

**CHAPTER 8098**  
**DEPARTMENT OF REVENUE**  
**INCOME TAX DIVISION**  
**INDIVIDUAL HOUSING ACCOUNTS**

**NOTE:** The Young Family Housing Act, Minnesota Statutes 1982, section 290.08, subdivision 25, was repealed by Laws of Minnesota 1983, chapter 342, article 1, section 44. Minnesota Statutes 1982, section 290.01, subdivisions 20a, clause (18), and 20b, clause (21), relating to individual housing accounts, were deleted pursuant to Laws of Minnesota 1983, chapter 342, article 1, sections 3 and 4. As of August 1, 1983, the Minnesota Department of Revenue was in the process of repealing some or all parts of this chapter.

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**8098.0100 DEFINITIONS.**

Subpart 1. **IHA.** The term "IHA" shall mean an individual housing account established pursuant to parts 8098.0100 to 8098.1000 and the Young Family Housing Act.

Subp. 2. **Participant.** The term "participant" shall mean an individual natural person for whose exclusive benefit an IHA is held. In the case of an IHA held jointly for an individual and his or her spouse, the term shall mean both of them.

Subp. 3. **Deposit.** The term "deposit" shall mean a deposit or contribution of cash to an IHA, whether made by the participant or any other person.

Subp. 4. **Withdrawal.** The term "withdrawal" shall mean a withdrawal or distribution of any amount from an IHA, whether withdrawn by or distributed to the participant or any other person or entity.

Subp. 5. **Principal residence.** The term "principal residence" shall mean the dwelling unit that the participant actually lives in and that the participant intends to be his/her fixed abode. A principal residence shall require both a physical presence in the dwelling unit and an intention to make that dwelling unit one's home. A principal residence shall be that dwelling unit to which, during an absence, the participant intends to return and from which there is no present intention of moving. There shall be a presumption that the dwelling unit in which a person's family lives is that person's principal residence.

The dwelling unit must be located within Minnesota and may be all or part of a house, townhouse, condominium, or cooperative. If a building contains more than one dwelling unit, only the dwelling unit actually occupied by the participant as his/her residence shall qualify as a residence. If a portion of the building is used for some purpose other than as a dwelling unit, for example, a portion of a building is used for a trade or business, only the portion used as a dwelling unit shall be considered a residence. The purchase price of such a building shall be properly allocated between the dwelling unit and the business portion of the building.

The participant may purchase the residence with others, for example, in joint tenancy, tenancy in common, or as a tenant-stockholder in a cooperative housing corporation. In this case, the dwelling unit shall qualify as a residence only to the extent of the participant's ownership interest therein.

In order to qualify for any of the benefits of the IHA provision, the residence must be the first dwelling unit ever owned and occupied by the participant as his/her own permanent residence. A taxpayer who previously

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owned or currently owns his/her own residence, whether located in Minnesota or in any other state or country, shall not qualify.

**Statutory Authority:** *MS s 290.52*

### **8098.0200 GENERAL REQUIREMENTS.**

**Subpart 1. Establishment of trust.** An IHA shall be a trust established in Minnesota for the exclusive benefit of a participant or, in the case of a married person, for the exclusive benefit of the participant and the participant's spouse, jointly.

**Subp. 2. First principal residence.** An IHA shall not be established or maintained for a participant who currently owns or formerly owned a principal residence, whether or not it is (was) located in Minnesota.

**Subp. 3. Participation limitations.** An IHA shall not be established or maintained for a participant who is currently the participant of another IHA. An individual shall not have two IHA's at one time. However, an IHA may be established for an individual who had an IHA at some time in the past but which was terminated and not used for the purchase of a first principal residence.

**Subp. 4. Contents of trust agreement.** (For recommended format of trust agreement, see part 8098.0900.) The IHA trust shall be established pursuant to a written trust agreement which shall contain, in addition to any other provisions, a separate provision for each of the trustee's duties prescribed in part 8098.0300 and a statement that the trustee agrees to comply with the law and rules applicable to IHA's.

**Subp. 5. Disclosure statement; contents.** (For recommended format of disclosure statement, see part 8098.1000.) The disclosure statement shall set forth in nontechnical language the income tax consequences of establishing an IHA, the limitations and restrictions on the program, and other matters as follows:

A. The ineligibility of individuals who own or have owned a residence.  
B. The deductibility of deposits to an IHA, the \$1,500, \$2,500, and \$10,000 maximum limitations, and the requirement that the amount be on deposit for six months before a deduction is allowed.

C. The tax treatment of a withdrawal from an IHA when the amount withdrawn is used for any purpose other than the purchase of a first principal residence if it is located in Minnesota.

D. The requirement that the first principal residence be purchased within ten years from the date that the account was first established.

E. An explanation of the additional taxes that may be due (in addition to the regular tax liability) on withdrawals not used for the purchase of a first principal residence.

F. An explanation of the additional taxes that may be due (in addition to the regular tax liability) on excess contributions as well as an explanation of what constitutes an excess contribution.

G. The availability of a tax free transfer of the account to a different financial institution or credit union and an explanation of what constitutes such a transfer.

H. If the IHA is revocable within seven days after establishment, as provided in part 8098.0300, subpart 1, item F, the disclosure statement shall include a statement of the circumstances under which the participant may revoke the account and the procedure therefor, including the name, address, and telephone number of the person designated to receive the notice of revocation. This explanation shall be prominently displayed at the beginning of the disclosure statement.

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I. A statement that the trustee is authorized by law to act as trustee of IHA's and has received approval to so act from the commissioner of banks or is not required to obtain such approval.

J. A statement that the trustee will abide by all laws and rules applicable to trustees of IHA's.

K. A statement that it is the participant's responsibility to assure that the financial institution is authorized by law to act as trustee of IHA's and that the particular account set up for that participant meets all of the requirements of the law and parts 8098.0100 to 8098.1000.

L. A statement that upon audit of the participant's income taxes by the Department of Revenue, if it is found that the account or the trustee do not meet all of the requirements of the law and parts 8098.0100 to 8098.1000, the deductions under this program may be denied.

Subp. 6. **Penalty for failure to furnish disclosure statement.** If the trustee does not furnish a disclosure statement as required by parts 8098.0100 to 8098.1000 or furnishes one that does not substantially comply with parts 8098.0100 to 8098.1000, he shall be liable to the commissioner for a penalty of \$10 for each required disclosure statement that he did not furnish or that did not comply with parts 8098.0100 to 8098.1000. A disclosure statement that is false or misleading shall not be considered to comply with parts 8098.0100 to 8098.1000.

Subp. 7. **Trustee of IHA's.** A financial institution or credit union may act as the trustee of of IHA's only if it meets the requirements of the law and parts 8098.0100 to 8098.1000 and either it has received approval to so act from the commissioner of banks or it is not required to obtain such approval.

A financial institution or credit union, in order to act as a trustee of IHA's, must actively make residential real estate mortgage loans in Minnesota. This means that the particular financial institution or credit union must originate mortgage loans in Minnesota on Minnesota real estate by lending money to the original mortgagor and taking a mortgage back as security for the loan. The mere holding of Minnesota mortgages, obtained in the secondary market by an institution that does not originate such loans, does not qualify.

Furthermore, the institution shall, subject to the availability of funds for such purpose, regularly throughout the year be ready and willing to make residential real estate mortgage loans in Minnesota. Whether or not an institution is actively engaged in making such loans shall be determined by reference to the general market conditions affecting all real estate mortgage lenders, rather than by the actual number of such mortgage loans made by the particular institution during a particular period of time. The fact that there is no mortgage money available or that the interest rate is so high that no one desires a mortgage loan shall not, alone, prevent a financial institution from being a trustee. The fact the institution seeking approval to administer IHA's made no such loans during a period of time while other financial institutions were making such loans shall be evidence that the particular financial institution is not actively making residential real estate loans in Minnesota.

Subp. 8. **Information for the commissioner.** The participant shall, upon request of the commissioner, submit copies of the trust agreement and disclosure statement and such other evidence as the commissioner may request to establish whether or not the particular IHA meets the requirements of the law and parts 8098.0100 to 8098.1000. None of the tax benefits of the IHA provisions shall be available to a participant who is unable to show that both the IHA and the trustee meet the requirements of the law and parts 8098.0100 to 8098.1000.

**Statutory Authority:** *MS s 290.52*

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## 8098.0300 DUTIES OF TRUSTEE.

Subpart 1. **In general.** In general:

A. The trustee shall accept only cash deposits to an IHA. No other property shall be accepted in an IHA trust, such as stocks, bonds, notes, debentures, mutual funds, real estate, or otherwise.

B. The trustee shall not accept deposits to an IHA in excess of \$2,500 for a single taxable year or in excess of \$10,000 for all taxable years.

C. The trustee shall not establish an IHA for an individual unless he receives a written statement from the individual indicating that the individual does not currently own and has never owned his/her own principal residence, whether in Minnesota or in any other state or country.

D. The trustee shall distribute the entire account to the participant within ten years after the first deposit to the account. Transfer of the entire amount in the IHA into a different account, which is not an IHA, shall constitute such a distribution but the transfer shall be treated as a withdrawal not used for the purchase of a first principal residence, as provided in part 8098.0600, and the trustee must withhold tax as prescribed by subpart 3.

E. For each withdrawal, the trustee shall withhold tax as prescribed by subpart 4 unless it verifies in accordance with parts 8098.0100 to 8098.1000 that the withdrawal is being used for the purchase of a first principal residence that is located in Minnesota and makes the instrument of payment payable to the seller or the seller's designee (other than the participant), construction contractor, or other vendor of the property. If only a portion of the withdrawal will be used for the purchase of a first principal residence, tax shall be withheld on the portion that will not be so used. This item is not applicable to a withdrawal attributable to disability or death which is verified in accordance with parts 8098.0100 to 8098.1000.

F. The trustee at least seven days prior to the establishment of an IHA shall provide a written disclosure statement in accordance with parts 8098.0100 to 8098.1000 and a copy of the governing instrument to each person who proposes to establish an IHA with the trustee. In the alternative, the trustee may provide the written disclosure statement to the participant at the time that the IHA is established, but only if the trust agreement provides that the trust shall not constitute an IHA for seven days following execution of the agreement, during which period of time the grantor may revoke the trust.

G. In the case of an amendment to the terms of the account or trust agreement, whether or not made pursuant to a statutory or rule change, a revised disclosure statement shall be furnished to the participant. The revised statement need not repeat material furnished in a prior statement, but it must set forth those matters affected by the amendment.

H. The trustee may invest assets of the trust only in savings or time deposits. Certificates of deposit shall qualify as savings or time deposits. The savings or time deposits must be the trustee's own accounts or certificates; investment in accounts or certificates of other institutions is not permitted. The savings or time deposits must be fully insured by an agency of the state or federal government. Assets of an IHA trust shall not be invested in any other types of assets, e.g., stocks, bonds, notes, debentures, mutual funds, or otherwise.

I. The trustee may commingle funds held in IHA trusts for purposes of investment but the trustee shall maintain individual records on each IHA in accordance with parts 8098.0100 to 8098.1000.

Subp. 2. **Annual report.** The trustee shall file a report with the commissioner of revenue by February 28 of each year for each IHA administered by him at any time during the preceding calendar year, including the following information on each IHA:

A. Name, address, and such other identifying information of the trustee as the commissioner may prescribe.

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- B. Name, address, and social security number of the participant(s).
- C. Date account was established.
- D. Whether a withdrawal was used for the first purchase of a principal residence in Minnesota. If so, the trustee shall submit with this report the verification form required under subpart 1, item C.
- E. Whether a withdrawal was claimed to be attributable to death or disability. If so, the amount thereof shall be indicated and the trustee shall submit with this report the written declaration required under part 8098.0800.
- F. Date and amount of each deposit during the preceding calendar year.
- G. Date and amount of each withdrawal during the preceding calendar year.
- H. Amount of interest paid, accrued, or credited to the account during the preceding calendar year.

One copy of the report shall be filed with the commissioner of revenue; two copies shall be furnished to the individual participant.

**Subp. 3. Report and verification of withdrawals.** Before allowing a withdrawal from an IHA, the trustee shall either withhold tax as prescribed by subpart 4, or verify that the withdrawal is being used for the purchase of a first principal residence that is located in Minnesota (unless the trustee determines in accordance with part 8098.0800 that the account holder has died or become disabled). The verification shall be supplied on a form prescribed by the commissioner which is completed by the participant and filed with trustee. The following information shall be included on the form:

- A. location and description of property being purchased;
- B. name and address of person or entity from whom the property is being purchased;
- C. name of realtor, closing company, etc., if any;
- D. type of ownership anticipated, i.e., whether title will be held alone, as tenancy in common, joint tenancy, or cooperative;
- E. total purchase price, including any mortgages or contracts given or assumed;
- F. amount to be financed, i.e., amount to be paid later than closing date, whether by mortgage, contract for deed, or otherwise;
- G. anticipated closing costs and description thereof;
- H. closing date;
- I. amount withdrawn from the account during the taxable year;
- J. portion of amount withdrawn which will be used to purchase the first principal residence;
- K. the person or entity to whom the withdrawal or distribution is to be made payable;
- L. name and address of trustee; and
- M. name, address, and social security number of participant.

The trustee shall file a copy of this form with the commissioner of revenue at the time that he files the annual information return for the particular account.

**Subp. 4. Withholding requirements.** The trustee shall withhold tax in an amount equal to ten percent of the amount of any withdrawal and remit the amount within ten days to the commissioner of revenue unless the trustee satisfies one of the following requirements:

- A. verifies in accordance with parts 8098.0100 to 8098.1000 that the withdrawal is used for the first purchase of a principal residence located in Minnesota, and makes the withdrawal payable to the person or entity from whom the residence is being purchased, either alone or jointly with the participant; or

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B. verifies in accordance with parts 8098.0100 to 8098.1000 that the participant has died or is disabled; or

C. determines that the withdrawal is of an excess contribution and is withdrawn by the due date of the tax return for the taxable year in which the excess contribution was made.

The trustee shall be personally liable for the amount of any tax required to be withheld under this subpart.

**Subp. 5. Failure to file; penalties.** For each instance in which a trustee fails to timely file or furnish a report or return required by parts 8098.0100 to 8098.1000 with either the commissioner of revenue or with the individual participant, a penalty of \$10 shall be due from the trustee and shall be paid to the commissioner of revenue.

**Statutory Authority:** *MS s 290.52*

### 8098.0400 DEDUCTION FOR CONTRIBUTIONS TO AN IHA.

**Subpart 1. Maximum deduction.** The annual deduction for deposits to an IHA shall not exceed \$1,500. Moreover, the total amount of all deductions for deposits to an IHA that may be claimed by the participant and his spouse in all taxable years shall not exceed \$10,000. These limitations shall not apply to amounts deducted which constitute interest accrued on the IHA.

**Subp. 2. Deduction for accrued interest.** An additional deduction shall be allowed for interest accrued on the IHA during its ten-year existence. However, no deduction shall be allowed for the portion of any interest which is attributable to an excess contribution, as defined in part 8098.0700. And no deduction shall be allowed for interest paid or accrued after the termination of the IHA.

**Subp. 3. Deductions for amounts already excluded.** No deduction shall be allowed under the IHA provisions for any amounts which have already been excluded from gross income or deducted in computing taxable income whether under federal law or under another provision of state law. A taxpayer shall not deduct or exclude the same item twice. For example, if an unmarried participant excludes \$200 of interest income, earned from an IHA, in computing federal adjusted gross income under the federal provision allowing a partial exclusion of dividend and interest income received by individuals, he cannot take a deduction for the same \$200 of interest under the IHA provisions. If more than \$200 of interest was credited to his IHA during the taxable year, he may deduct the excess over \$200 under the IHA provisions.

**Subp. 4. Deduction of interest expense.** To the extent that a deposit is deductible under parts 8098.0100 to 8098.1000, no deduction shall be allowed for interest expense in connection with a loan the proceeds of which are deposited to the IHA.

**Subp. 5. Time of deposit.** The deduction shall be allowed only for amounts on deposit for at least six months at the close of the taxable year. For calendar year taxpayers, the deposit must have occurred prior to July 1 of the taxable year.

Amounts on deposit for less than six months at the close of the taxable year may be deducted only in the next succeeding taxable year and shall be included when determining the \$1,500 maximum deduction amount for that next succeeding taxable year. Thus, a deduction not exceeding \$1,500 is allowed for deposits to an IHA in the last six months of the preceding taxable year or in the first six months of the current taxable year.

The deduction for interest paid or accrued on an IHA shall be allowed only for interest paid or accrued during the taxable year. Thus, for a deposit made during the last six months of a taxable year, the interest paid or accrued during

the last six months of the taxable year shall be allowed as a deduction for that taxable year even though the deposit itself is not deductible until the next taxable year.

Subp. 6. **Deductions for married participants.** Married participants shall not each get a \$1,500 deduction for each taxable year. The sum of the deductions, not including interest, allowed to the two married participants shall not exceed \$1,500. This rule shall apply whether the married participants file separately on separate forms, separately on a combined form, or jointly.

For married participants who file separate returns, only the individual to whom the money that is deposited actually belongs shall be allowed the deduction. For married participants who file separate returns on a combined form or who file joint returns, the deduction shall be allowed to the spouse to whom the money that is deposited actually belongs or the deduction may be divided between them as they elect.

Married participants shall not each be allowed deductions totaling \$10,000. Rather, the sum of all deductions, not including interest, claimed by the two married participants for deposits to an IHA for all taxable years shall not exceed \$10,000. Any amount deposited in excess of \$10,000 shall be treated as an excess contribution and subject to the six percent additional tax.

**Statutory Authority:** *MS s 290.52*

#### **8098.0500 EXEMPTION FROM TAX FOR DISTRIBUTIONS USED FOR FIRST RESIDENCE.**

Subpart 1. **Exclusion from gross income.** Amounts withdrawn from an IHA which are used exclusively in connection with the first purchase of a principal residence in Minnesota shall not be included in gross income in the taxable year withdrawn.

Subp. 2. **Definition.** The term "used exclusively in connection with the first purchase of a principal residence" shall mean only those amounts used for items directly related to the initial purchase of the participant's own first residence. In addition to the actual down payment, the term may include fees and other acquisition expenses incurred and actually paid by the participant for the first residence, such as sales commissions, points (those not deductible as interest), title insurance, legal fees, inspection fees, and current or delinquent real estate taxes; provided, however, that each item shall be included in this term only to the extent that the item is not deductible under another provision of state or federal law.

The term shall not include interest (or points, to the extent the points are deductible as interest), since interest is deductible under another provision of law. The term shall not include expenditures for repairs or maintenance of the residence which do not increase its value or extend its useful life, i.e., noncapital expenditures. Also, the term shall not include expenditures for personal property, such as furniture, appliances, or other furnishings.

If the participant is building his own new residence or purchasing and remodeling an existing residence (or having a contractor do it for him or her), the term may include amounts paid for building materials and labor, as well as for the lot or the existing residence being remodeled.

In order to qualify as an amount "used exclusively in connection with the first purchase of a principal residence," the amount withdrawn shall be made payable to the person or entity from whom the property is being purchased. This may include the seller, vendor, contractor, or designee of one of them (other than the participant), or the person or entity from whom the building materials or labor are being purchased. The amount may be made payable to such person or entity, alone, or jointly with the participant.

Use of an amount from an IHA pursuant to a written earnest money agreement shall be considered as used for the first purchase of a principal

residence, if all other requirements are met. If the sale is not completed and the money is either forfeited pursuant to the earnest money agreement or immediately redeposited in the IHA, no tax consequences shall result, i.e., the withdrawal for earnest money is ignored. However, if the earnest money is used for any other purpose, the amount withdrawn shall be treated as "not used for the purchase of a first principal residence," as provided in part 8098.0600. The trustee, however, is not required to withhold the ten percent additional tax on a withdrawal used for earnest money as long as the trustee makes the withdrawal payable to the escrow agent and obtains from the participant a completed verification that the withdrawal is being used for the purchase of a first principal residence.

**Subp. 3. Time limitations on use.** In order to be exempt from taxation, the amounts shall be used for the purchase of the principal residence within a reasonable time after withdrawal and shall not be used for any other purpose in the interim.

**Subp. 4. Participant use for personal residence.** Only the participant of the particular IHA may use the account for the purchase of his/her own first principal residence. It cannot be used to purchase a residence for someone else, for example, by gift, loan, or rental to another.

**Subp. 5. Deduction of amounts already excluded.** A participant shall not deduct or exclude the same item twice, under different provisions of law. For example, when the participant makes a withdrawal from an IHA and uses it for the first purchase of a principal residence, if any portion of the withdrawal is used to pay interest expense in connection with the purchase of the residence, no deductions shall be allowed for the portion so used, since interest expense is deductible under another provision of law.

**Subp. 6. Adjustment to basis of residence.** No adjustment to the basis of the residence that is purchased is required because of the use of amounts from an IHA.

**Subp. 7. Use of withdrawal in computing tax.** A withdrawal used for the first purchase of a principal residence shall not be included in computing the low income alternative tax, the property tax refund, or in the income limitations for purposes of the homemaker credit, the dependent care credit, the farm loss modification, or the charitable deduction.

**Subp. 8. Verification requirement.** In order to claim exemption from income tax of amounts used for a first principal residence in Minnesota, the participant shall attach to his income tax return for the taxable year a copy of the verification form that he or she provided to the trustee as well as a copy of the closing statement, if any, from the purchase of the residence. The participant shall also furnish any additional information that the commissioner may request to verify that all requirements of parts 8098.0100 to 8098.1000 have been met.

**Statutory Authority:** *MS s 290.52*

#### **8098.0600 TAX TREATMENT OF DISTRIBUTIONS NOT USED FOR A FIRST PRINCIPAL RESIDENCE.**

**Subpart 1. In general.** With certain limited exceptions, amounts withdrawn from an IHA which are not used for the purchase of a first principal residence are includible in the participant's gross income and subject to an additional ten percent tax in the taxable year of the withdrawal. The additional tax is in addition to any tax that is otherwise due on the amount of any withdrawal that must be included in gross income.

**Subp. 2. Amount included in gross income.** The amount to be included in gross income is not necessarily the total amount of the withdrawal. Rather, the amount includible in gross income is the portion of the withdrawal attributable to a contribution or accrued interest that was actually deducted under the IHA



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provisions, either in the current or a prior taxable year. The portion of a withdrawal that is not attributable to either a deductible contribution or deductible interest is not includible in gross income or subject to the ten percent additional tax.

**Subp. 3. Exception for participants who become disabled or die.** There is an exception to subparts 1 and 2 where the participant has died or become disabled. The ten percent additional tax shall not be due from the estate of a participant who has died or from a participant who has become disabled if the death or disability is verified in accordance with part 8098.0800.

**Subp. 4. Treatment as ordinary income.** All amounts withdrawn and not used for the purchase of a first principal residence are ordinary income to the participant. The ten percent additional tax is not to be offset by any nonrefundable tax credits.

**Subp. 5. Excess contribution treatment.** The ten percent additional tax shall not apply to a withdrawal of excess contributions where the withdrawal is made within the time for filing a return for the taxable year in which the excess contribution was made. This subpart shall apply only if the interest attributable to the excess contribution is withdrawn at the same time.

**Subp. 6. Treatment of amounts from revocation of a trust.** The ten percent additional tax shall not apply to amounts returned to a prospective participant pursuant to a revocation of the trust within seven days of its establishment, as provided in part 8098.0300, subpart 1, item F. Until the revocation period has expired, the account shall be treated as not constituting an IHA and the return of the initial deposit shall not be treated as a withdrawal.

**Subp. 7. Treatment of amounts remaining at termination of trust.** Any amounts remaining in the account on the termination date shall be treated as a withdrawal and shall be included in gross income in the taxable year in which the termination date falls and shall be subject to the additional tax for failure to use for a first principal residence.

**Statutory Authority:** *MS s 290.52*

## 8098.0700 EXCESS CONTRIBUTIONS.

**Subpart 1. Amount of additional tax due.** An additional tax shall be due from the participant of an IHA in which there are excess contributions on deposit. The additional tax shall be an amount equal to six percent of the amount of the excess contributions in the account.

**Subp. 2. Time when additional tax is due.** The additional tax shall be due in the taxable year in which the excess contribution is made and in each taxable year that the excess contribution remains in the account. When excess contributions are made in more than one taxable year, the amount of the excess contributions made in the current taxable year shall be added to the amount of excess contributions remaining in the account from previous taxable years in determining the amount of the excess contributions subject to the additional tax.

**Subp. 3. Definition.** "Excess contributions" are those amounts deposited in an IHA during a particular taxable year which exceed \$2,500 or during the ten-year life of the IHA which exceed \$10,000. However, an amount in excess of \$2,500 deposited during a taxable year shall not be considered an excess contribution and shall not be subject to the six percent additional tax if the excess amount, together with the interest earned on the excess amount, is withdrawn from the account by the date that the tax return is due for the taxable year of the excess contribution. Thus, the six percent additional tax may be avoided by withdrawing the excess amount before the tax return is due. The interest earned on the excess contribution shall not be allowed as a deduction in the taxable year in which the contribution was made, or thereafter. The

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withdrawn contribution shall not be included in gross income except to the extent that any portion was deducted or otherwise not taxed in the year of the contribution.

**Subp. 4. Withdrawal of excess contribution.** An excess contribution may also be withdrawn in a year subsequent to the year in which the excess contribution was made. The six percent additional tax shall not be due on the amount of the excess contribution that was withdrawn before the close of the taxable year. There is no requirement that the interest earned on the excess contribution be withdrawn from the account with the excess contribution, as in subpart 3.

**Subp. 5. Effect of withdrawal of excess contribution.** Any withdrawal from an IHA in which there are excess contributions on deposit shall be deemed a withdrawal of the excess contributions to the extent thereof. Thus, any withdrawal will reduce the amount subject to the excess contribution additional tax, yet will not reduce any allowable deduction or exemption to the extent of the excess contribution.

**Subp. 6. Use of excess contribution in another taxable year.** An excess contribution made in one taxable year may be used in another taxable year as a deductible contribution. An amount so used must be included with any deposits made in the current year in determining whether the deduction limitations of \$1,500 and \$10,000, provided in part 8098.0400, subpart 1, have been met. The deduction allowed for an excess amount in an IHA shall be the amount of the difference between the maximum amount allowable as a deduction and the amount that is actually deposited during the taxable year. A deduction shall not be allowed for an excess contribution in a taxable year prior to the year in which the excess contribution is made.

**Statutory Authority:** *MS s 290.52*

### **8098.0800 SPECIAL RULES.**

**Subpart 1. Disability of participant.** A withdrawal by a participant who is disabled within the meaning of Minnesota Statutes, section 290A.03, subdivision 10 shall not be subject to the ten percent additional tax for not using it for the purchase of a first principal residence. The withdrawal shall, however, be included in the participant's gross income in the year of the withdrawal under the same rules as for a participant who is not disabled. A disabled participant shall be subject to the six percent additional tax on excess contributions.

A participant shall not be treated as disabled unless he furnishes to the trustee at or prior to the time of the withdrawal a signed declaration of his/her disability including a description of the disability, the name of his/her treating physician and a statement, signed by that physician, stating that the disability prevents the participant from engaging in any kind of substantial gainful work or that the participant is "blind" within the meaning of Minnesota Statutes, section 290A.03, subdivision 10. The trustee shall file a copy of this declaration with the commissioner of revenue. Upon request, the participant claiming disability shall furnish to the commissioner of revenue a signed statement of a physician describing in detail the nature of the disability and, except in the case of blindness, how it prevents the participant from engaging in any substantial gainful work. In addition, the individual shall furnish such other information as the commissioner shall determine is necessary to verify that the disability is within the meaning of Minnesota Statutes, section 290A.03, subdivision 10.

**Subp. 2. Death of a participant.** Except in the case of an account held jointly between spouses, upon the death of a participant of an IHA, the account shall terminate and become immediately payable to the estate of the deceased participant. The amount in the account as of the date of death, including any accrued interest, shall be treated as a withdrawal and included in the deceased participant's gross income on his/her final income tax return. The ten percent

additional tax for failure to use a withdrawal for the purchase of a first principal residence shall not be applicable to the deceased participant or his/her estate.

In the case of an account held jointly for the benefit of two spouses, upon the death of one of the spouses, the account shall continue for the benefit of the surviving spouse. Limitations and restrictions on the IHA shall apply to the surviving spouse as if he or she had made all prior deposits and withdrawals. No additional tax shall be due solely by reason of the death. Also, no additional tax shall be due by reason of a withdrawal attributable to the death. A withdrawal by surviving spouse shall be deemed to be attributable to the death if it is made within six months after the death. Any other withdrawal, not attributable to the death, shall be subject to the additional tax if it is not used for the purchase of a first principal residence. Also, the surviving spouse shall remain subject to the additional tax on excess contributions.

**Subp. 3. Transfers of IHA's.** The term "transfer" shall mean a transfer of the entire amount in an IHA in one financial institution or credit union to a new IHA in another financial institution or credit union.

The participant of an IHA may transfer an IHA from one financial institution or credit union to another. The transfer of an IHA pursuant to parts 8098.0100 to 8098.1000 shall not be treated as a withdrawal from the first account or as a deposit to the second account as long as each of the requirements of parts 8098.0100 to 8098.1000 are met with respect to each account. The amount transferred pursuant to parts 8098.0100 to 8098.1000 shall not be included in gross income in the year of the transfer or subject to the ten percent additional tax for not being used for the purchase of a first principal residence in Minnesota. The six percent additional tax on excess contributions shall apply only if and to the extent that excess contributions are transferred as part of the account.

A transfer shall qualify under parts 8098.0100 to 8098.1000 only if the entire interest in the IHA is transferred to a new IHA and the original IHA is closed and terminated. A participant shall not have more than one IHA at any one time. The funds in an account to be transferred shall be promptly transferred from one financial institution or credit union to another. Any use of the funds for any purpose in the interim shall be treated as a withdrawal not used for a first principal residence and shall be included in gross income and subject to the additional tax.

The IHA account receiving the transfer shall terminate ten years from the date the original IHA account was established and the written trust agreement shall so provide. The participant shall inform the new trustee that the deposit is a transfer of the IHA, rather than a new IHA, and the date of the first deposit to the original IHA.

The trustee of the account to be transferred shall not be subject to the withholding requirements of parts 8098.0100 to 8098.1000 if it received a written declaration from the participant of his or her intention to roll over the account and the name and address of the financial institution or credit union to which the account will be transferred. The original trustee shall make the instrument of payment payable to the new trustee, either alone or jointly with the participant. The original trustee shall within ten days file a copy of the declaration with the commissioner of revenue.

**Subp. 4. Nonresidents.** An individual who is not a resident of Minnesota shall be allowed to establish an IHA in Minnesota and shall be allowed a deduction for deposits to the account against any income that is assignable in Minnesota. A Minnesota resident who establishes an IHA but later changes his/her residence to another state may maintain the IHA in Minnesota.

A nonresident participant shall be subject to the same rules as a resident with respect to the includibility of withdrawals in gross income and the imposition of additional taxes. Any portion of a withdrawal that is required to

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be included in gross income shall be assignable to Minnesota. Any amounts upon which an additional tax is imposed shall be assignable to Minnesota.

**Subp. 5. Married participants.** Whenever two single participants marry, their two accounts shall be treated for tax purposes as one joint account. This treatment, however, shall extend only to the two married participants and shall have no effect whatsoever on the trustees of either account, who shall continue to administer each account as if there was a single participant. Both accounts shall be treated as having terminated ten years from the date of the first deposit to the account that was established first. Only those deposits made in the taxable year of the marriage and thereafter will be considered in determining the excess contributions. The \$1,500, \$2,500, and \$10,000 limitations shall apply separately to each participant for taxable years prior to the marriage and shall apply to the two participants together, the same as for other married participants, for the taxable year of the marriage and for all taxable years thereafter in which they are married. If, in the taxable year of the marriage, deposits made by both participants, together, total \$10,000 or more, all further deposits shall be excess contributions subject to the six percent additional tax. Interest shall be deductible in the year of the marriage and thereafter only to the extent that it is attributable to the first \$10,000 of total combined deposits.

The amounts in the two accounts prior to the tax year of the marriage shall not be considered an excess contribution in the year of the marriage solely because of the two accounts being treated as one.

For example, A set up an IHA in 1981 and deposited \$1,500 per year to the account. B set up an IHA in 1981 and deposited \$2,500 per year to the account. In 1985, A and B marry. A's account balance in 1985, not including interest or transactions in 1985, is \$6,000. B's account balance in 1985, not including interest or transactions in 1985, is \$10,000. Upon marriage, the two accounts will be treated as one account for tax purposes. The balance on the marriage date will be \$16,000, not including interest. Because the total deposits by the two spouses exceed \$10,000, no further deposits will be allowed. Any deposit made in 1985 or thereafter is an excess contribution subject to six percent additional tax. No additional tax shall be imposed for the year of the marriage as long as no deposits are made during that year or any that were made in 1985 are withdrawn by April 15, 1986. Interest will be deductible only to the extent it is attributable to the first \$10,000 of deposits. Interest on the other \$6,000 of deposits in the account is not deductible.

**Subp. 6. Termination of account.** The IHA shall terminate in the following cases:

A. The account shall terminate whenever all or part of the account is used for the purchase of a first principal residence which is located in Minnesota. No deduction shall be allowed for deposits made or interest paid or accrued after the termination.

B. The account shall terminate ten years from the date of the first deposit to the account. In the case of an IHA which has received a transfer from another IHA under subpart 3, the account shall terminate ten years from the date of the first deposit to the first account. All amounts in the account on the termination date shall be distributed to the participant. Transfer of the total amount in the IHA to a non-IHA account shall satisfy this distribution requirement. However, it shall be treated as a withdrawal not used for the purchase of a first principal residence.

Any amounts remaining in the account on the termination date shall be treated as a withdrawal and shall be included in gross income in the taxable year in which the termination date falls and shall be subject to the additional tax for failure to use for a first principal residence.

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Subp. 7. **Marriage dissolution transfers.** A transfer of a participant's interest in an IHA to his former spouse pursuant to either a dissolution of marriage decree or a written instrument incident to a dissolution of marriage shall not be treated as a withdrawal and shall not be includible in gross income or subject to additional tax solely by reason of the transfer, as long as the IHA is maintained as such by the transferee. However, the withdrawal of any amounts from the IHA by the transferee shall be treated as any other withdrawal and subject to all of the provisions of this part. Limitations and restrictions on the IHA shall apply to the transferee as if he or she had made all prior deposits and withdrawals. For example, if the transferee had deducted \$9,000 for deposits to the account over a six-year period prior to the marriage dissolution transfer, the transferee could deposit only \$1,000 more before reaching the \$10,000 deduction limitation. The IHA would automatically terminate four years after the transfer since the transferee is treated as having made the first deposit to the account six years prior to the transfer.

Statutory Authority: *MS s 290.52*

**8098.0900 PROTOTYPE INDIVIDUAL HOUSING ACCOUNT TRUST AGREEMENT.**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between:

Individual's Name: \_\_\_\_\_

Spouse's Name: \_\_\_\_\_ (If married, both spouses must be listed.)

Social Security Numbers: \_\_\_\_\_ and \_\_\_\_\_

Address: \_\_\_\_\_

hereafter referred to, singularly and collectively, as "Participant," and

Name of Financial Institution: \_\_\_\_\_

Banking Division's Approval Number: \_\_\_\_\_ (If none is required, so indicate)

hereafter referred to as "Trustee,"

For the purpose of establishing a trust which qualifies as an Individual Housing Account under Minnesota Statutes, section 290.09, subdivision 30 (also referred to as the Young Family Housing Act).

Participant has transferred and delivered to Trustee the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in cash, as an initial contribution to the trust account hereby established.

NOW, THEREFORE, IT IS AGREED by and between Participant and Trustee that each party will abide by the laws and rules applicable to Individual Housing Accounts and that contributions made to the trust will be held and distributed pursuant to the terms of this Agreement as follows:

**ARTICLE I. REPRESENTATIONS**

1.1 Trustee is a financial institution authorized by law to act as Trustee for Individual Housing Accounts.

1.2 Trustee actively makes residential real estate mortgage loans in Minnesota.

1.3 Participant does not now own and has never owned a principal residence wherever located.

1.4 Participant does not now have another IHA either with this institution or any other institution.

**ARTICLE II. REVOCATION**

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2.1 Unless Trustee has furnished a disclosure statement to Participant at least seven days prior to the date of this Agreement, the Trust shall not take effect until seven days after the date of this Agreement.

2.2 During the seven-day period provided in paragraph 2.1, Participant may revoke this Agreement and receive back any deposits made to Trustee. The Agreement shall not constitute an Individual Housing Account. The Trustee will not withhold tax upon the revocation.

2.3 If during the period provided in paragraph 2.1, Participant does not revoke the Agreement, the trust shall relate back in time to the date of this Agreement.

### ARTICLE III. CONTRIBUTIONS

3.1 Trustee will accept additional deposits which shall become part of the corpus of this trust.

3.2 Participant will contribute and Trustee will accept no more than \$2,500 of total deposits to the trust in any taxable year and no more than \$10,000 of total deposits to the trust for all taxable years.

3.3 All deposits will be made in cash.

### ARTICLE IV. INVESTMENTS

4.1 The assets of the trust will be invested only in savings or time deposits in amounts fully insured by a Minnesota agency or a federal agency established for the purpose of insuring accounts in financial institutions.

4.2 The assets of the trust may be commingled for purposes of investment provided that individual records are maintained by Trustee for Participant, as prescribed by the commissioner of Revenue.

### ARTICLE V. WITHDRAWALS

5.1 Participant may withdraw amounts from the trust at any time by written notice to the Trustee.

5.2 Trustee shall deduct and withhold from any amount withdrawn a tax in the amount of ten percent of the amount withdrawn unless Trustee receives from Participant a written verification statement pursuant to paragraphs 5.3 or 5.4.

5.3 Trustee will not deduct and withhold tax from any amount withdrawn if he receives from Participant a written statement, in accordance with rules of the commissioner of revenue, verifying that the amount withdrawn is being used for the purchase of Participant's first principal residence and the residence is located in Minnesota. In this case Trustee will make the amount withdrawn payable to the seller, or the seller's designee (other than the buyer/Participant).

5.4 Trustee will not deduct and withhold tax from any amount withdrawn if he receives a written statement verifying, in accordance with rules of the commissioner of revenue, that Participant has died or has become disabled.

5.5 Trustee will remit and pay the tax deducted and withheld under paragraph 5.2 to the commissioner of revenue as required by law.

### ARTICLE VI. TERMINATION

6.1 This trust will terminate no later than ten years after the date of this agreement.

6.2 Upon termination, Trustee will deduct and withhold from the trust corpus a tax in the amount of ten percent of the corpus and remit and pay the tax to the commissioner of revenue, as required by law.

6.3 Upon termination, Trustee will distribute the corpus of the trust to Participant, less the taxes deducted and withheld under the preceding paragraph, in accordance with rules of the commissioner of revenue.

6.4 The trust shall terminate upon the death of Participant, or the survivor of the Participants, in which case Trustee will pay over the entire corpus of the trust and earnings thereon to the decedent's estate. No taxes will be withheld.

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## ARTICLE VII. RECORDS AND REPORTS

7.1 Trustee will keep records and accounts of its administration of the trust.

7.2 Trustee will provide reports to Participant and to the commissioner of revenue at the times and in the manner prescribed by the commissioner of revenue.

7.3 Participant will furnish to Trustee the information prescribed by the commissioner of revenue.

## Article VIII. OTHER PROVISIONS

(Other provisions that do not conflict with any laws, rules or other provisions of this trust agreement may be added here.)

IN WITNESS WHEREOF, the parties hereto set their hand the day and year first written above.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Trustee

By \_\_\_\_\_  
Its \_\_\_\_\_

Statutory Authority: *MS s 290.52*

## 8098.1000 DISCLOSURE STATEMENT FOR INDIVIDUAL HOUSING ACCOUNTS.

### DISCLOSURE STATEMENT FOR INDIVIDUAL HOUSING ACCOUNTS

NOTICE: YOU MAY REVOKE this account by contacting the following person within seven days from the date of your trust agreement. (See Part VIII of this statement for explanation.)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

#### I. INTRODUCTION

The Individual Housing Account (IHA) is designed to help a first-time home buyer save up money for the purchase of his or her home by not taxing as income the first \$1,500 that you contribute to an IHA each taxable year, and by not taxing the interest earned on the account, with certain limitations that are explained in this statement.

BEWARE, however, that there will be a substantial tax penalty due if you use any of the money from this account for any other purpose than your first home. In fact, the trustee must withhold and send to the Department of Revenue ten percent of any withdrawal that you make if you are not going to use the amount for the purchase of your first residence.

#### II. ELIGIBILITY

To be eligible to set up an IHA, you or your spouse must not now own and never have owned your own principal residence.

Furthermore, you or your spouse must not now have another IHA, whether at this institution or any other financial institution.

#### III. TAX DEDUCTION AND LIMITS THEREON

Amounts that you deposit in your IHA may be deducted for Minnesota income tax purposes for the tax year in which you make the deposit. However,

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to be deductible, the amount must have been on deposit in the account for at least six months during the tax year. And your deduction for deposits to the account cannot exceed \$1,500 for any one tax year and your total deductions for deposits for all tax years cannot exceed \$10,000.

In addition to the deduction for the amounts that you deposit in your IHA, you are allowed an income tax deduction for the interest earned on your IHA during the tax year. This deduction for interest, however, is limited to interest on deposits of \$2,500 or less per year or on total deposits of \$10,000 or less for all taxable years. Interest cannot be deducted on amounts in excess of these limits.

### IV. PENALTY TAX FOR NOT USING IHA FOR FIRST RESIDENCE

Your IHA is supposed to be used to purchase your first principal residence. The residence must be located in Minnesota. If you withdraw money from your IHA and do not use it for the purchase of your first principal residence, which is located in Minnesota, there is a substantial tax penalty due. Not only will you have to include the amount you withdraw in your income for Minnesota tax purposes and pay income tax on it, but you will also have to pay an additional tax of ten percent of the amount withdrawn. The additional ten percent tax will not, however, be due if the withdrawal was made because of your disability or death.

Your IHA can last only ten years. Therefore, you must use the IHA to purchase your first residence within ten years after the IHA is opened. If you do not use the IHA within ten years, the IHA automatically terminates and the taxes and penalties explained in the preceding paragraph are applicable just as if you had made a withdrawal of all of the money in the account.

You are not allowed to use or pledge your IHA as security for a loan. If you do so, the amount so pledged will be treated as a withdrawal. You will have to include the amount pledged in your Minnesota taxable income and pay the ten percent additional tax, just as if you had made a withdrawal of that amount and not used it for your first principal residence.

### V. TRUSTEE MUST WITHHOLD TAX ON CERTAIN WITHDRAWALS

If you make a withdrawal from your IHA which will not be used to purchase your first principal residence or the residence you do purchase is not located in Minnesota, the trustee must withhold as tax ten percent of the amount of your withdrawal. The trustee must send the amount withheld to the Department of Revenue to be applied against your additional tax liability. If the withdrawal is due to your death or disability, however, the trustee is not required to withhold this tax.

The trustee also must withhold the ten percent tax whenever the IHA terminates because the account was not used for your first residence within ten years from the date that you established the account.

### VI. LIMITATIONS ON THE AMOUNT THAT YOU MAY DEPOSIT IN THE IHA

You are permitted to deposit no more than \$2,500 to your IHA in any one tax year. Moreover, you are permitted to deposit no more than a total of \$10,000 to your IHA for all taxable years. If you deposit more than you are allowed, you must pay an additional tax of six percent of the amount which exceeds these limits. This six percent additional tax is in addition to your regular income tax liability and is due for every year in which the excess deposit remains in your account.

### VII. TRANSFERS OF YOUR ACCOUNT TO A DIFFERENT FINANCIAL INSTITUTION



You may transfer your IHA to another financial institution. If you follow the rules explained in this paragraph, your transfer of funds will not be treated as a withdrawal and not subject to tax or penalty. To transfer the IHA tax free, you must:

(1) Have the entire amount in the account made payable to the new trustee or financial institution.

(2) Transfer the entire account to a different financial institution and close out the original account. You cannot have more than one IHA at a time.

(3) Have the new IHA terminate ten years from the date that you opened the original IHA. To do this you must inform the new trustee of the date on which you opened your original IHA and have him put the proper termination date in the new trust agreement.

### **VIII. REVOCATION OF YOUR IHA**

You must be given seven days to read this statement and consider your decision to participate in the IHA program. Your IHA does not become final until this seven-day period is over. During the seven-day period, you may revoke your IHA and receive your money back without it being treated as a "withdrawal." Therefore, the regular taxes and additional taxes for failure to use the account for the purchase of your first principal residence, as explained in Part IV of this disclosure statement, will not be due. After this seven-day period, however, any withdrawal that you make and do not use for your first residence, will be subject to both regular tax and additional tax, as explained in Part IV.

The name of the person to contact if you wish to revoke this account is listed at the beginning of this disclosure statement.

### **IX. AUTHORITY AND QUALIFICATIONS OF TRUSTEE**

This financial institution is authorized by law to act as the trustee of your IHA. The trustee has either been approved by the Minnesota commissioner of banks to act as the trustee of IHA's or under federal law is not required to obtain this approval.

Your IHA meets all of the requirements of Minnesota Statutes, section 290.09, subdivision 30 and any applicable rules issued by the Minnesota commissioner of revenue. Furthermore, the trustee agrees to abide by all laws and rules applicable to IHA's.

### **X. YOUR RESPONSIBILITIES**

You, as the participant of this IHA, have certain duties and responsibilities imposed on you. You must be sure that the financial institution is qualified to act as the trustee of your IHA. Also, you must be sure that the trustee will abide by any laws or rules applicable to IHA's. Finally, you must be sure that your IHA is set up according to the law and rules.

If at some future time it is discovered that your trustee is not qualified or is not abiding by the laws or rules or your IHA does not meet all the requirements of the laws and rules, you will not be allowed a tax deduction for the years involved.

Finally, there are certain forms you must file and information you must furnish to either the trustee or the Minnesota Department of Revenue. As mentioned in Part V of this disclosure statement, the trustee must withhold, as tax, ten percent of any withdrawal that you make unless you are using the amount withdrawn for your first principal residence. In order to avoid this withholding of tax, you must furnish to the trustee a written statement, verifying that you are using the withdrawal for your first principal residence and that the residence is located in Minnesota. In this case, the trustee must make the withdrawal payable to the seller. The trustee cannot make the withdrawal payable to you alone. The withholding of tax may also be avoided if you die or become disabled by furnishing the trustee with verification form certifying that

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you have died or become disabled. If you fail to furnish completed and signed verification forms to the trustee, the trustee is required by law to withhold the ten percent tax.

To claim the income tax deduction on your Minnesota income tax return, you must attach a copy of the statement or statements of account that you receive from the trustee which show the date and amount of your deposits to the IHA and the date and amounts of any withdrawals during the entire tax year.

**Statutory Authority:** *MS s 290.52*