# Newsletter

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## Bringing Wills and Trusts Together: New Legislation Changes the Law of Trusts

Given the ever-increasing popularity of revocable living trusts as will substitutes, it is troubling that Oregon law of wills and trusts is inconsistent. House Bill 2269A, signed by Governor Kulongoski on May 24, "harmonizes" the provisions for revocable living trusts in several important respects with those of wills. The Bill was signed as "emergency legislation" at the urging of Representative Lane Shetterly, which means that it became effective when signed, rather than as of the first of the year.

Each section of the Bill adds to the law of trusts a provision that already was applicable to wills. Although every estate planning practitioner should review the Bill in its entirety, what follows is a summary of the highlights:

Section 1 defines a "trust" (or a portion of it, in the case of joint trusts) subject to the Bill as one revocable by the grantor at any time. In other words, the changes apply to revocable living trusts, not irrevocable trusts used for tax planning.

Section 2 makes clear that a marriage after a trust is signed does not revoke the trust.

Section 3 terminates any gift to a spouse in the trust if there is a divorce after the trust is signed. It does not, of course, affect any property settlement agreement.

Sections 4 and 5 clarify that if property that is specifically given to someone is subject to a contract for sale or is encumbered or partially sold, the remaining portion of the property still passes to that person, but subject to the contract or encumbrance.

Section 6 adds an "anti-lapse" provision similar to that for wills. It provides that if property is supposed to pass to a relative and that relative dies before the creator of the trust, the gift does not fail, or "lapse," but instead passes to the descendants of the relative. A gift to a nonrelative who predeceased the trust creator, however, does lapse.

Section 7 adds a "pretermitted child" statute, also patterned after current will law. If a trust makes a gift by name to children of the grantor, rather than referring to all children, and if a child is born after the trust is created, then that after-born child is entitled to a share of the gifts otherwise passing to other children under the trust. For example, if a grantor creates a trust and states that Child A and Child B are entitled to half of the assets (or one-quarter each), and after the grantor executes the trust Child C is born to the grantor, then all three children split the half of the assets (i.e., one-sixth each) that were to pass to A and B.

Section 8 spells out what happens to specific trust gifts of property that is subsequently destroyed, damaged or condemned, and the extent to which the beneficiary of the property receives the condemnation or insurance proceeds instead of the destroyed property.

Section 9 simply states that if a gift lapses, it passes as part of the trust residue.

Sections 10 and 11 spell out the rules for "advancement," which occurs when a beneficiary of a specific trust gift receives a similar gift from the grantor during the grantor's lifetime. As with wills, the lifetime gift will not count against the trust gift unless the grantor says so specifically.

## *In This Issue*

Section 12 provides a savings clause that will in some cases allow an improperly drafted trust for the benefit of a spouse to qualify for the estate tax marital deduction, if it appears that it was intended to so qualify.

Section 13 alters the statutory trustee powers to allow a trustee, when dividing trust property, to make non pro-rata distributions.

Section 14 makes a technical correction to the trust "creditor claims" statute enacted in 2001.

This Bill implements changes that should make lawyers' lives easier. However, although many of these provisions are somewhat esoteric, they will make a difference in trust drafting and administration. Lawyers should consider these differences immediately. For example:

Now that the "anti-lapse" provisions are in place, gifts to family members from a revocable trust at the grantor's death pass to the family member's descendants if he or she predeceases the grantor. If such is not the wish of the grantor, the lawyer will now have to specifically draft to say so.

The ability to make non-pro rata distributions should make our lives easier when administering trusts. Additionally, it allows some estate and income tax planning possible that previously was available only if such non-pro rata language was in the trust.

Although some types of "savings" provisions are now added to Oregon law of trusts, they probably should not be relied on when drafting.

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# Legislative Report

Of the four bills sponsored by the Estate Planning and Administration Section, two have passed and two may be reconsidered next session. The legislature is continuing to work on three inheritance bills. More detailed information about all of these bills appeared in the January 2003 issue of the newsletter.

In addition, the legislature passed SB 64, a bill that gives the Division of State Lands additional rights if any part of an estate may escheat.

**Will/Trust Harmonization Statute**. HB 2269A passed and has been signed by the Governor.

**Revised Uniform Principal and Income Act**. HB 2063 passed and has been signed by the Governor.

**Durable Power of Attorney Statute**. HB 2280 was referred to an Interim Judiciary Workgroup. This bill may be considered again by the 2005 legislature.

**Revocation of Beneficiary Designations upon Divorce**. HB 2270 failed and may be considered again in 2005.

**Inheritance Tax Bills**. Work continues on HB 2184, HB 2503, and HB 2704.

**Division of State Lands Given Additional Rights in Estates in Which Escheat Is Possible.** SB 64 (the "Act") passed and has been signed by the Governor. This statute gives the Division of State Lands the same rights as an heir if any part of the estate could escheat and makes a number of other changes.

The Act amends ORS 112.055 to provide that if any intestate taker cannot be found, that person's share escheats. Thus escheat can occur even if other heirs can be found. The Act also says that the share of a devisee who is not found escheats. Presumably, escheat would occur only if existing lapse and anti-lapse rules fail to give the property to someone else. If any devisee or intestate taker cannot be found, the Division of State Lands has the same preference as the missing person has for the appointment of a personal representative, to contest a will of the decedent, and to receive information concerning the estate.

The Act changes the long-standing common-law presumption against escheat and provides that "[n]o preference shall be given to any person over escheat [.]"

The Act creates a number of presumptions relating to missing persons. A missing person who has not been seen for seven years is presumed dead if the absence is unexplained and persons who would likely have heard from the missing person have not heard from him or her. If the missing person is presumed dead under this provision, he or she is presumed to have had two children in addition to any known descendants. These two presumed children have rights as intestate takers and, if they cannot be found, their share of the estate is subject to escheat.

The presumption that the missing person had two children does not apply under two other presumptions of death. A person is presumed dead if the missing person was exposed to a specific peril at the time he or she became missing and if proof of death would be impractical under the circumstances. A person will also be presumed dead if the character and habits of the person are inconsistent with a voluntary absence for the time the person has been missing.

The Act requires that any person who has knowledge that a decedent died wholly intestate, with property subject to probate in Oregon, and without a known heir give notice of the death to the Division of State Lands within 48 hours after acquiring such knowledge.

The Act gives the estate administrator of the Division of State Lands powers to take control of estate property and recover expenses, if the decedent died wholly intestate and without a known heir or if the decedent died with a will but no devisee has been found.

The Act amends ORS 113.035 to require that the petition for the appointment of a personal representative and for the probate of a will include a statement that "reasonable efforts have been made to identify and locate all heirs of the decedent." The new subsection also states: "If the petitioner knows of any actual or possible omissions from the list of heirs, the petition must include a statement indicating that there are omissions from the information

relating to heirs." This change applies to all petitions filed after the effective date of the Act.

The Act amends ORS 113.045 to require notice to the Division of State Lands if any heir or devisee of the decedent has not been found. The personal representative must file an affidavit stating that the notice was mailed or delivered.

The Act amends ORS 116.253 to shorten the period for recovery of escheated property, from 10 years after the entry of a decree of final distribution to 10 years after the death of the decedent or eight years after the entry of the decree.

The changes to ORS 112.055 and the presumptions concerning the death of a missing person apply to estates of all decedents, regardless of whether death occurred before or after the effective date of the Act. The modifications to the recovery period apply to estates of decedents dying on or after the effective date of the Act, however, after January 1, 2005 these changes apply to all estates, regardless of when death occurred.

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# Historical Reflections on the Constitutionality of the Oregon Will Contest Statute

## Introduction

One of the more arresting lines in the Oregon Constitution appears in the article on the judiciary, Article VII (amended), which provides:

> "In actions at law, * * * the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict." Or Const, Art VII (amended), § 3.

This section of Article VII, passed by initiative petition in 1910 at the behest of William U'Ren's populist People's Power League, was meant to be both a check on the Oregon judiciary and an affirmation of a litigant's right to have the decision reached by a jury of his or her peers be the final decision in his or her case. Under this provision, there would be no tampering with the sacred decision of the jury. It had the final word. The jury reigned supreme in Oregon's state courts.

With this constitutional emphasis on the central importance of the jury in Oregon jurisprudence continuing to this day, it may come as a surprise to note that Oregon is one of a distinct minority of jurisdictions throughout the country that do not permit a jury trial in a will contest. Only 13 states do not permit a jury trial in a will contest; seven of these, including Oregon, have a statutory prohibition of this practice. Even though Oregon's statute has been upheld, there is good reason today for questioning its state constitutionality. Careful historical analysis suggests not only that the statute is probably unconstitutional, but also that a crucial Oregon Supreme Court decision handed down shortly after the passage of amendments to Article VII in 1910, holding that a jury trial in a will contest was impermissible, was motivated in part by the supreme court's attempt to overcome some of the limitations placed on judges in those amendments.

After a brief review of the will contest statute and the 1985 Oregon Court of Appeals decision upholding it, this paper will review the standard for determining the state constitutionality of a will contest statute, discuss Oregon territorial statutes permitting jury trials in some aspects of will contests, and examine the supreme court decision that curtailed those rights.

## The Present Oregon Will Contest Statute

Since 1979, Oregon law has provided:

> "In the event of contest of the will or of probate thereof in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury." ORS 113.055(4).

This statute was a slight revision of the statute passed as part of the revision of the Oregon probate code in 1969 by the Oregon Legislative Assembly:

> "In the event of contest of the will or of probate there of in solemn form, proof of any facts shall be made in the same manner as in a suit in equity." Or Laws 1969, ch 591, § 85.

Though the "suit in equity" language appeared in the probate code of 1969, that language with respect to will contests goes back to the Deady Code of 1862, which provided that the mode of proceeding in probate matters "is in the nature of that in a suit in equity as distinguished from an action at law."

Only one appellate case has dealt directly with the question of whether the current statute is constitutional. At issue in *Rantru v. Unger*, 73 Or App 680, 700 P2d 272 (1985), was a challenge to the constitutionality of the statute, in which the appellant contended that the 1979 statutory revision, by making reference to an action before a jury, transformed a will contest from an equitable to a legal proceeding, thus requiring a jury trial. In rejecting this argument, Judge Gillette emphasized that the 1979 amendments to the statute were meant to conform to the usage of then new ORCP 2, which eliminated the distinction between law and equity in Oregon cases. The changes to the statute were procedural and not substantive; they did not alter the substantive rights of a contestant.

Judge Gillette also gave a second reason for rejecting the appellant's argument: the right to a trial by jury was reserved only to those classes of actions in which it was available at the time the Oregon constitution was enacted. Because neither the contestant nor the court knew of any authority allowing for a jury trial in a will contest at the time of the Oregon Constitution's enactment, such a trial would be impermissible today. This decision stands unchallenged.

## 1859 (Or 1857) and All That

Judge Gillette's insistence that a litigant must show the availability of a jury trial in a will contest at the time of the Oregon Constitution's enactment in order to have that right today is mirrored in several other decisions by the Oregon appellate courts. For example, in deciding whether a jury trial was available in an employment action for injunction, back wages, and attorney fees, the court of appeals held that the Oregon Constitution's provision ensuring a trial by jury in all civil cases, preserves that right only "in those classes of actions in which it was available at the time the constitution was adopted." *Rantru*, 73 Or App at 683. Likewise, the Oregon Supreme Court applied this test in 1927 when it held that a Prohibition-era statute permitting forfeiture of a vehicle transporting intoxicating liquor, without a jury trial for the offender, was unconstitutional because it was beyond the power of the legislature to deprive a litigant of a right to a jury trial when that right was available for that alleged offense (forfeiture) before the adoption of the Oregon Constitution.

In fact, this approach to the Oregon Constitution can be traced back as far as 1879, to *Tribou v. Strowbridge*, 7 Or 156 (1879), in which the Oregon Supreme Court asked whether finality of an architect-referee's findings regarding the completion of a construction project unconstitutionally prevented a litigant from having a jury trial on the same question. The court's brief analysis is instructive. In 1854 the Oregon Territorial Legislature passed a statute allowing a referee to make this determination. The right was not abridged in the Oregon Constitution. The then current code, compiled by Matthew Deady and Lafayette Lane, also contained such a statute. Therefore, it is unquestionably true that such a statute existed at the time of the Oregon Constitution's enactment. The court concluded that the statute was therefore valid and that no jury trial was available to the appellant.

In sum, under the logic followed by the Oregon appellate courts for more than a century, a jury trial would be available to a litigant if it could be demonstrated that this right was available to a litigant at the time the Oregon Constitution was enacted.

## Early Oregon Will Contest Statutes

The appropriate inquiry at this point, then, is to ask whether there was a territorial statute or statutes that provided for a jury trial in the probate of a will or a will contest. If there were statutes so providing, the next question is whether those rights were expressly abridged either by another territorial statute or by the Oregon Constitution. If they were not so abridged, the right to trial by jury guaranteed in the Bill of Rights of the Oregon Constitution would ensure the availability of that right for all time unless a subsequent constitutional amendment eliminated that right.

It happens that there was considerable legislative activity related to wills and probate matters during the decade of Oregon territorial government. The two most prominent pieces of legislation were the adoption of a probate code in September 1849 and the creation of a probate court in January 1853. For our purposes, the important sections of the 1849 act relate to the probate of wills. They provide:

> "If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the District Court of the county, contest the validity of the will, or pray to have the will proved, which has been rejected; an issue shall be made up whether the writing produced be the will of the testator or not, *which shall be tried by a jury*, or if neither party require a jury, by the court." Act of September 26, 1849 *in* General Laws of Oregon, 1849-51, § 31 (emphasis added).

The law went on to provide:

> "The verdict of the jury, or the finding and judgment of the court, shall be final saving to the court the right of granting a new trial as in other cases, and to either party, an appeal in matters of law to the Supreme Court." Act of September 26, 1849 *in* General Laws of Oregon, 1849-51, § 32.

This statute was reenacted when the Territorial Legislature adopted the report of the Code Commissioners in December 1853 and was not repealed before the adoption of the Oregon Constitution. Therefore, under the principle of law first articulated by the Oregon Supreme Court in 1879 and confirmed by Judge Gillette as recently as 1985 for will contests, the availability of jury trials for the contesting of probate is ensured by the Oregon Constitution. The current statute, ORS 113.055(4), providing to the contrary, must be unconstitutional.

The statute establishing the probate court in 1853 contained several provisions regarding will contests. It provided, almost unequivocally, that the judge of the probate court would have the authority to "hear and determine all disputes and controversies respecting wills." Act of January 29, 1853 *in* Laws of Oregon 1852-53 at § 8. Thus it appears at first reading that the contest of wills, unlike the probate of wills, did not permit a jury trial. Yet the statute went on to provide:

> "Any person aggrieved by any order, allowance, or sentence, decree or denial of any judge of probate * * * may appeal therefore to the district court, within and for the same county." Act of January 29, 1853, *in* Laws of Oregon, 1852-53, § 23.

Regarding appeals to the district court, the statute provided:

> "If, upon hearing an appeal in the court above, any question of fact shall occur that is proper for a jury to try, the court may, at its discretion, cause it to be tried upon an issue to be formed for that purpose, under the direction of the court." Act of January 29, 1853, *in* Laws of Oregon, 1852-53, § 30.

Here the availability of a jury trial is not as unequivocal as in the probate statute, but it is nevertheless available in certain circumstances. The language of the statute—that any question of fact might trigger a jury trial—would include almost all conceivable will contests that could be brought today, since the major grounds on which wills are contested (lack of testamentary capacity and undue influence) are quintessentially factual questions. So, even though a jury trial was not provided for in will contests in the first instance, it was available on remand from the district court when a question of fact remained outstanding.

Under the jurisprudence of the Oregon Supreme Court since at least 1879, so long as a right to a jury trial was available to litigants at the time of the Oregon Constitution's enactment, it would still be available today, unless precluded by another constitutional amendment. When this standard is rearticulated, one recognizes that

even though a jury trial was not available in the first instance in a will contest before 1859, and may not have been available to all litigants, it was nevertheless available. Therefore, the portion of ORS 113.055(4) precluding a jury trial in a will contest is likewise unconstitutional. With both of the substantive portions of ORS 113.055(4) having been shown to be unconstitutional, the statute must fail in its entirety.[i]

## How and Why the Oregon Supreme Court Ignored the Plain Language of the Territorial Laws

Although the territorial statutes plainly provided for jury trials in some instances for will contests and in all instances for probate contests, these statutes are absent from the Deady Code of 1862. Under that code, probate matters were handled by the county courts and proceedings were conducted as in a "suit in equity." Because probate issues were now conducted as suits in equity, and since equity jurisprudence usually did not permit jury trials, there was no jury trial as of right in the probate or contest of a will. It was not until *Stevens v. Myers*, 62 Or 372, 121 P 434 (1912), however, that the Oregon Supreme Court tried to deal with the tension between the plain language of the territorial statutes and the practice in Oregon, since the Deady Code of 1862, of rarely, if ever, permitting jury trials in will contests or probate proceedings.

The complex facts of Stevens need not detain us. Suffice it to say that for more than a decade of proceedings in that case, the courts of Oregon wrestled with whether and on what grounds the will of George T. Myers should have been admitted to probate and whether a challenge to its provisions should be successful. The unsuccessful contestant asked the Oregon Supreme Court to remand the case so that it could be heard by a jury.

The court proceeded to examine the territorial statutes listed above but then, through unexpected and novel legal and verbal legerdemain, pronounced the territorial statutes unconstitutional. In addition, it proclaimed that the Deady Code of 1862's practice was now determinative for the state of Oregon. By so doing, the Oregon Supreme Court shut down an avenue for jury authority in Oregon just two years after the people of Oregon had authorized the largest expansion of jury rights in Oregon's history, and the court seemed to contradict its "1859 (or 1857) and all that" jurisprudence that had been recognized for more than 30 years. To add to the irony of it all, the author of the first draft of the expansion of jury rights, Article VII, section 3 (amended), of the Oregon Constitution, was Thomas A. McBride, who, at the time of the article's drafting, was a member of the Oregon Supreme Court and who dissented spiritedly in the 3-2 decision in *Stevens*.

After listing the territorial statutes cited above and concluding that they permitted jury trials in probate proceedings and in some will contests, the *Stevens* court gave a two-pronged argument for why the territorial statutes were unconstitutional and why the Deady Code of 1862 prevailed. In a nutshell, the territorial statutes were held to be void because the court interpreted the congressional act of 1848 creating the Oregon Territory as not permitting jury trials in will contests. It also held that the Deady Code of 1862, by providing for county and circuit courts without jury trials in will contests, had provided the successor institutions to the district and probate courts of the territorial statutes.

Section 9 of the act creating the Oregon territorial government provided that judicial power of the territory would be vested in four courts or entities: the supreme court, district courts, probate courts, and justices of the peace. The district court "shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said Territory, as is vested in the Circuit and District Courts of the United States." An Act to Establish the Territorial Government of Oregon, 9 Stat. 223 § 9.

The Oregon Supreme Court then reasoned as follows. The district court, in the territorial statute, was the venue in which a probate could be challenged by jury. The district court was also the place where a remand decision for a jury trial in a will contest would be made. But since the district court had jurisdiction similar to that of the circuit and district courts of the United States, it could exercise jurisdiction only if the statute being sued upon was a federal statute or there was diversity of citizenship. But the probate or contest of a will is done under state law and between nondiverse parties. Therefore, the district court in fact does not have jurisdiction over probate or will contests and any statute that says that it does must be unconstitutional. Therefore, the 1849 and 1853 statutes, which tried to give the district courts jurisdiction over will contests and probate matters, must be unconstitutional. In the words of the opinion, the territorial statutes are "inconsistent with and in derogation of the act of Congress organizing the territorial government of Oregon." *Stevens*, 62 Or at 407.

Once these statutes were disposed of, the court went on to examine sections of the Oregon Constitution providing for courts in the state of Oregon and decided that the probate courts of territorial Oregon would be succeeded by the county courts of the Oregon Constitution and the Deady Code of 1862, and that the district courts of territorial Oregon were succeeded by the circuit courts in the state of Oregon. Because there was no provision for jury trials under county or circuit courts in either the Oregon Constitution or the Deady Code of 1862, and because proceedings in probate were now considered to be suits in equity, no jury trial would be possible in a probate challenge or a will contest.

But the logic of the Oregon Supreme Court can be maintained only by ignoring crucial words in the Act to Establish the Territorial Government of Oregon. Those words provide that the district courts in the Oregon Territory were not simply *federal* district courts, but also had responsibility for *all territorial law*. The supreme court did not even mention crucial words of the statute:

> "[E]ach of said District Courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States, *and also of all cases arising under the laws of the said Territory*, and otherwise." Act to Establish the Territorial Government of Oregon, 9 Stat 323, § 9 (1848).
>
> That is, it is plainly in the text of the congressional act that the district court has jurisdiction over territorial laws. Because it *has* this jurisdiction, it was entirely appropriate for district courts in the Oregon Territory to have jurisdiction over probate challenges and will contest appeals. It *was* entirely appropriate for there to be jury trials of right in the former and by the discretion of the district court in the latter.

Not only do the actual words of the congressional act belie the contention of the Oregon Supreme Court, but a few moments' reflection confirms the interpretation just given and rejects the strained interpretation of the Oregon Supreme Court. Under the congressional act, four types of judicial authority were created: the territorial supreme court, district courts, probate courts, and justices of the peace. If one were to assume that the district courts had jurisdiction only when there was a federal question or diversity of citizenship, one would have the supreme court and probate courts handle only territorial-law issues. But such a conclusion is ludicrous. The territorial supreme court did not have original and exclusive jurisdiction on all nonprobate matters. The district court was the place where civil (nonprobate) and criminal matters originated.

By the cramped and unrealistic construal of the Oregon Supreme Court, jury trials in will contests were banished from Oregon. Though it is beyond the scope of this paper to demonstrate the thesis that the stinging rebuke to judges through the passage of Article VII (amended) in 1910 might have led to the supreme court's reaction in 1912 of restoring some of the province of the judge, the thesis has much to be said for it. It would be a rather natural reaction for the state's highest court to try to salvage a bit of judicial authority in the wake of the "disaster" of 1910. It would be more tempting to do so when one's own colleague was a leader in the effort to curtail judicial power. Additionally, whenever one sees such feeble reasoning as was demonstrated by the supreme court, when the express words of a statute are ignored and the resultant construction makes no meaningful historical sense, one has to suspect that something other than rendering the "legally correct result" might have been on the agenda.

## Conclusion

This brief foray into the history of Oregon's probate and will contest statute has uncovered some unlikely results and challenged a dominant tradition in the state's contemporary jurisprudential machinery. It has discovered that Oregon's 1969 will and probate contest statute prohibiting jury trials is unconstitutional. It has evaluated and criticized the appellate court commitment to the "freezing" of constitutional rights as preserved in statutes that were decidedly inferior to the first code of laws in Oregon after statehood. It has further shown how the Oregon Supreme Court tried to explain away the plain language of the territorial statutes. Finally, it advanced a thesis for why the court might have done this at the time. On the basis of judicial construction of statutes in Oregon today, someone should bring a challenge to the constitutionality of ORS 113.055(4).

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**Note:** A longer version of this article, with footnotes, is available from the author at *blong@Willamette.edu.*

[1] The anomalous position of a right to jury trial in a will contest being available on some occasions at the discretion of the Territorial District Court, and not absolutely to all litigants on all occasions, should cause Oregon appellate courts in 2003 to reassess their language regarding the availability of remedies today. Would a jury trial be available today if, under some circumstances, it was available at the time the Oregon Constitution was enacted, or would it be available today only if it was a right of a litigant under all circumstances at such time? According to the language of the cases, a right to a jury or to free speech can be used today if it was "available" in 1857 or 1859, Wincer v. Ind. Paper Stock Co, 48 Or App 859, 862, 618 P2d 15 (1980); was "well established" in 1859, State v. Robertson, 293 Or 402, 412, 649 P2d 569 (1982); was "secured to them" (Tribou, 7 Or at 158) by the Oregon Constitution; "where it existed" at the time of the constitution's enactment, State v. 1920 Studebaker Touring Car, 120 Or 254, 259, 251 P 701 (1927); or where "it was available at the time the constitution was enacted," Rantru, 73 Or App at 683. Greater linguistic precision is a desideratum.

# Amending Estate Plans of Incapacitated Testators

The disciplinary board of the Oregon State Bar recently approved a stipulation reprimanding a Portland attorney for failing to provide competent representation. The case arose after the attorney prepared estate planning documents on behalf of an incapacitated individual.

In 1985 a husband and wife executed wills, and shortly thereafter the husband, who was having health problems, executed a general power of attorney in favor of his son. The power of attorney was executed with assistance from an attorney other than the one who had prepared the wills, and was a general form including several broad powers and several additional specific powers that had been added to the form at the time of execution. None of the powers included the power of the attorney-in-fact to amend or execute the estate planning documents on behalf of the principal or to make gifts.

By 1988 the husband had become incapacitated, and the wife and son retained the attorney in question, who had not prepared the original wills, for the purpose of updating the estate plans of the husband and wife. Based upon the wife's and son's representations that the husband was incapacitated and that the prior estate planning documents were not in conformity with the estate planning goals of the wife and husband, the attorney prepared a revocable living trust and pour-over will on behalf of the incapacitated husband. Subsequently, the attorney prepared three amendments to the trust documents, based solely upon conversations with the wife. The son executed these amendments as attorney-in-fact for the incapacitated husband. Finally, the attorney also assisted and allowed the son, as attorney-in-fact for the husband, to make gifts of stock in the family corporation to both the son and his wife. The son's siblings ultimately objected to these gifts.

The attorney's actions in representing the husband and wife fell short of the thoroughness and preparation reasonably necessary for their representation, in the following particulars:

- The attorney failed to contact the attorney who had prepared the husband's and wife's prior wills, to ascertain the husband's original testamentary intent.
- The attorney failed to make any attempt to contact the husband directly to determine whether or not he was fully incapacitated and whether he could provide any indication of his testamentary intent.
- The attorney allowed an agent acting under a power of attorney to execute estate planning documents on behalf of an incapacitated individual, even though the power of attorney was general and made no mention of the ability to prepare estate planning documents or amend existing estate planning documents.
- The attorney assisted the son in making gifts to himself under a power of attorney even though the power of attorney did not specifically authorize gifts, giving, or self-dealing.

In light of this case, attorneys should be especially diligent and thorough when representing an incapacitated individual, by taking all actions available to ascertain the testamentary intent and estate planning goals of the incapacitated individual before commencing any legal services that would alter existing estate planning documents. Similarly, when the estate planning document at issue is a will, the appropriate course of action to take, regardless of the terms of the power of attorney, is to implement conservatorship proceedings to appoint the agent named in the power of attorney or another individual as the conservator for the incapacitated individual, and to amend the estate planning documents through the conservator's powers.

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# Disinheritance: A Practitioner's Observations

American and Oregon jurisprudence have long recognized an individual's right of dominion and control over his or her property. That right has been given almost sacrosanct deference in the law, especially in the context of testamentary disposition. That attitude also manifests itself with clients. Time and time again, clients have explained to me that they are willing to participate in litigation because they must do everything in their power to see that their loved one's wishes for the estate are fulfilled. Sometimes, those wishes include a desire to disinherit an individual or a class of individuals. Whether we consider the reason for disinheritance justified or not, a testator's desire to disinherit someone is as legitimate and should be given as much force and effect as a positive disposition of the testator's estate. Consider the often-cited pronouncement from *Holman's Will*, 42 Or 345, 356-57, 70 P 908 (1902):

> "The right of one's absolute domination over his property is sacred and inviolable, so that he may do what he will with his own, if it is not to the injury of another. He may bestow it whithersoever he will and upon whomsoever he pleases, and this without regard to natural or legitimate claims upon his bounty; and if there exists no defect of donative capacity, whereby his individual will or judgment does not have intelligent and conscious play in the bestowal, or undue influence or fraud, whereby an unconscionable advantage may be taken of him through the wicked designs of another, the law will give effect to this disposition; and the right to dispose of one's property by will, and bestow it upon whomsoever he likes, is a most valuable incident to ownership, and does not depend upon its judicious use. And this court has held, in effect, that 'while it seems harsh and cruel that a parent should disinherit one of this children and devise his property to others, or cut them all off and devise it to strangers, from some unworthy motive, yet so long as that motive, whether from pride or aversion or spite or prejudice, is not resolvable into mental perversion, no court can interfere.' " (Citations omitted.)

Oregon courts have generally adhered to that principle. For example, in *U. S. Bank of Portland v. Snodgrass*, 202 Or 530, 275 P2d 860 (1954), the court enforced a provision of a testamentary trust disinheriting the testator's daughter for marrying a Catholic, while acknowledging the inherently small-minded and ungracious nature of the provision. In so ruling, the court explained that it had no right to question the correctness of a testator's religious or political views.

However, the recent case of *McClain v. Hardy*, 184 Or App 448, 56 P3d 501 (2002), serves as an important reminder that a testator's intent to disinherit should be given the same care and thought as any positive disposition, to ensure that the intent will be given effect. In *McClain*, the testator expressed a clear intent that her daughter be disinherited except for the bequest of some small items of personal property. The will, executed in 1977, provided: " 'It is my express intention that these items [previously identified as a sewing machine, photographs, and a china cup] be the total of the benefits left to my daughter, * * * and she shall be specifically excluded from any other benefits of my estate.' " 184 Or App at 450 (omission in original). The will then devised the remainder of the estate to the testator's husband. The testator died in 1997, having been predeceased by her husband. A dispute consequently arose regarding the proper disposition of the net estate.

The personal representative argued that because the will did not dispose of the net estate, the laws of intestacy governed the disposition of the net estate, with the result that the testator's daughter should receive the entirety. The testator's brother argued that the will demonstrated a clear intent that the daughter receive

nothing beyond the personal items and that this clearly expressed intention controlled the disposition of the net estate under ORS 112.227. The brother further argued that as a result, he should receive the net estate because, after the daughter, he was the next heir under the laws of intestate succession. 184 Or App at 450-51. The court ruled in favor of the personal representative and directed that the net estate be distributed to the daughter. *Id*. at 454.

In reaching its decision, the court reasoned that to "dispose of" property, one must give it to another, *i.e.*, specify who should receive it. A disinheritance clause simply states who should not receive the property, and such a clause alone does not "dispose of" any property. In *McClain*, because the testator did not direct who should receive her net estate if her husband did not survive her, ORS 112.015 governed. 184 Or App at 452-53. ORS 112.015 provides that "[a]ny part of the net estate of a decedent not effectively disposed of by the will of the decedent shall pass" under the laws of intestate succession. Furthermore, the court found no conflict between its ruling and ORS 112.227, which provides that "[t]he intention of a testator as expressed in the will of the testator controls the legal effect of the dispositions of the testator." The court concluded that ORS 112.227 governs only "dispositions" and that a disinheritance clause does not constitute a disposition. 184 Or App at 453. ORS 112.227 should be viewed simply as a rule of construction when the court is faced with the task of resolving an ambiguity in a will. 184 Or App at 453.

Although legally correct, the result seems rather inequitable and would certainly be upsetting to many clients. However, the case is not an anomaly. In *Bruner v. First National Bank*, 250 Or 590, 443 P2d 645 (1968), the court reached an equally inequitable result with the application of the anti-lapse statute.

In *Bruner*, the testator executed a will in 1962 that provided:

> " 'THIRD: I give and bequeath my son, Doc Mack, my daughter, Bertha Quiver, my grandsons Floyd Mack and Raymond B. Mack, the sum of Ten Dollars ($10.00) each. I intentionally make no other provision for the above named persons. I am expressly disinheriting all of the above persons except as heretofore mentioned and any and all other persons except my daughter Dressie Mack Reynolds, and I do hereby assert my right to dispose of my property by will as I see fit.
>
> " 'FOURTH: It is my desire and intention that all of the rest, residue and remainder of my property, wheresoever situated, of which I may die seised, or to which I may be entitled or have or acquire any interest therein whether legal or equitable, and whatever nature whatsoever, whether real or personal or mixed, I give and bequeath to my daughter, Dressie Mack Reynolds.' " 250 Or at 591.

The testator died in April 1966. Her daughter, Dressie Mack Reynolds, had predeceased her in March 1965. Dressie Mack Reynolds' sole surviving heir was her son, Raymond B. Mack, whom the testator had expressly disinherited. *Id*. A dispute then arose regarding the proper disposition of the net estate and the application of the anti-lapse statute.

At the time, the anti-lapse statute was ORS 114.240, which provided: "When any estate is devised to any child, grandchild or other relative of the testator, and such devisee dies before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done if he had survived the testator." The current anti-lapse statute, ORS 112.395, would not alter the analysis in *Bruner*. If the anti-lapse statute were applied, the residue would be distributed entirely to Raymond B. Mack, whom the testator had sought to disinherit. If the anti-lapse statute were not applied, the residue would be divided equally among her four heirs—Bertha Quiver, Dock Mack, Raymond B. Mack, and Floyd Mack—and though Raymond B. Mack would still inherit, he would inherit only one-fourth of the estate.

Following standard anti-lapse analysis, the court in *Bruner* first considered whether the testator had intended the anti-lapse statute to apply. The court cited and adopted a treatise discussion on anti-lapse statutes that provided:

> " 'The statutes which prevent lapse are not mandatory. They do not apply if the will shows that testator did not intend that the property should pass in accordance with the provisions of the statute. If testator's intention to dispose of his property in case of the death of the first beneficiary, in some way inconsistent with the statute which prevents lapse, is shown with a reasonable degree of certainty, effect will be given to such intention. On the other hand the statute will apply unless testator's intention to exclude its operation is shown with reasonable certainty.' "

For reasons that are unclear, the court determined that the testator intended only for the disinheritance clause to prevent any of the named heirs from claiming as pretermitted heirs. *Id*. The court further reasoned that the testator "would have made other provisions to effectuate her purpose" if it had really been her intention to disinherit Raymond B. Mack. *Id*. However, the court did not specify what additional provisions could or should have been made to effectuate such an intention. Finding that there was no evidence the testator did not want the anti-lapse statute to apply, the court ruled that the anti-lapse statute did apply, with the result that Raymond B. Mack received the entirety of the estate. The court's rationale regarding the testator's intention seems misplaced in light of the result and the evidence discussed.

These cases demonstrate that no matter how clearly stated a testator's intention may be, an estate planner must consider many contingencies to ensure that such an intention will be given effect. The court will fill any gaps left in a testamentary device with statutory provisions, even if the result is completely contrary to the expressed intentions of the testator. Testators frequently want to disinherit one or more heirs, and the law strongly supports the right to do so. Thus it is important to consider and review a testator's extended family tree with some level of precision and to take the time to discuss contingencies with the client. A client or lawyer may assume that a testator will predecease the named beneficiaries or that the testator will revise a testamentary device if an intended beneficiary dies. Unfortunately, such assumptions are frequently not borne out, with unintended consequences. The estate planner must ensure that regardless of the order of death, the property will be effectively given away to someone other than the disinherited person. That may mean naming several alternative beneficiaries or providing for a gift to a charity if the named beneficiaries do not survive the testator.

In addition, estate planners should give some thought to documenting in some way the reasons for disinheritance. Because wills are made public during probate, testators may not wish to include the specific reasons for disinheritance in the will itself. However, as a practitioner engaged in extensive litigation over trusts and wills, I can report that it is extraordinarily effective and sometimes outcome-determinative for the estate planner to provide a copy of a letter in the testator's handwriting, written at the time of the will's execution, and articulating the reasons for disinheritance. Such evidence can go a long way toward discouraging litigation, much more so than the unthinking use of *in terrorem* clauses. Although courts enforce *in terrorem* clauses, such a clause is rarely a threat if an heir has been completely disinherited. After all, if the heir does not challenge the will or trust, the heir takes nothing, so a threat that the heir will take nothing if he or she contests the will or trust is meaningless.

Sometimes disinheritance is not an option—as in the case of a contract to make a will. A testator may genuinely wish to disinherit an heir and may have "valid" reasons for doing so, but if that testator has made an agreement to execute a will or to not revoke a will, that agreement becomes irrevocable once the survivor of the contracting parties accepts the benefits of the agreement. *Willbanks v. Goodwin*, 300 Or 181, 200, 709 P2d 213 (1985). As stated in *Irwin v. First Nat'l Bank*, 212 Or 534, 540, 321 P2d 299 (1958), "A contract to make a will may be irrevocable, even though the will itself is not." Moreover, an intended beneficiary of such an agreement may seek to enforce the terms of the agreement during the lifetime of the surviving testator. To avoid such problems, an estate planner should review all of the testator's prior estate plans, especially in the situation of a second marriage, in which contracts to make a will most frequently arise.

Most estate planning clients have very specific and strong opinions about their estate plans. When a testator seeks to disinherit an heir, such feelings are particularly strong. Thus practitioners need to give some thought to the situation, to ensure that the disinheritance clause will have the desired result. Careful attention should be given to the extended family, and contingencies should be discussed thoroughly. Also, any prohibitions against disinheritance should be explored by considering prenuptial agreements, antenuptial agreements, and contracts to make a will.

*McLain* highlights the sometimes inevitable and inequitable results that occur when we and our clients fail to anticipate possible future events and fail to review estate plans on a regular basis.

*Susan A. Miller*
*Cartwright & Associates*
*Portland, Oregon*

# What's New

## *Samuel v. King*
## 186 Or App 684, 64 P3d 1206 (2003)

The March 13, 2003 decision in *Samuel v. King* may substantially affect the manner in which trusts are funded in Oregon. In addition, as a result of the case there may be increasing litigation over whether a trust owns property.

Peterson, a resident of Deschutes County, Oregon, had two children. On May 16, 1998, Peterson signed a "Revocable One-Party Living Trust." Peterson was the grantor and named himself as trustee. The trust provided that on Peterson's death the residue should be divided equally between his children. Peterson, as grantor, declared his intent

> "to create a revocable trust of the property described in Schedule A hereto annexed, together with such monies, and other assets as the Trustee may hereafter at any time hold or acquire hereunder (hereinafter referred to collectively as the 'Trust Estate'), for the purposes hereinafter set forth."

The trust instrument further provided that "the Grantor agrees to execute such further instruments as shall be necessary to vest the Trustee with full title to the property, and *the Trustee agrees to hold the Trust Estate, IN TRUST, NEVERTHELESS*, for the following uses and purposes and subject to the terms and conditions hereinafter set forth." (Emphasis added).

Attached to the trust was an "Assignment of Property to Trust" that was also dated May 16, 1998. The assignment of property provided that Peterson does hereby sell, transfer and convey to Peterson, as trustee of the trust, real estate, a pickup truck, a U.S. Bank checking account, and miscellaneous personal property. The assignment also provided "*To have and to hold for the benefit of the trust, its beneficiaries, successors and assigns. Seller warrants to defend the sale of property against all and every person claiming an adverse interest to same.*" (Emphasis added). There was no Schedule A attached to the trust, but there was a "Schedule of Assets." The schedule of assets listed real estate by address and value, a general description of a pickup truck, a U.S. bank account with an account number, a mutual fund investment account and a mutual fund money fund.

The trust and the above attachments were recorded by the county clerk on June 8, 1998. Peterson did nothing further to transfer assets to the trust.

On April 5, 1999, Peterson executed a will that indicated he had one child and left the residue of his estate solely to that one child. The will made no mention of the other child or the trust. Peterson died on April 16, 2000.

The child who was the devisee under the will petitioned to have the will admitted to probate. The child who was not mentioned in the will filed a claim against the estate for 50 percent of the assets. The personal representative disallowed the claim, taking the position that the will effectively revoked the trust and, in all events, Peterson had never transferred real estate or other titled assets to the trust. At trial, the court admitted extrinsic evidence, including hearsay statements, ascribed to Peterson, that Peterson had not put

anything into the trust because he had not decided whether he wanted to. The trial court found that Peterson took no other action to transfer titled assets from his individual ownership to ownership by the trust and that Peterson did not intend that the trust own or control his titled assets. The trial court made conclusions of law (1) that the trust was not revoked by Peterson's subsequent will, (2) that Peterson never transferred his titled assets into the trust and such assets were not governed by the terms of the trust, and (3) that Peterson's nontitled property was transferred into the trust and such property was distributable according to the terms of the trust in equal shares to his children. The trial court found the personal representative of the estate to be the prevailing party.

The child who received nothing under the will appealed and raised two assignments of error, challenging the court's conclusion of law that the titled assets were not transferred to the trust and that the personal representative was the prevailing party. The argument challenging the trial court's conclusion of law that the titled assets were not transferred to the trust was based on the clear, unambiguous language of conveyance in the trust instrument, the assignment of assets, and the recording of the trust instrument, the appellant argued that the admission of the extrinsic evidence regarding intent violated the parole-evidence rule since there was no ambiguity. In addition, the appellant relied on *Winters v. Winters*, 165 Or 659, 109 P2d 857 (1941), which provides that when an owner of property declares himself or herself trustee of property, a trust may be created without a transfer of title to the property. The respondent replied that according to the terms of the trust, the grantor was required to execute such further instruments as were necessary to vest the Trustee with full title to the property and the failure to do so resulted in no delivery of the trust property to the trustee as required by *Stipe v. First National*, 208 Or 251, 301 P2d 175 (1956). The respondent further argued that the admission of the extrinsic evidence regarding intent was appropriate to resolve the ambiguity regarding delivery. The respondent argued that because Peterson was his own trustee, no written notice was needed either to withdraw the titled assets or to revoke the trust, although the respondent did acknowledge that the trust agreement required withdrawals or revocations to be in writing. Finally, the respondent argued that the will effectively modified the trust to name the one child as the sole beneficiary.

The court of appeals disposed of the respondent's contention that the will effectively revoked the trust, because the trial court had found that the will did not revoke the trust and the respondent did not raise the matter by filing a cross-appeal.

The court of appeals held that when a party is both settlor and the initial trustee, as long as the party actually transferred the *titled assets* to the trust, it was unnecessary for the party to take further action formally transferring title of those assets to the trust. As a matter of law, the conveyance of the property was sufficient. The court concluded that the trust instrument and attached documents unambiguously expressed and effected Peterson's intent, as grantor, to convey his titled assets listed in the Schedule of Assets (the misnamed Schedule A which the court found to be immaterial) to the trust as of the date he executed the trust instrument.

The court of appeals further held that the evidence regarding Peterson's intent was not admissible. When a trust instrument is fully integrated and is not ambiguous on its face, extrinsic evidence is not admissible to establish the grantor's intent. Whether a term in an agreement is ambiguous is a question of law. An ambiguity is presented only when the language of the agreement is reasonably capable of more than one plausible interpretation.

The court of appeals rejected the respondent's argument that Peterson revoked the trust or withdrew the assets, because the terms of the trust clearly required such revocation or withdrawal to be in writing. No authority under Oregon law permits assets to be withdrawn from a trust in a manner other than the one specified in the trust instrument. The case was reversed and remanded with instructions to enter a declaratory judgment in the appellant's favor. The prevailing-party designation and award of costs was vacated and remanded.

At oral argument of this case, the court was particularly interested in the language of the trust instrument that stated "the Grantor agrees to execute such further instruments as shall be necessary to vest the Trustee with full title to the property, *and the Trustee agrees to hold the Trust Estate, IN TRUST, NEVERTHELESS,*" for the purposes of the trust. In addition, the court was very interested in the language of the Assignment of Property to Trust that provided, "Seller warrants to defend the sale of property against all and every person claiming an adverse interest to same."

*Samuel v. King* may result in significant consequences in other areas of law. For example, the opinion may affect title insurance and property transactions. Peterson owned his property as trustee, but there was no information in the chain of recorded title to reflect the ownership by the trust. The case may also affect interactions with banks and brokerage houses. Peterson owned two mutual fund accounts and those accounts were also held to be subject to the trust merely by the inclusion of the accounts on the Schedule of Assets. The banks and brokerage houses may have some relief under federal and state law and the terms of the account agreement.

Finally, while the case may have simplified the process of funding a self-settled, self-trusteed trust, as a practical matter, it would be poor practice not to formally transfer title to assets to a trust. Formally transferring title remains important to avoid protracted and expensive litigation or negotiations among institutions and persons interested in trusts.

*Heather O. Gilmore*
*Heather O. Gilmore P.C.*
*Salem, Oregon*

## *Schaefer v. Schaefer*
## 183 Or App 513, 52 P3d 1125 (2002)

Roger Schaefer sought permanent guardianship of his mother, Coenia Schaefer, for alleged incapacity, stating that there was an immediate and serious danger to her life or health. Coenia was 86 years old and lived alone in her own home. She cared for a collection of cats and a dog, handled her own finances, did her own shopping, and kept a neat, though foul-smelling, home. According to the evidence, Coenia experienced some memory lapses and mental confusion. For example, she did not recognize relatives in a photograph, did not remember the day of the week, and did not know the amount of her automatic bank deposits. She felt that certain prescribed medications resulted in troublesome side effects, so she chose not to take them, which resulted in severe blistering and swelling of her feet and two visits to the emergency room. The record also indicated that she had threatened suicide if she were ever to be removed from her house or from her pets.

The lower court granted temporary and then permanent guardianship. Coenia appealed. The appellate court stated that to establish a guardianship, the petitioner must prove three elements: (1) the person has severely impaired perception or communication skills, (2) the person cannot take care of his or her basic needs (to an extent that the lack of care may be life- or health-threatening), and (3) the person's impaired perception or communication skills cause the life-threatening disability. The court also emphasized that "the key [to determining the appropriateness of a guardianship] is the nexus between the inability to process and communicate information * * * and the inability to perform essential functions * * * *." 183 Or App at 517.

The appellate court held that the evidence in this case did not overcome the presumption in favor of competence. Although there was some evidence that Coenia's information-processing skills were mildly impaired, she was not delusional. She was able to understand what people were saying to her, and she was able to express her preferences. Coenia was also able to care for herself. Whereas the lower court relied on Coenia's "suicidal ideations," the unsanitary conditions (primarily the cat urine smell) in her house, and her unwillingness to take prescribed medications, the appellate court did not believe that these facts alone were sufficient to classify Coenia as incompetent. With respect to Coenia's suicidal threats, the appellate court stated that there was no clear and convincing evidence that suicide was highly probable or that her threats were anything beyond mere talk. Furthermore, the court likened the urine smell to the smell of cigar smoke or cheap cologne, in that, although unpleasant, it is not a health or safety hazard. As to the medications, all witnesses who testified on the matter stated that Coenia's refusal to take them was a conscious decision, based upon a cost-and-benefits analysis. The decision may have been idiosyncratic or misguided, but the court believed that it was not the result of an inability to process information. Since there was no clear and convincing evidence that Coenia's decisions resulted from impaired mental functioning, the court reversed with instructions that the guardianship be terminated.

*Timothy R. Strader*
*Hanna Strader PC*
*Portland, Oregon*

## *Burk v. Hall*
## 186 Or App 113, 62 P3d 394 (2003)

Harriet Burk, mother of minor Katharine Goodwin, appealed a court order appointing Goodwin's half-sister, Dana Hall, and Dana's husband as Katharine's permanent legal co-guardians. Katharine had resided with Harriet until age 13, when Katharine ran away and lived in shelters and with friends for four months. The Halls filed a petition for guardianship, alleging that Harriet had physically abused Katharine and had not been adequately meeting her needs. Following an evidentiary hearing, the lower court granted temporary and then permanent guardianship to the Halls.

Although the parties litigated over the provisions of ORS 125.305(1) and other general guardianship statutes, the court found that those statutes must be construed in light of the substantive requirements of ORS 109.119. While ORS chapter 125 establishes a comprehensive framework, both substantive and procedural, for governing guardianship proceedings, ORS 109.119 provides the requirements for an action in which a nonparent seeks custody or guardianship of a minor over the objection of a legal parent. Specifically, ORS 109.119 provides that there is a presumption that the legal parent acts in the best interest of the child. If the presumption is rebutted by a preponderance of the evidence, and if the court determines that a child-parent relationship exists between the petitioner and the child, the court can grant custody, guardianship, etc., as is in the best interest of the child. A "child-parent relationship" means a relationship that exists or did exist within six months preceding the filing of the action and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter, and incidental necessities.

In this case, the appellate court determined that the Halls were not entitled to be appointed as Katharine's co-guardians, because they did not have a "child-parent relationship" with her. Therefore, the trial court did not have the authority to enter the order appointing the Halls as co-guardians, and the order was reversed.

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**Questions, Comments or Suggestions About This Newsletter?**

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# CALENDAR OF SEMINARS AND EVENTS

- July 10-12, 2003 (Sponsored by ALI-ABA) **Estate Planning for the Family Business Owner**, The Ritz-Carlton, Boston, MA. Telephone: (800) CLE-NEWS.
- July 18, 2003 (Sponsored by Oregon State Bar and OSB Estate Planning and Administration Section) **Special Needs Trusts**, DoubleTree Hotel Lloyd Center, Portland, OR. Telephone: 800-452-8260, ext. 413.
- July 17-18, 2003 (Sponsored by ALI-ABA) **Representing Estate and Trust Beneficiaries and Fiduciaries**, Swissôtel, Chicago, IL. Telephone: (800) CLE-NEWS.
- July 30-August 1, 2003 (Sponsored by ALI-ABA) **Basic Estate and Gift Taxation and Planning**, Millennium Eldorado Hotel, Santa Fe, NM. Telephone: (800) CLE-NEWS.
- August 14-15, 2003 (Sponsored by PLI) **15th Annual Elder Law Institute: Basic Elder Law**, PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- August 21-22, 2003 (Sponsored by ALI-ABA) **International Trust and Estate Planning**, Loews Coronado Bay Resort, Coronado (San Diego), CA. Telephone: (800) CLE-NEWS.
- September 4-5, 2003 (Sponsored by ALI-ABA) **Sophisticated Estate Planning Techniques**, Weston Copley Place, Boston, MA. Telephone: (800) CLE-NEWS.
- September 11-13, 2003 (Sponsored by National Association of Estate Planners & Councils) **40th Annual Conference**, Marriott at Key Center, Cleveland, OH. Telephone: (866) 226-2224.
- September 18-19, 2003 (Sponsored by PLI) **34th Annual Estate Planning Institute**, PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- October 3, 2003 (Sponsored by Oregon State Bar and OSB Elder Law Section) **Elder Law Essentials: Planning Tools and Pratice Tips**, Oregon Convention Center, Portland, OR. Telephone: (800) 452-8260.
- October 23-24, 2003 (Sponsored by PLI) **34th Annual Estate Planning Institute**, San Francisco, CA. Telephone: (800) 260-4PLI.
- October 23-25, 2003 (Sponsored by Southern California Tax and Estate Planning Forum) **The 23rd Annual Southern California Tax and Estate Planning Forum**, Manchester Grand Hyatt. San Diego, CA. Telephone: (800) 332-3755.
- October 26-30, 2003 (Sponsored by Chaminade University Tax Foundation and Chaminade University of Honolulu) **The 40th Annual Hawaii Tax Institute**, Sheraton Moana Surfrider Hotel, Honolulu, HI. Telephone: (615) 880-4200.
- November 17-18, 2003 (Sponsored by WSBA) **The 48th Annual Estate Planning Seminar**, Seattle, WA. Telephone: (800) 945-WSBA.
- November 17-21, 2003 (Sponsored by ALI-ABA) **Planning Techniques for Large Estates**, San Francisco, CA. Telephone: (800) CLE-NEWS.
- November 20, 2003 (Sponsored by Oregon State Bar and OSB Estate Planning and Administration Section) **Administering the Basic Estate**, Oregon Convention Center, Portland, OR. Telephone: (800) 452-8260.
- November 21, 2003 (Sponsored by The Law School, University of Southern California Continuing Legal Education Program) **2003 Probate and Trust Conference**, Wilshire Grand Hotel, Los Angeles, California.Telephone: (213) 740-2582.
- January 5-9, 2004 (Sponsored by University of Miami School of Law) **Thirty-Eighth Annual Philip E. Heckerling Institute on Estate Planning**, Fountainbleau Hilton Resort & Towers, Miami Beach, FL. Telephone: (305) 284-6276.
- January 18-25, 2004 (Sponsored by National Law Foundation) **2003 Mid-Winter Tax and Estate Planning Conference**, The Buccaneer Beach and Golf Resort, St. Croix, U.S.V.I. Telephone: (302) 656-4757.
- January 23, 2004 (Sponsored by Estate Planning Council of Portland) **Annual Estate Planning Seminar**, Oregon Convention Center, Portland, OR. Telephone: (503) 244-4294.

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