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INSIDE THIS ISSUE

- The Virginia Uniform Power of Attorney Act
by Lisa V. Johnson
- Ask Allie
- Announcements
- Distribution of This
Newsletter

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THE VIRGINIA UNIFORM POWER OF ATTORNEY ACT

The Virginia Uniform Power of Attorney Act (“UPOAA”; “the Act”) has been enacted by the Virginia General Assembly and signed by the Governor. The Act will have a significant impact on laws related to the use and acceptance of durable powers of attorney (“DPA”) in Virginia. The enactment of this important bill represents an effort to bring uniformity to an area of law that has been rapidly emerging as a significant, if not vital, estate planning tool. The UPOAA will also provide greater protections for third parties at a time when a dramatically increasing amount of the nation’s wealth is being managed under DPAs because of the aging of the baby boomer generation. Current Virginia law is inadequate to meet those needs.

A DPA is legal document that grants authority to an agent to act on behalf of a principal, and it provides for the continuation of that authority in the event the principal suffers a subsequent disability or incapacity. As the popularity of DPAs continues to increase, so has litigation related to their use. Unlike guardianships and conservatorships, DPAs require little to no oversight. Therefore, financial exploitation by unscrupulous agents is a widespread problem.

DPAs are governed by state law, and those laws vary substantially. In 2002, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) conducted a survey comparing state DPA statutes. The study revealed many issues related to DPAs that needed to be addressed, including (1) improving portability, (2) including safeguards, remedies, and sanctions for abuse by an agent, (3) protecting the reliance of a third party on a DPA, and (4) including remedies and sanctions for third party refusal to honor a DPA.

As a result of this survey, in 2006 the NCCUSL adopted and promulgated the UPOAA. The UPOAA is an endeavor by NCCUSL to “codify both state legislative trends and collective best practices, and strike a balance between the need for flexibility and acceptance of an agent’s authority by third parties

and the need to prevent and redress financial abuse.” The UPOAA seeks to preserve DPAs as a low-cost, flexible, and private form of surrogate decision making while at the same time attempting to prevent and redress financial abuse of incapacitated individuals. The UPOAA is basically a set of default rules that preserve a principal’s freedom to choose both the extent of the agent’s authority and also the rules that govern the agent’s conduct.

While the UPOAA substantially clarifies Virginia law related to DPAs, it also makes several key changes to the law. A few of those changes are the following:

- All powers of attorney are presumed durable unless stated otherwise in the document.
- The UPOAA provides protections for third parties who in good faith accept a purportedly acknowledged power of attorney. To promote the acceptance of powers of attorney, the UPOAA places the risk that a power of attorney is invalid upon the principal rather than the third party; however, the risk of loss for a forged DPA rests with the third party who accepted it rather than the purported principal.
- The UPOAA rejects an imputed knowledge standard for those individuals who conduct activities through employees; however, third parties must use commercially reasonable systems to disseminate information among employees in order to receive protections under the UPOAA.
- The UPOAA provides sanctions against third parties for their unreasonable refusals of DPAs.
- The UPOAA identifies certain powers (e.g., gifting, changing designations of beneficiary) that must be specifically granted.

Since its inception in 2006, the UPOAA has been enacted in Idaho, New Mexico, Colorado, Maine, Nevada, and the U.S. Virgin Islands. Maryland and Minnesota, along with Virginia, introduced bills in their legislatures in 2010. Additionally, bar associations in Alabama, Massachusetts, and Ohio are currently studying the UPOAA.

For more information on the UPOAA, visit www.nccusl.com.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans’ benefits and special needs planning issues.

Ask Allie

O&H: Allie, we’ve heard about Bailey, a special therapy dog. Please tell us about him.

Allie: Sure! Bailey is a Golden Retriever who lives with local resident Nancy Head. Bailey is a therapy dog whose latest assignment is helping inmates at the Peninsula Regional Jail in James City County. Bailey’s sessions last for three hours, and give the inmates an opportunity to groom and play with the certified therapy dog. Her sessions serve as a stress reliever for those serving time in the jail. About 16 inmates are in the dog therapy program, and the inmates who attend the therapy sessions are part of the jail’s therapeutic community, which is a support group for inmates with drug addictions.

Bailey also spends time with patients at Riverside Cancer Institute in Newport News, and she visits the kindergarten class at Waller Mill Elementary School, where the children read books to her at least twice a week. Bailey passed 16 therapy dog tests and was certified by Therapy Dogs International. Good job Bailey! I know how much I enjoyed meeting with the clients when I was in the office at Oast & Hook. Now I'm happy in my retirement, but I enjoy reading my e-mails from the readers of the *Oast & Hook News*. See you next week!

Announcements

Oast & Hook is proud to announce that it has partnered with TowneBank to offer a series of seminars for seniors and their families. Each seminar will cover issues facing our seniors such as planning for retirement, elder law, Medicare, and long-term care planning. Oast & Hook and TowneBank will present six seminars, and each seminar will begin at 10:00 a.m. and will end at noon. Below is the list of dates and locations. Seating is limited. If you have any questions or would like to register for any of these seminars, then please phone Carol Hernandez at 757-638-6797.

April 20, 2010

TowneBank, Oyster Point Banking Center
1 Old Oyster Point Road
Newport News, Virginia 23602

April 28, 2010

TowneBank, New Town Banking Center
5216 Monticello Avenue
Williamsburg, Virginia 23188

April 27, 2010

TowneBank, Great Bridge Community Hall
137 Mount Pleasant Road
Chesapeake, Virginia 23322

April 23, 2010: Sandra Smith will speak at the meeting of the Hampton Roads Asperger's Support Group on the topic of planning for parents and guardianship. The meeting will be at 6:00 p.m. at St. Paul's Lutheran Church Library, 807 West Mercury Boulevard, Hampton, Virginia 23666. It is open to the public, however, seating is limited. If you would like to attend this meeting, then please phone Robyn Iuliano at 757-218-6507.

April 25, 2010: Andrew Hook will speak at the quarterly meeting of the Friends of the Portsmouth Library at 2:00 p.m. in the Coleman Room of the new Churchland Branch located at 4934 High Street, Portsmouth, Virginia 23703. This meeting is open only to members of the Friends of the Portsmouth Library.

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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