HOOK LAW CENTER
NEWS

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The Importance of Gifting Powers in Long-Term Care Planning

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An appellate court, in *Natho v. State* (Tex. Ct. App., 3rd Dist., No. 03-11-00498-CR, Feb. 6, 2014), upheld the conviction of an agent who used a power of attorney to transfer the assets of his former grandmother-in-law, Rosie Shelton, to himself. The facts of the case indicate that after Rosie Shelton entered a nursing home, Ronnie Natho sought counsel to assist with Medicaid planning. The attorney advised Mr. Natho to utilize the power of attorney executed by Ms. Shelton to spend down Ms. Shelton's assets for Medicaid eligibility. As a result, Mr. Natho transferred Ms. Shetlton's care, life insurance, money, and other assets to himself. These transfers led to Ms. Shelton revoking the power of attorney which named Mr. Natho as her agent and criminal charges resulting in a 25-year prison sentence. In upholding the conviction, the Texas Court of Appeals concluded that the power of attorney used by Mr. Natho did not authorize gifts to himself and that various assets that were transferred to Mr. Natho were exempt or non-countable resources for Medicaid eligibility. As a result, the court found that Mr. Natho was not acting to benefit Ms. Shelton.

A basic concept in agency law requires that an agent act within the confines of the authority given. Virginia Code § 64.2-1622 sets forth a list of powers that must be expressly granted to an agent. Such powers, to name a few, include the ability to create, amend, revoke or terminate an inter vivos trust, make a gift, change rights or survivorship or beneficiary designations, delegate authority. It is also common that such acts comply with a principal's estate plan. As a result, when looking to act on behalf of an agent, whether it be day-to-day activity, long-term care planning, or tax planning, it is important that you, as a fiduciary, understand your responsibilities and the powers granted to you.

In long-term car planning, it is important that you not only understand what you are legally authorized to do, but that you understand what you are doing. Most public benefit programs are complicated creatures of Federal and State law. As a result, the planning involved with Medicaid eligibility varies from state-to-state. Elder law attorneys understand what assets will compromise eligibility, what transfers will not affect a 60-month look-back period or penalty, and how to use this knowledge to promote eligibility.

When looking at public benefits eligibility for another, it is important that you

The Importance of Gifting Powers in Long-Term Care Planning – Cont'd

consult with an experienced Elder Law Attorney. As the first Certified Elder Law Attorney in the Commonwealth of Virginia, Andrew Hook is one of the most experienced Elder Law Attorneys in Virginia. As a recognized national leader in the realm of Elder Law, Andrew Hook has been able to provide his team of attorneys and staff with a vast knowledge of many complicated issues involving long-term care planning, Medicaid and Medicare, Veteran's Benefits, estate planning, special needs planning, personal injury consulting, guardianships and conservatorships, and much more. To schedule an initial consultation, please contact us at 757-399-7506.

Dogs and Guilt

Hook Law Center: Kit Kat, do dogs have a sense of guilt?

Kit Kat: Well, that is a good question as always. There are really no bad questions. Anyway, several authorities have weighed in, and the consensus is that NO, dogs don't feel guilty. They put on a mopey face or tilt their heads, but it is most likely a reaction to the loud, stern voice of their owner, not because they feel remorseful about the act they have committed. What's more this is backed up by scientific evidence. For example, Dr. Alexandra Horowitz, professor of psychology at Barnard College in NYC, did a study in 2009 with 14 dogs using videotaping. She found that, "...the'look' appeared most often when owners scolded their dogs, regardless of whether the dog had disobeyed or did something for which they might or should feel guilty." She said, the best time to administer consequences for inappropriate behavior is immediately after or close as possible after the undesirable conduct has occurred. That is right in line with behavioral theory and is called operant conditioning.

Despite the prevalence of websites that insist pets do feel shame, it's just not true. You can watch lots of dogs with mopey, sad faces, but remember, it's not really guilt you're watching. But go have some fun and look at some cute dogs at dogshaming.com or shameyourpet.com. They're hilarious!

(Sue Manning, The Associated Press, "Dogs feel no shame despite the look, behaviorists say," The Virginian-Pilot, pg. 3, Feb. 27,2014)

Upcoming Events

- Andrew Hook will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on **April 12, 2014**.

- Andrew Hook will be speaking at Westminster Cantebury, 3100 Shore Drive, Virginia Beach, VA on **April 16, 2014** at **10:00 AM.** For more information, please contact Westminster Cantebury at (757) 496-1100 or Hook Law Center at (757) 399-7506.

- Andrew Hook will be speaking at the newly renovated Parsons Residential Care Center, 1005 Deep Creek Blvd., Chesapeake, VA on **April 24, 2014** at **6:00 PM.** For more information, please contact Parsons Residential Care Center at (757) 487-0487 or Hook Law Center at (757) 399-7506.

- Shannon Laymon-Pecoraro will be attending the National Association for Medicare Set Aside (NAMSAP) Conference in Las Vegas, NV on **May 8-9, 2014.**

- Andrew Hook will be speaking at the Virginia Benefits Program Organization (BPRO) Spring Conference on **May 8, 2014** in Williamsburg, VA. Mr. Hook, Natalie Hale, CECC and Jennifer Woods-Pagano, CECC will be attending the three-day conference.

- Andrew Hook will be speaking on Financial Services Long-Term Care Insurance at the National Academy of Elder Law Attorneys (NAELA) Conference on **May 16, 2014** in Scottsdale, AZ. Mr. Hook will be attending the two-day conference.

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