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Newsletter

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## CARE AGREEMENTS BY LETHA SGRITTA

On September 7, 2006, the *Wall Street Journal* published an article entitled “Who Will Mind Mom? Check Her Contract.” The article discusses care agreements, written contracts in which a caregiver agrees to provide services for an elderly or disabled individual in exchange for a modest salary. Typically, the caregiver is an adult child of the elderly or disabled individual. While the idea of having a contract to provide compensation for taking care of a parent may seem unnatural, the use of care agreements is becoming more popular.

A care agreement, also known as a personal service contract, typically states, in specific terms, the services to be provided, such as doing laundry, paying bills, taking the individual to the doctor, and doing any necessary shopping. Some of these services are often the same services that the child caregiver would provide without the benefit of the agreement; however, the written contract is useful for many reasons.

The Medicaid laws were significantly changed in February 2006. As a result, making uncompensated transfers from a parent to a child (gifting) is severely penalized for purposes of determining Medicaid eligibility. Payment for services, however, is not penalized, because the parent is receiving something of value for the payment to the child. Therefore, a parent may pay a child to perform the tasks outlined in the care agreement without causing a penalty for purposes of determining Medicaid eligibility. It is important to have an arms-length, written agreement outlining the services to be provided, and the payment to be made; the Department of Social Services will presume that a transfer from a parent to a child is a gift unless there is proof to the contrary. The salary paid under the agreement is usually modest, and it must be reasonable. A geriatric care manager can assess the services that are needed, and the geriatric care manager can help determine the typical rate of pay for such services. This can ensure that the

contract terms are reasonable, and it can avoid the situation in which the child is paid \$50 an hour to do grocery shopping, when a home-care agency would charge \$15 an hour for the same service.

A properly drafted care agreement can have additional benefits. First, taking care of an elderly parent may require a child to rearrange his or her work schedule, arrange for additional care for his or her child, or cut his or her working hours. This can be costly for the child. Paying the child for the child's services can help alleviate the child's financial burden. Second, paying a child for services can help eliminate potential family disputes. Many families have multiple children, with one child serving as the primary caregiver. The parent often wants to reward the caregiver child for this child's services. Previously, this has been done by gifts during the parent's lifetime, or by an unequal distribution in the parent's will. This can lead to fighting among the children or will contests. If the parent does not provide something extra for the caregiver child, then that child can feel disappointed and unappreciated for this child's services. If the parent pays the caregiver child under the care agreement, then the caregiver child is compensated for the child's time, and there is no need for the parent to make unequal distributions of the parent's assets at the parent's death.

Care agreements should be carefully considered and drafted, because they are binding contracts. If an elderly person is paying someone for his or her care under a care agreement, then the tax rules regarding household employees still apply, and Social Security and other payroll taxes may have to be withheld. In addition, there may be other sources of funding for care agreements, such as long-term care insurance policies, and consumer-directed care programs funded by the state or federal governments.

Seniors and their families should consult with an experienced elder law attorney to determine if a care agreement would be beneficial for their situation. Oast & Hook can assist families with this analysis. Oast & Hook can prepare a care agreement as part of a comprehensive estate and long-term care plan that meets the needs of both the seniors and their caregivers.

*Letha Sgritta is an attorney with Oast & Hook who concentrates her practice in the areas of elder law and disability law. Ms. Sgritta is licensed to practice law in North Carolina and Virginia.*

### **Announcements**

Last week Letha Sgritta was a guest speaker at the 15th Annual Elder Law Conference for the Virginia CLE. The topic of Ms. Sgritta's speech was "Taxation of Care Coordination Agreements." Visit Oast & Hook's website for a copy of Ms. Sgritta's presentation at [http://www.oasthook.com/legal\\_information/care\\_coordination\\_agreements.pdf](http://www.oasthook.com/legal_information/care_coordination_agreements.pdf)

### **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

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