See* Minn. Stat. § 548.09. If real property has been attached and judgment rendered in favor of the plaintiff, the writ of execution may also direct the sale of the judgment debtor's interest in the real property. If the writ is for delivery of possession of real or personal property, it requires the officer to deliver the property to the party entitled thereto and to satisfy any costs, charges, damages, rents or profits recovered in the action out of the property of the defendant.

2. What are the exemptions available to individuals?

Several exemptions are available to individuals in Minnesota to protect all or a portion of their assets against collection activities. Minn. Stat. §§ 510.02, 510.07, and 550.37. Homeowners in Minnesota are eligible for a homestead exemption of up to \$300,000, whether joint or individual or up to \$750,000 farm (homestead). Minn. Stat. § 510.02.

Various personal property exemptions also exist, such as \$4,000 per person for one motor vehicle and up to \$9,000 for household goods and wearing apparel, including furniture, appliances, phonographs, and electronics. Minn. Stat. § 550.37. In addition, all earnings not subject to garnishment by the provisions of Minn. Stat. § 571.922 are exempt. Minn. Stat. § 550.37, subd. 13. Accordingly, the maximum earnings subjected to garnishment may not exceed the lesser of (1) 25% of the debtor's disposable earnings; or (2) the amount by which the debtor's disposable earnings exceed the following product: 40 times the federal minimum hourly wage in effect at the time the earnings are payable times the number of work weeks in the pay period. Minn. Stat. § 571.922. Finally, there is an unlimited exemption for public assistance and the earnings of a person who receives public assistance based on need. Minn. Stat. § 550.37, subd. 14.

3. How are foreign judgments enforced?

Minnesota has generally adopted the Uniform Enforcement of Foreign Judgments Act (Minn. Stat. §§ 548.26 to 548.33), which provides that a judgment, decree or order of a court in the United States or of any other court is entitled to full faith and credit in the state of Minnesota.

A foreign judgment may be enforced by filing with the office of the court administrator of any county a certified copy of the foreign judgment along with an affidavit

stating the name and last known post office address of the judgment debtor and the judgment creditor. As soon as the foreign judgment and affidavit have been filed, the court administrator is required to mail notice of the filing of the foreign judgment to the judgment debtor at the address given and note the mailing in the docket.

4. What are personal exposures of officers and managers of corporations and LLCs?

Generally, under Minnesota law, officers, directors, members, and managers are not liable for corporate debts. Officers or managers, however, may be exposed to personal liability in the scenarios discussed below.

- a. Minnesota courts will enforce personal guaranties of corporate debt.
- b. Under the doctrine of “piercing the corporate veil” or “alter ego,” Minnesota courts may hold an officer or manager liable for corporate debts if he fails to maintain separation between his individual and corporate personalities and disregards the formalities of corporate existence under Minnesota law. There is statutory liability for shareholders of corporations and members of limited liability companies who receive an illegal distribution. Minn. Stat. §§ 302A.557, 322B.55.
- c. Under Minnesota law, there is statutory liability for shareholders of corporations and members of limited liability companies who receive an illegal distribution. Minn. Stat. §§ 302A.557, 322B.55.
- d. Under Minnesota law, there is statutory liability for directors of corporations and governors of limited liability companies who consent or fail to vote against a distribution that causes the corporate entity to become insolvent or unable to pay its debts as they become due. Minn. Stat. §§ 302A.559, 322B.56.

5. Are there any unusual theories under which third parties, e.g. affiliated entities, lenders have been held liable for the debts of others such as "deepening insolvency," "joint venturer," etc.?

Under Minnesota law, deepening insolvency is not a recognized form of corporate damage. In general, Minnesota courts require four elements to establish a joint venture: (1) contribution by both parties; (2) joint proprietorship and control; (3) sharing of profits, but not necessarily losses; and (4) a contract, express or implied. Under joint venture law, any of the participants in a joint venture are subject to liability and obligations of the joint venture as a whole. This theory typically arises where a corporation has not been organized or the circumstances do not establish a technical partnership. Minnesota courts have held a lender can become an undisclosed principal or agent of another company where the lender takes over the day-to-day management of the business. Under these circumstances, a lender may become liable for obligations incurred in the ordinary course of business.