

Offices in
Elizabeth City, Portsmouth,
and Virginia Beach
Tel: 757-399-7506
Tel: 252-722-2890
Fax: 757-397-1267
Web: www.oasthook.com



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Special needs require special lawyers.

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Editor
Sandra L. Smith,
Certified Elder Law Attorney

ESTATE PLANNING FOR BLENDED FAMILIES

Oast & Hook assists clients with their estate and long-term care planning. Typically, clients are looking for assistance in 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 these 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 issues 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 the surviving spouse's 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 grantor'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 states that the child has no right to terminate the trust.

Ask Allie

O&H: Allie, we've heard that there is a special program to help cats and their families in these tough economic times. Please tell us about it.

Allie: Sure! More than 3 million cats end up in shelters every year; now even more are at risk. The ASPCA and the makers of Fresh Step cat litter are combining forces to donate Fresh Step litter in selected markets to families in need through the ASPCA Cat Assistance Program. With people tightening their belts and doing without, the two organizations want to do what they can to help cats and kittens remain with their human families. Everyone can help! Details of the ASPCA Cat Assistance Program are included on specially marked boxes of Fresh Step litter (Look for the boxes with orange at the top of the box.) and find out more at www.freshstep.com/aspca. Time to find my mom and see what we can do to help. I'll type at you next week!

Announcement

The Alzheimer's Association will be offering a Family Caregiver Education Series. These programs will be held from 11:00 a.m. to 1:00 p.m. at the Bayside Library, 936 Independence Boulevard, Virginia Beach, Virginia. Brown bag lunches are welcome, and drinks will be provided. These programs are free to family caregivers. The first program is entitled "Safety in the Home and Away," and it will be held on Wednesday, January 13th. Please register at least two business days before each program by phoning Carol Gurioli at 757-459-2405 or e-mailing her at carol.gurioli@alz.org.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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