

2007 LEGISLATIVE UPDATE

The Virginia General Assembly recently passed several pieces of legislation that are relevant to readers of the *Elder Law News*. Our thanks to the Wills, Trusts and Estate section of the Virginia Bar Association for compiling session information so that the *Elder Law News* can pass this on to its readers. Copies of the actual bills and statutes as amended can be accessed through the Legislative Information System at <http://leg1.state.va.us>.

The January 27, 2006, issue of the *Elder Law News* discussed the Virginia Supreme Court's decision in *Sexton v. Cornett* (2006 Va. Lexis 5). The Court considered the case in which a decedent, who had no descendants, changed his beneficiary designations on his Virginia Retirement System (VRS) life insurance and vested retirement benefits from his estranged wife, to his sister and her infant daughter. The estranged wife filed a petition to determine her share in the decedent's augmented estate, claiming that the life insurance proceeds and VRS retirement benefits should be included in the augmented estate. The Court held that the Commonwealth's laws exempted such assets from attack of any kind, including the augmented estate laws, and that therefore the VRS life insurance proceeds and vested retirement benefits were not part of the decedent's augmented estate. Passed in response to this case, House Bill 2833 amends Virginia Code §§ 64.1-16.1 (D) and 64.1-16.2 (F). These sections define "estate" and "property" to include insurance policies, retirement benefits (exclusive of Social Security benefits), annuities, pension plans, deferred compensation arrangements and employee benefits plans. Effective July 1, 2007, the amendment states,

[a]ll such insurance policies and other benefits are included in the terms "estate" and "property notwithstanding the presence of language contained in any statute otherwise providing that neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any other such similar language.

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House Bill 3083 is another bill that pertains to decedents' estates. It adds new Virginia Code § 64.1-157.1, relating to the nonexoneration of liens against property bequeathed by will. It states, "[u]nless a contrary intent is clearly set out in the will, a specific bequest or devise or bequest of real or personal property passes, subject to any mortgage, pledge, security interest, or other lien existing on the date of death of the testator, without the right of exoneration." This means that the mortgage, pledge, security interest or other lien will not be paid out of the residuary of the estate, unless the will clearly expresses the testator's intent that the residuary will be the source of payment. The statute states that "[a] general directive in the will to pay debts shall not be evidence of contrary intent that the mortgage, pledge, security interest or other lien be exonerated prior to passing to the legatee." Testators must be clear in their wills regarding how the mortgage, pledge, security interest, or other lien will be paid. The nonexoneration provisions do not apply to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated (unless later ratified by the testator when not incapacitated). The nonexoneration provisions also do not apply if the mortgage, pledge, security interest or other lien existing at the date of death of the testator was granted by a conservator, guardian, or committee of the testator, unless there is an adjudication that the testator's disability has ceased and the testator survives that adjudication by at least one year. This provision is effective July 1, 2007.

The third bill pertaining to decedents' estates is House Bill 3205. This legislation adds new Virginia Code § 64.1-49.1, and states that although a document may not have been executed in compliance with Virginia Code § 64.1-49, a writing may still be treated as though it had been properly executed. The proponent of the document or writing must establish, by clear and convincing evidence, that the decedent intended the document or writing to constitute (1) the decedent's will, (2) a partial or complete revocation of the will, (3) an addition or alteration of the will, or (4) a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will. Generally, this remedy may not be used to excuse compliance with any requirement for the testator's signature, except in specific circumstances listed in the statute. Further, this remedy is available only in proceedings brought in a circuit court filed within one year from the decedent's date of death, and in which proceedings all interested persons are made parties. The provisions of this section shall apply to all documents and writings of decedents dying on or after July 1, 1998, regardless of when such documents or writings came into existence.

The *Elder Law News* will provide additional 2007 legislative updates in future issues.

Announcement

Oast & Hook attorney Andrew H. Hook will be a featured speaker at the ALI-ABA program entitled "Elder Law: Issues, Answers, and Opportunities," April 26 and 27, 2007, at the Millennium Knickerbocker in Chicago. The program brochure and registration form are available at <http://www.ali-aba.org/aliaba/cm061.htm>

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 a 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.

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