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NOTICE: This is the last edition of the newsletter that will be mailed to you in paper copy. Beginning with the October issue, the newsletter will be distributed electronically in printable format. Please see page 7 for more information about this change.

Section 529s in Turbulent Times

For many families, planning to pay for a child's education is a daunting proposition that is only getting more worrisome in the current economic climate. The cost of attending post-secondary schools is rising. For the 2008-09 school year, the average cost of attending a community college was over $14,000; the average cost of attending a public four-year college as an in-state student rose to almost $19,000; and the average cost of attending a private university ran a costly $37,000.[1] Rising costs are just one of several factors contributing to a multitude of other difficulties in the education planning process.

Over the last year the stock market has suffered huge losses, and, because they rely on investments in the stock market, many college endowment funds as well as many college savings/investment plans ("529 plans") suffered losses, too. With the drop in the value of their endowment funds, many colleges have imposed corresponding decreases in the financial aid they award. Likewise, families have seen the value of their 529 plans drop. One of the investments in Oregon's 529 plan, the Oppenheimer Core Bond Fund, lost 28% in value in the last three months of 2008 and another 8% in the first quarter of 2009. Rising prices combined with less financial aid and diminished 529 plans create a sort of "perfect storm" for families facing the daunting task of paying for college—the sort of storm a well-prepared attorney can help a family navigate safely.

The Basics

Section 529 of the Internal Revenue Code describes two different programs designed to make college more affordable. The first program is the *prepaid tuition plan*, which allows taxpayers to pay for future college tuition at today's rates, in some cases with further-discounted rates. The second program is the *529 college savings plan*, which allows taxpayers to put money into individual state-run investment accounts designated for the payment of higher education expenses.

Contributions to 529 plans are considered completed gifts and are therefore taxable. However, contributions qualify for the annual gift tax exclusion amount. Donors can also make one large lump-sum gift and then elect to take the contribution ratably over five years. At the current annual gift tax exclusion amount of $13,000, a donor today can contribute as much as $65,000 in a lump sum without it being treated as a taxable gift ($130,000 for a married couple). Anything over this amount will be treated as a taxable gift for the calendar year in which the contribution was made. However, keep in mind that if a client dies within the five-year ratable period, amounts allocable to periods after the client's death are includable in the client's estate for federal estate tax purposes. Another advantage of the 529 plans is that no federal limit exists on the amount of contributions that can be made to each plan. However, section 529 provides that a tuition program will not be treated as a 529 plan unless it has adequate safeguards to prevent contributions in excess of those necessary to provide for a beneficiary's higher education. Thus, the only restrictions are state-imposed limits on the total that can be in a plan at any given time. Most limits are between $235,000 and $341,000.

When the savings in the account are withdrawn to pay for "qualified expenses," the money is distributed tax-free. "Qualified expenses" include tuition, fees, room and

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board, books, supplies, and, under the American Recovery and Reinvestment Act of 2009, computer technology and equipment, education software and internet access. Although contributions to the plan are not deductible under federal law, Oregon provides an annual $2,000 income tax deduction ($4,000 if married filing jointly) for contributions to the state plan. ORS 316.699(2). Withdrawals for qualified expenses are tax-exempt under state law. ORS 316.680(1)(i).

There are two types of prepaid plans: state-run plans and the institutional plans. Oregon has no state-run prepaid plan, because in a 1997 statewide referendum, Oregon voters declined to subsidize growing deficits in these state accounts. The institutional plan, called the independent 529 plan (www.independent529plan.org), is administered by TIAA CREF. Begun in 2003, it now has almost 280 private college participants. Prestigious private colleges, such as Pomona, Reed, Lewis & Clark, and Occidental, as well as private universities such as Stanford and Willamette, are members in this plan. The major benefit of a prepaid plan over a savings plan is that the tuition is guaranteed, even when investment returns are low and tuition costs remain higher. Additionally, prepaid plans now have the same beneficial financial aid consequences of a 529 plan. *See* the Deficit Reduction Omnibus Reconciliation Act of 2005. Under the federal financial aid formula, these plans are not assessed as a resource or an asset of the student.

Oregon's 529 Plans

Oregon has three 529 plans: the Oregon College Savings Plan (https://www.oregoncollegesavings.com), the MFS 529 Savings Plan (https://annex.mfs.com/subs/oregon/index.html), and the Oppenheimer Funds 529 Plan (https://www.opp529.com). These plans are quite similar in terms of minimum investment, maximum contribution, and annual fee waiver for Oregon residents. Although there are some variations by plan, generally the minimum initial investment is $250 with minimum subsequent contributions of $25. The maximum balance is $310,000. The MFS plan does not charge an annual fee for Oregon residents, although the other two plans charge fees that vary by percentage of fund selection, generally ranging from 0.21% to 0.79% annually.

Although the MFS plan and the Oppenheimer Funds plan both require purchase through financial advisors, resulting in increased costs, the Oregon College Savings Plan can be purchased directly. All three options offer a number of investment options. One typical offering is a "Years to College" or age-based option, which invests in progressively conservative assets as beneficiaries grow close to matriculation or are in college. Another option is a "Lifestyle" or risk-based option, which bases the investment profile on risk tolerance. Also, all three plans generally offer more flexible and specific investment options, such as money-market and single-fund portfolios.

Both the Oregon College Savings Plan and the Oppenheimer Funds 529 Plan are distributed and managed by OppenheimerFunds subsidiaries. The Oppenheimer Core Bond Fund, which was considered a "conservative" investment, became a staple in the "Balanced Portfolio" and "4-6 Years to College" options (30%), the "Conservative Portfolio" and "1-3 Years to College" options (35%), as well as the "Ultra-Conservative Portfolio" and "In College" options (20%). As of approximately March 30, 2009, OppenheimerFunds has removed the bond fund from some of its plans, and individual plan-inclusion is no longer specified in the plan description or supplements. Because of the tremendous losses—more than 35% in 2008—in the value of this bond fund, the state has now sued Oppenheimer for breach of contract, breach of fiduciary duty, and misrepresentation, among other offenses. Morningstar.com indicates that the value of this fund, despite its supposed conservative composition, experienced dramatic losses. These losses were due to bets on non-agency mortgages, and due to exposure to commercial mortgage-backed securities through derivatives that further amplified losses (http://news.morningstar.com/articlenet/article.aspx?id=287783).

Currently, the Oregon College Savings Board is looking into an FDIC-insured investment option for risk-adverse investors, and the Oregon State Treasurer is working toward an amendment of federal tax laws to permit the use of 529 funds to pay off short-term college loans. This expansion of favorable tax treatment would give funds more time to recover for beneficiaries who have already matriculated or will be entering college soon (www.oregon529network.com/treasurer.htm).

Out-of-State 529 Plans

Many out-of-state plans have experienced better investment returns than the Oregon plans. In general, the age-based plans and conservative funds faired better than the general market last year. According to data from Savingforcollege.com, in Oregon, age-based portfolios lost 24.12% last year for those students with fewer than three years to go until they start college. However, according to the *Wall Street Journal*, such losses were not the case for every fund, and some funds from other states performed better in spite of having significant equity holdings at the time the student enrolled in college. For example, Maryland's savings plan (managed by T. Rowe Price) still had 20% in equities after the student enrolled in college. Although the attorney can find websites that assess these funds (*see* www.morningstar.com and www.savingforcollege.com), given the complexity and variations of plan options, it makes sense to have the client contact a broker or financial advisor who will assess the risk of the investor and give appropriate advice. Additionally, it is important to evaluate the state-tax consequences of investing in an out-of-state plan.[2]

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1 *See* CollegeBoard, Trends in College Pricing, Trends in Higher Education Series, http://www.collegeboard.com/html/costs/pricing/. The following chart summarizes the current data on post-secondary educational costs according to the CollegeBoard, http://www.collegeboard.com/html/costs/pricing/1_2_total_student_budgets.html (last visited June 16, 2009):

	Average Tuition & Fees – Nationwide	Average Tuition & Fees – Oregon Schools	% Increase in 2008-09 – Oregon Schools	Average Estimated Total Expenses*
Public 2-Year Schools	$2,402	$3,368	4.5%	$14,054
Public 4-Year Schools, in-State Students	$6,585	$6,238	4.9%	$18,326
Public 4-Year Schools, out-of-State Students	$17,452			$29,193
Private 4-Year Schools	$25,143	$28,142	5.6%	$37,390

* Average estimated total expenses represent the sum of tuition and fees, average room and board costs, average books and supplies costs, and average transportation and other expenses. For four-year public and private university attendees, the chart assumes on-campus living as opposed to commuting.

2 All of the details of Section 529 plans are described in Professor Shurtz's upcoming treatise, Education Planning, which will be published by the ABA this coming fall.

2009 Estate Planning Section Bills

HB 2308 – Oregon Department of Revenue Closing Letters

Current Status: Signed by Governor

Currently the Internal Revenue Service ("IRS") will issue a closing letter to a fiduciary after it has reviewed a return and determined that it has been accepted as filed. A closing letter generally means that the estate will not be reopened in the absence of fraud, malfeasance, substantial understatement, discovery of a position taken that is clearly in opposition to a previously stated IRS position, or similar factors. In addition, in the absence of fraud and similar factors, the IRS is subject to a three-year statute of limitations on auditing estate tax returns.

Unfortunately, there is no comparable procedure with the Oregon Department of Revenue, because it lacks the statutory authority to issue closing letters. Nor is the Oregon inheritance tax subject to a statute of limitations. Under current law fiduciaries can never obtain an assurance that an inheritance tax return has been accepted by the Oregon Department of Revenue.

When an estate is subject to both the federal estate tax and the Oregon inheritance tax, fiduciaries can take some comfort from an IRS closing letter, since that means that at least the IRS is satisfied and has accepted the return. But if the estate files only an Oregon inheritance tax return, there is no such closure.

The purpose of HB 2308 as amended is to provide that closure and establish a procedure comparable to the one followed by the IRS. This bill is very similar to Internal Revenue Code section 2204, and it will require the Oregon Department of Revenue to issue a release of the fiduciary within 18 months after a return is filed, if the estate requests one. Basically, the department will have 18 months after a request for a closing letter to review the return and determine if it wishes more information. If the department does not believe further investigation is needed, the fiduciary will be discharged from personal liability.

In addition, HB 2308 ties the same statute of limitations currently in effect for Oregon income tax returns to Oregon inheritance tax returns. As with income tax returns, in the absence of fraud or similar factors, after three years the return may not be selected for audit.

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HB 2357 – Modifies Uniform Disclaimer of Property Interests Act

Current Status: Signed by Governor

A disclaimer is the legal method by which a rightful heir or beneficiary of a property interest rejects or refuses the acceptance or receipt of such property. The “disclaimant” means the person to whom the property would have passed but for such person’s voluntary refusal to accept the property. The question that arises, however, is to whom the disclaimed property shall pass as a result of the disclaimant’s refusal or “disclaimer” of the property.

Under current law, if the decedent had a will and property is disclaimed, property passes as though the person who disclaimed the property had died before the decedent. However, the law is unclear in a case where there is no will.

HB 2357 clarifies that the rule in such a case shall be identical to the process for when there is a will.

SB 235 – Increases Value of Estate for Which Small Estate Affidavit May Be Filed

Current Status: Signed by Governor

SB 235 increases the limit on the value of an estate so that the estate can file a small estate affidavit rather than be required to go through the probate process.

Under current law, this process may be used for estates valued at no more than $200,000, of which personal property must be no greater than $50,000 and real property no greater than $150,000. SB 235 would increase these limits to allow the process for estates valued at up to $275,000, with limits of $75,000 and $200,000 for personal property and real property respectively.

SB 237 – Springing Power of Attorney Bill

Current Status: Signed by Governor

A springing power of attorney is a power of attorney that becomes legally effective only when a condition occurs, such as the disability of the person granting the power.

Although springing powers of attorney have long been used in Oregon, there has been some question as to whether they are technically allowed under Oregon statute. SB 237 expressly allows springing powers of attorney, bringing Oregon into conformance with virtually all other states.

SB 238 – Uniform Adult Guardianship Act

Current Status: Signed by Governor

SB 238 enacts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This legislation is a product of the Uniform Laws Commission, which seeks national adoption of the Act. SB 238 resolves a number of outstanding issues relating to jurisdiction in cases of guardianships that exist under current law.

SB 238 creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict. It does this by

- Designating that the individual’s “home state” has primary jurisdiction, followed in priority by a state in which the individual has a “significant connection”;
- Eliminating the current festering problems created when parties use presence jurisdiction to “forum shop”;
- Specifying a procedure for transferring a guardianship or conservatorship to another state, which helps reduce expenses and conserve judicial resources while protecting incapacitated persons and their property from potential abuse;
- Facilitating enforcement of guardianship and protective orders in other states through a registration process; and
- Facilitating communication and cooperation between courts of different jurisdictions in sorting out these jurisdictional issues.

SB 371 – Oregon Uniform Trust Code Revisions

Current Status: Signed by Governor

In 2005, the Section presented and the Oregon legislature passed the Oregon Uniform Trust Code (the “OUTC”), which enacted a sweeping change to the law of trusts in this state. It represented the work of two law professors, a study group of practitioners and judges throughout the state, and the Executive Committee. This bill seeks to make several technical corrections to the OUTC. With one exception, these changes are designed to correct unintended changes to Oregon trust law resulting from the passage of the OUTC.

The largest change that SB 371 would make to current law is contained in section 21 of the bill. This section allows the creator of a trust to provide for an “adviser” to the trustee with regard to certain trustee acts. Very often, a person creating a trust would like to appoint an individual or a corporate fiduciary as a trustee, but would like another individual to have the responsibility for certain limited decisions only (such as how to invest trust assets or when trust distributions should be made). Under current law, the trustee must still supervise such decisions, which can result in administrative delays and increased expense if the adviser and the trustee do not agree. Section 21 provides that an adviser can make the decisions outlined in the trust agreement and the trustee need not review those decisions and is not liable for the acts of the adviser (except in cases of “reckless indifference” on the part of the trustee). This section is based on an existing statute in Delaware that has been used successfully for many years.

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International Will Primer

The validity of an international will has been the subject of much discussion and debate among estate planning practitioners. So much so that practitioners at several international conventions have discussed under what circumstances an international will is valid and which country's laws should govern the disposal of a decedent's assets when the decedent is not a citizen, a national, or a domiciliary of the country where the assets are located. For the purpose of this discussion, the following is a brief synopsis of the basic rules for (1) the validity of an international will for disposing of a decedent's assets located within Oregon and (2) the validity of an international will executed within Oregon for disposing of a decedent's assets located in another country. Even with a valid international will, proper estate planning requires an understanding of the tax laws, succession laws, and choice of law.

I. International Wills Accepted in Oregon

In Oregon, a will is valid as an international will regardless of the place where it is executed, the location of the assets, and the nationality, domicile, or residence of the testator, if the will complies with the following requirements: (1) the will is in writing (in any language); (2) the testator signs or acknowledges the will and declares in the presence of two witnesses and an authorized person (defined below) that the document is the testator's will and the testator knows its contents; (3) the testator signs each page, and each page is numbered; (4) the signatures are at the end of the document; and (5) the witnesses and authorized person sign the will in the presence of the testator. ORS 112.232.

The formal validity of an international will can be proven by a certificate, which basically states that the requirements for the valid execution of an international will have been fulfilled. The responsibility of preparing the certificate falls to the authorized person. An authorized person is either an individual admitted to the practice of law before the courts in the State of Oregon or a member of the diplomatic and consular service of the United States designated by foreign services regulations. ORS 112.232(1)(b), (9). The authorized person is also responsible for asking the testator whether the testator wishes to make a declaration concerning the safekeeping of the will and to make a note of the location in the certificate. ORS 112.232(4)(c). An example of the certificate form can be found at ORS 112.232(5). Please note, the absence or irregularity of the certificate does not affect the formal validity of the will. The purpose of the certificate is to prove the will's formal validity, absent evidence to the contrary. ORS 112.232(6).

When an international will complies with the formalities above, it will be valid for the purpose of disposing of a decedent's assets located in Oregon. There is, however, an exception to the requirements stated above. Lack of the testator's signature does not void the will, if the testator indicates the reason for the inability to sign and the reason is noted on the will by the authorized person. The testator can also direct another individual to sign on behalf of the testator. ORS 112.232(3)(d).

An international will that fails to meet the requirements outlined above (absent an exception) is invalid as an international will. Despite this, a foreign will may nevertheless still be valid in Oregon as a general will as defined under ORS 112.235 (if it meets the applicable requirements therein), even if the will is invalid as an international will under ORS 112.232.

II. International Wills Executed Within Oregon and Accepted in Foreign Countries

A will drafted in Oregon under ORS 112.232, as discussed above, is valid in a foreign jurisdiction if (1) the foreign jurisdiction has adopted the 1973 Washington Convention or (2) the form of the Oregon will complies with the foreign jurisdiction's internal laws. It may be valid, although not necessarily, if the foreign jurisdiction has adopted either the 1961 Hague Convention and/or the 1988 Hague Convention.

As previously mentioned, international wills have been the subject of much discussion and debate among estate planning practitioners. The lack of uniformity among countries with respect to the rules determining the formalities of a will, choice of law, and succession of law has led to the convening of the following three international conventions.

The 1961 Hague Convention essentially provided that a will was valid if the will was valid in the jurisdiction where (1) the will was executed, (2) the testator was a national at his or her death, (3) the testator was domiciled when he or she executed the will, or (4) the testator was domiciled at the time of his or her death.

The 1973 Washington Convention focused on the structure and form of a will and basically provided that a will was valid regardless of the place of execution, the situs of the testator's assets, or the testator's nationality, domicile, or residence, so long as the will conformed to a prescribed uniform format as described in Section I above.

Lastly, the 1988 Hague Convention provided that a testator had the power to designate the governing law (choose between law of nationality and law of habitual residence) that applies to a will. If none was stated, then the default rule was the law of habitual residence.

The conventions sought to provide uniformity in the rules that determine the formalities of a will, choice of law, and succession of law. Despite this, many foreign jurisdictions have not yet enacted the rules formulated by the conventions, or if they have enacted the rules, the jurisdictions have modified them. The most common modification is when a will attempts to dispose of assets that are categorized as "immovables" (e.g., real property).

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For example, if a will disposes of an immovable, then many jurisdictions require that the will comply with the laws of the place were the "immovable" is located regardless of the testator's nationality, domicile, or habitual residence at the time of the will's execution or at the time of the testator's death. The same will, however, can dispose of a "movable" asset (e.g., personal property) by either complying with the laws where the movable asset is located or the laws of the testator's nationality, domicile, or habitual residence at the time of the will's execution or at the time of the testator's death.

Another common modification is Forced Heirship and/or Laws of Succession. While many countries in Western Europe, Japan, and South Africa have signed and/or adopted the 1961 Hague Convention and/or the 1973 Washington Convention, some countries—for example, France and Switzerland—have Forced Heirship laws and/or Laws of Succession that limit the fraction of an estate that can be disposed of by will. For example, Forced Heirship laws require that a fraction of the estate be given to certain ascertained heirs, and those heirs cannot be disinherited.

To ensure that a testator's intent regarding the disposition of a foreign asset is accomplished, the international will should comply with the rules of the jurisdiction where the asset is located at the time of execution. Practitioners may use either a single multi-jurisdictional will or separate situs wills to accomplish this.

Separate situs wills are prepared under the laws of each jurisdiction where the testator's property is maintained. The question of whether to draft separate situs wills or a single will is a fact-specific inquiry and dependent on the needs of the client and the skills of the practitioner. Separate situs wills are often favored since it allows more flexibility as to choice of law and can address Forced Heirship laws in those countries that have them. The disadvantage of separate situs wills is the inadvertent revocation of other separate situs wills. This can be avoided with careful planning and drafting.

To safeguard that the testator's disposition of property is recognized by a foreign jurisdiction, it is generally recommended that separate situs wills be used and written and executed in accordance with local laws when it is known that the decedent owns real property in a specific foreign jurisdiction. Local counsel should be consulted to ensure that the required formalities of execution are observed and potential issues of local law are addressed.

Marisol Cordero-Goodman
Hanna Strader PC

Recent Case Summaries

***In re Marriage of Githens,* 227 Or App 73 (2009),** presented the Oregon Court of Appeals with an issue of first impression. In this domestic relations case, the court was required to interpret the controlling statute, ORS 107.105(1)(f), which authorized the court in a dissolution case to divide the "real or personal property" of the parties, as it applied to the husband's beneficial interest in his mother's revocable trust. The court, affirming the trial court, held that a beneficial interest is an expectancy, and therefore not real or personal property subject to division in a marital dissolution action.

The husband's mother created a revocable trust, to which he had a beneficial interest. Upon dissolution of the 23-year marriage, the wife argued that the husband's interest in his mother's revocable trust was property subject to division. The trial court first agreed with the wife and issued a letter opinion concluding that the "best, and fairest way" to address the issue was to award the wife a "non-interest bearing judgment for one-half of the value of the husband's portion of the trust, valued as of dissolution but payable as of the date of distribution, whenever made to Husband." On reconsideration, the trial court issued an amended letter opinion noting its obligation to follow case law concerning revocable trusts, and concluding that because the trust was revocable, the husband's beneficial interest was speculative and not subject to division.

The wife appealed. She argued that the court erred (a) in failing to award her a one-half interest in her husband's trust and (b) in failing to take evidence of the likelihood that the trust would become irrevocable and evidence of the nature and value of the trust. The husband argued that, because of the inherently speculative nature of a beneficial interest in a revocable trust, the trial court did not err in refusing to treat it as marital property. The court of appeals affirmed the trial court and held that, because a beneficiary's interest in a revocable trust is a mere expectancy, it is not real or personal property subject to division in a marital dissolution action.

***In Tupper v. Roan,* 227 Or App 391 (2009),** the Oregon Court of Appeals considered issues relating to the authority of the court to impose a constructive trust on insurance proceeds where the decedent agreed to, but failed to, maintain a life insurance policy for the benefit of his child and former wife.

Prior to the dissolution of their marriage, the plaintiff and the decedent were married for approximately five years and had one child together. The stipulated dissolution judgment required the decedent to secure his child support obligation with a $100,000 insurance policy insuring his life and naming the plaintiff as trustee on behalf of their child. The judgment contained provisions relating to procedural aspects of the requirement to maintain insurance, one of which provided: "A constructive trust shall be imposed over the proceeds of any insurance owned by either party at the time of either party's death if either party fails to maintain insurance in said amount, or if said insurance is in force but another beneficiary is designated to receive said funds. The trustee shall make distribution as described herein." Another provided, "During the term of the obligation to maintain insurance each party shall furnish to the other party, upon request, a copy of the policy or evidence th[at] proper life insurance is in force with the appropriate beneficiary designation in effect."

At the time of the dissolution judgment, the decedent did not own life insurance. Approximately two years after the dissolution, the decedent and the defendant each purchased a life insurance policy with a death benefit of $600,000, naming the other as sole beneficiary. The decedent died three months later. Pursuant to the decedent's beneficiary designation, the defendant received $600,000 in proceeds. At his death, the decedent was still obligated to pay child support to his former wife but owned no life insurance policy other than the one naming the defendant as the beneficiary.

The former wife brought action against her ex-husband's estate and the beneficiary of the life insurance policy, seeking to have a constructive trust imposed on the life insurance proceeds. The parties filed cross-motions for summary judgment. The plaintiff argued that, because the decedent failed to provide life insurance complying with the terms of the dissolution judgment but owned other life insurance, and because the judgment expressly provides for the imposition of a constructive trust in her favor in the event of such a breach, she was entitled to the stipulated remedy as a matter of law. The defendant argued that a stipulation between the plaintiff and the decedent, by itself, was insufficient to warrant the imposition of a constructive trust on what was now her property. The defendant further argued that, to obtain a constructive trust over life insurance proceeds that belong to her, the plaintiff must demonstrate (1) that the defendant knew about the decedent's breach of his life insurance obligation and (2) that the policy naming the defendant as beneficiary was intended to satisfy that obligation to the plaintiff. The trial court entered judgment granting the plaintiff's summary judgment motion and imposing the requested constructive trust in favor of the plaintiff. The defendant appealed.

On appeal, the former wife argued that the constructive trust should be imposed because it was the stipulated remedy in the dissolution judgment. The Court of Appeals summarized the elements justifying the imposition of a constructive trust: (1) the existence of a confidential or fiduciary relationship; (2) a violation of a duty imposed by that relationship; and (3) unjust enrichment. Noting that the stipulation between the plaintiff and the decedent was not binding on third parties, including the defendant, the court refused to enforce the stipulation and relied on case law to support its reversal. Concerning the unjust enrichment element, the court explained that proof of whether the defendant knew or should have known about the decedent's obligation to his former wife was essential. Because the record reflects a genuine issue of material fact as to what the defendant knew or should have known, the court held that the trial court erred in granting summary judgment in favor of the plaintiff. Further, the court held that, because the former wife failed to offer any evidence that when the decedent designated the defendant as the beneficiary on his life insurance policy he gave her property that belonged to his former wife, the trial court erred in failing to grant the defendant's motion for summary judgment on the unjust enrichment claim. The Court of Appeals reversed the trial court's imposition of a constructive trust and remanded for entry of summary judgment in favor of the defendant.

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NOTICE: *Continued*

The Executive Committee for the Estate Planning and Administration Section has decided to distribute future issues of the newsletter electronically. The Committee did not make this decision lightly as we know that many of you look forward to receiving your newsletter by mail. However, the costs of printing and mailing the newsletter were becoming unsustainable, and the Section was faced with the choice of raising member dues or moving to a more cost-effective method of newsletter distribution.

The Oregon State Bar email service does not allow for attachments so it is not possible for us to email the newsletter directly to each Section member. Instead, each member who has an email address on file with the bar will receive an email notification with a direct link to a PDF version of the current newsletter edition. The email notification will also have a link to the OSB website where we post all prior newsletters. These newsletters are now held in an indexed library that can be searched by key word. Currently the real estate section and the estate planning section are the only two sections that have this search capability available for their newsletters.

The newsletter will continue to provide well-edited and concise articles with the same layout as the mailed newsletter. Members will be able to print out each edition in PDF format for reading or filing.

We are hopeful that this transition will go smoothly, and we appreciate your willingness to accommodate the change. Please contact the OSB Section liaison, Matt Shields, if you have questions about this change.

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