

Offices in  
Suffolk and  
Virginia Beach, Virginia  
Tel: 757-399-7506  
Fax: 757-397-1267  
Web: [www.oasthook.com](http://www.oasthook.com)



MEMBER



Special needs require special lawyers.

### INSIDE THIS ISSUE

- 2010 Tax Relief Act –  
Is It Really a Relief?
- Trust Administration  
Issues
- Ask Allie
- Distribution of This  
Newsletter

Editor  
Sandra L. Smith,  
Certified Elder Law Attorney

## 2010 TAX RELIEF ACT – IS IT REALLY A RELIEF?

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (“Tax Relief Act”) was signed by President Barack Obama on December 17, 2010. The Tax Relief Act made significant, but temporary, changes to the estate and gift tax laws and some income tax laws that will affect many individuals. Additionally, the Patient Protection and Affordable Care Act made some changes to the Medicare laws that will also affect many individuals. The attorneys at Oast & Hook have studied the effects of both of these Acts, and Oast & Hook will present a free seminar to those who think they could be affected by these changes. Oast & Hook will present this seminar twice on January 27, 2011, at the Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. The first presentation begins at 10:00 a.m., and the second presentation begins at 4:00 p.m. Make sure your estate plan and your plans for health care are not obsolete. Reserve your seat now. If you have any questions about this seminar or if you would like to register for it, then please phone Oast & Hook’s Jennie Dell at 757-399-7506.

If you are interested in having an Oast & Hook attorney speak at your event, phone Jennie Dell at 757-399-7506 or e-mail her at [dell@oasthook.com](mailto:dell@oasthook.com). Past topics include estate planning, long-term care planning, and veterans benefits.

## TRUST ADMINISTRATION ISSUES

A recent Georgia Court of Appeals case highlights several issues with respect to administering trusts. In *McPherson v. McPherson*, (2011 Ga. App. LEXIS 8, January 11, 2011), the Georgia Court of Appeals considered a case

in which a father established an irrevocable trust in 1990. The father had four adult children from his first marriage. He appointed his son Scott as trustee; in 1992 Scott consented to the appointment of his three siblings as co-trustees. The trust states that the trustee has the discretion to pay income or principal or both to any of Howard's children. The distributions did not have to be equal, and the trustee was directed to take "into consideration any other means of support they or any of them may have to the knowledge of the trustee." The trust also provided Howard with the authority to remove any trustee for any reasonable cause and to appoint another trustee, except that he could not appoint himself as trustee.

Howard remarried and had one son (also named Howard) by his second wife. He transferred to the trust his ownership interest in assets, including real estate companies. Eric participated as co-trustee between 1992 and 2005 and received his equal share of distributions from the trust. In June 2004, Howard told Eric that he was considering removing Eric as co-trustee because he was being difficult. Eric had placed his girlfriend on the company payroll, refused to sign legal documents after promising to sign them, and had threatened to sue his siblings. Eric subsequently sued his siblings for the first time, and Howard removed Eric as co-trustee. He replaced Eric with Howard's attorney.

In July 2005, the trustees distributed \$300,000 of trust income to each McPherson child. The trustees put \$50,000 of Eric's share in sub-trusts created for the benefit of Eric's children. The trustees directed that of the remaining \$250,000 of Eric's distribution, \$157,000 was to be deducted to account for the expenses the trust incurred in defending the trust in Eric's first lawsuit. The remaining \$93,000 was sent to Eric, and Eric negotiated the check. The trustees distributed a total of \$2,240,000 from the trust between August 2005 and December 2008, with Eric's share equal to that of his siblings, less the \$157,000. Eric brought the current suit in July 2006, alleging that the trustees' withholding of the \$157,000, as well as in making the rest of the 2005 through 2008 distributions, violated their fiduciary duties. He also sought an injunction against Howard for removing him as co-trustee. The trial court ruled for the defendants on all counts.

On appeal, Eric argued that "the trustees abused their discretion in making the 2005 through 2008 distributions because they were required to take into account the needs of each of Howard's children." The youngest child was a minor still living at home with his father. The court reviewed the provisions of the trust as well as the Georgia Revised Trust Code and common law. The court said that Eric did not provide evidence that the trustees did not consider the beneficiaries' resources in their distribution decisions. The court also said that even if he had provided such evidence, the trustees could exclude the beneficiaries' resources from consideration for two reasons. First, the trust permitted either equal or unequal distributions to each of Howard's children, and second, based on the trustees' knowledge of Howard's intended treatment of the children, with the result being equal per stirpes distributions.

Eric also argued that the trustees' withholding of the \$157,000 amounted to an abuse of discretion. This amount was one-tenth of the total amount distributed to Eric and his children over four years. The court said that the unsuccessful result of the 2004 suit and the instant suit "Provide evidence of these

claims' lack of merit sufficient to justify the trustees' decision to pass these defense costs on to Eric alone." The court said that the trustees' decision was on a "principled basis," with the principles being Howard's desire to treat his children equally and preserving the assets of the trust for the use of all of the beneficiaries. The court also held that the trial court did not err with respect to Eric's claim regarding Howard's removal of Eric as co-trustee. The court said Eric did not dispute the trustees' evidence regarding Eric's behavior as co-trustee, and this evidence gave Howard "reasonable cause" to remove Eric. The court affirmed the judgment of the trial court.

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

### **Ask Allie**

O&H: Allie, in a previous column, you discussed two ways that people can volunteer to help dogs and cats. Please tell us some other ways that people can volunteer.

Allie: Sure! People can provide foster homes for older pets and those with special needs. The Fuzzy Pet Foundation (TFPF) in Santa Monica, California, operates such a foster home program. Foster care provides an opportunity to assess the pet and ultimately place the pet in lasting homes. Sometimes a foster family receives assistance from a rescue group for supplies and veterinary care, so fostering pets can give a loving reprieve for cats and dogs without making a large financial commitment. People can also donate clean, old blankets and newspapers to local animal rescue organizations or shelters. Some veterinary clinics may also accept donations of blankets and towels for pets that are hospitalized. These are just a few suggestions to help improve the lives of animals. No gesture is too small, and people will gain far more than they give. These are some great ideas! I'm happy that my friends at Oast & Hook and my mom have taken such great care of me. Time to go and play. See you next week!

### **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](mailto:mail@oasthook.com), telephone us at 757-399-7506, or fax us at 757-397-1267.

### **Copyright © 2011 by Oast & Hook, P.C.**

*This newsletter is not intended as a substitute for legal counsel. While every precaution has been taken to make this newsletter accurate, we assume no responsibility for errors, omissions, or damages resulting from the use of the information in this newsletter.*

*This newsletter is produced to be sent electronically. If we currently fax you a copy of the Oast & Hook News but you prefer to receive it by e-mail, then please contact us at: [mail@oasthook.com](mailto:mail@oasthook.com).*

*If you would like to be removed from our Oast & Hook News distribution list, please e-mail us at [mail@oasthook.com](mailto:mail@oasthook.com), telephone us at 757-399-7506, or fax us at 757-397-1267.*