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MEMBER



Special needs require special lawyers.

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ESTATE PLANNING FOR BLENDED FAMILIES

Oast & Hook assists clients with their estate and long-term care planning. Typically, the clients are looking for assistance solving complex and difficult problems. These problems include: Paying for uninsured medical and long-term care services; assuming the investment risk for their retirement funds; providing for the management of their personal and financial affairs during periods of incapacity, and protecting their family members and assets from diverse legal, financial, tax and social risks. Our clients want professionals that provide comprehensive solutions to these problems.

In the past, the typical client was in a long-term marriage, with the client's only descendants being the children of that marriage, and the children's descendants. "Blended families" are increasing in number, and they have their own unique set of challenges and problems. "Blended families" are families with multiple family groups. These families include married couples with one or both spouses having children by a prior marriage or relationship. These families also include clients with married children in which a child has a child by a prior marriage or relationship, or a child's spouse has a child by a prior marriage or relationship. These blended families create many complex estate and financial planning problems for our clients, including the potential disinheritance of their children and descendants, the protection of the client's current spouse from the client's descendants, the protection of assets from former spouses, and disputes concerning the division of authority or responsibility between the different family groups. Therefore, estate planning for blended families is a form of asset protection. Estate planning for blended families raises many difficult ethical issues for the attorney, including confidentiality of information and conflicts of interest. The attorney should document clearly the terms of the representation in a written engagement agreement.

There are several value-added solutions for blended families. Some clients will need premarital or marital agreements. The agreement should address the

parties' rights and responsibilities during their marriage, including living arrangements, the division of the payment of expenses, and whether or not there is an obligation to purchase and maintain long-term care insurance. The agreement should also address the parties' rights and obligations if they divorce, the rights of the surviving spouse in the estate of the first spouse to die, and the obligations of the surviving spouse at his or her death.

With regard to descendants, the spray spendthrift trust can be used. Attorneys drafting the spray spendthrift trust should consider several provisions. The trust can provide for discretionary principal and income distributions in equal or unequal amounts to the surviving spouse or the testator's children for appropriate purposes, taking into account the beneficiary's other resources, income and means of support. The client should consider giving the spouse an annual unitrust distribution, using a disinterested trustee to avoid conflicts of interest, and permitting additional distributions for "any appropriate purpose." The residue of the trust is typically distributed to the client's children on the client's death. The client should also consider the inclusion of a "no contest" provision to minimize the risk of a challenge to the trust.

Another tool is the bloodline trust. This is a generation-skipping discretionary spendthrift trust for the benefit of the grantor's child, and the child's descendants. The trust is designed to protect the trust assets from the child's creditors, including former spouses, while maintaining maximum control for the child. The trust typically provides that the child is the trustee of the child's trust unless the child is involved in a divorce or becomes a defendant in a lawsuit. Additionally, the trustee is given discretion to distribute income to or for the benefit of the child. As trustee, the child can distribute principal to or for the benefit of the child or the child's descendants in accordance with the health, education, maintenance and support standard, while a disinterested trustee can distribute principal for any appropriate purpose. The trust terminates on the child's death, and the remaining principal is paid to the child's descendants. The trust should include a spendthrift provision and a provision that expressly says the child has no right to terminate the trust.

Ask Allie

O&H: Allie, do you have any suggestions for people about maintaining their health and well-being in retirement?

Allie: Yes, research shows that pets may contribute to the health and well-being of their owners. Please consider adopting a pet from the SPCA or an animal shelter. The Pets for Elderly Foundation will pay up to \$50 of the adoption costs when people 60 years of age and older adopt a cat or dog from one of 58 shelters in 31 states, including the Virginia Beach SPCA. Visit their website at: www.petsfortheelderly.org.



Please feel free to e-mail your questions to Allie at: allie@oasthook.com.

Speakers

If you are interested in having an elder law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz at 757-399-7506.

Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at www.oasthook.com.

Distribution of This Newsletter

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