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Member, National Academy
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Oast & Hook Seminar New Law, New Opportunity



Oast & Hook will host a seminar titled, "Recent Developments In Long-Term Care Planning: New Law, New Opportunity" on Thursday, August 24, 2006, at the Chesapeake Conference Center, 900 Greenbrier Circle in Chesapeake. Registration starts at 8:30 a.m. The workshop begins at 9:00 a.m. and concludes at 12:30 p.m. The seminar will be presented by Oast & Hook attorneys Andrew Hook, Sandra Smith, Jennifer Rossetini, and Letha Sgritta. The seminar will explore the changes the Deficit Reduction Act of 2005 (DRA) and the Virginia implementing rules have made to Medicaid planning, as well as the new opportunities that they provide to obtain assistance in the payment of long-term care while protecting assets.

The registration fee is \$30. A registration form is attached to the end of this newsletter.

PLANNING FOR CLIENTS WITH ASSETS IN MULTIPLE JURISDICTIONS BY LETHA SGRITTA

America today is a migratory society. Few people live in one area their entire lives and many people travel or have assets outside of their local area. Those who travel to other states need to make sure they have properly planned for their disability. Further, when developing or revising an estate plan, it is important for attorneys and clients to discuss and plan for the management and disposition of assets in multiple states.

Many people travel between states or have vacation homes or timeshares units in a state different from their home state. If a client splits his or her time among two or more states, then the client should have an advance medical directive that conforms to the laws of these states. This will ensure that the

client's designated healthcare agent has the ability to act in the states in which the client resides or visits. Additionally, a general durable power of attorney that is satisfactory in one state may not meet the requirements of another state. Unfortunately, this may only be discovered after the client has become incapacitated and needs an agent to act on his or her behalf in the other state.

For example, many individuals spend part of the year in Virginia and part of the year in Florida. In Virginia, a power of attorney does not need to be witnessed in order to convey Virginia real property; however, in Florida, a power of attorney has to be witnessed by two witnesses in order to transfer Florida real property. If a client loses capacity but needs to sell Florida real property, then the family may have to resort to a guardianship or a conservatorship, unless the Virginia estate planning attorney was aware of the Florida real property and ensured that the power of attorney complied with Florida law.

Additionally, the requirements for wills are different from state to state. Therefore, a will may need to conform to the requirements of several states when there are assets in different states. If an individual dies with assets in more than one state, some form of estate administration may be required in each state where the client had assets, unless other planning options have been instituted. For example, if a client opens a brokerage account in one state, and then moves to Virginia, but never transfers the brokerage account to Virginia, then the client's estate is subject to estate administration in Virginia and may be subject to limited estate administration in the other state. If the attorney who prepared the Virginia estate plan was aware of the account in the other state, then this attorney may have recommended that the client move the account to Virginia, establish a payable on death account designation, or transfer the asset into a trust administered under the laws of Virginia. All three of these options should avoid estate administration in the other state.

Having assets in multiple states may also affect the client's income tax planning. The estate planning attorney needs to be aware of all of the client's assets, as well as the client's living arrangements. The attorney needs this information in order to properly advise the client regarding the client's potential state income tax liability. Many people believe that if they spend six months and one day in a state, then they are residents of that state. If that six months and one day occurs in a state with no income tax, then the person may believe that he or she does not owe income taxes in any state. This is not true; most states require presence plus intent to be domiciled in that state in order to be a state resident for income tax purposes. Proof of domicile may include real property ownership, vehicle titling and registration, voter registration, and obtaining a driver's license. And even if the client is a resident of a state that does not impose an income tax, the client may still be considered a part-year resident of another state if the client resides part-time and works in the second state. It is critical that the estate planning attorney is aware of these situations so the attorney can help the client ensure that all necessary steps are taken to avoid potential problems during a tax audit.

If the individual has assets sufficient to warrant federal estate tax planning, then planning for assets in multiple states may also become important. Some states base their estate tax directly on the federal estate tax (known as "coupled states"), while other states do not ("decoupled states"). If the assets are divided between a coupled state and a decoupled state, then the attorney and client must plan so that the taxpayer is not overtaxed at the state level.

Each state has unique laws regarding its estate planning, estate administration, and taxation. Having assets in multiple states is not uncommon, so proper planning is critical. Often the planning process involves attorneys in more than one state, but proper planning will save the client and the client's time and expense.

Oast & Hook assists families with estate, tax and financial planning for these situations. Through their networks of attorneys in the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, and the Special Needs Alliance, Oast & Hook helps clients ensure that their estate and disability plans will be effective in all of the states in which the client owns property and spends time.

Letha Sgritta is an attorney with Oast & Hook who concentrates her practice in the areas of elder law and disability law. Ms. Sgritta received her undergraduate degree from Purdue University, studied at Oxford (Oriel College) in England, and received her law degree from the University of Maine. Ms. Sgritta is licensed to practice law in North Carolina and Virginia.

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.

Oast & Hook is the Virginia member of the Special Needs Alliance, a nationwide network of disability attorneys. As members of this alliance, we assist personal injury attorneys in resolving their cases to enhance the judgments and awards of their disabled clients and to maintain the eligibility of these clients for SSI and Medicaid. We are experienced in protecting the public benefits of persons with special needs and in assisting with the management of their assets. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.com.

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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 *Elder Law News*, then please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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