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MEMBER



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WILLS – DISPENSING WITH FORMALITIES

Jane was told by her physicians that she has a terminal disease, and that she has less than a year to live. She is a mentally competent thirty year old who has never been married and has no children. After a few weeks of contemplation, Jane sits down with her laptop and types a five page document that gives her house and other assets to a local charity at her death. She calls both of her sisters and informs them that because they are financially secure, she wants to leave all of her assets to the charity at her death. Jane's sisters are not only understanding, they also are supportive. After she prints her "will," Jane signs the document in front of a friend, a local notary public, who notarizes Jane's signature on the document.

Prior to 2007, Virginia required strict formalities for executing a document in order for it to be considered a valid will. Sometimes these requirements could lead to results that were clearly not the author's intent. In the above example, even though Jane was competent and told her family she wanted to give her property to a charity after her death, she did not sign her "will" in front of two witnesses. As a result, Jane's "will" could not be admitted to probate. The courts would treat Jane's estate as if she had died without a will and direct her assets to be distributed according to Virginia law governing intestate succession.

In 2007, the Virginia General Assembly adopted Virginia Code 64.1-49.1, a provision of the Uniform Probate Code, commonly known as the "dispensing with formalities provision." This section provides Virginia courts with the power to deem documents and writings that are not in strict compliance of Virginia Code section 64.1-49 to be treated as validly executed, if it is established by clear and convincing evidence that the author intended the document or writing to constitute the author's will. In the above example, the circuit court could be petitioned within one year of Jane's death to invoke the Virginia Code's dispensing with formalities provision.

If the proponent of Jane's "will" proves by clear and convincing evidence that Jane intended the document to be her will, then the court can order it to be treated as such, even though the formal statutory requirements were not met. Ultimately, this would allow the document to be admitted to probate, allowing Jane's intentions to be carried out and her assets to be given to the charity, rather than forcing the court to ignore Jane's wishes.

Recently, the attorneys at Oast & Hook used the dispensing with formalities provision of the Virginia Code to successfully probate a document that allowed the true intentions of the author to be followed. In this case, a woman who had been diagnosed with a serious disease decided to leave her entire estate to her boyfriend of over ten years upon her death, and she discussed this with various people, including members of her family. Using a form she obtained from a co-worker, she typed a document that she thought would act as a valid will. This woman signed the document, placed it in an envelope, and gave it to her family. After the woman's death, the envelope was opened, and it was discovered that the document she had typed and signed was not properly witnessed. The family was initially not allowed to probate the will because it did not meet the statutory formalities to be a valid will in Virginia. The family, however, knew it was the woman's intention to leave her estate to her boyfriend at her death. On behalf of her boyfriend, Oast & Hook filed a petition in the circuit court. The court found by clear and convincing evidence that the woman had intended the document to be her will. The dispensing with formalities provision of the Virginia Code allowed the circuit court to rule that the document was the woman's will, thus honoring her intentions.

The attorneys at Oast & Hook can assist clients and their families with these types of issues requiring litigation, as well as their estate, financial, investment, veterans' benefits, life care, and special needs planning issues.

Attorney M. Bradley Brickhouse joined Oast & Hook in 2009. He practices primarily in the areas of estate planning, guardianships, conservatorships, financial abuse, will contests, and estate and trust disputes.

Ask Allie

O&H: Allie, last week you started a series of articles on disaster planning. Please continue your discussion.

Allie: Sure! Last week I talked about preparing a kit in your home for each pet. The next step in preparing for an emergency such as a hurricane is to decide where you will shelter your pet and yourself. You should locate safe areas in your home, contact evacuation shelters in your area to see if they accept pets, or contact family members in nearby areas to see if you could stay with them. You can also check with hotels along your likely evacuation route to see if you can stay there with your pet, and how many pets they will accept. You should map out your possible evacuation routes and keep maps available in your car. Of course, if you live in an area prone to hurricanes, floods or fires, you should keep an eye on your local news and weather. Your current disaster plan should include the following: (1) a current list of your pets; (2) contact information and the address of where you plan to

go if necessary, including backup locations; (3) a list of your pet supplies and their locations; (4) a list of family members and friends to alert if you evacuate, as well as their contact information; (5) a list of things to do before your evacuate, such as boarding windows, packing valuables, and turning off the water, gas, or electricity to your house if necessary; and (6) a list of items you need to take with you and their locations. You should make sure that everyone in the house is aware of the plan and agree ahead of time who will transport the pets and where you will go. You do not want your pets left behind because everyone thought someone else was taking care of them. Keep copies of your disaster plan handy. Next week I'll talk about what to do if disaster actually strikes. Time to check with my mom and see if she's finished with out plan, then it's time for a nap. See you next week!

Announcements

Oast & Hook attorney Andrew Hook recently gave a podcast interview on the topic of estate planning. To listen to this podcast, please visit <http://tinyurl.com/398jwvc>.

Oast & Hook will hold its quarterly Social Workers and Administrators Breakfast on Wednesday, August 18th at the Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. The topic is life care planning. Registration begins at 9:00 a.m., and the presentation begins at 9:30 a.m. Questions will be answered from 10:30 a.m. to 11:00 a.m. The breakfast is designed to be both a networking opportunity and also an educational opportunity for area professionals who work with seniors, the disabled, and their families. Seats are limited, so please register early for this breakfast by phoning Jennie Dell at 757-967-9704.

Oast & Hook attorney Letha McDowell will speak on the topic of elder law at the monthly meeting of the Norfolk Retired Employees Association from 10:30 a.m. to 11:00 a.m., Friday, August 27th at the Titustown Recreation Center located at 7545 Diven Street, Norfolk, Virginia 23505. For more information on this organization, please visit www.norfolk.gov/retirees.

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 *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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