Elder Law Newsletter

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New laws affect elder law practice

By Leslie Kay and Jenny Kaufmann, Legal Aid Services of Oregon

While the 2007 legislature passed no estate planning, probate, and elder law legislation on the scale of the 2005 enactment of the Uniform Trust Code, a number of important bills pertaining to elder law practice were enacted. Two bills proposed by the Elder Law Section passed into law: HB 2359, which pertains to affidavits of heirship at financial institutions, and HB 2360, which pertains to court approval of a trust that terminates a conservatorship. (These are covered in a separate article on page 4.) The legislature also made significant changes to statutes governing long term care insurance (SB191). Other bills affect the rights of people in care facilities and care decisions made by guardians. Unless specified otherwise, the new laws will take effect on January 1, 2008.

SB 191 (ch 486): Amends Oregon's Long Term Care Insurance Act to comply with changes in federal law and increasing marketplace and consumer expectations

SB 191 amends Oregon's Long Term Care (LTC) Insurance Act and statutes governing Oregon's Medicaid program. The Long Term Care Insurance Act was originally enacted in 1989. Many older LTC policies contain very restrictive terms that make it difficult for policy holders to receive benefits. The use of Medicaid to provide LTC benefits for elderly persons and persons with disabilities has dramatically increased, and the cost to state Medicaid programs is quickly becoming too burdensome. The federal Long Term Care Insurance Partnership Program was passed in the 1980s to address these concerns. Four states were permitted to amend their state Medicaid plans to exclude private LTC policies as resources that affect Medicaid eligibility. The federal Deficit Reduction Act of 2005 expanded the program to all the states and the District of Columbia. SB 191 contains a number of significant amendments that eliminate restrictive clauses found in private policies, increase the training requirements for providers who sell these policies, and exclude LTC benefits from Medicaid-eligibility and estate-recovery calculations.

Section 2 of the bill amends the definition of "long term care insurance" in ORS 743.652, which now includes an insurance policy or rider that is advertised, marketed, offered, or designed to provide coverage for not less than 24 consecutive months, rather than the previous provision of coverage for 24 months. Annuities and life insurance policies are now specifically included in the definition if they directly provide or supplement LTC insurance. An important addition to the definition is that policies or riders that pay for benefits based on cognitive impairments or loss of functional capacity are covered. The definition now states that "[l]ong term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; or health maintenance organizations, health care service contractors or any similar organization to the

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extent they are otherwise authorized to issue life or health insurance." Finally, the definition now excludes those life insurance policies that accelerate death benefits based on terminal condition(s) or medical conditions that require extraordinary intervention or permanent institutionalization and provide for an optional lump-sum payment that is not conditioned upon the receipt of LTC.

A new provision, ORS 743.652(6), has been added to define *qualified long term care insurance* policies. Not all LTC policies are treated equally under the tax laws. Qualified LTC policies are those policies that qualify for premiums to be tax deductible, within certain limits, under the Internal Revenue Code. They must satisfy federal statutory eligibility criteria, which are more stringent than the "medically necessary" trigger of non-tax-qualified plans. Under this new provision, these policies can also include life insurance policies that provide LTC coverage through a rider or contract provision and individual or group LTC policies that meet the requirements of Section IRC §7702B of the Internal Revenue Code or, alternatively, Oregon's new statutory provisions. The alternative provisions include requirements that the contract: (1) cannot pay or reimburse for expenses paid by Medicare, or that would be reimbursable but for the application of a deductible or co-pay; (2) must be renewable; (3) cannot provide for a cash surrender value or be used to secure a loan (e.g., whole life insurance policies); and (4) applies any refund of premiums, dividends, or similar payments solely to reduce future premiums or increase future benefits, except upon the death of the insured or a complete cancellation or surrender of the policy.

Section 4 of the bill contains significant and substantial amendments to ORS 743.655, including the consumer protections now required by the Deficit Reduction Act of 2005.

ORS 643.655(2)(f) now requires that a policy may not, regardless of when it was sold, provide less than 24 months of coverage.

The rule on pre-existing conditions is changed by the bill, and is more favorable to consumers. The old rule provided that pre-existing conditions included the mere existence of symptoms for which the "ordinarily prudent" person would seek medical attention. Insurers will no longer be allowed to deny or exclude coverage on this basis under ORS 743.655(3)(a). Under SB 191, the applicant must have actually sought medical advice or treatment.

ORS 743.655(4) prohibited issuance of an LTC care policy that required prior hospitalization before any benefits would be approved, or the receipt of a higher level of institutional care before the insurer would approve institutional care benefits. Under SB 1931, LTC policies may not be issued if they contain certain conditions on eligibility. The prohibited conditions of eligibility have been expanded to include any conditions on eligibility (other than waiver of premiums, post-acute care, or recuperative benefits) for any benefits based on a prior institutionalization. These provisions should make it easier for otherwise eligible individuals to begin receiving services under their policies without first incurring hospitalization or institutionalization costs.

A new ORS 743.655(5) allows an LTC policy to contain limits on post-confinement, post-acute care or recuperative benefits, but those restrictions must be clearly labeled under the title "Limitations or Conditions of Eligibility for Benefits" in a separate paragraph in the policy or a separate certificate. Any policy that conditions eligibility on the prior receipt of institutional care cannot require a stay of more than 30 days. The right of rescission under ORS 743.655(6) now applies to applicants (rather than policyholders) and to denials of policies. It now requires that refunds after rescissions must be made within 30 days. Finally, there is an exception to the right of rescission for group LTC insurance policies issued under ORS 743.652(3)(a).

ORS 743.655(7) deals with notices that must be provided to applicants and policyholders. ORS 743.655(7)(a) requires that solicitations to prospective applicants comply with formatting rules that will be established by the director of the Department of Consumer and Business Services. The bill again excepts certain issuers of group policies—found in ORS 743.642(3)(a)—but they too are required to provide an outline of coverage somewhere in their materials. The outline-of-coverage requirements are found in subsection 743.642(355(7)(b), and remain virtually the same except that the outline must also disclose to the person whether or not the LTC policy is intended to be qualified LTC insurance as defined above. This new requirement, however, requires provision of the outline of coverage to policyholders or certificate holders instead of to the prospective applicants referenced in ORS 743.655(7)(a).

New ORS 743.655(9) requires delivery of the policy to the applicant within 30 days after approval.

New ORS 743.655(10) requires delivery of a policy summary along with the policy or rider and outlines the statutory requirements of that summary. It also requires that a summary be provided at the applicant's request when there has been a direct-response solicitation.

New ORS 743.655(11) deals with LTC benefits funded through life insurance policies that provide for an acceleration of death benefits. It requires the insurer to furnish a monthly report to the policyholder that includes mandatory disclosures. The report must include the amount of benefits paid out that month, an explanation of changes in the policy, and the amount of remaining benefits.

New ORS 743.655(12) deals with denial of claims under an LTC policy. The subsection requires the insurer to provide certain information to the policyholder or the policyholder's representative within 60 days of after receiving a written request.

Section 6 of the bill outlines the rights of the insurer and insured when the insurer rescinds or contests an LTC insurance policy. For policies or certificates less than six months old, rescission can occur only

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when there is a showing of misrepresentation material to acceptance for coverage. For policies in effect for six to 24 months, rescission can only occur when there is misrepresentation material to acceptance for coverage that pertains to the condition for which benefits are sought. For policies in effect for longer than 24 months, the policy can be contested only upon a showing of knowing and intentional misrepresentation about the insured's health. LTC policies cannot be "field issued" (issued by an insurance producer or third-party administrator based on underwriting authority granted by the insurer) based on medical or health status. This section also contains restrictions on field issuing of policies, the inability to recover benefits if the policy is rescinded, and treatment of policies funded by life insurance policies with accelerated benefits.

Section 7 requires LTC insurance policies to offer the policyholder or certificate holder a policy or certificate that includes a nonforfeiture benefit. Group policies are required to provide the same option, but delivery can be made to the group or to individual holders, depending on which type of group is issuing the policy. The section also requires the director of the Department of Consumer and Business Services to set rules regarding nonforfeiture benefits and contingent benefits.

Section 9 includes restrictions on who may sell, solicit, or negotiate LTC insurance policies. The section sets forth licensing requirements as well as the new training requirements provided under federal law. The training must include, among other topics, the relationship between qualified state long term care LTC insurance partnership programs and other public and private coverage of LTC services, including Medicaid, the effect of inflation on benefits and the importance of inflation protection, and alternatives to the purchase of LTC insurance. Insurers are now required to provide verification that their producers (e.g., sellers) meet the training requirements, and they must keep compliance records of their compliance with training. Section 9a allows persons who are currently licensed to maintain their licensing as long as they meet minimal training requirements by January 31, 2008.

Section 10 of the bill amends ORS 411.708, the estate-recovery provisions, to exclude from recovery any benefits paid to or on behalf of a beneficiary under a policy of qualified LTC insurance.

Section 11 of the bill amends ORS 414.025 to provide that a person will be Medicaid eligible if the individual would otherwise be eligible except for the receipt of qualified LTC insurance benefits. This provision is important, because it allows an otherwise ineligible person to have access to full Medicaid benefits as a dual eligible, including premium-free Medicare Parts B and D benefits and avoidance of the noncoverage period for Part D, as well as the limited vision and dental benefits of the Oregon Health Plan's Oregon Supplemental Income Program.

SB 191 took effect on June 20, 2007.

HB 3093 (ch 556): Rights of residents of long term care facilities

HB 3093 amends ORS 441.605, the Nursing Home Patients' Bill of Rights. The measure creates two additional rights for residents of long term care facilities, as defined in ORS 442.015: (1) A resident or patient of a long term care facility has the right to receive care from facility staff trained to provide care that is specific to the resident's or patient's disease or medical condition; and (2) a resident or patient of a long term care facility has the right to receive a modified or special diet that meets the specific requirements of the resident's or patient's disease or medical condition.

Rights of long term care residents are found throughout the statutes and regulations governing long term care facilities. These rights are held and exercised by the long term care resident unless there is a legal finding that the resident is incapacitated and that the exercise of the particular rights should be delegated to a guardian. A health care representative under an advance directive may exercise certain rights on behalf of an incapacitated resident. The rights to receive care from qualified staff and to receive a modified or special diet are implicit in other guaranteed rights governing long term care facilities such as the federal nursing home bill of rights. 42 CFR §§483.10. Elevating these rights to the Oregon Nursing Home Patient's Bill of Rights, however, empowers long term care residents to assert these rights and requires facilities to guarantee them.

SB 260 (ch 230): Establishes conditions for withholding of food and water by guardian

SB 260 amends ORS 125.315 to limit situations in which a guardian may consent to the withholding or withdrawing of artificially administered nutrition and hydration (ANH) for a protected person.

Consent may be given only under any of these conditions:

- The person, while a capable adult, clearly and specifically stated that he or she did not want tube feeding
- It has been medically confirmed that tube feeding is not medically feasible or would itself cause severe, intractable, or long-lasting pain
- It has been medically confirmed that the person is permanently unconscious
- It has been medically confirmed that the person has a terminal condition
- It has been medically confirmed that "[t]he person has a progressive illness that will be fatal and is in an advanced stage, the person is consistently and permanently unable to communicate by any means, swallow food and water safely, care for the person's self and recognize the person's family and other people, and it is very unlikely that the person's condition will substantially improve."

The term "medically confirmed" is defined in ORS 127.505(17) to mean that "the medical opinion of the attending physician has been confirmed by a second physician who has examined the patient and who has clinical privileges or expertise with respect to the condition to be confirmed." ■

Section-sponsored bills become law

By Ryan E. Gibb, Elder Law Section Legislative Subcommittee Chair

The Elder Law Section proposed two bills for the 2007 legislative session: HB 2359, which amended the banking statutes relating to the use of affidavits of heirship, and HB 2360, which amended ORS 125.440.

HB 2359 amended ORS 722.262, ORS 723.466, and ORS 708A.430, relating to the use of affidavits of heirship at financial institutions. The bill clarified that a surviving spouse has the right to gain access to a bank account without any delay by using an affidavit, thus addressing the concern that financial institutions would require a waiting period after the death of a depositor before a surviving spouse could have the use of the funds. The bill also clarified the timelines that the Estate Administration Unit and other heirs have to use such an affidavit. Nothing in the bill affected the right of any heir, creditor, or the Department of State Lands to initiate a probate or file an affidavit of claiming successor as a means of handling an estate. The amendment retained the current cap of $25,000 for the use of these affidavits of heirship. The Oregon Banker's Association had concerns about language in the bill, and slight modifications were made to handle those concerns. This bill has passed through the legislature and was signed by the governor. The bill applies to the accounts of depositors who die on or after January 1, 2008.

HB 2360 amended ORS 125.440(2), with regard to the termination of a conservatorship. As it exists, the statute did not allow a conservator to create a trust that would have the effect of terminating the conservatorship. The bill amended the statute by allowing the court to terminate a conservatorship in favor of a trust if the court finds any of the following:

(a) the trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the protected person's eligibility for needs-based government benefits
(b) the value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed $50,000.00
(c) the purpose of establishing the conservatorship was to create such a trust
(d) other good cause is shown to the court

This bill passed through the legislature and was signed by the governor. It applies to all conservatorships as of January 1, 2008.

The Elder Law Section was also involved in dealing with HB 2381, proposed by the Oregon Law Commission, which would have significantly modified the current spousal elective share rights. The Elder Law Section and the Estate Planning Section both expressed concerns with the substance of the bill. Of particular concern to the Elder Law Section was the inclusion of specific rights provided to the Estate Administration Unit to pursue these rights on behalf of Medicaid recipients. Several Section members spent significant time working on this bill. This bill did not pass out of the House Judiciary Committee, and therefore is not law. The Elder Law Section will continue to be involved with this legislation in the future. (See article below.)

The full text of these bills can be found at the legislature's Web page: **www.leg.state.or.u/bills–laws.** ■

Update on HB 2381: Elective Share

The elective share bill was the product of a work group of the Oregon Law Commission, composed of representatives of a wide variety of constituencies. The bill presented to the legislature was the result of work group agreement on its provisions. After it was referred to the House Judiciary committee, a variety of objections surfaced that had not been presented to the work group during the drafting process. Members of the work group met with representatives of the Elder Law and Estate Planning Sections, and several changes were made to the bill to respond to these objections. Because of the workload of Legislative Counsel's office, and the rapidly approaching deadline for committee hearings on bills, the Commission decided to pull the bill from consideration in the 2007 session in order to give the workgroup additional time to prepare the final draft.

The Commission later voted to present an elective share proposal to the 2009 legislature, and the work group will continue during the interim to draft that proposal, starting with HB 2381 as it existed when removed from consideration by the House Judiciary Committee. Any suggestions for improvement are welcomed by the work group, and may be submitted by mail, e-mail, or fax to:

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Changes in laws affect estate planning

By Susan N. Gary

The 2007 legislature passed a number of bills that touch on estate planning issues. The new laws all take effect on January 1, 2008. Although a number of inheritance-tax bills were introduced, those bills died in committee.

SB 133: Disclaimer

SB 133 amends the Oregon disclaimer statute, ORS 105.643. The statute now bars a disclaimer "if the purpose or effect of the disclaimer is to prevent recovery of money or property to be applied against a judgment of restitution under ORS 137.101 to 137.109." ORS 105.643(6). The Attorney General's office developed this bill so that the convicted perpetrator of a crime could not use a disclaimer to avoid paying restitution to victims of the crime. SB 133 will bar the use of a disclaimer if the purpose or effect is to deny restitution to crime victims.

SB 302: Foreclosure and Sale

SB 302 amends ORS 18.312, relating to judgments of foreclosure and sale. The existing section says that execution shall not issue against the decedent's estate. The amendment permits the execution on and sale of property pursuant to a judgment of foreclosure and sale of property of the decedent. If the amount collected from the sale of the property does not satisfy the deficiency, then the amount remaining may be collected by making a claim against the estate of the decedent.

SB 305: Oregon Uniform Trust Code—Representation

SB 305 amends ORS 130.105, part of the Oregon Uniform Trust Code. The new section permits the holder of a testamentary power of appointment to represent and bind the permissible appointees, takers in default, and others subject to the power, so long as a conflict of interest does not exist. The existing section limits the representation to a holder of a general power; the amendment deletes the word "general," making representation possible by the holder of any power.

SB 693: Oregon Uniform Trust Code—Termination of Trusts by Agreement, Transactions between Bank Trustees and Banks

The Oregon Bankers Association proposed a bill that has passed both houses and awaits the Governor's signature. SB 693 amends ORS 130.205, the section that permits modification or termination because of unanticipated circumstances or the inability to administer a trust effectively. The bill states that if the trustee and all qualified beneficiaries agree, the trustee can terminate a trust without court approval. The termination must be "appropriate by reason of circumstances not anticipated by the settlor," and termination cannot be inconsistent with a material purpose of the trust. The trustee cannot terminate the trust if the trustee is a beneficiary or if the trustee owes a duty of support to any beneficiary. If the trust is a charitable trust, the Attorney General must consent to termination unless the charitable interests are negligible.

ORS 130.200(3) indicates that a spendthrift clause is rebuttably presumed to be a material purpose, but that subsection refers directly to the modification provisions of 130.200(1), (2). The revisions to ORS 130.205 are silent with respect to the effect of a spendthrift clause.

SB 693 also amends ORS 130.655, the duty of loyalty provision, to provide additional protection to trustees for actions taken on behalf of the trust. SB 693 adds two subsections to a provision that permits certain transactions between the trustee and the trust if the transactions are fair to the beneficiaries. The trustee can advance money to the trust to pay expenses, losses, or liabilities, and the trustee can obtain a loan to protect the trust or to pay expenses, losses, or liabilities. The lender may be operated by or affiliated with the trustee.

SB 693 amends ORS 130.725, the section that lists specific powers of trustees, to clarify that a trustee can borrow from a financial institution operated by or affiliated with the trustee.

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Professor Susan N. Gary is Associate Dean for Academic Affairs at the University of Oregon School of Law. She is the editor of the Estate Planning and Administration Section's newsletter.

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HB 2361: Principal and Income Act: Clarification of Partial Liquidation

ORS 129.300 provides that a trustee should allocate money received from an entity to income except for money received under several circumstances listed in the section as exceptions to this rule. One exception is that a trustee should allocate money received as a partial liquidation to principal. HB 2361 amends ORS 129.300(4)(b) to clarify that a partial liquidation occurs if the distribution or series of distributions is greater than 20 percent of the entity's gross assets. HB 2361 does not represent a change in existing law, just a clarification.

HB 2362: Declaration in Lieu of Verification

HB 2362 permits the use of a declaration in lieu of a verification for petitions, reports, and accounts in probate proceedings, and for proof of mailing and other delivery of notice. The probate code has long required verification of paperwork filed in probate, and verification has been understood to mean a statement on oath or affirmation before a notary public. In the 1970s the Oregon Rules of Civil Procedure eliminated the requirement that pleadings in civil actions be verified, and in 2005 Uniform Trial Court Rule 2.120 provided that affidavits required by the Uniform Trial Court Rules should be declarations rather than made under oath or affirmation. HB 2362 brings the probate rules into line with the rules already applicable in other areas of civil law.

In addition to the elimination of verification, HB 2362 amends ORS 116.083 to make a change in connection with short-form final accounts. A final account can be used to close an estate if "all creditors have been paid in full," but typically certain administrative expenses, including attorney fees, are not paid until the court approves the final account. HB 2362 indicates that a short-form final account is permissible even if administration expenses remain unpaid pending court approval.

HB 2507: Disposition of Body

Sometimes a person charged with a murder is also the family member with priority to make decisions about the remains of the decedent. A person arrested for or charged with criminal homicide can, until HB 2507 takes effect, direct the disposition of the remains of the victim. HB 2507 seeks to prevent a person who may be responsible for causing the death from making decisions contrary to the wishes of other survivors. The bill raises difficult questions, because decisions about a body must be made long before anyone accused of the homicide can be brought to trial. Nonetheless, a person "arrested for or charged with criminal homicide by reason of the death of the decedent" cannot make decisions concerning the disposition of the remains.

HB 2905: Charities—Uniform Prudent Management of Institutional Funds Act

UPMIFA replaces ORS 128.310-128.355, the Uniform Management of Institutional Funds Act (UMIFA), and updates the rules provided in UMIFA. Both acts apply primarily to charities operating as nonprofit corporations and do not apply to funds managed for charities by corporate trustees. UPMIFA updates the rules on managing and investing charitable funds, provides guidance on spending from endowment funds, and sets forth modification rules applicable to restrictions imposed by donors on charitable funds.

UPMIFA incorporates the experience gained under UMIFA by providing even stronger guidance for investment management and enumerating a more exact set of rules for investing in a prudent manner. UPMIFA requires investment "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." It requires prudence in incurring investment costs, authorizing "only costs that are appropriate and reasonable." Factors to be considered in investing are expanded to include, for example, the effects of inflation. UPMIFA emphasizes that investment decisions must be made in relation to the overall resources of the institution and its charitable purposes. No investment decision may be made in isolation, but must be made in light of the fund's entire portfolio, and as a part of an investment strategy "having risk and return objectives reasonably suited to the fund and to the institution." A charitable institution must diversify assets as an affirmative obligation unless "special circumstances" dictate otherwise. Assets must be reviewed within a reasonable time after they come into the possession of the institution in order to conform them to the investment strategy and objectives of the fund. Investment experts, whether in-house or hired for the purpose, are held to a standard of care consistent with that expertise.

If the donation documents do not provide otherwise, spending from an endowment fund will be based on a charity's determination of the amount that is prudent, "for the uses, benefits, purposes and duration for which the endowment fund is established." In making its yearly expenditure decisions, the charity must consider the long-term nature of the fund, the need to maintain distributions over time, the purposes of the charity and the fund, general economic conditions, and the investment policy and experience of the charity. A rebuttable presumption of imprudence arises if a charity spends more than seven percent of the value of an endowment fund, computed on a three-year rolling average.

UPMIFA recognizes and protects donor intent more broadly than UMIFA did, in part by providing a more comprehensive treatment of the modification of restrictions on charitable funds. Sometimes a restriction imposed by a donor becomes impracticable or wasteful or

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may impair the management of a fund. The donor may consent to release the restriction, if the donor is still alive and able to do so, but if the donor is not available the charity can ask for court approval of a modification of the restriction. The trust law doctrines of cy pres (modifying a purpose restriction) and deviation (modifying a management restriction) probably already apply to charitable funds held by nonprofit corporations. UPMIFA makes this clear. Under UMIFA, the only option with respect to a restriction was release of the restriction. UPMIFA instead authorizes a modification that a court determines to be in accordance with the donor's probable intention. If the charity asks for court approval of a modification, the charity must notify the Attorney General who may participate in the proceeding.

UPMIFA adds a new provision that allows a charity to modify a restriction on a small (less than $25,000) and old (over 20 years old) fund without going to court. If a restriction has become impracticable or wasteful, the charity may notify the Attorney General, wait 60 days, and then, unless the Attorney General objects, modify the restriction in a manner consistent with the charitable purposes expressed in any documents that were part of the original gift.

HB 3092: Revised Uniform Anatomical Gift Act

This bill enacts the Revised Uniform Anatomical Gift Act. It replaces Oregon's statutes on anatomical gifts, ORS 97.950 – 97.964, and modifies a few other statutory provisions relating to anatomical gifts. The new statutes continue to honor the choice of a person to be or not to be a donor, facilitate donations by expanding the list of those who may make an anatomical gift for another person, and permit a minor eligible to apply for a driver's license to be a donor. The bill enables procurement organizations to gain access to documents of gifts held by the Department of Transportation.

As under current law, a person can make an anatomical gift by (1) a document signed by the person or by another person acting on the request of the donor, (2) a designation on the person's driver's license or identification card, or (3) by will.

In addition to these ways of making the gift, the bill permits the gift to be made by (1) registering with a donor registry or (2) during a terminal injury or illness of the donor, by communication to two adults, at least one of whom is disinterested. The Act permits the Department of Human Services to allow an organ procurement organization to establish a donor registry and indicates that only one such registry can be established in Oregon. If the registry is established, the Department of Transportation must cooperate with the organization managing the registry to provide information regarding a donor's making, amending, or revoking an anatomical gift. The registry must be available 24 hours a day to enable a procurement organization to determine, when a donor or prospective donor is at or near death, whether the person has made, amended, or revoked an anatomical gift.

HB 3092 expands the list of people who can make an anatomical gift for a decedent. The list now includes a grandchild or grandparent, an "adult who exhibited special care and concern for the decedent," and "any other person having the authority to dispose of the decedent's body."

Although the statute says that a designation on a driver's license will be sufficient to make an anatomical gift, anecdotal evidence suggests that procurement organizations have been reluctant to act on a driver's license alone and may request consent from family members. Because time will usually be of the essence in organ donations, registering with the donor registry may be the safest way to ensure that a donor's wishes are carried out. Advisors can direct clients to register by going to **www.donatelifenw.org**. ■

*If your clients ask about organ donation, refer them to the Web site **www.donatelifenw.org** to learn more and to register in either Oregon or Washington.*

Call 503.494.7888 or 800.452.1369 for explanatory brochures and a business card to give clients that lists the Web site and phone numbers for Oregon and Washington.

New law recognizes same-sex domestic partnerships

This article was prepared by Elder Law Newsletter editor Carole Barkley, from information provided by Penny L. Davis, Davis Pagnano & McNeil LLP, and Mark M. Williams, Hutchinson Cox Coons DuPriest Orr & Sherlock PC.

The Oregon Family Fairness Act establishes requirements and procedures for individuals of same sex to enter into a civil-union contract.

The Oregon state legislature recently passed a law that will affect estate planning for your lesbian, gay, bisexual, and transgender (LGBT) clients. You need to be aware not only of the details of the law, but of which clients it affects.

Working with LGBT clients

"People who are LGBT are not necessarily going to be highly visible," Penny Davis told attendees at an October 5 Elder Law Section CLE presentation. Despite the relevance of the issue for legal planning, do not expect a client to tell you he is gay. There is a long history in this country of prejudice and even violence against LGBT people. Although Oregon today is seen as a very tolerant state, it too has a shameful history, including forced castration and sterilization under the auspices of the Board of Eugenics. Given this background, it is not surprising that many LGBT people prefer to keep a low profile.

It is certainly each person's right to withhold information, but it is not the most desirable scenario. Mark Williams, Davis's co-presenter, told a story about a client who was denied access to his hospitalized long-time partner, and was told he had "no legal rights." Although the two men had reciprocal wills, they had not executed advance directives for health care or powers of attorney. When Williams asked their original attorney why this was not done, he expressed surprise that they were a gay couple. They had not told him, and he had not asked.

Both Davis and Williams stressed the importance of respecting the client's choice about disclosure, while at the same time making it easy and natural for the client to acknowledge a relationship that will affect property and health care decisions. "How are you going to get the client to disclose that information?" asked Davis. "By being open, by asking questions the right way." A good place to begin is with the intake process and forms. Many estate-planning intake forms— even the *Confidential Information Sheet* that the Professional Liability Fund provides — focus on married couples. An LGBT client who is part of a same-sex couple with children would find it not only difficult to fill out the form, but might well be offended by its assumptions. The simple tactic of using inclusive language on your intake forms, e.g., *spouse/partner* instead of just *spouse*, can communicate your openness to working with LGBT clients while also eliciting information crucial for planning.

The new law: HB 2007

In May 2007, the Oregon State Legislature passed House Bill 2007, the Oregon Family Fairness Act, a law that establishes requirements and procedures for individuals of same sex to enter into a civil-union contract. Williams said that when he first read the statute, he was struck by the depth and quality of its introductory statement. While the legislature acknowledged that the Oregon Constitution limits marriage to the union of one man and one woman, it also recognized the importance of legal status for same-sex partners. To quote from Section 2 of House Bill 2007:

> Many gay and lesbian Oregonians have formed lasting, committed, caring and faithful relationships with individuals of the same sex, despite long-standing social and economic discrimination. These couples live together, participate in their communities together and often raise children and care for family members together, just as do couples who are married under Oregon law. Without the ability to obtain some form of legal status for their relationships, same-sex couples face numerous obstacles and hardships in attempting to secure rights, benefits and responsibilities for themselves and their children. Many of the rights, benefits and responsibilities that the families of married couples take for granted cannot be obtained in any way other than through state recognition of committed same-sex partnerships.

Provisions of HB 2007

"Domestic partnership" is defined as a civil contract entered into by two individuals of the same sex. Both must be at least 18 years old, and at least one must be a resident of Oregon.

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The option of entering into a domestic partnership is *not* available to opposite-sex couples.

A civil ceremony or ritual is not required. This is a civil contract—not a marriage. It brings with it many of the same rights and responsibilities, but is specifically not to be considered a substitute for marriage.

The Department of Human Services and each county clerk will make the *Declaration of Domestic Partnership* form available to the public. Both parties must sign the form in the presence of a Notary. The filing fee is $25.

Anyone who has signed a *Declaration of Domestic Partnership* and subsequently wants to dissolve the partnership must do so through the circuit courts.

The effective date of the Oregon Family Fairness Act is January 1, 2008.

The effect of HB 2007

The full effect of HB 2007 will not be known for some time. For example, the extent to which Oregon can and will recognize same-sex marriages, civil unions, and domestic partnerships entered into in other states is unknown. It is also unclear how community-property arrangements created under the laws of another state will be treated. Also unclear is whether a couple in a legal union entered into in another state or country can or should register in Oregon as domestic partners. Despite the gray areas, some likely consequences of HB 2007 can be noted.

Probate and trust administration

A registered domestic partner will have the same rights as a spouse under laws regarding intestacy, ORS 112.015 *et seq*.

Like a spouse, a surviving domestic partner would be the preferred personal representative of the partner's estate. ORS 113.085(1)(b).

A domestic partnership registration revokes a prior will unless the will contains language indicating the testator's intent that the will not be revoked, in accordance with ORS 112.305. Similarly, the dissolution of a domestic partnership operates like a divorce to revoke the provisions of a will that benefit the partner, unless the will indicates a different intent. ORS 112.315.

A revocable living trust is not automatically revoked by the registration of a domestic partnership. ORS 130.530. Dissolution of the partnership will, however, revoke all provisions of the trust in favor of the former partner as well as any provision naming him or her as trustee, unless the terms of the trust provide otherwise. ORS 103.535.

Estate planning

A legally recognized relationship entered into in Oregon or elsewhere should be part of the definition of family in wills and revocable trusts. Williams advises clients to list in the will the domestic partnership and the date it was established—but, he noted, "I have had clients who declined to do that, who even in death did not want to face the wrath of their families, or were concerned with their families' knowledge because of discomfort at that time."

Children who are an important part of a client's family should be identified in wills and trusts, whether or not the client is a recognized parent. Naming and describing the intended beneficiaries beyond "my children" can avoid a variety of problems, including those that would arise in a jurisdiction that does not recognize Oregon's domestic partnership law for inheritance purposes.

Many same-sex couples own real property with right of survivorship using the Erickson deed language from ORS 93.180. HB 2007 allows registered domestic partners to create a tenancy by the entirety in real property under ORS 108.090, which adds some protection from creditors. However, the form of ownership preferred will depend on a number of factors, including estate planning goals and estate tax considerations. Same-sex couples, whether or not they are registered domestic partners, should be advised to consult a tax professional before changing the ownership of property. If one partner adds the other's name to a deed, there may be a federal gift-tax consequence.

HB 2007 gives a surviving domestic partner the right to determine the disposition of remains under ORS 97.130(2). However, because the domestic partnership may not be recognized if the death occurs outside of Oregon, it makes sense for all same-sex couples to compete the Disposition of Remains instruction using the form found at ORS 97.130(7).

Planning for disability

Advance directive for health care. A registered domestic partner will have the same rights as a spouse when it comes to making end-of-life decisions in the absence of an advance directive for health care or a court-appointed guardian. See ORS 127.635(2). However, the decision-making authority is limited and does not cover many of the health care issues that must be dealt with when someone is incapacitated, including access to information, obtaining care and treatment, and placement in a care facility. For that reason, an advance directive for health care is very important, regardless of spousal or domestic partner status.

Usually, domestic partners will appoint each other as health care representative, but even if for some reason that is not the case, the advance directive for health care can include instructions about access by the domestic partner. Where keeping peace with the family of origin is an issue, the directive can also spell out the client's wishes for their access. "Make it clear," said Davis, "that there is no intent by the domestic partner who is named as the health care representative to shut out other people who are important in the partner's life. The intent is to be inclusive."

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Domestic partnerships

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While an advance directive is important for all your clients, it is critical for LGBT clients. In addition to the many other concerns, LGBT elders have an extra concern: possible discriminatory treatment by health care professionals.

Financial power of attorney. HB 2007 makes no changes in the way financial powers of attorney are used. When it comes to handling the finances of an incapacitated person, domestic partners, like spouses, do *not* have statutory authority to make financial decisions for each other. It remains important for all clients to execute a financial power of attorney. Davis advised that one carefully consider including specific authority for self-dealing or gifting in a financial power of attorney.

Guardianship and conservatorship. A registered domestic partner will have the same statutory preference for appointment as a guardian and conservator that a spouse has. ORS 125.200. However, because a jurisdiction outside of Oregon may not recognize Oregon's law, it is a good idea for your client to have a written nomination of a guardian and a conservator as permitted by ORS 125.200.

Health care costs. Registered domestic partners will be responsible for each other's necessary health care expenses and the expenses of their minor children. ORS 108.040 and ORS 108.045. This can be expensive, particularly in the case of long term care. Medicaid is the main source of assistance in paying for long term care for people with limited financial resources. The Medicaid program is governed by federal law, which does not recognize same-sex unions, so it appears that the assets of a domestic partner will not be taken into account when evaluating eligibility for Medicaid. However, the partner of the Medicaid recipient will not be entitled to the spousal-impoverishment protection or minimum income adjustments under the Medicaid laws and regulations.

Taxes

When the Oregon Family Fairness Act goes into effect on January 1, 2008, domestic partners may file a joint Oregon tax return, but will need to file single federal returns. This may create special problems for calculations of the applicable income and deduction amounts.

The effect of federal law

There are many issues still to be settled where federal law is concerned. In addition to Medicaid and tax issues, at least one federal bankruptcy court in California equalized the status of domestic partners with married couples, even though their partnership has no federal standing. See *In re Rabin,* 359 B.R. 242 (Bankr.App. 9th Cir.2007).

In summing up the effects of HB 2007 on the way an attorney helps a client plan, Davis said, "We are probably not going to be changing a lot of what we do as far as working with same-sex couples. The reason for that is the federal Defense of Marriage Act. "

Williams noted that although Article IV, Section One of the United States Constitution says, "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," the federal and state Defense of Marriage Acts have yet to be reconciled with that constitutional guarantee.

Should all same-sex couples file a declaration of domestic partnership?

Both Davis and Williams asserted that it is not an attorney's role to tell clients whether or not they should register as domestic partners, just as it is not his or her role to advise clients on whether or not to marry. However, they noted several circumstances under which a client should be advised that registration may have negative consequences. If one partner is in the military or is entitled to military benefits, registration could result in a discharge and loss of benefits, because of the military's "don't ask, don't tell" policy. If one person is not a U.S. citizen, registration could cause problems with his or her immigration status. If one is receiving or likely to receive Medicaid benefits, the other could end up liable for health care costs while being ineligible for spousal benefits.

"Don't assume every same-sex couple is going to want to register as domestic partners," Davis said. "There is a real diversity of views out there. Some people in the LGBT community don't think marriage is such a hot idea to begin with. Other people aren't willing to go through a registration process. If there were actual marriage available they might do that, but they don't want what is seen as a second-class alternative. There are other people who don't want to be public. They are concerned about their personal issues with family; they're concerned about what that might mean for their jobs. There are lots of reasons why people may not want to register as domestic partners." On the other hand, couples may embrace the recognition of their legal status as domestic partners, and choose to register to obtain the benefits of the law. ■

Court of Appeals interprets portions of long term care lien law

By Amy Merilatt, Attorney at Law

Lawyers for both long term care facilities and their residents will find a recent holding of the Oregon Court of Appeals to be a valuable tool when filing and responding to liens for outstanding long term care expenses. The opinion in *King City Rehab, LLC v. Clackamas County, et. al.*, 214 Or. App. 333 (2007) is significant because it marks the first time the Court of Appeals has interpreted portions of Oregon's long term care lien law (ORS 87.501 *et seq*.). The statute provides the framework for perfecting and foreclosing a lien in favor of the long term care facility against the real property of the individual receiving care.

The case was brought by a long term care facility that was seeking to foreclose a long term care lien against a resident's estate. When the resident entered the facility, in July 2002, her son allegedly acted as her agent and signed a contract with King City to provide long term care services. The son paid the facility each month, until he died in October 2004. In January 2005, Forest Grove Senior Center, dba Senior Guardianship Assistance Program (Senior GAP) was appointed as the resident's guardian and conservator, but she died before Senior GAP could take any steps to liquidate her real property to pay her obligations.

In February 2005, King City filed and recorded a notice of lien against the decedent's real property, located in Clackamas County. The outstanding amount of principal due, as stated on the lien, was $13,960.21, "plus accruing interest at the rate of 9% per annum from February 5, 2005, until paid," plus an additional $437.17 in interest which had accrued since October 2004. The principal and interest owed to King City was undisputed. It took several months to provide the advance notice to the multiple intestate heirs, as required by the probate court, before Senior GAP was appointed personal representative, with the authority to administer the estate. Once Senior GAP was appointed personal representative (May 2005), King City served Senior GAP with a Summons and Complaint, seeking foreclosure of the long term care lien. The lawsuit named as defendants Senior GAP, all of the intestate heirs (known and unknown), and Clackamas County (holder of a prior lien for property taxes).

In anticipation of the sale of the real property, Senior GAP obtained a private loan, so that payment could be immediately tendered for the entire amount of the principal and interest owed to King City. While noting that the amount tendered fully paid the principal debt plus interest, King City refused the tendered payment. King City maintained that the payment did not satisfy the lien, and thus it did not have to discharge the lien pursuant to ORS 87.539, because the tender did not include the more than $13,000 in attorney fees that the facility had incurred to collect the debt. Soon after filing an answer and counterclaim under ORS 87.539(1)-(5), seeking discharge of the lien and damages for failure to discharge the lien, Senior GAP filed a motion for summary judgment. King City also moved for summary judgment. "The trial court granted Senior GAP's motion and denied King City's motion, ruling that the amount that Senior GAP had tendered constituted full payment of the lien. The court awarded statutory damages of $100 to Senior GAP and awarded it attorney fees under ORS 87.539(4) and for having prevailed in the foreclosure action." *King City Rehab* at 337-338.

First, the Court of Appeals determined that "under the plain and unambiguous text of ORS 87.539(1), when King City received the tender of principal and interest, it should have filed a certificate declaring that the payment had been received and that the lien was discharged." *King City Rehab* at 340. The court reasoned that a long term care facility receives payment for the "care claimed in the notice of lien" when payment is tendered for the amount due and owing to the long term care facility as of the date of the notice, after deducting all credits and offsets. ORS 87.512(1).

Second, the court determined that the "contracted costs of care," as this phrase is used in ORS 87.503(1), *do not* include attorney fees.

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Amy Merilatt is an associate attorney with Marble Law Office, P.C., in Forest Grove. Her practice emphasizes the establishment and administration of guardianships and conservatorships, preparation of wills, trusts, and the administration of probate estates.

Elder Law Section News

Executive Committee retreat

The Elder Law Section Executive Commmittee recently held its annual retreat at Bella Beach, just south of Lincoln City.

Among the topics addressed were how the practice of elder law has changed since the section was formed; the future directions for elder law; how the section could improve its most popular services, the discussion list and the newsletter; the advantages and disadvantages of continuing to accept non-lawyers as associate members; and working with the Oregon State Bar to get more information about elder law issues out to the public. ■

Section treasurer Sylvia Sycamore came from Eugene for the annual retreat.

CLE credits for unCLE conference

The Oregon State Bar has approved 4.0 general credits and 1.0 ethics credit for the 2007 unCLE conference. Section members who attended the event should claim the credits.

Be sure to save May 9, 2008, for the next unCLE program at the Valley River Inn in Eugene! ■

Long term care lien

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"Care" is defined in ORS 87.501(2) as "all services rendered in a long term care facility, including but not limited to medical care, room and board, nursing care, administrative costs, supplies equipment and ancillary services such as therapies." The court emphasized that this portion of the statute refers specifically "to the administrative costs that pertain to providing services in the long term care facility." In other words, the definition is nonexclusive, but not so open-ended as to include *all* administrative costs, such as collection costs/attorney fees, within the definition of "care." *King City Rehab* at 340. The court noted that attorney fees are expressly made available, at trial, to a prevailing party, in ORS 87.522, but that the attorney fees are not part of the lien itself. *King City Rehab* at 341.

While this case may appear to create a windfall for non-paying residents of long term care facilities, the Court of Appeals did note that this was "an action under the long term care lien statue, not the contract." *King City Rehab* at 341. The holding in this case is significant for the debtor because it clarifies the debtor's ability to cure the lien, even after it has been recorded and a foreclosure lawsuit has been filed. The holding is just as significant for the long term care facility because it warns the facility of the debtor's ability to cure, while reminding the creditor's attorney that a lawsuit to foreclose a lien for long term care should always be accompanied by a companion contract action. Assuming the underlying contract includes a provision for attorney fees and that the contract can be proven, an action for breach of contract could preserve the facility's ability to collect attorney fees, even if the foreclosure action fails due to the debtor's cure. ■

Senior GAP was represented by Marble Law Office, P.C. at the trial court level and by Bodyfelt, Mount, Stroup and Chamberlain, P.C. at the appellate court level.

New Developments in Elder Law

By Cynthia L. Barrett, Attorney at Law

This is the fifth in a series of columns by Cynthia L. Barrett that highlight trends in the practice of elder law, both locally and nationally, and direct the practitioner to helpful resources, including recent cases, administrative rules, and Web sites.

Astor will dispute erupts after her death; grand jury convened

The Brooke Astor Manhattan guardian dispute morphed, after Mrs. Astor's death on August 13, 2007, into a Westchester County Surrogate Court's hotly disputed probate case. But there is still heat in Manhattan: the Manhattan district attorney convened a grand jury and called witnesses to testify in mid-September. The grand jury is considering whether the signature on the 2004 codicil was a forgery, and whether crimes were committed by Anthony Marshall, Mrs. Astor's son, in managing his mother's affairs.

Mrs. Astor's favorite charities stand to gain more if assets diverted from the estate pre-mortem by her son are returned, and if the 2002 and 2004 codicils are invalid. The New York State attorney general's office, charities, and relatives participated in settlement negotiations, but no settlement was achieved as of mid-September. To review the Astor wills and codicils, go to: **http://cityroom.blogs.nytimes.com/2007/08/15/brooke-astors-last-will-and-testament/**

The Astor case pre-mortem legal work, by elder law attorneys Ira Salzman (representing Mrs. Astor's grandson), Susan I. Robbins (appointed by the guardian court to represent Mrs. Astor), and Daniel Fish (representing JP Morgan Chase Bank) was brilliantly conceived and executed, and this case will be long studied by other strategists in big-dollar elder-abuse disputes. The need for a protective proceeding arises only when the incapacity documents are inadequate or being misused —and by pleadings attacking the incapacity documents the attorneys brought into play the validity of the estate planning (wills, trusts, etc.) itself.

Salzman's firm petitioned for appointment of an independent guardian (friend Annette de la Renta) and independent conservator (JP Morgan Chase Bank), alleging Marshall had engaged in a pattern of neglect while enriching himself from his mother's assets. Squarely before the court were two sets of issues: (1) whether Mrs. Astor's power of attorney and health care directive naming her son were void because of lack of capacity, and (2) whether actions taken by the son (in neglecting his mother, in arranging for execution of documents after her incapacity, and in removing her name from assets) were a breach of fiduciary duty.

Robbins, Mrs. Astor's court-appointed attorney, applied for an order requiring (1) that Mrs. Astor's original estate planning documents be turned over to her for analysis by a handwriting expert, and (2) that estate planners allegedly representing Mrs. Astor refund all fees paid by or on behalf of Mrs. Astor. Robbins's actions squarely placed before the court not only the validity of the incapacity documents (power of attorney, advance directive) but also the validity of the estate planning documents themselves.

Dan Fish, representing JP Morgan Chase Bank, helped the proposed independent fiduciary focus on how financial assets were handled by Marshall using the questioned power of attorney, including fees paid to him for his management and assets transferred to himself and his wife. In preparing for the hearing the bank focused on disbursements and missing assets and did more discovery than the court found warranted by its role as temporary conservator. But the elder law attorney knows what breach of fiduciary duty is, and whether the bank found the missing assets or Salzman's firm (for the petitioner) or Robbins firm (for Mrs. Astor), the result was the same: Marshall mismanaged his mother's funds and was *not* permitted to continue as her fiduciary.

The Astor guardianship case was settled by appointment of independent fiduciaries (Dan Fish's client, JP Morgan Chase Bank) and Mrs. de la Renta. Marshall returned more than $11 million in assets to the conservator, and pledged collateral totaling more than $10 million to cover any future claims brought on behalf of the estate.

The Astor case provides a brilliant example of how clients can use the pre-mortem protective proceeding, can remove a questionable fiduciary, and provide interested persons with access to information that can be used post-mortem to improve challenges to a questionable estate plan. The probate court judge would prefer the protective proceeding be a simple "is a guardian needed, and who should it be" inquiry.

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New developments

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Oregonians are registering as Washington State domestic partners

The new Washington State domestic partner registry (RCW 26.60 as newly codified) went into effect on July 2007, and forms are available for downloading from the Washington Secretary of State's Web site at **www.secstate.wa.gov/corps/domesticpartnerships/declaration%20draft%209.pdf.**

Washington's law—like California's domestic partner registry—has no residency requirement, so Oregon residents can choose to register in Washington.

Washington's new domestic partner law gives registrants (same-sex couples and opposite sex couples age 62 or older) a series of limited rights: among them, control of medical decision making, control of disposition of remains, ability to make a wrongful death claim, and intestate inheritance rights. By contrast, Oregon's law of domestic partnership is restricted to same-sex couples, but grants them *all* rights and privileges granted to spouses under Oregon statutory and common law.

A Washington Secretary of State policy official confirmed by telephone that registrations from nonresidents are being accepted, and that a few from Oregon have been processed. More than 1,600 Washington registrations had been issued by mid-September, and 500 more applications have been received for processing. The Secretary of State receives about 30 new applications a day. Out-of-state registrants may be frequent travelers to Washington, who want the medical decision-making protections of the new state law.

What Washington or California registration will mean for your Oregon client is uncertain. Some California or Washington state public-entity retirees living in Oregon will register to obtain spouse-like health and pension benefits for their partners. No one can predict the implications of such a registration on Oregon's new law, going into effect January 1, 2008. However, you will likely see clients with Washington registration coming through your office. My same-sex couple (SSC) planning group is grappling with the portability and cross-jurisdiction implications of out-of-state registration and marriage.

Special needs trustee sued by ERISA plan; pro rata reimbursement rejected

When personal injury tort settlements cover only a small fraction of their injuries, plaintiffs argue that full reimbursement to ERISA health care providers is not fair. Plaintiffs seek to have only the part of the settlement sum allocable to medical expenses subject to reimbursement, leaving more on the table for the injured plaintiff to fund the usual special needs trust.

The *pro rata* reimbursement theory was upheld by the US Supreme Court in a Medicaid reimbursement case, *Arkansas Department of Health v. Ahlborn*, 126 S.Ct 1752 (2006). In the recent Eighth Circuit case interpreting the right to reimbursement in Wal-Mart's ERISA plan, the court rejected the pro rata theory and permitted full reimbursement to the private health plan from the plaintiff's special needs trust. *Administrative Committee of the Wal-Mart Stores Inc. Associates' Health and Welfare Plan v. James A. Shank, Trustee,* No. 063531 (August 31, 2007).

The US Supreme Court in *Sereboff v. Mid Atlantic Medical Servs. Inc,* 126 S. Ct. 1869 (2006) concluded that ERISA plans can seek a form of constructive trust or equitable lien from specifically identifiable funds under the control of the defendant. The funds identified in *Sereboff* were a special investment account holding the settlement funds. In *Shank*, the settlement funds had been placed in a special needs trust but were still subject to the reimbursement claim. These issues are being fought state by state, plan by plan. ■

New Probate Fee Schedule

Multnomah, Marion, & Washington Counties
(May vary in other counties)

Probate (Decedent's Estates) and Guardianship/Conservatorship

Item	Fee
Filing a will without probate petition	$8.00
Small estate affidavit	$78.00
Supplemental small estate affidavit	$78.00
Regular probate and Conservatorship	
$10,000 or less	$78.00
$10,001 to $25,000	$150.00
$25,001 to $50,000	$253.00
$50,001 to $100,000	$355.00
$100,001 to $500,000	$457.00
$500,001 to $1,000,000	$559.00
Over $1,000,000	$662.00
Guardianship	$78.00
Request for future filing (Guardianship/conservatorship)	$20.00
Filing answer, motion, or objection	$73.00
Hearing fee	$41.00

Upcoming events

Friday, November 2, 2007
OSB CLE: Administering the Basic Estate
Oregon Convention Center, Portland
www.osbar.org

Friday, November 2, 2007
Oregon Women Lawyers Fall Conference
Governor Hotel, Portland
www.oregonwomenlawyers.org

November 1–4, 2007
NAELA Advanced Elder Law Institute
Memphis, TN
www.naela.org

Friday, November 9, 2007
OLI CLE: Guardianships & Conservatorships
Oregon Convention Center, Portland
www.lclark.edu/org/oli

Thursday, November 29, 2007
OSB CLE: Working with Difficult People
Oregon Convention Center, Portland
www.osbar.org

January 25–27, 2008
NAELA unProgram
Grapevine, TX
www.naela.org

May 9, 2008
OSB Elder Law Section unCLE program
Valley River Inn, Eugene

May 14–18, 2008
NAELA Symposium
Hyatt Regency Maui Resort, Kaanapali Beach
www.naela.org

Elder Law Section Web site

www.osbar.org/sections/elder/elderlaw.html

The Web site has useful links for elder law practitioners, past issues of the *Elder Law Newsletter,* and current elder law numbers.

Resources

Important elder law numbers

as of July 1, 2007

Supplemental Security Income (SSI) Benefit Standards	Eligible individual	$623/month
	Eligible couple	$934/month
Medicaid (Oregon)	Long term care income cap	$1,869/month
	Community spouse minimum resource standard	$20,328
	Community spouse maximum resource standard	$101,640
	Community spouse minimum and maximum monthly allowance standards	$1,712/month; $2,541/month
	Excess shelter allowance	Amount above $514/month
	Food stamp utility allowance used to figure excess shelter allowance	$303/month
	Personal needs allowance in nursing home	$30/month
	Personal needs allowance in community-based care	$141/month
	Room & board rate for community-based care facilities	$483.70/month
	OSIP maintenance standard for person receiving in-home services	$624.70
	Average private pay rate for calculating ineligibility for applications made on or after October 1, 2006	$5,360/month
Medicare	Part B premium	$93.50/month*
	Part B deductible	$131/year
	Part A hospital deductible per spell of illness	$992
	Part D premium: Varies according to plan chosen	average is $27.35/month
	Skilled nursing facility co-insurance for days 21-100	$124/day

* A person whose income is more than $80,000/year will pay a higher premium

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Newsletter Board

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