

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

NOVEMBER 2010

OKLAHOMA LEGAL UPDATE

The Oklahoma Legislature was busy in 2010 and enacted several laws which impact the estate planning area. Following is a general outline of the new laws. Most of the new laws are effective November 1, 2010.

1. There is a new Oklahoma Discretionary and Special Needs Trust Act which deals primarily with creditor's rights and beneficiary's rights to sue Trustees. It also contains a provision concerning third party Special Needs Trusts which are utilized when a person is attempting to qualify for State or Federal financial or medical assistance (SSI, Medicaid, etc.).

2. Oklahoma now has a Uniform International Wills Act which allows a Will to be executed in Oklahoma which is valid in other foreign countries (not Mexico). In addition, this Act allows residents of those countries to execute Wills effective in Oklahoma. The countries which have adopted this Act are Belgium, Bosnia, Equador, Hurzegovina, Canada, Cypress, France, Italy, Nigeria, Portugal and Slovenia.

3. Oklahoma now has a Pet Trust Act of 2010. This statute authorizes the establishment of a Trust to care for designated domestic or pet animals. If this Trust's worth is less than \$20,000.00, there are minimal filing or reporting requirements.

4. Oklahoma now has a probate statute which provides that the Executor or Administrator of an Estate has the power to control, conduct, continue or terminate any deceased person's accounts on social networking websites (Facebook, Twitter, etc.).

5. The Oklahoma Estate Tax terminated at Midnight on December 31, 2009. The Oklahoma Legislature passed several statute modifications eliminating the need for estate tax releases in probates and for real property.

6. Title 58 O.S. §1074 relating to Durable Power of Attorneys has been amended effective November 1, 2010. We believe this may have been in response to an Oklahoma case which was decided last year. The amended statute now provides that if a Durable Power of Attorney is executed and subsequently a Court of the principal's domicile appoints a conservator, guardian of the estate or other fiduciary charged with the management of all of the

principal's property, the Durable Power of Attorney, upon notice of such appointment shall terminate. In the Oklahoma case decided last year, the Court pointed out that the then existing statute at that time allowed a Durable Power of Attorney and Court appointed guardian to co-exist, subject to the court appointed guardian's right to terminate the Durable Power of Attorney. This new amended statute automatically terminates the Durable Power of Attorney upon notice of the guardian's appointment. Unfortunately, the statute does not specify how or to whom notice must be given. Out of an abundance of caution, we would suggest that actual notice (a certified copy of Letters of Guardianship) be served upon the attorney in fact and all financial institutions with which the principal has accounts.

If you have any comments or questions regarding this Riseling Report, please contact us.

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