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ESTATE PLANNING FOR BLENDED FAMILIES

Oast & Hook assists clients with their estate and long-term care planning. Typically, the clients are looking for assistance solving complex and difficult problems. These problems include: Paying for uninsured medical and long-term care services; assuming the investment risk for their retirement funds; providing for the management of their personal and financial affairs during periods of incapacity, and protection of their family members and assets from diverse legal, financial, tax and social risks. Our clients want a professional service provider that provides a comprehensive solution for these problems.

In the past, the typical client was in a long-term marriage, with the client's only descendants being children of that marriage, and the children's descendants. "Blended families" are increasing in number, and they have their own unique set of challenges and problems. "Blended families" are families with multiple family groups. These families include married couples with one or both spouses having children by a prior marriage or relationship. These families also include clients with married children in which a child has a child by a prior marriage or relationship, or a child's spouse has a child by a prior marriage or relationship. These blended families create many complex estate and financial planning problems for our clients, including the potential disinheritance of their children and descendants, protection of the client's current spouse from the client's descendants, the protection of assets from former spouses, and disputes concerning the division of authority or responsibility between the different family groups. Therefore, estate planning for blended families is a form of asset protection. Estate planning for blended families raises many difficult ethical issues for the attorney, including confidentiality of information and conflicts of interest. The attorney should document clearly the terms of the representation in a written engagement agreement.

There are several value-added solutions for blended families. Some clients will need premarital or marital agreements. The agreement should address the parties' rights and responsibilities during their marriage, including living arrangements, the division of the payment of expenses, and whether or not there is an obligation to purchase and maintain long-term care insurance. The agreement should also address the parties' rights and obligations if they divorce, the rights of the surviving spouse in the estate of the first spouse to die, and the obligations of the surviving spouse at his or her death.

With regard to descendants, the spray spendthrift trust can be used. Attorneys drafting the spray spendthrift trust may want to consider several provisions. The trust can provide for discretionary principal and income distributions in equal or unequal amounts to the surviving spouse or the testator's children for appropriate purposes, taking into account the beneficiary's other resources, income and means of support. The client may want to consider giving the spouse an annual unitrust distribution, use a disinterested trustee to avoid conflicts of interest, and permit additional distributions for "any appropriate purpose." The residue of the trust is typically distributed to the client's children on the client's death. The client should also consider the inclusion of a "no contest" provision to minimize the risk of a challenge of the trust.

Another tool is the bloodline trust. This is a generation-skipping discretionary spendthrift trust for the benefit of the grantor's child, and the child's descendants. The trust is designed to protect the trust assets from the child's creditors, including former spouses, while maintaining maximum control for the child. The trust typically provides that the child is the trustee of his or her trust unless he or she is involved in a divorce action or becomes a defendant in a lawsuit. Additionally, the trustee is given discretion to distribute income to or for the benefit of the child. As trustee, the child can distribute principal to or for the benefit of the child or the child's descendants in accordance with the health, education, maintenance and support standard, while a disinterested trustee can distribute principal for any appropriate purpose. The trust terminates on the child's death, and the remaining principal is paid to the child's descendants. The trust should include a spendthrift provision, and a provision that expressly says the child has no right to terminate the trust.

Oast & Hook will discuss additional value-added solutions in a future edition of the *Elder Law News*.

Announcements

William Oast and Stefan Gravenstein, M.D. will be the guest speakers on the "Ask the Expert" show on WTAR radio (850 AM) from 8:00 a.m. to 9:00 a.m. on June 24th. Dr. Gravenstein is the director of the Glennan Center for Geriatrics and Gerontology at the Eastern Virginia Medical School.

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 "Welcome Home." It will be aired at 4:30 p.m., Saturday, June 10th.

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

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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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