Elder Law Newsletter

Volume 7
Number 1
Winter 2004

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Understanding retirement plans is important part of estate planning

By Matt Hutcheson and Jay Richardson

In an effort to balance federal revenue needs with the retirement needs of an ever-changing pool of employers and employees, legislators create, restructure, and curtail retirement plans. Their efforts have yielded a broad menu of plans, each with its own unique characteristics and objectives. In fact, since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), there have been no fewer than 18 legislative enactments that have materially affected retirement plans.

Before a lawyer can advise a client on his or her retirement plan, and how it fits into the overall estate plan, the lawyer must understand the different types of plans and why they are important. Simply put, if you know what plan your client has, you will know what questions to ask or documents to request.

Generally speaking, there are three types of retirement plans:

- Qualified retirement plans
- Other tax favored retirement plans that do not satisfy the meaning of "qualified"
- Nonqualified retirement plans

CHARACTERISTICS OF QUALIFIED PLANS

Qualified retirement plans meet the requirements of Internal Revenue Code (IRC) Section 401(a) and ERISA, and are thus eligible for favorable tax treatment. Qualified plans offer several tax benefits. For example, they allow employers to deduct annual contributions for each participant, and contributions and earnings on those contributions are tax-deferred until withdrawn for each participant.

Any discrimination in the plan in favor of owners, key employees, and highly compensated employees that is not specifically sanctioned by the IRC is prohibited.

The plan must protect certain benefits offered to participants from being eliminated retroactively. For example, the plan may allow employees to retire at age 55, or allow a choice between an annuity and a lump sum distribution, or may have specific criteria for vesting. The plan sponsor may not remove or diminish such protected benefits without tax consequences.

Practice Tip: If your client (1) loses any plan benefit, and it was a protected benefit, or (2) thinks that the plan is discriminating against the company's rank and file employees, locate a consultant who specializes in retirement plans about

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what to do next.

Any employer or self-employed person may adopt a qualified plan. A qualified plan set up by an unincorporated business or self-employed individual is sometimes called a "Keogh" plan.

Governmental employers may also sponsor a qualified retirement plan. Oregon PERS, for example, is a tax-qualified defined benefit pension plan.

Generally, sponsors of qualified plans must demonstrate compliance with ERISA and IRS regulatory requirements, including filing form 5500 with the Employee Benefit Security Agency (formerly the Pension and Welfare Benefit Administration). Plans sponsored by governmental employers are exempt from ERISA (including filing form 5500) and discrimination testing requirements, but are still subject to all other IRS contribution/benefit limitations.

Practice Tip: *The sponsors of qualified retirement plans fall into three categories: (a) private employers, including the self-employed, (b) governmental employers, and (c) individuals who are not employers but who have earned income from business activities. Different rules can apply to the same type of plan, depending on whether the sponsor is a governmental or private employer. Make sure you know who the plan sponsor is.*

TYPES OF QUALIFIED PLANS

Pension plans

If your client participates in a "defined benefit," "defined contribution," "money purchase,"or "target benefit" plan, he or she is participating in the type of plan commonly referred to as a "pension plan."

Pension plans set a specific "definitely determinable" benefit or contribution.

If the benefit is definitely defined within the plan documents, then the plan is a defined benefit pension. A defined benefit pension pays a specified benefit at a stated age, such as a benefit of $1,000 per month for the life of the participant. Under IRS rules, the yearly benefit cannot exceed a specified amount: $165,000 in 2004. The amount required to fund the benefit as defined in the plan varies from year to year.

If the amount of money to be put into the account is defined within the plan documents, then the plan is a defined contribution plan. The IRS commonly refers to defined contribution plans as "individual account" plans. Money purchase plan and target benefit plans are two kinds of defined contribution pension plans.

A money purchase plan[1]defines what the contribution should be, e.g., 10 percent of annual compensation. The IRS limits how much may be contributed to an individual's account each year, which for 2004 is the lesser of 100 percent of compensation or $41,000.

In a target benefit plan, the annual contribution is determined by the amount actuarially needed each year to accumulate (at an assumed rate of interest) a fund sufficient to pay a projected retirement benefit to each participant at retirement age. The plan does not guarantee that such benefit will be paid. Its only obligation is to pay whatever benefit can be provided by the amount in the participant's account.

Contributions to a pension plan must be made annually, with very few exceptions.

A pension plan's normal form of benefit is a joint and survivor annuity. Participants and beneficiaries may elect a different form of benefit if permitted by the plan.

Profit sharing plans

If the qualified plan is not a pension plan, then it is probably a profit sharing plan. Profit sharing plans are always defined contribution plans. However, profit sharing plans do not have a "definitely determinable" aspect, and employers have significant flexibility in how and when contributions are made.

Profit sharing plans do not require annual contributions nor do they require that contributions meet specific dollar or percentage minimums, although contributions must be "substantial and recurring."

Practice Tip: *If your client is a participant in a qualified plan, and reasonably recurring contributions have not been made, inquire why. Despite its name, a plan sponsor does not need profits to make contributions to a profit sharing plan.*

In some companies, employees have the choice of taking some of their wages or bonuses as cash or putting them into their retirement plan. Such a "cash or deferred arrangement" (CODA) is subject to IRC §401(k), hence this type of plan is commonly referred to as a 401(k) plan. Individuals who participate in a 401(k) plan may defer wages and bonuses up to $13,000 (for 2004) plus an additional $3,000 if they are age 50 or older. Other possible contributions such as company matching funds or ordinary profit sharing may be used to increase the yearly contribution to the $41,000 limit—plus an additional catch-up contribution of $3,000 if the participant is 50 or older.

Example: In 2004, a 51-year-old employee might receive allocations to his or her profit sharing account as follows:

Type of contribution	Amount of contribution
401(k) deferrals	$13,000
Employer matching	4,000
Profit sharing	24,000
Age 50+ catch-up	3,000
Total additions to account	**$44,000**

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Retirement plans *Continued from page 2*

Practice Tip: *In the modern 401(k) plan, employer contributions are generally discretionary, meaning the matching and profit sharing amounts are determined by the plan sponsor on an annual basis, and can be as little as zero. However, it is common to see a stated matching formula within the plan, and even a stated profit sharing percentage. Make sure your client reads the contribution portion of the plan carefully.*

Employee stock ownership plans

Employee stock ownership plans (ESOPs) operate virtually identically to profit sharing plans except contributions are made in the form of employer stock, or the employer contributes cash that is subsequently invested in employer stock. ESOPs have a number of specific and special rules associated with their operation. Because they are very complicated in operation, they will not be discussed here.

OTHER TAX-FAVORED PLANS

Technically, all retirement plans that do not fall into the qualified status are called non-qualified plans. However, some practitioners call any type of plan that operates in a tax-favored environment qualified. We have chosen to call these "other tax favored plans" because they are not qualified under IRC §401(a), although they may resemble qualified plans in many ways.

Plans controlled under IRC §408

- **Individual Retirement Account (IRA)**
  IRAs may be sponsored by an individual and spouse. Each may contribute yearly the lesser of 100 percent of income or $3,000 plus a catch-up amount of $500 if older than 50.
- **Simplified Employer Pension (SEP)**
  A SEP allows employers to make contributions on a tax-favored basis to traditional individual retirement accounts (IRAs) owned by the employees. SEPs are subject to minimal reporting and disclosure requirements. Under a SEP, the employee must set up an IRA to accept the employer's contributions. As a general rule, the employer can contribute up to 25 percent of a participant's pay, or $40,000 (whichever is smaller) into a SEP each year. Account balances must be 100 percent vested at all times. SEPs are easy to set up, and can be sponsored by any nongovernmental small business, including a self-employed individual.
- **Saving Incentive Matching Plan for Employees IRA/401(k) (SIMPLE)**
  Like SEPs, SIMPLEs are for small businesses with fewer than 100 employees. To be eligible, an employee must have income of at least $5,000. SIMPLE IRA plans allow a participant to defer income and put it into the plan (up to $9,000 for 2004). SIMPLE 401(k)s permit a deferral of up to $13,000 for 2004. In both plans, the employer then is required to match the employee deferral dollar for dollar on the first four percent deferred plus 50 percent on the next two percent — for a maximum match of four percent. Alternatively, an employer may choose to contribute a flat two percent of all the eligible employees' pay, regardless of whether the employees contribute their own money to the plan.

Plans controlled under IRC §457(b)

457(b) Deferred compensation plans for eligible governmental employers

Employees of eligible governmental employers may defer up to $13,000 of their pay each year to a 457 plan. These plans operate much the same as 401(k) plans. However, they are not subject to discrimination testing, nor to 5500 reporting requirements. Because governmental employers sponsor 457 plans, they are not subject to ERISA.

Plans controlled under IRC §403(b)

403(b) Plans for tax-exempt organizations

403(b) plans can be subject to ERISA or not depending on the way the plan is structured. An example of a 403(b) plan that is not subject to ERISA is a tax-sheltered annuity program sponsored by a school district that provides for employee contributions only. A plan sponsored by a tax-exempt organization that provides matching contributions to the 403(b) would be subject to ERISA, and would therefore be required to file form 5500 and adhere to all other applicable requirements.

NONQUALIFIED PLANS

A non-qualified plan is any type of retirement or incentive plan for highly compensated executives. These plans are not regulated like the plans described above, and hence do not have "set-in-stone" limitations. However, because of the lack of regulation, they are not afforded the tax-favored status that other plans have. For example, employer contributions may not be deductible until the employee receives payment. Also, a nonqualified plan cannot accumulate income tax-free. Although these plans may not be tax favored, they can be very complicated and can have surprising implications. For example, if a non-qualified plan covers more than one or two elite managers, the plan could be subject to ERISA.

WHERE TO OBTAIN INFORMATION ABOUT A RETIREMENT PLAN

The type of plan determines whom you must ask for information about your client's retirement plan. If the plan is a nonqualified

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Retirement plans

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Practice Tip: Never just read a retirement plan's "summary plan description." Always ask for a copy of the actual plan document.

plan, you should direct your questions to the plan sponsor. If the plan is a qualified plan or other tax-favored plan, you should seek help from the plan's named fiduciaries:

1. **The plan administrator:** The plan administrator is a person or entity charged with legal responsibility for the plan. In most plans, the plan administrator is also the plan sponsor. In some cases, the plan sponsor hires a third party to perform administrative functions, and may delegate the answering of questions to this "third party administrator."
2. **The trustee/custodian:** The trustee/custodian is charged with handling, investing, and authorizing transactions with respect to the assets held in trust for the benefit of the participants and beneficiaries. Therefore, any investment-related question is generally answered by the trustee or custodian, or a co-fiduciary who has accepted a delegation from the trustee.
3. **Service providers:** Banks, insurance companies, mutual fund companies, brokerage firms, consultants, accountants, and others who provide services to the retirement plan administrators or trustees can be extremely valuable. Some service providers are co-fiduciaries, and are therefore obligated to help participants and plan sponsors in ways that non-fiduciaries would not be able or willing to.

Footnote

1. At retirement, the resulting account balance can then be taken to an insurance company to purchase an annuity, hence the term "money purchase." In actual practice, the purchase of an annuity is seldom done, as the participants want to maintain full control over their account balance.

More Resources

For a chart that compares various defined contribution plans, see **www.401khelpcenter.com/pdf/retirement_plan_comparison.pdf**

The Administration on Aging provides funding to nonprofit centers around the nation that help people resolve pension problems.
For information, visit the Pension Help Web site:
www.pensionrights.org/pages/help.html

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An interview with Natalie B. Choate

By David J. Loftus

Natalie B. Choate is a popular national speaker on the subject of retirement benefits. Choate practices law in Boston with the firm of Bingham McCutcheon LLP. Her book, *Life and Death Planning for Retirement Benefits*, is a leading resource for professionals in this field.

Asked how she first got involved in the field, Choate said "when the Federal Pension Law was passed in 1974—this sweeping law that regulated all aspects of retirement plans and created IRAs, which didn't exist until then—my law firm said, okay, you're the youngest one in this firm; you learn this."

Choate was an estate-planning specialist so she knew both sides of the equation: estate planning and retirement benefits. She started giving seminars, and found that there was a demand and that she enjoyed it. "I teach mainly attorneys, CPAs, all kinds of estate planning professionals. I also speak to nonprofessional audiences and investment people."

Choate said estate-planning lawyers have traditionally thought only in terms of planning for death. Their approach was: "If the client dies, what should happen to their assets, how do we save estate taxes for the heirs?"

Today such attorneys need to recognize their clients might live a long time. The question becomes: "Does the client have enough money for his old age? Or for the surviving spouse's old age? Attorneys need to focus more on that, and work more with financial planners, so that the estate plan doesn't destroy the financial plan. Sometimes the client is trying to think about that, and the lawyer is just talking estate taxes and they're not communicating."

Designation of beneficiaries is crucial

Asked about the most common mistake estate planners make, Choate cited lack of follow-up on designation of beneficiaries of retirement plans.

"The attorney should draft the beneficiary form, oversee that it gets filed, and make sure that the retirement plan acknowledges they've received it. Lawyers do that with insurance policies, but there's a tendency with retirement plans to neglect it."

Naming a beneficiary for one's retirement plan is important for two reasons, according to Choate. "The first one is obvious: You're supposed to choose who you want to get the money, not leave it up to somebody else. The second reason is that, unlike with other assets, who is named as beneficiary determines the value of the asset.

"If you leave it to a young individual, that individual can take it over, and … they can take it out in gradual installments over their entire life. So they get a lot of income tax deferral after your death. If you name your grandmother, she also can use this life expectancy method, but she's older so she has a very short life expectancy, and she'll have to cash it out very soon after your death. So leaving it to one beneficiary versus another indicates how much tax deferral there will be."

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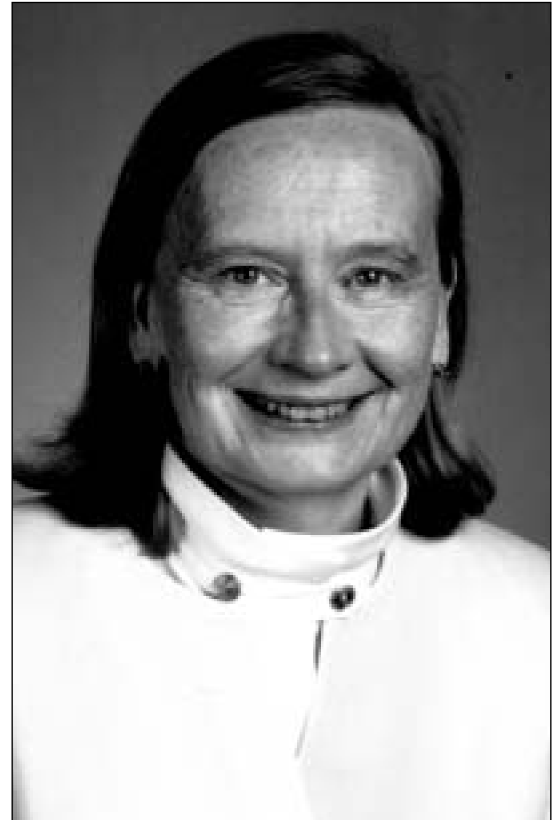

Elder Law Section members who have attended Natalie Choate's seminars in Portland say she can enliven what many regard as a dry subject. "I did take speech training," she said, "and the rest of it came naturally, because the reason I started doing seminars is that I have a short attention span and I found most seminar speakers were so boring, I couldn't stand to sit through their seminars, so I had to start doing my own. And I can't stand to see people snoozing out there, so I really do whatever I have to do to keep them awake."

Building jokes out of the material helps. "Once you really understand the material, it naturally presents humorous possibilities." But, one of the female attorneys in Oregon wanted to know, how does she manage to teach all day wearing high heels?

"That is the hardest part of my job!"

Natalie Choate

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Natalie Choate's book, *Life and Death Planning for Retirement Benefits* is available through her Web site at www.ataxplan.com

Choate could not think of a single instance in which naming a beneficiary would not be advantageous. Though she cautioned that nothing is always or never true, leaving money to one's estate generally results in higher taxes that are paid sooner.

Unless there's a strong reason for the benefits to be left in trust, Choate says a living trust is not usually a good choice of beneficiary.

Choate observed there are "three tax-favored choices of beneficiary and three non-tax-favored." For a person who's widowed or divorced, and has grown children, "You should leave the benefits to the person you want to leave them to, but you should always know if it's tax favored or not. Generally, just naming the children as beneficiaries is probably going to be a very tax favored method, because they will inherit, they can take it over, they can take the distributions over their lifetime, and have a built-in retirement plan. So as long as you have children to leave it to, it's easy. For childless people it becomes more complicated, but that's true of all estate planning."

In that case, the questions become: "Are there [other] relatives you want to benefit, are they older or younger, are there charities you want to benefit? Charitable giving of course is very advantageous for an IRA."

Charities make excellent beneficiaries of IRAs because they are income tax exempt. Choate calls them "a great deal; if you are at all charitably inclined, then you should look to your retirement benefits as the best asset to leave to the charity."

Some attorneys have tried using an IRA to create a special needs trust for a disabled child. This poses problems, Choate says, because special needs beneficiaries are typically fairly young. "If you name that beneficiary outright, he has a long life expectancy [and] he can use that long term deferral of income taxes on the IRA. But that conflicts with your special needs concept, because if he owns it outright, now it's a countable asset. But if you put it into a trust, it's much harder to qualify for the long-term payout. And that is a very severe problem for elder law attorneys."

Choate added that, as far as retirement benefits go, she was not aware of any tax advantage to placing a special needs trust in a will as opposed to a living trust. As for naming a special needs trust as a beneficiary of a retirement plan, "it's better to name the trust directly as beneficiary, rather than having the benefits go through your estate."

In the past, attorneys worried about whether a testamentary trust could be named as beneficiary of retirement benefits without incurring adverse tax consequences. But Choate said it was never a problem to name a testamentary trust, as far as the IRS was concerned: "Of all the headaches and problems they have given us, that was not one of them. And now it's definitely laid to rest: It's clear a testamentary trust is perfectly as good as any other kind of trust."

Asked about whether she could provide savings language, Choate said, "If you are naming any kind of trust as beneficiary of retirement plans, then you need to go through a process regarding this ability to look through the trust and use the beneficiary's life expectancy for a payout period. The first step of the process is, do you care? is it really important in this case? Sometimes it isn't. But if it is, what do we do to make the trust qualify? And there's no magic paragraph you can throw into every trust and make it qualify. So you have to look at each on a case-by-case basis. In my book I explain that and I have sample trust language; I have different clauses that can help you along with the problem."

Lost beneficiary forms lead to litigation

According to Choate, recent litigation involving IRAs has had less to do with tax laws than with IRA providers who lose beneficiary designation forms, or forms that get overturned by changing conditions.

"They're screwing them up and paying the wrong person! You know, you filed your IRA form, you named your kids as beneficiary, your IRA provider merged with another company, and when they merged, they lost everything. So when you die, they say 'we

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Natalie Choate

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don't have any form.'

"Another one is: You named your children in the first form, you got married and you named your new wife in the second form, you die, and they don't find the new form, [and] they pay it to the wrong people because they've still got the old form. This is happening every day. They need to do something about their procedures."

Investing retirement funds

Retirement planning is fertile ground for entrepreneurs. Choate noted there are all sorts of "wild and crazy ideas" currently being promoted for retirement plans. Sales pitches assert, "You really should have your IRA invested in a yak farm" or "Mutual funds are only for stupid people and what you need is to put your chiropractic business into your IRA."

"Every time I hear about one of those, I try to analyze it. Then I try to point out legally why it doesn't work, or if there's nothing wrong with it, I say 'It works!' "

Perhaps the most popular one is: "You can invest your IRA in real estate. You don't have to stick with boring stocks and bonds." While this is literally true—investors are not legally limited to stocks and bonds and may invest an IRA in real estate—Choate said "the minute you stray from the vanilla, ordinary stuff, you have a lot more issues to worry about than whether you're going to just invest in nice, boring mutual funds.

"For example, if your real estate investment is really a business, because you are buying houses, fixing them up, and reselling them—that's a business, that's not an investment. And if you run a business inside your IRA, the IRA has to pay taxes on it. It's not tax free, if it's a business. And if you sell real estate to your IRA, that's a prohibited transaction. Your IRA can't do deals with you."

Do IRAs always result in lower taxes?

Common wisdom has it that if you put the same amount of money in an IRA and a non-IRA investment, the IRA will result in more income because of the tax advantages. But does this always hold true—if someone works past the age of 70-1/2, for example?

"It doesn't always hold true that deferring the tax will result in a lower tax, especially for lower income people. Let's say you've retired and you're 70 years old, and your base income is maybe $30,000. But you have to start taking distributions from your retirement plan, because you're seventy and a half. Well, you're receiving Social Security, and if you have a low income to start with, your Social Security is not taxable. But the minimum distributions could be pushing you up into a higher bracket, and making the Social Security benefits taxable, too. Like if you have $85,000 of income, your Social Security benefits are 85 percent taxed or something like that. So especially for lower income retired people, distributions from their retirement plan can actually be taxed at quite a high rate."

Asked whether there are ever situations where the above would not be the case, Choate said, "I guess if you're going to be in a lower bracket in the future, it's better not to defer. I mean, each individual case you have to look at. Most people are going to grab a current tax deduction and worry about the future later."

Retirement planning and long term care issues

Decisions people make about where to put their money can affect what happens when they get old, such as whether or not they can qualify for Medicaid. For Medicaid planning purposes, retirement benefits such as IRAs are countable assets, so a client can't "hide" assets there.

Choate admitted, "I'm no expert on elder law issues. The Oregon State Bar is the only organization I'm aware of that's actually published on the subject of elder law, Medicaid qualification issues, and retirement benefits. … So you guys are the leaders. Somebody out there ought to become the national expert on the subject and enlighten the rest of us."

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*David J. Loftus is a Portland freelance journalist and author. His Web site is at **www.david-loftus.com**.*

He interviewed Natalie Choate in her office in Boston's financial district in late September.

Determining retirement income needs

Financial experts say a person needs about 70 to 80 percent of pre-retirement income to finance a comfortable retirement. Social Security retirement benefits can be expected to replace about 40 percent of the money an average wage earner makes. That means most people will need to provide for an additional 30 to 40 percent of pre-retirement earnings through pensions, 401(k) plans, IRAs, savings bonds and other investments.

Online retirement income calculators can be found at:
www.socialsecurity.gov/planners/calculators.htm.

New Oregon inheritance tax rules affect estate planning

By Jeffrey M. Cheyne

HB 3072, the bill that changed the Oregon Inheritance Tax (OTax) law, became effective on November 26, 2003. Estate planners must take into account the various changes that affect their clients.

Not subject to income tax referendum

There has been some confusion about whether or not the OTax will be repealed if the income tax referendum (Measure 30) passes. On February 3, 2004, voters will choose whether or not to repeal the income tax surcharge enacted in HB 2152 that funds public services for the 2003-05 biennium. However, the OTax was not part of HB 2152 and will not be affected by Measure 30.

Inheritance tax tied to IRC as of 12/31/2000

For estates after January 1, 1998, HB 3072 generally ties the OTax law to the Internal Revenue Code as it existed on December 31, 2000. As a result, Oregon has adopted the federal exemptions established in the Taxpayer Relief Act of 1997 (TRA-97) that provides for incremental increases in the Oregon inheritance tax exemption, which in is $700,000 in 2003, $850,000 in 2004, and then gradually increases to $1 million in 2006. A copy of HB 3072, Chapter 806, can be obtained at **www.leg.state.or.us/03reg/measures/hb3000.dir/hb3072.en.html.**

The current federal estate tax exemption of $1 million, the scheduled exemption increases, and the other changes enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) will not be followed. For example, the federal exemption for 2003 is $1 million; but the OTax exemption will only be $700,000. For 2004 the federal exemption will increase to $1,500,000, but the OTax exemption will only increase to $850,000.

2003 inheritance tax changes

For a 2003 estate with a gross value between $700,000 and $999,999, even though a federal estate tax return is not required to be filed with the IRS, a federal form 706 estate tax return will nevertheless have to be completed and filed with Oregon's IT-1 form. The Oregon Department of Revenue (ODR) now requires that the 706 federal estate tax form be completed in addition to the IT-1 form, since the 706 form provides the valuation and deduction details necessary to compute the OTax. No OTax will be due until the taxable estate reaches $700,000 or more. Therefore, it is possible that an estate may be required to file an OTax return because the estate is over $700,000, but not be required to pay any OTax because the taxable estate is less than $700,000.

It should be noted that if an estate has a gross value in excess of $700,000 but a taxable value of less than $700,000, no tax will be due and no penalties will be due if a taxpayer decides not to file a tax return. See ORS 118.260. Even though a taxpayer does not owe any tax, it may still be prudent to file a tax return in order to trigger the three-year statute of limitations. See Section 8 of HB 3072, that amends ORS 118.230 to tie the assessment and collection procedures of the OTax to ORS Chapter 314. The OTax now has a statute of limitations.

Any 2003 Oregon estate with a taxable value in excess of $700,000 will owe an OTax based on the lesser of the estate tax, as determined under TRA-97, or the state death tax credit as computed on Oregon Tax Form IT-1 pursuant to the form instructions. The IT-1 form for 2003 has been released and can be downloaded from the ODR Web site.

Automatic extension for 2003 estates

On November 4, 2003, the ODR issued an Inheritance Tax Advisory providing an automatic extension for 2003 inheritance tax returns. The time for filing a 2003 return and paying any tax is automatically extended to the later date of May 26, 2004, or 6 months after the due date of the return. However, interest accrues from the later date of November 26, 2003, or one day after the due date of the return. The latest Inheritance Tax Advisory issued by the Oregon Department of Revenue can be obtained at **www.dor.state.or.us/taxInfo/Inhtaxadv.html**.

2004 inheritance tax changes

For 2004 estates, the Oregon inheritance tax filing requirement will increase to estates with a gross value of $850,000 or more. An OTax will not be due unless the taxable value of the estate exceeds $850,000. In 2004 the federal exemption increases to $1,500,000. The difference between the Oregon exemption and the federal exemption will be $650,000. The OTax for a 2004 taxable estate of $1,500,000 will be $64,400.

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Changes in Oregon inheritance tax *Continued from page 8*

Effect of changes on estate plans of married clients

One of the dilemmas that attorneys face with 2003 married-couple estates is how to handle the $300,000 difference between the Oregon exemption of $700,000 and the federal exemption of $1 million. In 2004 the difference between the Oregon exemption of $850,000 and the federal exemption of $1.5 million will be $650,000.

Married couples whose estate plans include credit-shelter trusts based on federal exemption funding formulas face an unexpected OTax when the first spouse dies. For example, if the first spouse dies in 2003 with a taxable estate of $1 million, and the credit-shelter trust is funded based on the current federal exemption formula of $1 million, as opposed to the Oregon exemption amount of $700,000, an OTax of $33,200 would be due even though no federal estate tax is due.

It is now possible to make a federal QTIP election that will set aside a taxable estate of $1 million that is exempt from federal taxes and also make a state QTIP election that will leave a taxable estate for Oregon purposes of $700,000 that is exempt from OTax. Subparagraph (7) of Section 6 of HR 3072 authorizes ODR to adopt "rules providing for a separate election for state inheritance tax purposes." The instructions to the 2003 Form IT-1 state: "A separate election under IRC 2032 or 2056 (such as alternate valuation or the marital deduction) may be claimed for Oregon purposes." However, ODR has not adopted any rules, and according to an ODR representative, is unlikely to do so until 2004.

If an estate requires a state QTIP election prior to ODR adopting its rules, either file a return with a separate election for Oregon purposes or contact ODR to discuss an extension of time under Section 9 of HB 3072 which authorizes ODR to "extend the time for the filing of a return and for the payment of any tax . . . for a reasonable period not to exceed four years from the date otherwise fixed for the filing of a return and the payment of the tax due."

If the first spouse dies in 2004 with a taxable estate of $1.5 million, and the credit-shelter trust is funded based on the 2004 federal exclusion-amount formula of $1.5 million, as opposed to the Oregon exemption amount of $850,000, an OTax of $64,400 would be due even though no federal estate tax is due.

With properly drafted documents it is possible to preserve the federal unified credit and at the same time defer the payment of the OTax by making a state QTIP election. When ODR issues its rules on this issue, more precise drafting options can be determined. For an example of a trust provision that allows a state QTIP election in a credit shelter trust see Stephen J. Klarquist, "Funding Formulas for Inheritance Taxes," *Oregon Estate Planning & Administration Section Newsletter* (Oct. 2003).

Disclosures to married clients

As a result of the passage of HB 3072, practitioners should now consider advising their married clients that there may be unexpected Oregon inheritance tax ramifications. Because of the difference between the Oregon exemption amounts and the federal exemption amounts, most estate plans for married couples with credit-shelter trust or marital deduction funding formulas should be reviewed and probably revised. A sample married couple disclosure letter can be downloaded from the PLF Web site at **www.osbplf.org/docs/aids/10ltrnotcltreoretaxlawchg.pdf.**

For unmarried individuals, these computational issues need to be reviewed so that each client can decide whether to take further steps to reduce the value of his or her estate in order to reduce or, in some cases, avoid the Oregon estate tax.

Estate administration tips

2003 estates with a gross value of $700,000 or more are subject to the new tax changes. Because of these new changes, it may be necessary to initiate court proceedings to reform the estate planning documents so that the OTax can be avoided on the first spouse's death. If the first spouse died in 2003, a request for an extension to file should be considered.

Continued on page 12

Special Note:

If you represent a decedent who died during 2003 with a gross estate value of more than $700,000 and a taxable value of more than $700,000 and have not filed an Oregon Inheritance tax return, the Oregon Department of Revenue has granted an automatic extension until at least May 26, 2004, or perhaps later depending on the date of death, to file the inheritance tax return and pay the tax. Note however, that interest will begin to accrue on the later date of November 26, 2003 or one day after the due date of the return.

Is Social Security safe from debt collectors?

By Leslie Kay, Regional Director, Legal Aid Services of Oregon, Multnomah County Office

The laws that govern Social Security collection issues can be complex. Generally, Social Security[1] benefits and Supplemental Security Income[2] benefits are exempt from execution, levy, attachment, garnishment, or other legal process, and from the operation of any bankruptcy or insolvency law. However, the widely held belief that Social Security and SSI benefits are "judgment proof" is subject to several notable exceptions.

Federal tax bills/Treasury offsets

26 USC § 6331 permits the Secretary of the Treasury to levy up to 15 percent of any "federal payment" to collect past due tax bills. Social Security benefits are not exempt from this provision. Needs-based federal payments like Supplemental Security Income (SSI), for which eligibility is based on the income or assets of a payee, are exempt under the statute.

Non-tax federal debts/Administrative offsets

Since 1996, 31 USC § 3716(c)(3)(A)(i) has permitted federal government agencies to off-set Social Security benefits to collect federal debts such as federal student loans, federal mortgage loans in default, and food stamp overpayments. A maximum exemption of $9,000 each year is available. Supplemental Security Income (SSI) is exempt under the statute except for off-set of SSI overpayments.

Child and spousal support

42 U.S.C § 659 permits garnishment of Social Security benefits for the collection of child and spousal support. Garnishment is limited to the lesser of the state maximum or the maximum under the Consumer Credit Protection Act (CCPA) 15 U.S.C. 1673(b).

The CCPA limits garnishment to:

- 50 percent if the beneficiary is supporting a spouse and/or child other than the spouse and/or child whose support has been ordered
- 60 percent if the beneficiary is not supporting another spouse and/or child
- 55 percent or 65 percent respectively, if the garnishment order or other evidence submitted indicates the original support ordered is 12 or more weeks in arrears.

ORS 25.414 and OAR 461-055-4200 govern Oregon maximums. In some instances the limitations are more restrictive than the Federal limitation and will control the maximum withholding.

Bank overdraft fees

The Ninth Circuit Court of Appeals has approved a bank practice of offsetting overdraft charges from direct deposited Social Security and SSI benefits. The court reasoned that the bank's account agreement notified depositors of the practice of using deposits to cure overdrafts and that each deposit to the account after an overdraft pursuant to direct deposit instructions, could be treated as a voluntary payment of a debt incurred. *Lopez v. Washington Mutual Bank,* 302 F.3d 900, 311 F.3d 928 (9th Cir. 2002).

Co-mingling funds

In some jurisdictions, a Social Security recipient's benefits may be at risk of garnishment or attachment if they are combined with other funds. The best defense is to keep Social Security benefits in a separate account. If a creditor sends a bank a notice of garnishment, the bank will freeze the account and send a notice of garnishment to a depositor. The depositor then has the burden of claiming the Social Security benefit exemption.

Remedies

Generally a recipient will receive notices before Social Security benefits are garnished or offset under the circumstances described above. The notices will detail the right to potentially claim exemptions or partial exemptions. As a general matter only Social Security and SSI overpayments can be resolved through the Social Security Administration. Other debts must be resolved through the IRS, the US Treasury, or the federal agency that maintains the debt.

A thorough discussion of this complicated area of law is beyond the scope of this article. More information can be obtained by calling the National Consumer Law Center at 617.542.8010, the Taxpayer Advocates Office toll free at 877.777.4778 (**www.irs.gov/advocate**), or the Department of Treasury Financial Management Service at 800.304.3107. Further information about student loan collection can be obtained from the Department of Education Web site, **www.ed.gov**, the department's Student Aid Office at 800.433.3243, or the student loan ombudsman office at 877.557.2575 or **www.sfahelp.ed.gov**.

Footnotes

1. Social Security benefits include retirement benefits, survivor benefits, disability insurance benefits, and auxiliary benefits paid to eligible members of the insured worker's family including certain spouses, children, and divorced spouses---under the retirement and disability insurance programs. 42 USC §§401-422.
2. SSI is a needs-based program for the aged, blind, or disabled. To qualify for SSI, a person must have limited income and resources. SSI may constitute a person's sole form of income, or it may supplement other income. 42 USC §§1381-1383.

Medicare will add prescription coverage

By Professor Leslie Harris, University of Oregon School of Law

Congress recently passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which adds prescription drug coverage to the Medicare program.

According to the Kaiser Family Foundation, in 2006 the average elder's drug bill in 2006 will be $3,160. Under the new law, the individual will pay $2,080 of this amount, and the government will pay $1,080. All the prescription drug programs will be administered by private, regionally based HMOs or preferred provider organizations.

Effective date and scope of the coverage

Medicare will begin providing drug prescription benefits by mid-2004, though the main program will not go into effect until 2006.

From April to June 2004, Medicare participants will be able to purchase cards for $30 per year that will provide savings on prescriptions of from 10 to 25 per cent. The cards will be used during the rest of 2004 and all of 2005.

Medicare participants whose income is less than $12,124 (individual) or $16,363 (couples) will also be eligible for a $600 subsidy to help pay for prescription drugs.

In 2006, Medicare participants will have three options for obtaining prescription benefits:

1) Those who are enrolled in the original Medicare program may enroll in a stand-alone drug plan. Medicare will have guidelines for what plans must cover, but the drugs covered will vary from plan to plan. Individuals will need to check to be sure that the specific drugs they take are covered under the plan they select, as the plan will pay only for the drugs it covers, and only those drugs will count toward the deductible.
2) Instead of original Medicare, a person may enroll in a private health plan, called a Medicare Advantage Plan, that offers drug coverage.
3) People on Medicare who receive prescription drug coverage through a former employer may continue to do so, and Medicare will help the employer pay for coverage.

The effect of coverage on premiums, deductibles, and copays

The premium for the 2006 stand-alone plan is estimated to be $35 per month. The deductible will be $250, and then insurance will pay 75 per cent of the cost of drugs up to $2,250. There is a coverage gap for drug costs between $2,250 and $5,100; in this range, beneficiaries must pay 100 per cent of all their drug costs. After that, insurance kicks back in and will cover 95 per cent of the cost of drugs.

Premiums and deductibles will be waived for people who qualify for Medicaid, and they will not face a coverage gap. They will have to pay a modest amount per prescription, $1 to $2.

Other low-income individuals will also receive relief. Individuals with incomes below 135 percent of poverty level, which in 2006 will be $12,123 for an individual and $16,362 for a couple, will not have to pay premiums or deductibles, provided that they satisfy an asset requirement. An individual may have no more than $6,000 in assets, excluding a house or car; the limit for a couple is $9,000.

Those at 150 per cent of poverty—$13,470—which is about one-third of beneficiaries, will get partial subsidies, provided their countable assets are worth less than $10,000. An early analysis found that 33 per cent of beneficiaries with incomes up to 135 per cent of poverty and 47 per cent of those at 150 per cent have too many assets to qualify for this additional assistance.

The Congressional Budget Office estimates that in 2013 the deductible will rise to $445, monthly premiums will go to $58, and the benefit cap will rise to $4,000. The result will be that in 2013, the average elder's out-of-pocket costs will jump to $6,400 before the catastrophic coverage begins.

Other changes in Medicare

Under the new law, Medicare Part B premiums will rise. Medicare beneficiaries now pay 25 per cent of the Part B premium. Under the new rules, people with incomes of more than $80,000 will pay a larger premium, increasing on a sliding scale, and topping out at 80 per cent for people with incomes over $200,000. Beginning in 2005, the Part B deductible will rise from $100 to $110 per year and will then to be indexed to the growth in Part B spending.

New benefits will include an initial doctor's appointment for new Medicare beneficiaries, screening for diabetes and cardiovascular disease, benefits for coordinated care for people with chronic illnesses, and increased payments to doctors for mammograms.

Web sites for more information

Kaiser Family Foundation: **www.kaisernetwork.org** provides an online drug price calculator as well as other information

Families USA: **www.familiesusa.org/site/PageServer**

The official government Medicare site: **www.medicare.gov.**

Changes in inderitence tax

Continued from page 9

The future

The ODR is beginning to consider the rules for reporting the estate elections that are unique to Oregon and is seeking input from the professional estate planning community. If you are interested in participating in working with ODR and estate planners on these rules, please contact the author.

The author thanks Debra Buchanan, ODR Legislative Coordinator; Vera Carriger, ODR Program Manager for Inheritance, Trusts and Estates; Peter Duffy, Duffy Kekel, LLP; and Karey A. Schoenfeld, Ferguson & Schoenfeld PLLC for their assistance.

Jeffrey M. Cheyne, LL.M., Myatt, Bell & Cheyne, P.C. Mr. Cheyne represents individuals and businesses in the areas of estate planning and business planning. He is the author of Oregon Estate Tax Warning, Or Est Plan & Admin Sec News (Apr. 2002); Oregon Estate Tax Update, Or Est Plan & Admin Sec News (Oct. 2002); Oregon Inheritance Tax Update: HB 2184, Or Est Plan & Admin Sec News (Apr. 2003), and Oregon Inheritance Tax Changes, PLF In Brief (November 2003). He is a member of the Portland Estate Planning Council and the American Academy of Estate Planning Attorneys, and he received an LLM in taxation from the University of San Diego. He has given presentations on this topic to the Central Oregon Estate Planning Council, Portland Tax Forum, Springfield Eugene Tax Associate, and Willamette Estate Planning Council. He is licensed to practice in Oregon and Washington.

Committee moving ahead on UTC study

By Professor Valerie Vollmar, Willamette University College of Law

In September 2002, a 12-person committee was formed to study the new Uniform Trust Code (UTC) for possible adoption in Oregon. The UTC is the most comprehensive trust and estate legislation developed by the National Conference of Commissioners on Uniform State Laws since 1969, when the Uniform Probate Code was approved. Five states already have adopted the UTC, and at least 35 states have study projects or legislative proposals pending. The text of the UTC is available on-line at **www.nccusl.org**.

The UTC Study Committee includes representatives of those groups that would be affected the most by a new trust code: the Elder Law Section, the Estate Planning and Administration Section, and the Taxation Section of the Oregon State Bar; the Oregon Bankers Association; Oregon probate judges; and the Oregon State Bar Public Affairs staff. After studying the UTC for four months, the Study Committee formed five subcommittees charged with reviewing the various UTC articles and making written recommendations. The subcommittees, which included about 40 members, invited other Oregon State Bar sections to participate in the review process.

The subcommittees submitted their written reports to the Study Committee in September 2003. During the coming months, various Oregon State Bar sections will be asked for input regarding UTC provisions that affect their areas of interest. The Study Committee's goal is to prepare a final legislative proposal by May 2004, for consideration by the 2005 legislature.

If you have any questions about the study process or would like to share your views about the UTC with the Study Committee, please contact one of the co-chairs:

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Professor Susan N. Gary
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Pro Bono Challenge

The Oregon New Lawyers Division Pro Bono Challenge is a friendly competition to motivate attorneys and law students to provide the highest level of pro bono service. The challenge recognizes pro bono services by all sizes of firms, individual attorneys, and law students.

Pro bono hours for 2003 should be reported on the 2004 OSB attorney membership fee statement that was mailed in December. The hours reported will be tracked for the Pro Bono Challenge.

More information on the voluntary pro bono reporting program is available on the Oregon State Bar Web site, **www.osb.org**.

Section CLE program report

By Wes Fitzwater, Elder Law Section Chair

The Elder Law Section held its annual CLE seminar on October 3 at the Oregon Convention Center. The program entitled *Elder Law Essentials: Planning Tools and Practice Tips* was well attended, with 274 attorneys registered: 200 for the Portland seminar and 74 for the video replays.

The program was a mixture of basic elder law information and updates on current "hot" topics.

Kristianne Cox and Steve Heinrich began the day with a *Basic Tools* presentation which reviewed commonly used documents, including the advance directive for health care and POLST forms, powers of attorney, and quality-of-life provisions for wills and trusts. Steve also discussed the new Health Insurance Portability and Accountability Act (HIPAA) regulations.

Jenny Kaufman from Legal Aid Services of Oregon discussed *Government Benefits for Long Term Care*. Her focus was the non-Medicaid benefits, including Medicare coverage for long term care, VA benefits, and Oregon Project Independence (OPI).

Verena Lewandowski of Northwestern Mutual Financial Network gave a comprehensive review of long term care insurance.

Geoff Bernhardt discussed basic Medicaid issues, specifically *Medicaid Eligibility: Resources and Income.* Geoff covered means-testing of assets, Oregon's income cap and the income cap trust, and fundamental planning strategies for single clients.

Margaret Murphy Carley of the Oregon Heath Care Association updated everyone about *Medicaid: Recent Changes to Coverage for Long Term Care.* Margaret's presentation and materials explained the service priority levels and gave us up-to-date information about cutbacks to Medicaid coverage.

Ryan Gibb completed the Medicaid overview with *Spousal Impoverishment Protection.* Ryan reviewed the community spouse's resource and income allowances and discussed basic spousal planning techniques.

Dady Blake, co-chair with Ruth Simonis of the legislative subcommittee of the Elder Law Section, and Jonathan Levy, legislative chair for the Estate Planning Sections, presented *Legislative Update.* Highlights included changes to the elder abuse statutes, the Revised Uniform Principal and Income Act, and the will and trust harmonization statute.

The last presentation of the day was on ethics. Tim McNeil did an excellent job explaining *Everyday Elder Law Ethics*. Tim discussed the very difficult issues of counseling multiple generations, "who is your client," conflicts of interest when a former client is now incapacitated, and representing a questionably competent or incompetent client.

Reviews of the CLE program have been excellent. I strongly recommend the program to every practitioner who works with an elderly or disabled client. Audio and videotapes are available from OSB CLE Order Desk at 503.684.7413 or 800.452.8260, ext. 413.

Elder Law Section annual meeting held

The annual meeting of the membership of the Elder Law Section of the Oregon State Bar was held at the Oregon Convention Center in Portland on Friday October 3, 2003.

Treasurer Jane Patterson reported that the Section's budget had been based on 450 members, but as of August 31 we had 500 members. Although we had projected more expenses than income for 2003, as of the most recent financial statement available, expenses have not exceeded revenues. Our major expense is the newsletter. We have not spent funds budgeted for research or general expense. As a result of higher than expected revenue and lower than budgeted expenses, we may have a higher end-of-year fund balance than originally forecast.

The membership elected officers and an Executive Committee members for 2004:

Chair: .... Wes Fitzwater
Chair-elect: .... Mark Williams
Past Chair: .... None
Secretary: .... Ruth Simonis
Treasurer: .... Jane Patterson

Members-at-large:
- Kristianne M. Cox (returning)
- Penny L. Davis (returning)
- Leslie Kay (returning)
- Susan Ford Burns (new)
- Sam Friedenberg (new)

The following members, whose terms did not expire, will also continue to serve on the Executive Committee:
- Dady K. Blake
- Allyn E. Brown
- Claudia M. Burton
- Steven A. Heinrich
- William J. Kuhn
- Alexis Packer
- Sylvia Sycamore

The Elder Law section "UnCLE" is scheduled for May 14–15 at the Valley River Inn in Eugene. This is a reprise of the highly successful program we held last May. More information and registration materials will follow, but we encourage you to note this on your calendar.

THE RESOURCE CORNER
An interview with Sylvia Sycamore

By Alexis J. Packer, Attorney at Law, Ashland

Sylvia Sycamore is a sole practitioner in Eugene, Oregon. Before entering the legal profession, she spent twenty years in telecommunications corporate management. She has also worked with elderly clientele in various human services positions. Sylvia began working as an associate for Eugene elder law attorney Helen B. Hempel. When Ms. Hempel relocated, Sylvia took over the practice. Sylvia focuses on guardianships and conservatorships, long term care planning including Medicaid, special needs trusts, and basic (nontaxable) estate planning and administration.

Sylvia has a number of books and CLE materials in her elder law library and also relies on several Web sites. One resource she finds invaluable to her elder law practice is the set of will and trust forms originally authored in 1984, and most recently updated in 2002, by Professor Valerie J. Vollmar of Willamette University College of Law in Salem, Oregon. They are contained within the handbook from the 2002 Oregon State Bar's CLE program *Planning the Basic Estate.*

The features Sylvia most appreciates about the forms are their specificity to Oregon law, the clarity with which they are written, the use of plain English except when legalese cannot be avoided, the formatting which she finds makes documents easy to create, modify and review, and the ease with which the forms can be customized. She notes that the forms alert the user to when provisions should be included and when they are optional, which is very useful, especially for the less experienced practitioner.

Sylvia finds the forms to be an ideal starting point to create documents. Once she has met with the client, sufficiently explored that client's needs and goals, and discussed estate planning options available to the client, she begins to think about which of Professor Vollmar's forms will provide her the best option to help create a document for that client. She then retrieves the particular master or sample document that most closely fits her client's situation and customizes the document to fit the specific needs of her client. Sylvia finds the alternate clauses very useful in the customization of Professor Vollmar's forms. Of course, sometimes the forms do not address a client's situation. Whenever Sylvia creates her own provisions, she saves them, both in written and in electronic form, for ease of future reference.

Sylvia commented that basic estate planning is an integral part of an elder law practice and noted that in a traditional estate planning practice the attorney is primarily concerned with after-death transfer of wealth. In contrast, the elder law practitioner, in addition to planning for such transfers, is very concerned with the possibility of an extended incapacity due to longer life spans and adequate planning to address that possibility. She pointed out that Professor Vollmar's 2002 forms, in keeping with the times, include more language that seems to have been drafted specifically with an eye toward the possibility that the client may need to apply for Medicaid and/or may become incapacitated. Sylvia emphasized how thoroughly Professor Vollmar's trust forms address the issue of incapacity and said she is often able to incorporate some of Professor Vollmar's incapacity language in other documents. For example, she has incorporated some of the incapacity language into documents creating a durable power of attorney document and additional instructions for advanced directive. She has also used the language to create a simple "Incapacity Agreement" for a client who does not want a trust but rather a statement that specifies her wishes in the event of her incapacity.

Often, elder law clients come into the office at the eleventh hour or in crisis. The clients may have done no planning and have concerns about capacity. If they have done some estate planning, the planning may not be adequate to address the problems presented by illness and incapacity, including the potential need to apply for Medicaid. In such situations, an attorney may not have the luxury of time in which to help the client. Sylvia finds that having a collection of expertly researched and well crafted forms from which to begin saves her invaluable time. As with any forms, however, Sylvia cautioned that while it is wonderful to not have to reinvent the wheel, be sure you fully understand any provision you place into a document, and never hand off responsibility for a legal document to a legal assistant.

Recommended Resource

Forms by Prof. Valerie Vollmar

Included in CLE course materials:
Planning the Basic Estate

PBE02.84: Course materials w/disk: $65

PBE02.85: Audio with course materials & disk: $175

PBE02.86: Video with course materials & disk: $315

Order from Oregon State Bar CLE Order Desk
FAX: 503.968.4456
Phone: 503.684.7413 or 800.452.8260, x 413

Description: Master forms, in paper and electronic form, for everything from wills for single and married clients including forms for clients with adult children, minor children, clients with no descendants, and a form for a disclaimer trust will; a sample self-proving affidavit and codicil; a form containing alternate will clauses; master forms for revocable living trusts for single and married clients including a joint trust form; master pour-over wills for each type of trust; a sample trust amendment; a form containing alternate trust clauses; a master durable power of attorney form as well as samples of other documents and letters commonly used in a basic estate planning practice.

Elder Law Section Executive committee holds annual retreat

By Mark M. Williams, Elder Law Section Secretary

The Elder Law Section Executive Committee held its third annual retreat in conjunction with the Oregon State Bar annual meeting in Seaside to discuss the goals and progress of the Section. The retreat provides an opportunity to get away from the office schedule and even the weight of the regular Section business agenda, to get a little perspective on our practices, enjoy each other's company, and discover what it is that sets elder law apart from other areas of practice. Upon reflection, we noted that in six years of existence the Section has attracted 500 dues-paying members, sponsored high-quality CLEs, affected legislation, and produces an excellent newsletter that serves to educate lawyers on the subtleties of elder law practice. We spent some time talking about the past successes, and how we might be able to build on this good record.

At the end of the day, we had agreed on the following priorities for the upcoming year: 1) serve as a resource for courts, other practitioners, and the community; 2) develop a 2005 legislative agenda; 3) improve advocacy on rulemaking; and 4) have some fun. The primary action step identified was to look for ways to inject "new blood" into the organization. For example, it was suggested that recruitment for broader member participation in the Section subcommittees be highlighted at the upcoming elder law CLE. The existing subcommittees are already working on many of our priorities, but the need to keep the energy going to accomplish our goals was a common concern. The retreat served to focus our resolve, rather than identify any major change in course. In the end, the retreat itself was a good start toward our final identified priority: we had some fun.

Dady Blake at the annual Executive Committee retreat.

Important elder law numbers

as of Jan. 1, 2004

Supplemental Security Income (SSI) Benefit Standards	Eligible individual . . . . . $564/month Eligible couple $846/month
Medicaid (Oregon)	Asset limit for Medicaid recipient . . . . . $2,000 Burial account limit . . . . . $1,500 Personal needs allowance in nursing home . . . . . $30/month Personal needs allowance in community-based care . . . . . $110/month Room & board rate for community-based care facilities . . . . . $455.70/month OSIP maintenance standard for person receiving in-home services . . . . . $565.70 Long term care income cap . . . . . $1,692/month Community spouse minimum resource standard . . . . . $18,552 Community spouse maximum resource standard . . . . . $92,760 Community spouse minimum monthly maintenance needs allowance . . . . . $1,515/month Maximum monthly maintenance allowance . . . . . $2,319/month Excess shelter allowance . . . . . Amount above $455/month Food stamp utility allowance used to figure excess shelter allowance . . . . . $266/month* *$195 without heating and cooling cost Average private pay rate for calculating ineligibility for applications made after October 1, 2002 . . . . . $4,300/month
Medicare	Hospital deductible per illness spell . . . . . $876 Skilled nursing facility co-insurance for days 21-100 . . . . . $109.50/day Part B premium . . . . . $66.60/month Part B deductible $100/year

SAVE THE DATE

Elder Law Section "unCLE"

Attorneys helping attorneys

Friday & Saturday, May 14–15, 2004
Valley River Inn, Eugene, Oregon

- **No formal speakers**
- **Small group discussion format**
- **Brainstorming • Networking • Forms exchange**

Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Wesley Fitzwater, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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