

OAST & HOOK

Offices in
Portsmouth, Virginia
and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
E-mail: eln@oasthook.com



Member, National Academy
of Elder Law Attorneys

INSIDE THIS ISSUE

- The Augmented Estate and Certain Life Insurance Proceeds and Vested Retirement Benefits
- Announcement
- Seminar
- Distribution of This Newsletter

Editor
Sandra L. Smith
Attorney at Law

THE AUGMENTED ESTATE AND CERTAIN LIFE INSURANCE PROCEEDS AND VESTED RETIREMENT BENEFITS

The Supreme Court of Virginia recently decided a case about a surviving spouse's right to claim an elective share in the deceased spouse's augmented estate, and about the exemption of certain life insurance proceeds and vested retirement benefits from a decedent's augmented estate. The outcome will likely affect estate planning decisions made by some *Elder Law News* readers, and current and future Oast & Hook clients.

In *Sexton v. Cornett* (2006 Va. Lexis 5) decided January 13, 2006, the Court considered a case in which the decedent, who had no descendants, changed his beneficiary designations on his Virginia Retirement System (VRS) life insurance and vested retirement benefits from his estranged wife, to his sister and her infant daughter. James Sexton and Christie Sexton were separated and divorce proceedings were pending on the date of Mr. Sexton's death. After Mr. Sexton's death, Mrs. Sexton filed a petition to determine her elective share in his augmented estate. She claimed that the life insurance proceeds and the VRS retirement benefits should be included in the augmented estate, and that she should be awarded one-half of the retirement benefits as her elective share. The trial court ruled that the value of life insurance proceeds and the value of retirement benefits should be added to the decedent's augmented estate pursuant to Virginia Code § 64.1-16.1, but that this Virginia Code section does not bring the actual life insurance proceeds and retirement benefits into the augmented estate. The trial court stated that Virginia Code § 38.2-3339 exempts the life insurance proceeds and the retirement benefits from application "by any legal or equitable process or operation of law" to any debt or liability of any person who has a right under the policy. As a result, the trial court held that the life insurance

proceeds and the retirement benefits were not part of Mr. Sexton's augmented estate, and that Ms. Sexton had no claim to them. Ms. Sexton appealed the trial court's decision.

The Supreme Court of Virginia affirmed the trial court's judgment, although it disagreed with the trial court's reasoning. The Court first discussed Virginia's revision of its laws pertaining to wills and estates from the previous dower and curtesy system to the current augmented estate system. The augmented estate system provides that the augmented estate includes the value of any property having an aggregate value exceeding \$10,000 transferred by a decedent within the calendar year of his or her death, or within the five preceding calendar years. Persons such as beneficiaries who are "original transferees or appointees of the decedent" are "subject to contribution to make up the elective share of the surviving spouse." (Internal citations omitted.) The Court stated that the designation of an individual as a beneficiary under a life insurance policy or vested retirement benefits is a gift from the insured to that individual. If the augmented estate laws are read in isolation, the Court said that the life insurance proceeds and the retirement benefits at issue would be subject to the claim of the surviving spouse.

The Court then analyzed various Virginia Code sections in which the Virginia General Assembly excepted VRS life insurance proceeds and retirement benefits, in the hands of the beneficiaries, from attack of any kind, specifically Virginia Code §§ 51.1-510, 51.1-124.4, and 38.2-3339. The Court said that the question before it was whether these Virginia Code sections (part of the law since 1960, 1952 and 1934, respectively) were partially repealed by implication when the augmented estate laws were enacted in 1990.

The widow argued that the two statutory schemes do not conflict because even if the value of the proceeds and benefits are added into the augmented estate, the beneficiaries do not have to satisfy her elective share claim from those proceeds and benefits, and she can use other assets of the estate to satisfy her claim. The Court disagreed, stating that this would create a circular process that "would effectively nullify the exemption laws and would require a court to accomplish by indirection the very result those laws were designed to prevent." The Court went on to explain that the implied repeal of an earlier statute by a later enactment is not favored, because there is a presumption against a legislative intent to repeal when the later statute does not expressly repeal or amend the former statute. The Court said that its duty, therefore, was to give both statutes a construction that will give force and effect to each. The Court stated that the earlier exemption laws were statutes of special application, and that they were not repealed by the later, general augmented estate laws. The Court held that the exemption laws remain in effect as exceptions to the application of the augmented estate laws. In this specific case, the VRS life insurance proceeds and the vested retirement benefits are not part of the decedent's augmented estate, their value should not be added to it, and the beneficiaries are not subject to any claims for contribution.

Oast & Hook recommends that its clients review their estate plans annually to ensure that their plans are still effective if there are changes in the law. This case is one example of a change in the law that may affect some of our clients and cause them to revise their existing estate plans. Clients should review their estate plans and call Oast & Hook for an appointment to review their estate plans if they think the outcome of the *Sexton* case may affect their estate plans.

Announcement

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled "Boomers: Redefining Life After 50." This week's episode will cover Sex, Love and Relationships and will be aired at 4:30 p.m., Saturday, January 28th.

Seminar

Oast & Hook is proud to present an advanced seminar entitled: "Special Needs Trusts: A Wealth of Information." This seminar is open to the public, and it will be held at the Chesapeake Conference Center, 900 Greenbrier Circle, Chesapeake, Virginia 23320, from 9:00 a.m. to 12:30 p.m., Wednesday, March 8, 2006. This seminar has been approved for 3 CLE credits by the Virginia State Bar. For more information, please telephone Jennifer Lantz or Linda Gerber at 757-399-7506.

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 *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.

Please visit us on the world wide web at:
www.oasthook.com

Our Web site contains information about Oast & Hook and an archive of our newsletters and other estate planning, estate administration, and elder law articles in searchable format.

Copyright © 2006
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 or omissions, or for 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 Elder Law News but you prefer to receive it by e-mail, then please contact us at: eln@oasthook.com.

If you would like to be removed from our Elder Law News distribution list, please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.