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Member, National Academy
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INSIDE THIS ISSUE

- Pet Trusts
- Announcement
- Ask the Expert
- Recent Developments
in Long-term Care
Planning Seminar
- Oast & Hook
- Special Needs Alliance
- Distribution of This
Newsletter

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PET TRUSTS

Many states have adopted statutes that permit pet owners to establish trusts for the care of pets during the owner's incapacity or after the owner's death. Virginia will join these states on July 1, 2006, when Virginia Code § 55-544.08 becomes effective. This code section is modeled after a similar section of the Uniform Trust Code.

The new law permits a person to create a trust to provide care for an animal or animals alive during the trust settlor's lifetime. The trust terminates at the death of the animal, or if several animals are included in the trust provisions, at the death of the last surviving animal. The most important feature of the statutory pet trust is that such a trust can be enforced by a person appointed in the trust, or if no person is appointed in the trust, by a person appointed by the court. Any person interested in the welfare of the animal or animals can request the court to appoint a person to enforce the trust, or to remove a person appointed in the trust. Prior to the adoption of this statute, a pet owner could set up a trust for the care of a pet, but there were no methods available to enforce the trust. Pets could end up in shelters while those in charge of the money could end up with the funds.

The statute also provides that the property of a pet trust may be applied only to its intended use, except that a court could determine that the value of the trust property exceeds the amount required for the intended use. Such excess property would be distributed according to the terms of the trust, or if the trust does not specify a distribution, the property would be distributed to the settlor, if living, or to the settlor's successors in interest. Settlers of pet trusts may want to consider naming charities as remainder beneficiaries and as distributees of excess funds. This should avoid the issue of disgruntled family members going to court to have funds declared as excess in order to receive the funds themselves. This should also prevent a conflict of interest if a person is named as trustee and also as a remainder beneficiary or distributee of excess funds.

A pet trust should name a trustee who will manage the trust assets, and it should also name a caretaker for the pets. The trust should also name someone or a panel of people who have the authority to enforce the trust. The caretaker could serve in this role if not also serving as trustee. The trust should list the types of permitted expenses for food, grooming, toys, medical care (and the extent of that medical care), cremation or burial expenses, as well as address the issue of if and when euthanasia is permitted. Some attorneys recommend that the trust should provide the most specific pet care directives possible, keeping in mind that the pet cannot speak for itself.

In states that have adopted statutory pet trust legislation, more and more pet owners are taking advantage of the opportunity to plan for their pets, particularly since the trusts can now be enforced. Some owners have established sizeable trusts so that their pets can live in relative luxury, while others leave smaller amounts so that the pets can be cared for by family or friends without out-of-pocket costs to the caregivers.

Oast & Hook is currently assisting its first client establish a pet trust under the new statute, and the firm expects many more clients to take advantage of this new law. Please contact Oast & Hook for assistance with this new aspect of estate planning.

Announcement

Oast & Hook is pleased to continue its sponsorship of a series on WHRO-TV entitled "Boomers! Redefining Life After 50." This week's episode is "Friends Forever." It will be aired at 4:30 p.m., Saturday, July 1st.

Ask the Expert

Mark your calendars to listen to the "Ask the Expert" show on WTAR radio (850 AM) from 8:00 a.m. to 9:00 a.m. on Saturday, July 22nd. Andrew Hook an attorney from Oast & Hook and Kenneth Wren Jr. from Towne Investments will be the guest speakers.

Oast & Hook Seminar

Oast & Hook presents "Recent Developments in Long-term Care Planning: New Law, New Opportunity" on Thursday, August 24, 2006. The seminar will be held at the Chesapeake Conference Center from 9:00 a.m. to 12:30 p.m. This half-day workshop will be presented by Oast & Hook attorneys Andrew Hook and Sandra Smith. The registration fee is \$15 before August 1, 2006, or the fee is \$30 after August 1, 2006. Please visit Oast & Hook's website (www.oasthook.com) to obtain a registration form for this seminar.

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.

Special Needs Alliance

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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