

2007 LEGISLATIVE UPDATE PART II

Last week's edition of the *Elder Law News* focused on new legislation pertaining to decedents' estates. This edition reviews other legislation regarding powers of attorney, trusts, and deeds. The *Elder Law News* again thanks the Wills, Trusts, and Estates Section of the Virginia Bar Association for compiling legislative session information that the *Elder Law News* can now pass 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>.

House Bill 2864 amends Virginia Code § 11-9.1 and adds a subsection that states that an agent stands in a fiduciary relationship to the principal and may be held liable for a breach of such fiduciary duty. A second additional subsection states that if an agent is removed by a court because of abuse, neglect, or exploitation of the principal, then the agent shall pay all costs of the removal proceeding, including the attorney's fees of the prevailing party. This legislation amends Virginia Code §§ 11-9.6 and 37.2-1018 by extending the financial accounting requirement for an agent from two years prior to the request or date of death of the principal to five years.

Senate Bill 1235 also pertains to attorneys-in-fact and agents. This legislation clarifies Virginia Code §§ 11-9.6 and 37.2-1018 by stating that challenges may be made to the actions of an attorney-in-fact, and that discovery may be made after the principal's death, by a person who was interested in the welfare of the principal during the principal's lifetime. An interested person includes the personal representative of the principal's estate. The legislation further amends Virginia Code § 11-9.6 to add that a request to inspect the records of actions taken by an attorney-in-fact or agent made under this section may be enforced in the manner provided in Virginia Code § 37.2-1018 by petition to the appropriate court having jurisdiction over the principal or the estate of a deceased principal. The petition can be filed if the request for inspection is not complied with by the attorney-in-fact or agent within 60 days of the date the request is made.

OAST & HOOK

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



National Academy of
Elder Law Attorneys, Inc.

MEMBER

Member, National Academy
of Elder Law Attorneys

INSIDE THIS ISSUE

- 2007 Legislative Update, Part II
- Speakers
- Oast & Hook
- Distribution of this Newsletter

Editor
Sandra L. Smith,
Certified Elder Law
Attorney

In a trust-related change, House Bill 2831 amends Virginia Code §§ 31-37 and 31-50 to enable custodians of a trust benefiting a minor to transfer property, after the minor reaches 21 years of age, to a qualified minor's trust. A qualified minor's trust means any trust that meets the requirements of Internal Revenue Code § 2503(c). Such a transfer terminates the custodianship to the extent of the custodial property transferred.

House Bill 1838 modifies the Virginia Uniform Trust Code in § 55-548.13 regarding a trustee's duty to inform and report. A trustee shall not be subject to removal or other sanctions if the trustee "fails to furnish information to a beneficiary or respond to a request for information in a good-faith belief that to do so would be unreasonable under the circumstances or contrary to the purposes of the settlor."

House Bill 2395 amends Virginia Code § 55-548.10 by adding a subsection to the Virginia Uniform Trust Code. This subsection states that "a deed or other instrument purporting to convey or transfer real or personal property to a trust, instead of to the trustee or trustees of the trust, shall be deemed to convey the property to the trustee or trustees as fully as if made directly to the trustee or trustees."

House Bill 1909 also pertains to deeds and other writings submitted for recordation, and amends Virginia Code § 17.1-223(B). This subsection now requires that the attorney or party preparing the writing for recordation ensures that Social Security numbers are removed from the writing prior to submission for recordation. This subsection also requires that "a deed conveying not more than four residential dwelling units states on the first page of the document the name of the title insurance underwriter insuring such instrument or a statement that the existence of title insurance is unknown to the preparer."

These changes to the Virginia Code are effective on July 1, 2007.

Oast & Hook can assist clients with complying with these and other changes in the law.

Speakers

If you are interested in having an elder law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz 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.

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.

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:

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.

Copyright © 2007 by Oast & Hook, P.C.

This newsletter is not intended as a substitute for legal counsel. While every precaution has been taken to make this newsletter accurate, we assume no responsibility for errors, omissions, or damages resulting from the use of the information in this newsletter.

This newsletter is produced to be sent electronically. If we currently fax you a copy of the Elder Law News but you prefer to receive it by e-mail, then please contact us at: eln@oasthook.com.

If you would like to be removed from our Elder Law News distribution list, please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.