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INSIDE THIS ISSUE

- Spendthrifts:
Preserving Your
Estate For Your
Children
- Ask Allie
- Announcement
- Distribution of this
Newsletter

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SPENDTHRIFTS: PRESERVING YOUR ESTATE FOR YOUR CHILDREN BY STEPHEN TAYLOR

Protecting and preserving your estate for your children after your death has become much more challenging in the face of the current economic climate. With the financial collapse of 2008 and subsequent recession, the perilous nature of the European market, our country's debt crisis, and the fears of another recession, many people are concerned about the long-term stability of the assets left to their children. Very often, however, market conditions are not the biggest threat to the inheritance you leave to your children; rather, the unpreparedness of your own children to manage their inheritance may pose the biggest threat. According to a recent poll, 75% of heirs felt either completely unprepared or only somewhat prepared to handle the management of their inheritance.

Fortunately, there are several solutions to protect against the diminution of such assets, either through mismanagement or creditor issues. One of the most common solutions to preserving your assets for your children is the creation of a spendthrift trust. A spendthrift trust is a trust that restrains the voluntary and involuntary transfer of a beneficiary's interest in the trust. Such a trust is often established when the beneficiary cannot effectively manager the beneficiary's own financial affairs, or, similarly, as an asset protection tool to protect the trust's assets from the beneficiary's debt and creditors.

The following are several considerations when using a spendthrift trust:

Trust terms. Most spendthrift trusts are irrevocable, provide discretionary as well as mandatory payout provisions, and may even direct partial or full payments of the trust assets to the beneficiary upon reaching certain age requirements.

The terms of the trust should also explicitly provide spendthrift provisions. For example, the trust should be a spendthrift trust to the maximum extent

permitted by law, providing that no interest in the trust shall be subject to a beneficiary's liabilities or creditor claims, assignment, or anticipation.

The spendthrift trust should also provide protections against the beneficiary's creditors. For example, if the trustee determines that a beneficiary would not benefit as greatly from any outright distribution of trust income or principal because of the availability of the distribution to the beneficiary's creditors, the trustee shall instead expend those amounts for the benefit of the beneficiary (i.e., the trustee can directly pay the beneficiary's bills – such as rent and medical costs – instead of giving money to the beneficiary outright which may then be reached by creditors). This direction is intended to enable the trustee to give the beneficiary the maximum possible benefit and enjoyment of all the trust income and principal to which the beneficiary is entitled.

Finally, the spendthrift trust can prevent marital claims against the trust assets in case of the beneficiary's divorce. This is done by providing that all benefits granted to a beneficiary the trust shall be the separate property of such beneficiary (as distinguished from marital property, community property, quasi-community property or any other form of property as to which such beneficiary's spouse might have a claim or interest arising out of the marital relationship).

Trustee. One of the most important decisions you must make is whom to appoint as trustee of the trust. Often, another family member is asked to serve as the trustee. There are many reasons, however, to consider appointing a corporate trustee (or co-trustee). The corporate trustee—such as a bank or trust company—has experience managing money and can provide valuable guidance. It is also much easier for a corporate trustee to make unbiased decisions, especially when various family dynamics are in play.

Trust Protectors. A growing trend is to also appoint one or more trust protectors, defined as a person or persons who are authorized to direct the action of the trustee. The use of a trust protector can be a valuable tool when you have appointed a corporate trustee of the trust. The addition of a trust protector allows you to appoint a familiar, trustworthy person to oversee the trustee. Depending on your desires, and the applicable state laws, the trust protector may be given the power to (i) modify distribution or administrative provisions; (ii) remove and replace the trustee; (iii) consent to or veto exercises of trustee discretionary powers, such as investments and distributions; (iv) resolve disputes between beneficiaries and the trustee; and (v) terminate the trust.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

Stephen Taylor is an elder law attorney with Oast & Hook, and he practices in the areas of estate planning, estate and trust administration, business planning, and litigation. Mr. Taylor is licensed to practice law in Virginia and North Carolina.

Ask Allie

O&H: Allie, we've heard that some dogs cannot fly on commercial airlines. Please tell us about their alternatives.

Allie: Sure! Many airlines no longer let brachycephalic breeds, also known as short-faced or snub-nosed dogs, fly on their aircraft. Such breeds include popular breeds like pugs and bulldogs; they have smaller openings to their noses and elongated soft palates in the roofs of their mouths. This can make breathing more difficult for them, and these problems can be magnified in stressful situations such as air travel. A recent New York Times article stated that for example, American Airlines and Delta Airlines banned these breeds from flying after several bulldogs died on flights over the past year. Pet Jets offers charter plane service for pets, while Pet Airways is a pet airline. Both have been transporting pets for the past two years, and each said that brachycephalic breeds make up approximately 25% of its passengers. You can find out more about them at www.Petjets.net and www.petairways.com. These are great alternatives for pets who have to travel. As for me, I don't even like to ride in a car, so I don't think air travel would be for me. Time to get my laser toy ready for later . . . See you next week!

Announcement

Oast & Hook will hold its quarterly Social Workers and Administrators Breakfast on Tuesday, November 15th, at the Hilton Garden Inn, Virginia Beach Town Center, 252 Town Center Drive, Virginia Beach, Virginia 23462. The guest speaker is M. Bradley Brickhouse, who will present "Protecting the Elderly" that will focus on the prevention and remedies of elder abuse. You will learn about different categories of elder abuse, as well as reporting, legal remedies, and prevention of elder abuse. Registration begins at 8:00 a.m., and the presentation begins at 8:30 a.m. Questions will be answered from 9:30 a.m. to 10:00 a.m. The breakfast is designed to be 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 Darcee Hale at 757-399-7506.

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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