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Member, National Academy
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COMMON ERRORS IN LONG-TERM CARE PLANNING

The elder law attorneys at Oast & Hook assist seniors and disabled persons and their family members in applying for Medicaid assistance. We frequently observe the following planning errors that people make when applying for Medicaid.

- **Medicaid Myths.** Relying on information from family members or friends. Medicaid is a state program funded in part by the federal government. Each state has its own Medicaid rules and regulations; there are 51 Medicaid programs when you include the District of Columbia. Seniors, disabled persons and their families should consult with an experienced elder law attorney familiar with the Medicaid program in the state in which the Medicaid application is to be filed.
- **Thinking it's too late to plan.** It is never too late to plan. It is possible to begin planning even after the senior or disabled person has entered a nursing home. With proper planning it is possible to protect much of the senior or disabled person's assets.
- **Giving away assets too early.** These assets belong to the senior or disabled person. Don't put the senior or disabled person at risk by making premature gifts to family members. Premature gifts can also result in tax and Medicaid problems, particularly with the changes in the law because of the Deficit Reduction Act of 2005 (DRA).
- **Ignoring exempt transfers.** Some transfers do not result in periods of Medicaid ineligibility. These transfers include transfers to disabled children, minor children, some caretaker children, some siblings, d(4)(A) trusts for disabled persons under the age of 65, and d(4)(C) pooled trusts for disabled persons of any age.

- **Failing to take advantage of spousal protections.** These protections include maximizing the Community Spouse Resource Allowance by increasing countable resources prior to the “snapshot” date, and by purchasing exempt resources, such as a motor vehicle, home, or prepaid burial, or by converting countable resources to income.
- **Applying for Medicaid too early.** As a result of the DRA, applying for Medicaid within five years of making a gift can result in a period of ineligibility that will start not when the gift is made, but when the senior or disabled person is in the nursing home with no funds available to pay for his or her care.
- **Applying for Medicaid too late.** Applying for Medicaid too late can result in spending funds that could have been protected by proper planning.
- **Failing to keep good records.** This has become a critical issue in light of the DRA. An experienced Medicaid eligibility worker will examine thoroughly all Medicaid applications. The applicant should retain records to support all items listed on the application, document the applicant’s assets as of the date of entry into the nursing home, and verify the disposition of the applicant’s assets for the five years period prior to the filing of the application.
- **Not getting expert help.** Medicaid asset protection planning is complicated. Most people will require this planning only once during their lives. Because a great deal is at stake, it is wise to consult an experienced elder law attorney when nursing home care is necessary. The attorney’s fees are an investment, not an expense.

The attorneys at Oast & Hook are experienced in long-term care planning, and they are available to assist clients with these critical issues.

Announcements

Oast & Hook is pleased to announce that it is a sponsor for the 17th Annual Alzheimer’s Education Conference to be held at Old Dominion University on June 7th and 8th. Oast & Hook will also present a workshop entitled “Legal Issues for Families Facing Alzheimer’s Disease” on June 7th and a workshop entitled “Current Legal Issues – Competency Issues and the Law” on June 8th. For more information about this conference, please call the Alzheimer’s Association at 757-459-2405 or visit their website at www.alzseva.org.

William Oast will be the guest speaker on the “Ask the Expert” show on WTAR radio (850 AM) from 8:00 a.m. to 9:00 a.m. on June 24th.

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled “Boomers: Redefining Life After 50.” This week’s episode is “Pack Your Bags.” It will be aired at 4:30 p.m., Saturday, June 3rd.

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.

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:

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

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