

### OAST & HOOK

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Member, National Academy  
of Elder Law Attorneys

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## Oast & Hook Seminar New Laws, New Opportunities



Oast & Hook will host a seminar titled, "Recent Developments In Long-Term Care Planning: New Laws, New Opportunities" on Thursday, August 24, 2006, at the Chesapeake Conference Center, 900 Greenbrier Circle in Chesapeake. Registration starts at 8:30 a.m. The workshop begins at 9:00 a.m. and concludes at 12:30 p.m. The seminar will be presented by Oast & Hook attorneys Andrew Hook, Sandra Smith, Jennifer Rossetini, and Letha Sgritta. The seminar will explore the changes the Deficit Reduction Act of 2005 (DRA) and the Virginia implementing rules have made to Medicaid planning, as well as the new opportunities that they provide to obtain assistance in the payment of long-term care while protecting assets.

The registration fee is \$30. A registration form is attached to the end of this newsletter.

## WAIVER OF ELECTIVE SHARE AND MEDICAID ELIGIBILITY

A recent New Jersey case illustrates the relationship between the waiver of an elective share, and Medicaid eligibility. In *I.G. v. Department of Human Services* (Docket No. A-0006-05T00006-05T5, June 13, 2006), the plaintiff was a woman suffering from Alzheimer's disease, who was residing in a nursing home and receiving Medicaid benefits. Her husband, E.G., had also been a nursing home resident receiving Medicaid. The marital home had been transferred to E.G. before his wife moved into the nursing home. When the marital home was sold, E.G.'s Medicaid benefits were terminated because of excess resources, and E.G. died a few months after the sale of the home.

E.G.'s will left his residuary estate to I.G. with the provision that the bequest would be held in a trust for which no residuary beneficiary was named. J.K.,

the parties' niece, I.G.'s agent under her power of attorney, and also the executrix of E.G.'s will, transferred the funds in the residuary estate into a testamentary trust account at a New York bank. The will gave J.K., as trustee, sole discretion over the distribution of the trust assets and income for I.G.'s benefit. The Department of Social Services terminated I.G.'s Medicaid benefits because of excess resources. I.G. requested a hearing, and the Administrative Law Judge (ALJ) found that I.G. was resource ineligible because she did not elect against her husband's estate. The judge found that one-third of E.G.'s residuary estate (the elective share) was countable, and rendered her ineligible for Medicaid benefits. The Director of the Division of Medical Assistance and Health Services adopted the ALJ's conclusions and found that by "consenting to the will, [I.G.] used her 1/3 elective share to fund the trust" and the "refusal to elect against the estate is considered a transfer of assets she [was] entitled to receive under the law."

The Superior Court of New Jersey, Appellate Division, reviewed the agency decision on appeal. The Court did not deal with the issue of whether the testamentary trust was an excludable asset. The Court dealt solely with the issue of whether "I.G. could have elected against E.G.'s estate, and if so, whether the failure to do so would constitute a disposal of assets for less than fair market value during the statutorily defined period of time, hereby requiring an ineligibility period for the Medicaid program." Under New Jersey law, for transfer of assets purposes, assets include income and resources that the individual "is entitled to, but does not receive because of action or inaction by the individual . . . or by any person . . . with the legal authority to act in place of or on behalf of the individual." The New Jersey regulations specifically mentioned the waiver of an inheritance, including the waiver of the spousal elective share, as an example of an asset that, if transferred for less than fair market value, would render the individual ineligible for Medicaid. The Court determined that J.K., as agent under I.G.'s power of attorney, had the "right, authority of power" to access one-third of E.G.'s residuary estate. When J.K., on I.G.'s behalf, consented to the will and did not demand I.G.'s elective share, I.G. waived immediate access to one-third of E.G.'s residuary estate. The transfer to the trust, without any compensation to I.G., was a transfer of assets resulting in a period of ineligibility for Medicaid. The Court determined that the one-third elective share of E.G.'s estate was available to I.G. for Medicaid purposes, whether or not she actually received the funds.

This case provides an example of the need for careful planning when one or both spouses need nursing home care. The attorneys at Oast & Hook can assist families with these complex planning situations.

### **Ask the Expert**

Mark your calendar to listen to the "Ask the Expert" show on WNIS radio (790 AM) from 8:00 a.m. to 9:00 a.m., Saturday, August 26th. Oast & Hook attorney Sandra Smith and Kevin Shea from CB&H Business Services will be the guest speakers, and they will be discussing long-term care insurance.

### **Speakers**

If you are interested in having an elder law attorney from Oast & Hook speak at an event, then please call Vivian Lane at 757-399-7506.

### 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](http://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](http://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](mailto: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](http://www.oasthook.com)**

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 form at.

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# OAST & HOOK

**Presents:**

## **Recent Developments in Long-term Care Planning: New Laws, New Opportunities**

**Date:** Thursday, August 24, 2006

**Location:** Chesapeake Conference Center  
900 Greenbrier Circle  
Chesapeake, Virginia 23320

**Schedule:** Registration: 8:30 a.m. to 9:00 a.m.  
Workshop: 9:00 a.m. to 12:30 p.m.

**Presenters:** Andrew H. Hook, Jennifer Rossettini, Letha Sgritta and Sandra L. Smith

**Tuition:** Register on or before August 1, 2006, for an early registration fee of \$15.  
The registration fee after August 1, 2006, is \$30.

Space is limited, so please register as soon as possible. Walk-in registrations will not be accepted.  
*No refunds after August 1, 2006.*

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### Registration Form

Please complete this form and either fax it to Oast & Hook at 757-397-1267 or mail it to Linda Gerber at Oast & Hook, P.C., at 295 Bendix Road, Suite 170, Virginia Beach, Virginia 23452-1294.

Name: \_\_\_\_\_

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For more information, please telephone Linda Gerber, Vivian Lane or Jennifer Lantz at 757-399-7506.