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LIFE ESTATE AND MEDICAID BY LINDA CARSON

The basic rule for Medicaid eligibility is that an applicant, whether single or married, must have no more than \$2,000 in countable resources in the applicant's name. Countable resources generally include all bank accounts, stocks, bonds, life insurance, certain prepaid burial arrangements, and most real property.

A life estate in real property conveys to an individual certain property rights for the duration of this individual's or someone else's life. Prior to August 2008, the Virginia Medicaid State Plan did not treat a life estate in real property as a countable resource, and the ownership of a life estate did not affect Medicaid eligibility. This policy changed in September 2008, and was announced in Broadcast 5451. Effective August 28, 2008, life estates created after that date were considered countable resources. If the applicant or recipient lived in the home in which he or she owned the life estate, the life estate would be exempt. If the recipient or applicant did not live in the property, then the life estate would not be exempt, unless the property was occupied by a spouse or dependent child, or the applicant or recipient was using reasonable efforts to sell the property interest. The result of this policy change was that the eligibility for Medicaid became more restrictive.

The American Recovery and Reinvestment Act of 2009 (ARRA or Stimulus Bill) provides increased federal funding for Medicaid programs. In order for a state to receive these increased funds, the Medicaid eligibility standards, methodologies or procedures under the Medicaid State Plan can be no more restrictive than the eligibility standards, methodologies or procedures that were in effect as of July 1, 2008. States with Medicaid State Plans that are more restrictive now than they were on July 1, 2008, will not qualify for the increased amount of federal funding. The new Virginia Medicaid policy regarding life estates was a more restrictive eligibility standard than was in existence on July 1, 2008. Therefore, in order for the Commonwealth of Virginia to qualify for the increased federal funding, the new life estate

policy needed to be changed. On May 15, 2009, in Transmittal # 91, the life estate policy was rescinded. As a result, the policy that is applied to a life estate now varies depending on the date that the life estate was created:

- Life estates created prior to August 28, 2008, are not counted as resources (except when determining eligibility for Qualified Working Disabled Individuals (QWID)).
- Life estates created on or after August 28, 2008, but before February 24, 2009, are to be treated in the same manner as real property, including the application of real property exclusions, if any.
- Life estates created on or after February 24, 2009, are not counted as resources (except when determining eligibility for QWID).
- The transfer of a life estate must be evaluated under the asset transfer policy regardless of whether or not the life estate was counted or excluded as a resource.

The Medicaid eligibility rules are complex, and applicants and their families can easily make errors that will result in denied or delayed eligibility. The attorneys at Oast & Hook can assist seniors in qualifying for Medicaid, while preserving assets and income for the senior's community spouse, dependent children, children with disabilities, or other family members.

Linda Carson is a paralegal with Oast & Hook. She concentrates her work in the area of long-term care planning. Prior to working with Oast & Hook, Ms. Carson worked for the Newport News Department of Social Services for 21 years.

Ask Allie

O&H: Allie, you have your own web page and e-mail. We've heard that one cat is even more involved with the internet. Please tell us about this feline.

Allie: Sure! Sockington, or "Socks," is the cat of Jason Scott, a 38-year-old computer historian and computer administrator from Waltham, Massachusetts. Sockington has his own Twitter account and has been "tweeting" since late 2007. More than 500,000 (including other pets) follow his musings on meal time, personal hygiene, and the view from the top of the stairs. The running thread of Sockington's feline commentary is similar to a comic strip. For instance, Sockington once tweeted, "I must say no comment to the whole dining room incident. No questions please." Sockington is almost a parody of Twitter, where a cat's life, including trips to the litter box and household adventures, is beamed out to the entire world. Hmm, I need to get my own Twitter account and follow Sockington; maybe I can get some tips to liven up the office at Oast & Hook....



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

Announcements

Oast & Hook attorney Sandra Smith will make a presentation entitled "Veterans Benefits" at the Alta Reserve, 1005 Elysian Place, Chesapeake, Virginia, at 2:30 p.m., Thursday, June 11th. For more information please telephone Tammy White at 757-361-0066.

Oast & Hook attorney Sandra Smith will participate in a panel discussion entitled "Senior Services 101" at Kings Grant House, 440 North Lynnhaven Road, Virginia Beach, Virginia, at 9:30 a.m., Saturday, June 13th. The panel will consist of speakers from Oast & Hook, ElderLife Financial Services, Senior Services of Southeastern Virginia, Solutions Home Care, Tidewater Mortgage Services and Alzheimer's Association. This presentation is free and open to the public. For more information or to register please telephone 757-431-8825. Seating is limited so please register by June 10, 2009.

Distribution of This Newsletter

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