

OAST & HOOK

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



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of Elder Law Attorneys

INSIDE THIS ISSUE

- How Does Medicaid Treat Heir Property?
- Announcement
- Ask the Expert
- Oast & Hook Seminar
- Oast & Hook
- Special Needs Alliance
- Distribution of This Newsletter

Editor
Sandra L. Smith
Attorney at Law

HOW DOES MEDICAID TREAT HEIR PROPERTY?

Oast & Hook has been busy analyzing Transmittal #84 to the Medicaid Manual. Many of the provisions of Transmittal #84, which became effective July 1, 2006 are the result of the passage of the Deficit Reduction Act of 2005, and they are exactly as Oast & Hook has reported in previous editions of the *Elder Law News*. Because many of the changes in the law will have an impact on Medicaid planning, Oast & Hook will continue to report on the effect of Transmittal #84 in future editions of the *Elder Law News*. These changes require seniors to think about long-term care planning well before their need for nursing home care.

Some planning opportunities remain unchanged. For example, Oast & Hook was confronted recently by a common situation in developing a Medicaid asset protection plan for a married couple in Virginia. A community spouse was seeking advice in obtaining Medicaid long-term care assistance for her institutionalized husband who was mentally incapacitated.

The husband had inherited an interest in two parcels of real property: one parcel from an uncle named James, and the other parcel from an uncle named William. Neither uncle had a will or a list of heirs on record. Each parcel of real property had an assessed value of about \$10,000. The husband had been paying the real estate taxes on both of these parcels of property for years. The wife knew that her husband's parents were deceased, and that he had four siblings. She also knew that her husband had at least two deceased uncles, but she did not know if he had any other aunts or uncles. This resulted in the institutionalized spouse owning a fractional interest in the two parcels of real property.

Many people of modest means often die without a will. As a result, their assets will pass to their heirs as provided under the laws of intestate succession set

forth in the Virginia Code. Frequently, this will result in a large number of heirs owning a relatively small interest in a single piece of real property as tenants in common. These property interests are often called "heir property." Unless all of the owners can be located and consent to the sale of this heir property, it can only be sold through an expensive and time consuming court action called a partition suit.

How should the interests of the institutionalized spouse in these two parcels of real property be treated on the Medicaid application? The Virginia Medicaid Manual provides that an undivided interest in real property is an asset. Therefore, the property interest must be reported on the application; however, we do not want the entire value of both parcels to be applied to the community spouse's resource allowance. The Medicaid Manual provides that if a partition suit is necessary to sell real property because there is at least one other owner, then the estimated cost of the partition suit may be deducted from the property's value. If the cost of the partition suit would result in the applicant securing title to property that does not have a value substantially in excess of the cost of the suit, then the property will not be treated as an asset. (See Virginia Medicaid Manual Sections S1120.010(C)(2) and M1120.215.)

In the case under discussion, Oast & Hook had the community spouse execute an affidavit stating that her husband owned an undivided interest in both parcels of real property with his siblings and other family members. Oast & Hook then obtained a written estimate of the cost of a partition suit for each parcel of real property from a local trial attorney. Because these estimates exceeded the value of each parcel of real property, the community spouse listed each parcel on the application with a zero value. The affidavit and written cost estimates were attached to the Medicaid application.

The attorneys at Oast & Hook provide valuable assistance to families in planning for their long-term care needs, including estate and investment planning. With the recent changes in the law, advance planning is more critical than ever.

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 "Leaving a Legacy." It will be aired at 4:30 p.m., Saturday, July 8th.

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. Oast & Hook attorney Andrew Hook and Kenneth Wren Jr. from Towne Investment Group 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

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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