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MEMBER



Special needs require special lawyers.

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2010 TAX RELIEF ACT – IS IT REALLY A RELIEF?

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (“Tax Relief Act”) was signed by President Barack Obama on December 17, 2010. The Tax Relief Act made significant, but temporary, changes to the estate and gift tax laws and some income tax laws that will affect many individuals. Additionally, the Patient Protection and Affordable Care Act made some changes to the Medicare laws that will also affect many individuals. The attorneys at Oast & Hook have studied the effects of both of these Acts, and Oast & Hook will present a free seminar to those who think they could be affected by these changes. Oast & Hook will present this seminar twice on March 2, 2011, at the Russell Memorial Library, 2808 Taylor Road, Chesapeake, Virginia 23321. The first presentation begins at 10:00 a.m., and the second presentation begins at 4:00 p.m. Make sure your estate plan and your plans for health care are not obsolete. Reserve your seat now. If you have any questions about this seminar or if you would like to register for it, then please phone Oast & Hook’s Jennie Dell at 757-399-7506.

If you are interested in having an Oast & Hook attorney speak at your event, phone Jennie Dell at 757-399-7506 or e-mail her at dell@oasthook.com. Past topics include estate planning, long-term care planning and veterans benefits.

PET TRUSTS BY ALLIE

February is Responsible Pet Owners’ Month. In recognition of this month, Oast & Hook has asked me to write this week’s article in place of my regular “Ask Allie” column. The economic downturn has affected families across the country, including families with pets. Some people are updating their

estate plans, and they want to be sure that their pets are well cared for after their deaths. Many states have adopted statutes that permit pet owners to establish trusts for the care of pets during the owner's incapacity or after the owner's death. Virginia joined these states on July 1, 2006, when Virginia Code section 55-544.08 became effective. This code section is modeled after a similar section of the Uniform Trust Code.

This law permits a person to create a trust to provide care for an animal or animals alive during the trust settlor's lifetime. The trust terminates at the death of the animal, or if several animals are included in the trust provisions, at the death of the last surviving animal. The most important feature of the statutory pet trust is that such a trust can be enforced by a person appointed in the trust, or, if no person is appointed in the trust, then by a person appointed by the court. Any person interested in the welfare of the animal or animals can request the court to appoint a person to enforce the trust, or to remove a person appointed in the trust. Prior to the adoption of this statute, a pet owner could set up a trust for the care of a pet, but there were no methods available to enforce the trust. Pets could end up in shelters while those in charge of the money could end up with the funds.

The statute also provides that the property of a pet trust should be applied only to its intended use, except that a court could determine that the value of the trust property exceeds the amount required for the intended use. Such excess property would be distributed according to the terms of the trust, or, if the trust does not specify a distribution, then the property would be distributed to the settlor, if living, or to the settlor's successors in interest. Settlers of pet trusts may want to consider naming charities as remainder beneficiaries and as distributees of excess funds. This should avoid the issue of disgruntled family members going to court to have funds declared as excess in order to receive the funds themselves. This should also prevent a conflict of interest if a person is named as trustee and also as a remainder beneficiary or distributee of excess funds.

A pet trust should name a trustee who will manage the trust assets, and it should also name a caregiver for the pets. The trust should also name an individual or a panel of people who have the authority to enforce the trust. The caregiver could serve in this role if not also serving as trustee. The trust should list the types of permitted expenses for food, grooming, toys, medical care (and the extent of that medical care), cremation or burial expenses, as well as address the issue of if and when euthanasia is permitted. Some attorneys recommend that the trust provide the most specific pet care directives possible, keeping in mind that the pet cannot speak for itself.

In states like Virginia that have adopted statutory pet trust legislation, more and more pet owners are taking advantage of the opportunity to plan for their pets, especially since the trusts can now be enforced. Some owners have established sizeable trusts so their pets can live in relative luxury, while other owners leave smaller amounts so their pets can be cared for by family or friends without out-of-pocket costs to the caregivers.

My attorneys at Oast & Hook can assist clients with establishing pet trusts, as well as assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning. Now I need to see if my mom has set up a pet trust for me



Please feel free to e-mail your pet and animal-related questions to Allie at: allie@oasthook.com.

Distribution of This Newsletter

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