Legislative Wish List

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By: James C. Milton

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The session's first legislative reports began showing up this past week, with a number of bills introduced in the trust and estate area.

The Oklahoma legislature will consider trust decanting this session. Decanting has been the subject of prior columns in this space. It is a flexible tool for trusts, allowing some changes to the controlling trust instrument. It is also a restrictive procedure because it must account for tax laws and the purpose of the trust.

The proposed Oklahoma Trust Decanting Act was drafted three years ago by a group of Tulsa attorneys, approved by the Oklahoma Bar Association, and circulated among lawyers around the state.

The proposed Act was filed in 2018, but did not receive a committee hearing. The bill was not filed last year. But last summer, Sens. Julie Daniels and Brent Howard held a legislative study committee to discuss whether the law is needed in Oklahoma. The proposal has been changed some, but for the most part it is the same proposal that a group of Tulsa attorneys put together three years ago.

This space has also seen columns regarding the Uniform Fiduciary Access to Digital Assets Act. This Act has been introduced before, but needed some work to fit Oklahoma law. Hopefully this year the Act will be enacted, giving certainty to Oklahomans regarding their online and other digital property.

Last year, the legislature added the term "personal degradation" to the definition to the definition of "abuse," within the Protective Services for Vulnerable Adults Act. As an elder law attorney, I think that's great. But it also represents a significant missed opportunity.

The Oklahoma criminal statutes addressing abuse, neglect, and exploitation of vulnerable adults do not contain the same robust definitions as the Protective Services statute.

As puzzling as it may sound, when instructing juries on crimes against the elderly, courts will typically view themselves as confined to the definitions in the criminal statutes and related case law, and might not rely on

definitions in the Protective Services Act. This is an easy fix, just adding a cross reference to the definitions related to elder abuse and exploitation. This is at the top of my legislative wish list.

It would also help if our jury instructions on elder abuse and exploitation were updated. Currently, the instructions are unclear and leave a gaping hole for abusers who are not also caretakers. Again, an easy fix.

Attorneys

- James C. Milton