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## Notes from the Practice Group Leader



Welcome to the new format of the *Trusts & Estates Bulletin*. After taking into consideration our readers' comments from Buckingham's newsletter survey, we restructured the *Trusts & Estates Bulletin* to make it more readable and user friendly. In this issue, we explore a broad range of topics ranging from caring and providing for a disabled child to an assessment of why estate planning is important for everyone, regardless of age, wealth, or marital status. Finally, there is a discussion involving a new section of the Ohio Trust Code which permits pet owners to create trusts for their pets. I am confident that you will find these articles insightful and helpful.

For current information on trust and estate law, please visit our web site, [www.bdbl.com](http://www.bdbl.com) or call one of our expert estate planning lawyers. As always, we welcome your opinions and feedback.

*David W. Woodburn*

Trusts & Estates Practice Group Chair

## FEATURE ARTICLES

### Providing for a Disabled Child

By: Michael Renne

Government benefits are often essential for the continued well-being of a disabled child after the parents' death. Even for parents who might be able to afford large insurance policies (or have other assets to care for the child), the preservation of government benefits can substantially decrease the costs of care over the lifetime of the child. In addition, some social service programs are accessible *only* through government programs.

Most government benefits, including Medicaid, are available only to those who have no substantial assets or income. The parent's dilemma is how to ensure their child has adequate resources while not rendering the child ineligible for Medicaid and other government programs.

One solution is to place assets for the benefit of a disabled child in a "wholly discretionary trust." A wholly discretionary trust names the disabled child as its beneficiary but does not provide any standards for how or when the money is to be used for the child, giving complete discretion to the trustee. A recent Ohio Supreme Court decision, rendered on January 17, 2008, affirms the use of wholly discretionary trusts as effective means of preserving Medicaid eligibility for disabled children.

Other options for parents have significant disadvantages. Some parents leave all of their assets at death to their non-disabled children, relying on them to provide for their disabled child. This

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## Providing for a Disabled Child

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approach preserves the child's eligibility for government benefits, but it leaves the disabled child without any certain means of financial assistance. The siblings have no legal obligation to assist the disabled child. Death, disability, bankruptcy, divorce, overreaching spouses, etc., can all interfere with the siblings' ability to use the money for the disabled child.

Some parents choose to set aside a portion of their assets for a disabled child in "supplemental services" trusts or "special needs" trusts. These trusts are generally adequate for the one-child family, but each contains government "payback" provisions which are a concern for parents with more than one child. The "supplemental services trust" requires a distribution of one-half of its assets to the government at the beneficiary's death, and it limits the amount that the

trust can initially hold (currently \$228,000). There is no limit on the amount that can be held by a "special needs trust," but it requires a "dollar for dollar" payback at the beneficiary's death for all Medicaid expenditures during the beneficiary's life. These payback provisions prevent some or all of the disabled child's trust assets from passing to the other children at the disabled child's death.



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## Why Estate Planning

By: George Weinstein

Estate planning is for everyone. Since the rest of our lives will be spent in the future, the sooner we come to grips with the present and plan for the future, the better the future will be. Estate planning is important. Not just when there is a real expectation of dying, but through all the stages of your life. Along the way there are many risks. Some may be guarded against or at least alleviated, such as by life or health or disability insurance, but other bumps in life's road may come unexpectedly unless you give proper forethought to protecting yourself and your family.

This is the process of estate planning. Circumstances change, as do people, and your thoughts require continual updating. Translating such thoughts into actions will require well-thought-out instruments such as wills, possible trusts, interfamily transfers, etc. In this process you should consider the impact of taxes – income, gift, estate, and generation-skipping – but taxes should be a secondary consideration. Of primary importance is accomplishing what you wish to do as to

benefiting your loved ones. The competent estate planning expert will assist the client in following through with his or her desires at the least tax cost.

You owe it to yourself and your family to take a financial physical every few years. Formulate goals or plans, take stock of your assets and liabilities, consider the future both short-range and long-range, and determine how to provide for yourself and your family. Such devices as lifetime gifts to family, charitable bequests both during life and at death, use of the marital deduction, and proper beneficiary designations of life insurance, can supplement the provisions of wills and trusts to produce effective estate plans.



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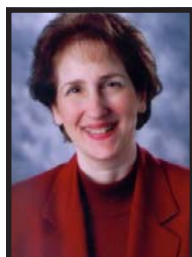
## Providing for Your Pet When You Are Gone

By: Dianne Blocker Braun

The Ohio Trust Code that went into effect January 1, 2007, includes a new section created to meet the concerns of pet owners. Up until now, if you had a pet, you could name a specific person to whom you left your pet as a asset of your estate. You could also leave a gift of monies to that same person with the hope the funds would be used for the care of your pet. You could not, however, require that the funds be used for your pet's needs as there was no right to leave assets directly to a pet and there was no ability to create a trust for the benefit of a pet.

Now, under Ohio Revised Code §5804.08, if you want to be certain that there will be funds set aside strictly for the care of your pet, you can create a trust for your pet. If you already have a trust for your estate plan, you can include in that trust instrument specific language that requires the trustee to leave a specified sum of monies in trust during the lifetime of your pet. If you have more than one pet, the funds can remain in the trust until all your pets are no longer living. You can use the trust instrument to name the trustee (and successor trustees), describe the care you want the trustee to pay for with the trust funds, and direct what happens to the remaining funds when the trust ends.

If you are interested in setting aside funds earmarked for the care of your pet, please contact a member of the Trusts & Estates Practice Group. We can help you establish a plan to care for your pet when you are no longer able to do so.



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**Dianne Blocker Braun** is a Partner and member of the *Trusts & Estates and Business Law Practice Groups*. She can be reached at [dbraun@bdblawn.com](mailto:dbraun@bdblawn.com) or 330.491.5222.

If you already have a trust for your estate plan, you can include in that trust instrument specific language that requires the trustee to leave a specified sum of monies in trust during the lifetime of your pet.

## Kudos

**Michael A. Bonasera (Columbus)** was recently quoted in *Business First Magazine* in regards to his Ohio Trusts & Estates blog, [bonasera.org](http://bonasera.org), being used as a client development tool. Mr. Bonasera was also quoted in an article in *The National Underwriter* about estate tax issues related to revocable and irrevocable trusts.

**Mary Sue Donohue (Boca Raton)** was interviewed and quoted for an article recently published in the *New York Times Business/Personal Finance* Section called, "Instant Fortunes, and Sudden

Heartaches," dealing with windfall inheritances. Reprints are available by contacting Jennifer Schuster at [jschuster@bdblawn.com](mailto:jschuster@bdblawn.com).

**Philip S. Kaufmann (Akron)** was the recipient of The Salvation Army of Summit County's 2007 Life Membership Award. He was given the award for his history of outstanding work on behalf of the organizations. Mr. Kaufmann is a long-standing member as well as past chairman of the group's Advisory Board.

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## Case to Note

Congratulations to attorneys **David W. Woodburn, Christopher C. Esker** and **Steven P. Mutersbaugh (Akron)** in receiving a favorable decision for a Firm client in a case before the Ninth District Court of Appeals in Ohio.<sup>1</sup> The case involved a gentleman that signed a transfer on death deed a few days before his death. The deed provided that certain real property would pass to the gentleman's ex-wife at his death. As the deed was not recorded until after the gentleman's death, the court ruled that Ohio law provides that the deed was ineffective to transfer title. Accordingly, the real property should pass to the gentleman's estate. This resulted in the real property being distributed to the gentleman's nephew, a Firm client. The moral of this case is that you should quickly record a transfer on death deed after signing.

### (Footnotes)

<sup>1</sup> Mattia vs. Hall et al., 2008 WL 186650 (9th Dist. Court of Appeals 2008)

## Save the Date for these Upcoming Presentations:

March 2008

**Trust, Estate and Guardianships, Wrongful Death Settlements and the Probate Court from the Trial Lawyers Perspective**  
**Thomas J. Bonasera (Columbus)**

Columbus, Ohio

Sponsored by: Franklin County Trial Lawyers

March 12

**Disability Planning and the Team Work Needed to Assist in Making the Quality of Life Better for Persons with Disabilities**  
**Thomas J. Bonasera (Columbus)**

Columbus, Ohio

Sponsored by: Association of Ohio Social Workers

June 2008

**Florida Attorney Trusts Officer Liaison Conference**  
**Mary Sue Donohue (Boca Raton)**

Naples, Florida

Sponsored by: Florida Bar/Florida Bankers Conference

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