

# LIFE BEGINS

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## Senior Lawyers Section Hosts Successful Annual Seminar

by Fred Frederickson

On April 16, 2010, the Senior Lawyers Section hosted its annual CLE seminar, entitled "The Past, Present, and Future of Law," at the SeaTac Marriott Hotel. Over 71% of the Section membership – 186 of 261 members – attended the seminar.

For lawyers who attended the entire program, the Seminar provided 6.25 CLE credits, including 2.25 ethics and 4.0 general credits.

William H. Gates, Sr. led off the CLE in the morning, speaking on "RPC 6.1 and Ethical Considerations," and "Time for Rewards – Be a Pro Bono Lawyer." He was followed by the "Ethics of Protecting Client Interests When Closing Your Practice," presented by David Powell and Peter D. Roberts of WSBA; "Alejandre Revisited – Current Developments in Real Estate Purchase Disputes," by Scott B. Osborne, of Seattle; and "Legal Strategies for Fighting Hate in Washington State," by George Critchlow, of Gonzaga Law School.

Justice Charles W. Johnson, speaking on "Law and Technology," opened the afternoon session. Later topics included "Rules of Professional Conduct for the Estate Planning and Business Lawyer" by Donald K. Querna, of Spokane, and "Should We Go Native? Ruminations on What We Can Learn from Native American/Indian Traditional Justice" by Gene Brandzel, of Seattle. Michael S. Wampold, of Seattle, concluded the CLE with "An Opening Statement in a Medical Malpractice Trial."

### Credits and Cost Foster Attendance

Approximately one third of the attending lawyers filled out the seminar evaluation form which included, among other things, this inquiry: "Which of the following influenced your decision to attend today's program (rank in order of importance)?"

\_ Subject \_ Faculty \_ Date \_ Location \_ Cost \_ Credits."

Each of these six factors influenced at least several lawyers to attend, but the two most commonly cited were "Credits" and "Cost." The Senior Lawyers Section CLE offers approximately six CLE credits (including ethics credits) at each annual seminar at a reasonable price per CLE hour. The cost of the April 2010 seminar, including an outstanding lunch and post-seminar reception, was less than \$25 per CLE hour, making it among the most affordable seminars available on the market.

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The Executive Committee, on behalf of its members,  
wishes to thank the Seattle law firm of Peterson Young Putra  
for its generous financial contribution as Program Sponsor of the CLE.

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*Editor's note: This article originally appeared in the winter 2009-2010 newsletter of the WSBA Real Property, Probate & Section Section. It appears with the permission of the authors.*

## Who Receives the Proceeds of Life Insurance?

*by Scott A.W. Johnson and Karolyn A. Hicks – Stokes Lawrence, P.S.*

There are certain exceptions to the general rule that life insurance proceeds are payable to the beneficiary named on the policy. When these exceptions are not considered during planning, challenges from heirs and disastrous consequences to the estate plan may be the result. In assessing whether any of these exceptions apply, you will want to discuss a number of issues with your client regarding his life insurance policies including: Who is currently the named beneficiary on his policies; What other family relationships exist; What type of insurance does the client own (*i.e.*, cash value (also referred to sometimes as "permanent" insurance) or term); From where does he obtain the insurance (*i.e.*, private, insurance provided as a benefit of employment, ERISA plans, federal employment plans, military benefits); What have been the sources of funds for payment of the premiums (*i.e.*, community property or separate property funds); What is the purpose of the insurance (*e.g.*, to provide for loved ones, to pay off outstanding debt,

or perhaps a key man policy to help his business continue in his absence); Is there a community property agreement that addresses insurance in any way; Has the client previously been divorced; What does the divorce decree require in terms of maintenance of insurance and support for minor children; How does the client desire to dispose of the proceeds? These are just a few questions estate planning lawyers should ask to help create the overall estate plan for a client. In this article, we address certain issues that will inform estate planning attorneys of the pertinence of these questions.

### General Rule: Proceeds of a Life Insurance Policy Are Paid to the Named Beneficiary

In the ordinary course, the beneficiary that the insured has named under his life insurance policy receives the pro-

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The third most important factor influencing attendance was "Subject." The Senior Lawyers Section Executive Committee is gratified that "Subject" played a significant role in influencing seminar attendance. Since the Section is not focused on a particular area of law, selecting seminar topics poses a challenge. Each year the Executive Committee endeavors to find interesting topics and speakers that will appeal to its venerable membership whose interests in legal topics is anything but homogeneous. *The Committee welcomes suggestions and recommendations for next year's annual seminar, which will be held on Friday, May 13, 2011, at the Sea-Tac Marriott. Please contact any of the Executive Committee (they are listed on page 15 of this issue) with your ideas for topics.*

#### The Attendees Have Spoken: "Consistently one of the best"

Several attendees commented that they signed up for the seminar because it is a "gathering of old friends." Perhaps this is one of the reasons for the seminar's continued success.

Here are some comments by attendees about this year's seminar:

"This is the best program of all I attend. I look forward to it every year. Keep it up."

"This is the 1st conference I have attended. I found it educational, interesting and well worth the time. I plan on attending next year."

"The Senior Lawyers' conference is consistently one of the best CLEs put on by the WSBA. Great job again. I liked the variety of subjects."

"This annual CLE is still the best I've ever attended."

"I very much enjoyed seeing a lot of friends. Still looking forward to next year."

"As a senior bar member, I always attend this seminar."

#### **Welcome to the Rank of Senior Lawyer!**

The Senior Lawyers Section is for lawyers aged 55 years and counting or who have been in practice in any jurisdiction for at least 25 years.

The Section hosts an annual meeting and CLE program, social activities, and produces this newsletter. CLE programs focus on issues such as ethics, computer use, retirement strategies, and appellate procedures.

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ceeds of that policy. The policy owner has the right to change the beneficiary designation so long as he is competent to do so. While a named beneficiary generally has nothing more than a mere expectancy in the policy during the insured's life, upon the death of the insured, the named beneficiary's rights vest and the beneficiary becomes entitled to the policy proceeds.<sup>1</sup> The rights of a beneficiary to receive the proceeds of a life insurance policy arise under the law of contracts and insurance.<sup>2</sup> A number of exceptions, however, override this general rule.

### **Exception No. 1: The Insured Was Not Competent at the Time He Made the Designation**

Washington's insurance statutes specifically state that an individual must possess "competent legal capacity" in order to insure "his or her own life or body for the benefit of any person."<sup>3</sup> Washington case law is consistent and applies a capacity to contract standard. As explained by the Washington Supreme Court in 1942:

The rule relative to mental capacity to contract, therefore, is whether the contractor possessed sufficient mind or reason to enable him to comprehend the nature, terms and effect of the contract in issue. In applying this rule, however, it must be remembered that contractual capacity is a question of fact to be determined at the time the transaction occurred; that everyone is presumed sane; and that this presumption is overcome only by clear, cogent and convincing evidence. That he was perhaps eccentric and excitable is not denied. Moreover, that he exercised poor business judgment, likewise, cannot be contradicted. Yet even though these are conceded, they do not spell mental incapacity to contract.<sup>4</sup>

Thus, if the insured was not competent, his designation may be overturned by clear, cogent and convincing evidence of his lack of mental capacity.

### **Exception No. 2: The Beneficiary Dies Before the Insured Dies or the Beneficiary Disclaims the Proceeds of the Policy**

If the direct or primary beneficiary designated under the policy dies before the insured dies, the secondary or contingent beneficiaries named in the policy would receive the proceeds.<sup>5</sup> If there is no other beneficiary named at the time of the insured's death, the proceeds of the policy would be paid pursuant to the terms in the policy, often to the insured's estate. Ordinarily, when the beneficiary named in a life insurance policy dies after the insured but before payment of the insurance proceeds, the proceeds become part of the beneficiary's estate, since they are regarded as having vested in the beneficiary upon the insured death.<sup>6</sup>

Typically, if the primary or direct beneficiary survives the insured for however short a time, the rights of the contingent beneficiaries are cut off.<sup>7</sup> There is at least one case of which we are aware, however, where the principal beneficiary died before the amounts due under the policy were paid and the proceeds went to the surviving contingent beneficiary because of a clause in the policy.<sup>8</sup>

In the case of simultaneous death of the insured and primary beneficiary, the Uniform Simultaneous Death Act instructs that unless the policy or other relevant instrument provides otherwise, the beneficiary must survive the insured by at least one hundred and twenty hours or the beneficiary is considered to have predeceased the insured.<sup>9</sup>

Similarly, a beneficiary may disclaim proceeds of a life insurance policy, in which case, unless the policy (or other estate planning instrument) directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date the interest was transferred.<sup>10</sup> In the case of life insurance policies, that would mean the person disclaiming the policy proceeds will be deemed to have died immediately prior to the insured.

### **Exception No. 3: The Community Property Rights of Another**

The named beneficiary generally will be entitled to the proceeds of life insurance "to the extent no community property rights are invaded."<sup>11</sup> When insurance premiums are paid with community funds, the proceeds are community property.<sup>12</sup> To what extent the spouse or former spouse who is not named as the beneficiary of the policy is entitled to the proceeds depends upon the type of policy and the extent to which community or separate property was used to pay the premiums.

### **Apportionment Rule and Risk Payment Rule**

To what extent the policy proceeds are considered community property will depend upon the type of the policy. Although there are many forms of life insurance, for this analysis, Washington courts focus on two broad classes: cash value insurance and term life insurance.<sup>13</sup>

Premiums purchasing cash value insurance pay for both cash value and protection from risk of death. The cash value, somewhat akin to a savings account, is a permanent cumulative asset against which the owner may borrow, and which the owner may receive upon cancellation of the policy.<sup>14</sup>

On the other hand, term insurance has no cash surrender value; premiums purchase only protection from risk of death for a fixed period of time. At the end of that period, there is no asset remaining. The length of time the

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insured has had the policy and the number of premiums paid are irrelevant.<sup>15</sup>

Before *Aetna Life Insurance Co. v. Wadsworth*,<sup>16</sup> Washington courts applied the “apportionment rule” that prorated the proceeds of the policy as separate property or community property by the percentage of the total premiums that had been paid with separate or community funds.<sup>17</sup> In *Wadsworth*, however, the Washington State Supreme Court adopted the “risk payment approach” for term life insurance.<sup>18</sup> Under the risk payment approach, only the most recent premium is considered such that if community funds were used to pay the premium, the entire proceeds would be community property.<sup>19</sup> For all policies other than term policies, specifically including cash value, the “apportionment rule” still applies.<sup>20</sup>

Here is an example of the application of this “apportionment rule.” The insured owns a cash value policy for two years before he is married, and for one year after he is married. He uses separate funds to pay the first two years’ premiums and uses community funds to pay the third year’s premium. He dies at the end of the third year. Someone other than his spouse is the named beneficiary of the policy. At the time of his death, his spouse would have a community property interest in one-third of the proceeds; in other words, the spouse would be entitled to one-sixth of the proceeds of the policy even though she is not named as a beneficiary.<sup>21</sup>

Here is an example of the application of the “risk payment rule” using the same scenario except that the policy is a term policy. Again, the insured uses community funds to pay the premium the third year he owns the policy. At the time of his death, his spouse would have a community property interest in the entire policy; in other words, the spouse would be entitled to one-half of the proceeds of the policy even though she is not named as a beneficiary.

### Qualified ERISA Plans May Preempt State Community Property Laws

Even though Washington law seeks to protect the community property rights of a spouse in the proceeds of life insurance, federal law governs life insurance benefits under qualified plans. ERISA explicitly provides that it “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan ...”<sup>22</sup> The U.S. Supreme Court has held that ERISA preempts Washington’s community property laws as it applies to ERISA benefit plans.<sup>23</sup> In *Ablamis v. Roper*,<sup>24</sup> the Ninth Circuit held that ERISA preempts any state community property law that arguably provides a spouse with a testamentary interest in fully vested pension benefits, and state court orders effecting testamentary transfers are not qualified domestic relations orders excepted from ERISA’s spendthrift provi-

sions. Thus, a spouse not named as the beneficiary of life insurance benefits obtained through an employer’s qualified ERISA plan may not be able to recover her community property interest in the proceeds.

But, that analysis does not always end the inquiry. In one case we litigated, an insured identified his “trust” as the beneficiary in one section of his ERISA beneficiary designation form and his daughter in another section of the same form. At the time the designation was made, his daughter was the trustee and sole beneficiary of the trust. The insured subsequently remarried, named his new spouse as the trustee and sole beneficiary of his trust and explicitly disinherited his adult daughter in his will by saying she “should take nothing from my estate.” The insured, however, did not change the beneficiary designation form. The spouse/trustee argued the form was ambiguous and the court should look at the insured’s entire estate plan to ascertain his intent (especially including the fact that he disinherited his daughter). The trustee cited Ninth Circuit precedent that holds that when the designation is not clear, ERISA plans:

should be interpreted in an ordinary and popular sense as would a person of average intelligence and experience. More specifically ... [w]hen disputes arise, courts should first look to explicit language of the agreement to determine, if possible, the clear intent of the parties. The intended meaning of even the most explicit language can, of course, only be understood in the light of the context that gave rise to its inclusion. Each provision in an agreement should be construed consistently with the entire document such that no provision is rendered nugatory. Typically, however, when a plan is ambiguous, a court *will examine extrinsic evidence to determine the intent of the parties.*<sup>25</sup>

Despite the ambiguous form and the decedent’s estate planning documents (extrinsic evidence), the court found the disinherited daughter and not the trust should receive the ERISA plan proceeds.

### Military Benefit Plans May Preempt State Community Property Laws

Similarly, military benefits are governed by federal law and have unique characteristics. For example, under 38 U.S.C. §1970(a), an insured may freely designate beneficiaries, and the insurance proceeds must go to the beneficiary designated in the policy. This provision has been held to *preempt state law and agreements made under state law.*<sup>26</sup> However, this rule is not absolute.<sup>27</sup> Likewise,

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other federal benefit plans may preempt state community property laws.

### Exception No. 4: Automatic Revocation Upon the Dissolution of a Marriage or a Registered Domestic Partnership

If the insured failed to revise his beneficiary designation after a divorce or dissolution of a domestic partnership and the former spouse or domestic partner is still named as beneficiary under the policy, RCW 11.07.010(2)(a) automatically revokes the designation of the former spouse or domestic partner as beneficiary of the policy. The statute creates a legal fiction that the former spouse or domestic partner has predeceased the insured, the former spouse or domestic partner "having died at the time of entry of the decree of dissolution."<sup>28</sup> In that case, any contingent beneficiaries named under the policy would be entitled to the insurance proceeds, or the proceeds would be paid to the insured's estate.

### Policies Underlying the Automatic Revocation on Dissolution Statute

The legislature enacted the automatic revocation statute in response to the Washington State Supreme Court's decision in *Aetna Life Insurance Co. v. Wadsworth*.<sup>29</sup> Practitioners heavily criticized that decision because it concluded that an insured's designation of his former spouse as a beneficiary under his insurance policy was valid even though the divorce decree had specifically purported to divest the former spouse of an interest in the policy. The court adopted this "Wadsworth rule" to "encourage individuals to carefully consider the disposition of life insurance policies in dissolution" and to "simplify the procedure of determining to whom life insurance proceeds are to be distributed."<sup>30</sup>

In response, the legislature enacted the automatic revocation statute premised on the assumption that members of divorced marriages or dissolved domestic partnerships would *want* to change the beneficiary designations on their insurance policies. As later explained by the court in *Mearns v. Scharbach*:<sup>31</sup>

The Legislature sought to accomplish several purposes [by enacting RCW 11.07.010]. First, the Legislature codified the assumption that divorcing couples want to change the beneficiary designations on nonprobate assets upon dissolution or invalidity of their marriage. Of equal importance, the Legislature chose to accomplish this goal by adopting an automatic revocation mechanism patterned after the revocation provisions applicable to wills. By choosing this mechanism, the legislators demonstrated their understanding that life insurance and other nonprobate assets are widely

used as essential parts of estate planning and should be treated accordingly. Additionally, the adoption of a bright-line rule triggered by the date of dissolution or invalidation of marriage evinces a legislative intent to encourage couples to resolve estate planning questions when terminating their marital relationship.<sup>32</sup>

### Exceptions to the Automatic Revocation on Dissolution Statute

There are exceptions to the exception, however. First, the statute does not apply if the decree of dissolution of the marriage or the registered domestic partnership requires that the insured maintain the former spouse or former domestic partner as the beneficiary of the policy.<sup>33</sup> Second, the statute does not apply if the insured voluntarily redesignates the former spouse or former domestic partner as the beneficiary after the date of dissolution. In *Mearns*, the court held that a redesignation of the former spouse as the beneficiary of the insurance policy following dissolution of the marriage must be in writing to overcome the operation of the automatic revocation statute.<sup>34</sup>

Third, federal ERISA preempts the automatic revocation statute. In *Egelhoff v. Egelhoff ex rel. Breiner*,<sup>35</sup> the employer provided life insurance benefits. Two months after the insured obtained a divorce from his second wife, he died. The policy named the second wife as the beneficiary. The children of the first marriage sued, asserting that the beneficiary designation was automatically revoked by RCW 11.07.010(2)(a). The U.S. Supreme Court, however, held that Washington's automatic revocation provision was preempted by ERISA.<sup>36</sup>

A recent Pennsylvania case has added a twist to ERISA preemption. The court in Pennsylvania held that the remedy provided by the revocation on divorce statute was not preempted by ERISA.<sup>37</sup> The insured and his wife were divorced. The insured never changed the designation of his ex-wife as beneficiary of the life insurance policy that was part of his employee benefits subject to ERISA. After the insurance company paid the proceeds of the policy to the ex-wife, the administrator of the estate brought an action to require the ex-wife to surrender the proceeds to the contingent beneficiary under the policy. The appellate court affirmed because the Pennsylvania revocation on divorce statute makes the ex-spouse answerable to anyone prejudiced by the payment and because it does not impact the administration of the ERISA plan so it is not preempted.<sup>38</sup>

Fourth, the automatic revocation statute does not apply to foreign divorce decrees. In *Henley v. Henley*,<sup>39</sup> the insured named his second wife as beneficiary of his life insurance policies. Later they obtained a divorce in Hong Kong and

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the insured never changed the beneficiary designation. After the divorce, the insured moved to Washington where he lived at the time of his death. The children of the prior marriage sued for the proceeds of the insurance policy. The Washington State Supreme Court held that the automatic revocation statute is limited to decrees of dissolution entered by the superior courts of the state of Washington.<sup>40</sup>

### Exception No. 5: The Equitable Vesting Doctrine for the Support of Minor Children

Planning that involves divorced parents or parents of a dissolved domestic partnership and minor children raises special considerations because Washington law recognizes a narrow exception to the general rule that an insured's designation of a beneficiary will generally be upheld. Under Washington law, where a divorce decree or dissolution of domestic partnership agreement requires the insured to maintain life insurance as security for his or her obligation to provide support for minor children and adequately identifies the policy, the children will have an equitable interest in the proceeds of the policy even if the insured later *changes* the beneficiary before his or her support obligations expire.<sup>41</sup> In *Aetna Life Ins. Co. v. Bunt*,<sup>42</sup> the Supreme Court recognized this narrow exception of equitable vesting.<sup>43</sup> In *Bunt*, the final decree of dissolution incorporated a separation agreement whereby the insured agreed to pay child support. The decree also ordered the insured to name the parties' two minor children as irrevocable beneficiaries of his life insurance policy. The insured remarried and, contrary to the express order of the court, changed the beneficiary designation to his second wife. The insured died and the minor children and the second wife both claimed entitlement to the proceeds. The Supreme Court held that the children acquired an equitable interest in the proceeds of the life insurance policy and invalidated the insured's change of beneficiary.<sup>44</sup>

### When Used as Security for the Support for Minor Children

Under Washington law, equitable vesting applies only when the insurance is used to secure an obligation of support for minor children, and the insured has died while the children are still minors.<sup>45</sup> *Bunt* recognized that a divorce can raise special concerns about the financial support of children and that it is the policy of the state of Washington to protect children in divorce proceedings.<sup>46</sup> Providing equitable vesting when life insurance is used to secure support obligations for minor children is consistent with the protections that Washington courts afford minor children of divorced parents.<sup>47</sup> Where a life insurance policy is used as security for child support, equity favors the children to preclude the insured's right to change beneficiaries. Wash-

ington courts have upheld security for support provisions as long as the father's obligation to maintain his children as beneficiaries on his life insurance ceases when his support obligation ceases.<sup>48</sup>

### So Long as the Policy Is "Adequately Identified"

The application of the equitable vesting doctrine turns on whether or not the divorce decree adequately identified the insurance policy. A divorce decree will *not* encumber a particular life insurance policy under the equitable vesting doctrine unless it adequately identifies it.<sup>49</sup> In *Bunt*, for example, the dissolution decree specifically identified the policy, and the court held that the minor children were equitably vested in the proceeds of that policy.<sup>50</sup> The decree in *Bunt* stated that the insured would "name their two minor children as irrevocable beneficiaries of the Aetna life insurance policy available to [him] as a Boeing employee."<sup>51</sup> At the time that the insured died, he had changed the beneficiary designation of that policy to his second wife.

In *Sullivan v. Aetna Life & Cas.*,<sup>52</sup> on the other hand, the decree of dissolution did not refer to the specific policy at issue and the court declined in that case to extend the principle of equitable vesting recognized in *Bunt*. The decree in *Sullivan* stated only that "[e]ach party shall maintain a minimum of \$10,000 life insurance with their minor child as beneficiary until said child attains majority."<sup>53</sup> As a result, the children did not have a superior right to the named beneficiary, but instead the beneficiary provision controlled.

In *In re Marriage of Sager*,<sup>54</sup> the decree was more specific than the decree in *Sullivan*, but less specific than the decree in *Bunt*. Like *Bunt*, it said the insured was to maintain life insurance that existed through his employment for the benefit of his minor children, but like *Sullivan* it did not identify the employer or the insurer. The Court of Appeals nevertheless held that it adequately identified the policy that existed through the insured's employment. The court in *Sager* upheld the minor children's right to equitably vest in the policy the insured had through his employer at the time he died.<sup>55</sup>

### Open Questions About the Equitable Vesting Doctrine

While the equitable vesting doctrine is the law of Washington, it may be applied differently in other states. Still, given the relatively few decisions in Washington about the doctrine, a number of questions remain: What if the divorce decree requires the insured to name the first wife as the irrevocable beneficiary instead of the minor children, does the doctrine still apply? What if the insured did not *change* the named beneficiaries, but instead the policy in the decree lapsed due to nonpayment of the premiums?

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### Exception No. 6: Slayers and Abusers

Obviously there cannot be much planning to avoid this exception, but under RCW 11.84.100(1), the insured's slayer or an abuser who has financially exploited the insured while he was a vulnerable adult is not entitled to the proceeds of the life insurance policy of which he is the named beneficiary. Like the automatic revocation statute, RCW 11.84.100(1) operates under the legal fiction that the slayer or abuser is deemed to predecease the insured.<sup>56</sup> Instead the proceeds are paid to any secondary or contingent beneficiary or to the insured's estate. Under Washington law, the slayer is barred from receiving the proceeds only if the killing was willful and intentional, and not if it was negligent or unintentional.<sup>57</sup> The legislature adopted the provisions regarding financial exploitation in the 2009 legislative session, and as yet there is no case law about those provisions of the statute.<sup>58</sup>

### Exception No. 7: Estoppel

Estoppel may be another very limited exception to the general rule that the named beneficiary is entitled to the proceeds of the life insurance policy. Estoppel precludes one from asserting a right which might otherwise have existed when another has relied to their detriment on that person's act or conduct. In *Porter v. Porter*,<sup>59</sup> the surviving spouse had listed four life insurance policies as the insured / decedent's separate property on the inventory of his estate. At a trial of a creditor's claim brought by the first wife, at which the first wife had devoted no effort toward the status and character of those policies, the surviving spouse was estopped from then asserting that those policies had actually been community property. There likely are other situations in which estoppel may apply.

### Exception No. 8: Super Wills Cannot Alter Who Receives the Proceeds of an Insurance Policy

The "Testamentary Disposition of Nonprobate Assets Act," affectionately referred to among estate planners as the "super will" statute, Title 11.11 RCW was adopted in 1998 as a vehicle for assuring an owner / decedent's "interest in any nonprobate asset *specifically referred to* in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will."<sup>60</sup>

The "super will" does not apply to life insurance proceeds because life insurance policies are specifically carved out of the definition of "non-probate assets."<sup>61</sup> Under Title 11 RCW, a non-probate asset "does not include ... [a] payable-on-death provision of a life insurance policy, annuity or similar contract, or of an employee benefit plan."<sup>62</sup> Thus,

certain provisions pertaining to non-probate assets simply do not apply to life insurance policies, including the "super will" statute.

### Exception No. 9: Creditors' Rights to the Proceeds of Life Insurance

Washington law provides life insurance beneficiaries a complete exemption for claims of creditors against the insurance proceeds, protecting all classes of beneficiaries, all proceeds, and exempting proceeds from both the insured's and the beneficiary's creditors.<sup>63</sup> The exemption applies to group policies as well as individual policies.<sup>64</sup> There are, however, five exceptions to this broad exemption:<sup>65</sup>

First, it does not extend to the owner's federal gift and estate tax liability.<sup>66</sup> Moreover, section 2035 of the Internal Revenue Code "recaptures" for the donor's estate any policy of life insurance on the life of the donor transferred by the donor gratuitously within three years of the donor's death.<sup>67</sup>

Second, it does not apply to the proceeds of individual life insurance where the proceeds are deliberately made payable primarily to the insured or to the estate of the insured.<sup>68</sup> If, however, the proceeds are payable to the insured or his estate only because the primary beneficiary has predeceased the insured, then the exemption remains in force.<sup>69</sup>

Third, it does not apply to life insurance provided under federal law to federal employees, although a separate federal exemption covers such insurance.<sup>70</sup> "Any payments due or to become due under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."<sup>71</sup>

Fourth, it does not apply to the proceeds of insurance to the extent of any premiums paid with intent to defraud creditors, nor to "any claim to or interest in such proceeds ... by ... any person to whom rights thereto have been transferred with intent to defraud creditors."<sup>72</sup>

Fifth, although not an exemption *per se*, support claims by children and former spouses are not considered "creditors' claims" for purposes of this broad exemption.<sup>73</sup>

### Conclusion

While generally the proceeds of a life insurance policy are paid to the named beneficiary, that is not always the case. Estate planning practitioners can help their client understand the circumstances under which the proceeds

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may not be paid to his intended beneficiary and can help plan to avoid some (but obviously not all) of those circumstances.

- 1 RCW 48.24.160; *Standard Ins. Co. v. Schwalbe*, 110 Wn.2d 520, 523, 755 P.2d 802, 804 (1988); *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 656, 689 P.2d 46 (1984).
- 2 *In re Killien's Estate*, 178 Wash. 335, 340, 35 P.2d 11, 14 (1934).
- 3 RCW 48.18.030.
- 4 *Page v. Prudential Life Ins. Co. of America*, 12 Wn.2d 101, 109, 120 P.2d 527, 531 (1942) (finding decedent had mental capacity sufficient to surrender insurance policies prior to death despite eccentric nature and poor business decisions).
- 5 *Federal Old Line Insurance Co. v. McClintick*, 18 Wn. App. 510, 514, 569 P.2d 1206 (1977). An exception to this rule applies when the insured is the slayer of the primary beneficiary, in which case the proceeds are paid to the estate of the primary beneficiary even though he has predeceased the insured. RCW 11.84.100(2).
- 6 *Stenneck v. Kolb*, 91 N.J. Eq. 382, 111 A. 277, 279 (1920); 4 R. Anderson, *Couch Cyclopedia of Insurance Law* § 27:137 (2d ed. 1960).
- 7 *Rossetti v. Hill*, 161 F.2d 549, 550 (9th Cir. 1947).
- 8 *McClintick*, 18 Wn. App. at 514-15.
- 9 RCW 11.05A.020-.030.
- 10 RCW 11.86.041(1); RCW 11.12.120.
- 11 *Mearns v. Scharbach*, 103 Wn. App. 498, 506, 12 P.3d 1048, 1052 (2000) (quoting *Wadsworth*, 102 Wn.2d at 659).
- 12 *Porter v. Porter*, 107 Wn.2d 43, 49, 726 P.2d 459 (1986).
- 13 *Wadsworth*, 102 Wn.2d 656.
- 14 *Id.* at 659.
- 15 *Id.*
- 16 102 Wn.2d 652, 656, 689 P.2d 46 (1984).
- 17 *Wilson v. Wilson*, 35 Wn.2d 364, 212 P.2d 1022 (1949).
- 18 *Wadsworth*, 102 Wn.2d at 659.
- 19 *Id.*; see also *Aetna Life Ins. Co. v. Boober*, 56 Wn. App. 567, 569-70, 784 P.2d 186 (1990).
- 20 *Porter*, 107 Wn.2d at 49.
- 21 *Id.* at 51 (holding that under the risk payment doctrine applied to term policies, the character of funds used to pay the most recent premium determines the character of the *entire proceeds* of a term life insurance policy).
- 22 29 U.S.C. 1144(a).
- 23 *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 121 S.Ct. 1322, 149 L.Ed.2d 264 (2001) (holding our state law preempted because it "related to" ERISA plans and directly conflicted with ERISA's requirement that plans be administered, and benefits be paid, in accordance with plan documents).
- 24 937 F.2d 1450 (9th Cir. 1991).
- 25 *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 112 F.3d 982, 985 (9th Cir. 1997) (internal quotations and citation omitted).
- 26 *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S. Ct. 49, 70 L. Ed. 2d 39 (1981) (holding dissolution decrees cannot affect distribution of federally-administered military benefit plans, and benefits are not subject to constructive trust); *In re Marriage of Barrett*, 33 Wn. App. 420, 423-24, 655 P.2d 257 (1982) (provisions purporting to divide military retirement benefits are unenforceable because prohibited by federal law), *remanded*, 99 Wn.2d 1005 (1983).
- 27 See e.g., Harry Cross, *The Community Property Law*, 61 WASH. L. REV. 13, 37 (1986) (discussing Uniformed Services Former Spouses' Protection Act and related cases); *In re Marriage of Correia*, 47 Wn. App. 421, 735 P.2d 691 (1987) (noting a child support exception to federal statute that precluded assignment of benefits under any law administered by Veterans' Administration). In *Gutierrez v. Madero*, 564 S.W.2d 185 (Tex. App. 1978), the court held that it was not prohibited by Servicemen's Group Life Insurance Act from awarding proceeds of successor policy to persons other than designated beneficiary, and since former husband committed constructive fraud in violating divorce decree by changing names of beneficiaries, constructive trust was created for children with regard to proceeds. Note, however, that this case is *not* from the Ninth Circuit and does pre-date the Supreme Court's decision in *Ridgeway*.
- 28 RCW 11.07.010(2)(a).
- 29 102 Wn.2d 652, 656, 689 P.2d 46 (1984).
- 30 *Id.* at 663; see also *Mearns*, 103 Wn. App. at 507.
- 31 103 Wn. App. 498, 506, 12 P.3d 1048, 1052 (2000).
- 32 *Id.* at 507.
- 33 RCW 11.07.010(2)(a).
- 34 *Mearns*, 103 Wn. App. at 507.
- 35 532 U.S. 141 (2001).
- 36 *Egelhoff*, 532 U.S. at 141.
- 37 *In re Estate of Sauers*, 971 A.2d 1265 (Pa. Super. Ct. 2009).
- 38 *Id.*
- 39 95 Wn. App. 91, 974 P.2d 362 (1999).
- 40 *Id.*
- 41 *Schwalbe*, 110 Wn.2d at 523. In each instance in which equitable vesting has been applied in Washington State, the decedent *changed* the beneficiary designation, despite

*continued on next page*

*Who Receives the Proceeds of Life Insurance?* from previous page

- the obligation he had under a decree or court order. *Bunt*, 110 Wn.2d at 370 (“Contrary to express court order, George changed the beneficiary designation on the Aetna policy ...”); *Schwalbe*, 110 Wn.2d at 522 (“In disregard of the preliminary injunction, ... Schwalbe changed the beneficiary ...”); *Porter*, 107 Wn.2d at 47 (“Porter violated both of these provisions” by changing the beneficiaries of his insurance policies).
- 42 110 Wn.2d 368, 379-80, 754 P.2d 993 (1988).
- 43 See also *Boober*, 56 Wn. App. at 572-73.
- 44 110 Wn.2d at 379-80.
- 45 See *Bunt*, 110 Wn.2d at 380-81; *Schwalbe*, 110 Wn.2d at 523; *Porter*, 107 Wn.2d at 45-48; *In re Marriage of Sager*, 71 Wn. App. 855, 858, 863 P.2d 106 (1993). In each of these cases, the decedent had a legal obligation to name his minor children as beneficiaries of a specific policy. See *Bunt*, 110 Wn.2d at 370 (under separation agreement decedent agreed to name two minor children as irrevocable beneficiaries of life insurance policy during their dependency); *Schwalbe*, 110 Wn.2d at 522-25 (decedent violated injunction prohibiting him from changing entitlements of insurance policy intended as a security for support of minor children); *Porter*, 107 Wn.2d at 45 (decree provided that Porter was to maintain certain insurance on his life with minor son as beneficiary for as long as Porter’s support obligation was to continue).
- 46 *Bunt*, 110 Wn.2d at 380-81.
- 47 *Schwalbe*, 110 Wn.2d at 523.
- 48 *Porter*, 107 Wn.2d at 51 (citing *Sutherland v. Sutherland*, 77 Wn.2d 6, 459 P.2d 397 (1969); *Riser v. Riser*, 7 Wn. App. 647, 501 P.2d 1069 (1972)).
- 49 *Sager*, 71 Wn. App. at 858, 863 P.2d 106 (1993).
- 50 *Bunt*, 110 Wn.2d at 370.
- 51 *Id.*
- 52 *Sullivan v. Aetna Life & Cas.*, 52 Wn. App. 876, 879, 764 P.2d 1390 (1988).
- 53 *Id.* at 877 (emphasis in original).
- 54 *Sager*, 71 Wn. App. at 858.
- 55 *Id.*
- 56 RCW 11.84.030.
- 57 *New York Life Insurance Co. v. Jones*, 86 Wn.2d 44, 541 P.2d 989 (1975).
- 58 Laws of 2009, ch. 525, codified at RCW ch. 11.84.
- 59 107 Wn.2d 43, 49, 726 P.2d 459 (1986).
- 60 RCW 11.11.020(1) (emphasis added).
- 61 RCW 11.02.050(15); RCW 11.11.010(7)(a) (“super will” statute specifically incorporates the general provision definition of “non-probate assets” found in RCW 11.02.005).
- 62 RCW 11.02.005 (15). Note that this analysis is different than what happens to a beneficiary designation upon dissolution or invalidation of marriage or domestic partnerships discussed above because there is a more-specific statute specifically governing “non-probate” assets at dissolution and invalidation of marriages or domestic partnerships (RCW 11.07 et. seq.).
- 63 RCW 48.18.410; *Feminist Women’s Health Ctr. v. Codispoti*, 118 Wn.2d 99, 106, 821 P.2d 1198 (1991).
- 64 RCW 48.18.420(1).
- 65 The explanation of these exceptions comes from University of Washington Professor Thomas Andrew’s article *Creditor Rights Against Nonprobate Assets in Washington: Time for Reform*, 65 WASH. L. REV. 73 (1990).
- 66 I.R.C. § 2042.
- 67 I.R.C. § 2035(a)(2).
- 68 RCW 48.18.410(1).
- 69 RCW 48.18.410(2)(b); see *Elsom v. Gadd*, 93 Wash. 603, 162 P. 867 (1916).
- 70 See, e.g., 38 U.S.C.A. § 1970(g) (concerning life insurance for federal armed service personnel).
- 71 *Id.*
- 72 RCW 48.18.410(3)(b).
- 73 *Bunt*, 110 Wn.2d at 377.

*Editor's note: This article was originally submitted to the Senior Lawyers Section for Life Begins, and with the permission of the author, it was forwarded to the Bar News for a wider readership. It appeared in the Bar News in March 2010. We are reprinting it now in Life Begins, its original intended home, for Section members who may have missed it in the Bar News or who just would like to read it again.*

## **Life Begins for Washington Lawyers Who Are "55 and Counting": A Brief History of the Senior Lawyers Section**

*by Philip H. De Turk*

It was 1995 and I was attending an ABA meeting in some city that hosted those events – Orlando, Florida, I recall. I belonged to the ABA Senior Lawyers Section. One of the meetings involved reports of the statewide organizations that existed. During the presentation, solicitation was made for more to be started.

The gist of the program was that each of us should sally forth into our own domain creating Senior Lawyer conclaves. I was skeptical. What would be the advantage of such a program? I did not respond, did nothing to foster the movement at that time.

Probably it was a meeting in another city in 1997 that finally caused me to believe there would be value in a Washington Senior Lawyers Section. I agreed to do my best for my mentors in the ABA to foster such a movement. I could say that the rest was history, but that is what this is about: the history of our section, now in its 13th year.

The first item that had to be completed back in 1997 was getting the WSBA to accept another section. To do that, a petition had to be prepared setting forth the purpose of the proposed group. It had to have 20 endorsers. Our section began with three general principles: We would have annual CLE meetings with subjects of interest to members of the Bar who were at least 55 years of age; there would be social events in various cities in Washington for our members; and we would issue a quarterly publication with articles by and for our members.

Jumping ahead, we have greatly succeeded with numbers one and three. Only two has been lacking, although we did put together a program in Spokane at the final state bar convention.

### **Fooling Around Yields a Motif**

Getting the 20 signatures was a difficult task. However, it need not have been. I learned later that the WSBA would have assisted in this effort. But I did it my way, going to the San Francisco ABA convention, where I corralled people I knew, seeking their John Hancock after explaining what I was trying to accomplish.

We were accepted in late 1997. Now all that had to be done was to get some members. An organizational meeting took place at the WSBA headquarters in downtown Seattle.

Exactly two people besides me attended. One was Howard Breskin, a longtime lawyer in Seattle. I was terribly dejected, but Howard urged me on, saying we should proceed as if we would have hundreds attending the first CLE meeting.

So we set it for August 1998 at the Sea-Tac Hyatt. Mr. Breskin helped me arrange an agenda and get the speakers. The WSBA advised they would give us seed money with which to front the first news publication, as well as some other mailings. These would be sent to lawyers who were admitted in 1958 and before, since the Bar keeps members' ages confidential.

I was in my office fooling around with the first quarterly newsletter. Suddenly it came to me: "Life Begins When You Retire," or perhaps "When You Retire, Life Begins." This was to be our motif: CLE subjects that would assist an attorney seeking retirement. The first issue advised all recipients of the forthcoming program. It was mailed around the spring of 1998.

### **Speakers at the First CLE**

Our first meeting's speakers were an eclectic group. We had Arnie Robbins telling about the travel he had done since retiring. Barrie Althoff talked about files and what the retiree should do with them. He also appeared again with Paula Ledbetter, my office manager, to discuss what can happen if a lawyer does not prepare for sudden death, insofar as his clients and caseload are concerned.

Stan Wagner chaired a two-hour session where laptop equipment for use in the office was reviewed. Then video aids for future trial use were demonstrated. Steve Jobes and Terry Tainter were speakers. The latest in the appellate field of decisions was presented, as well as the importance of various forms of insurance and trusts for the retiree.

Richard Gemson told us why we should have malpractice insurance, not only while still practicing, but for at least three years following termination of our legal efforts. Until the Statute of Limitations takes effect, lawyers are subject to suits by disgruntled clients.

Howard Breskin stepped to the fore with a humorous outline of what the retiree must anticipate: loss of office space and a secretary; loss of face; loss of income. Wow.

*continued on next page*

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## *A Brief History of the Senior Lawyers Section* from previous page

His talk probably did not inspire too many of our early members to unhitch from the practice.

We also had our first business meeting. During the weeks prior to the important CLE event, which had more than 100 attendees, individuals had sent in their 20 dollars to join the section. We were an active section with more members than many of the others.

### **Around the State**

At that 1998 meeting, I was officially elected the next chair, or first chair, or following chair after organization had been completed. Fredrick Frederickson volunteered to be the second chair, beginning in August of 1999.

"Life Begins" was published every quarter. It was usually eight pages with some local topics as well as legal ones taken from other state publications (with the permission of the section involved).

Our next CLE annual meeting was also in August. A number of helpers materialized to arrange the program. These included Kenneth Selander, who became the third chair, and the always ready-to-serve Robert Berst, our fourth.

Somewhere along the line, the annual CLE event was shifted to early spring. It was also moved to the Sea-Tac Marriott. Monthly meetings of the officers began to take place, usually at the Broadmoor. Herbert Freise was a member of that Seattle golf club and arranged for our group of eight to 12 to gather there for discussion of CLE speakers and other events.

Bob Berst and I put together a program for Spokane to be held during the last WSBA convention. Sparsely attended, with some speakers withdrawing at the last minute, it was a marginal success. A program of ethics received some controversial input. The annual CLE was presented in Tacoma at the Fircrest Golf Course. Attendance was substantially lower than at the Marriott proceedings. The consensus has been that Sea-Tac is the best place for all future activities.

Following Berst, Pete Francis stepped forth to chair the organization. Our annual meetings never had fewer than 150 members attending at the cost of \$100. This fee included a lunch and cocktail party following the speakers. Jim McClendon's Pacific Financial Group sponsored these soirées, where no one ever took advantage of the drinks on the house.

### **13 Years and Counting!**

After Francis did a two-year stint as chair, Dudley Panchot headed the section for a period of time. His successor was Jerome Jager. It was during the latter's regime in September 2006 that we did a three-hour program prior to the honoring of the lawyers who had been WSBA members for 50 years. The number of attendees was adequate, but the effort was a money loser, due to the high expense of the meeting room.

Our current chair is Steve DeForest. Joanne Primavera ably served as secretary over the years. John Bergmann now serves in that capacity. The aforementioned Friese was active on the executive committee, as have been Gene Annis, Weston Foss, Thomas Wampold, and Roderick Dimoff.

Truly, without the efforts of these individuals, there would not be a section ready to celebrate its thirteenth year. Also, praise must be offered for the continuation of "Life Begins." After I moved to North Carolina in 2003 and could no longer do the job, Bob Berst took over. When he needed a sabbatical, the job was handed to Carole Grayson, although before assuming her duties, she confessed that, at a few months shy of "55 and counting," she was underage!

Then, too, our presence as a viable force among WSBA sections would not have lasted without the outstanding speakers we have had over the years — people who volunteered their time to do papers for use in the program booklets given to each member attending the function, and speaking for anywhere up to an hour. There have been well over 100 such people, so to name them at this time is not feasible. Suffice to say, we applaud each and every one of them.

As I conclude this third rewrite of the history, sitting in my den in Pinehurst, North Carolina, on September 12, 2009, where it is 85 degrees outside, I realize that my final effort for the WSBA has come to pass. Henceforward, truly life begins here in the South.

*Philip H. De Turk attended George Washington University on a basketball scholarship and received a J.D. from GWU Law School. He was admitted to the WSBA in 1956. He has worked for small firms, as a solo practitioner, and at government positions. His career involved trial work including criminal, personal injury, real estate, and probate. He is now retired after 50 years of practice and lives in North Carolina to enjoy a life of golf and travel. He can be reached at hlipkruted@aol.com.*

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## Hoi An: UNESCO Site and More

by Tom Wampold

Every year for the last 25 years, I have taken a three- or four-week trip to Southeast Asia. I have been to Thailand, Viet Nam, Cambodia, Laos, China, Malaysia, and Singapore. This year fellow senior lawyer Barbara Levy and I were planning to go to the island of Koh Samui in Thailand. My travel agent Peggy Petrie (wife of Seattle attorney Greg Petrie), had a question for me: "Why are you going there, when you can go to Hoi An in Viet Nam which is cheaper and has way more charm?"

In 1999, Hoi An's old town was declared a World Heritage Site by UNESCO as a well-preserved example of a Southeast Asian trading port of the 15<sup>th</sup> to 19<sup>th</sup> centuries, with buildings that display a unique blend of local and foreign influences. Hoi An was founded as a trading port around 1595. It flourished as a trading port and became the most important trade port on the South China Sea.

In the 1700s, for political reasons, Danang became the center of trade. The result was that Hoi An remained nearly untouched by changes occurring in Viet Nam over the next 200 years (somewhat reminiscent of the walled city of Carcassonne in southern France).

Hoi An is 45 minutes south of Danang. To get there, fly to Saigon, spend a couple of days there, and fly to Danang. It is much cheaper to buy intra-Viet Nam airline tickets there, rather than booking them in the U.S.

### Conical Hats

Hoi An is a small city, and most hotels are within easy walking distance from the center of town. We had the nicest room in the small hotel in which we stayed. It overlooked the water spinach marshes. In the morning, we would look out over fields and see old women wading through the

marshes wearing their conical hats picking water spinach (morning glory). The hotel cost \$40 a night, which included an American breakfast, omelets cooked to order, bacon, banana pancakes, fruit, etc. The people running the hotel – indeed, the citizens of Hoi An in general – were wonderful, friendly, cheery, and helpful.

The town is charming, with what remains of the French influence. A river separates the two parts of town, with pedestrian bridges over it. It has a wonderful market you can walk through and lots of great little restaurants.

Shopping was incredible both in terms of what was offered and the price. Hoi An is known for shoe making. Having read this before leaving the U.S., I brought with me some special shoes that had cost me \$300 in the U.S. A shoemaker in Hoi An copied them for \$24.

I had a suit made for \$75; for \$100, I got glasses with expensive frames. I also bought Izod shirts for \$6 each. I made a lot of money last year, so I decided to splurge, and in Saigon, I bought a Rolex watch for \$20, and for that price it better be real. I also bought a model 16<sup>th</sup> century ship of the line. It is about 3 feet long. I paid \$200, which included shipping to Seattle.

### Round Boats

Every morning, we got up, enjoyed the free breakfast with the other hotel guests, and discussed restaurants, traveling, etc. You meet some very interesting people this way. We then rented a bike for the day (\$1.00), and pedaled to the beach three miles away. It was flat all the way so the biking was easy. There are two beaches – the tourist beach

*continued on next page*



*Hoi An: UNESCO Site and More* from previous page



and the local one. Naturally we went to the latter. We would get there about 9:30, when no one was there except fishermen bringing in their catch, fishing in little round boats as they did hundreds of years ago. We reclined in chaise lounges with an umbrella for shade. This was free as long as you ate at the nearby restaurant. This was not a hard bargain to keep.

At the end of the day, after our strenuous day of reading and sitting in the sun, we would get a massage. This cost about \$6.00 an hour. Then on to dinner.

The food was incredible and far superior to Vietnamese restaurants here. For two people, including bottled water, the bill came to \$5.00. One local specialty was squid stuffed with pork and vegetables. Being on a limited budget, we passed on the beer which was 15 cents. One person wrote that his party drank 70 beers, and the bill was \$10.00.

Hoi An is truly idyllic. I highly recommend it to anyone looking to relax. How can you go wrong with such inexpensive food, beer, shopping, and massages? Are you a senior lawyer who cannot divorce yourself from the office or home? No problem. Our hotel provided free Internet access.

## UW Law School Alumnus? Alumna? Join Reunion Day 2010

by Shari Ireton – Media Relations & Marketing Officer,  
UW School of Law

The UW School of Law invites alumni and alumnae to Reunion Day 2010. Yes, on **Saturday, November 6**, the law school is celebrating the classes of 1960, 1965, 1970, 1975, 1980, 1985,

1990, 1995, 2000, 2005 and the Tax LLM graduates. Reunion Day is a great way to reconnect with classmates, as well as meet law school graduates from other classes.

The list of esteemed UW law school alumni includes judges, prosecutors, public defenders, law firm partners, legislators, and public interest lawyers – come find out where the lives of law school graduates have led. Guests will also include current and emeriti faculty, current students, law librarians, and law school leadership.

More than just memories, Reunion Day 2010 is a way to reconnect with your law school, even if your law school building was (old) Condon Hall (now known as Savery Hall) or (not so old) Condon Hall (temporary home to the student union).

The day begins with an optional building tour of William H. Gates Hall, home to the law school since September 2003. This state-of-the-art facility includes wireless classrooms and video recording capability for the capture of lectures for podcasting. Another feature of Gates Hall is the Claire Sherman-Thomas Remote Learning Center. Funded by Kate Sako, '87, in honor of Sherman-Thomas, a renowned women's legal rights scholar, the RLC is where parents attending law school can care for their children and participate in law classes at the same time. As you'll learn, legal education in the 21st Century has come a long way in the last decade.

At 3 p.m., Dean Kellye Testy, the UW James W. Mifflin University Professor of Law and first woman to join the distinguished group of permanent law school deans at UW, will host a welcome reception in the Gallagher Law Library. The UW law library is among the finest in the country, housing extensive research and East Asian Law collections, as well as serving as a federal depository for selected U.S. government documents.

Members of each class will gather for individual class reunion dinners following the reception.

For a complete schedule of Reunion Day 2010 event and registration information, visit [www.law.washington.edu/Alumni/Reunions/](http://www.law.washington.edu/Alumni/Reunions/) or call 206.543.8707.

*It appears that our state's three law schools reunite at different times of the year. A future edition of Life Begins will cover the reunions at Seattle University and Gonzaga University.*

## Executive Committee Amends Section Membership Criteria to Comport with BOG Policy

by Fred Frederickson

On May 18, 2010, the Senior Lawyers Section Executive Committee amended Section bylaws to provide that a WSBA member is eligible for Section membership upon reaching his/her 55th birthday or upon being in practice for 25 years. Previously, Section membership was limited to lawyers 55 years of age and older.

This action was precipitated by a policy adopted by the WSBA Board of Governors. In a letter to the Section dated April 30, 2010, Robert D. Welden, WSBA general counsel, summarized the applicable policy, stating

“At their meeting on April 24, 2010, the Board of Governors voted to adopt a policy that age may be used as a criterion for Section or Division membership only in conjunction with another criterion not exempt from public disclosure (e.g., years in practice).”

In a memorandum dated April 12, 2010, to the Board of Governors, Welden discussed the use of age as a criterion membership:

“During the program review of the Washington Young Lawyers Division, an issue arose whether there was any legal impediment against using age to determine who qualified for WYLD membership. That discussion led to whether age could be used to determine who qualified for Senior Lawyers Section membership. Elizabeth Turner and I both researched this and found nothing that precludes use of age as a membership criterion. Age discrimination as a legal constraint appears limited mainly to employment issues ... However, a web search of mandatory bars found that Michigan and Indiana Senior Lawyer Sections are open to members 60 years or older; in Kentucky it is 55 as it is in Alabama, Utah and Virginia.”

### Public Disclosure Concerns

Welden recommended the following to the Board of Governors:

“As General Counsel, it is my opinion that members’ ages should not be disclosed nor should they be used as the sole criteria for Section or Division membership. Currently under the WSBA bylaws, age is not part of the information made disclosable pursuant to Art. 15, [Sec.] B(6)(a)(12).”

Article 15 of the WSBA bylaws relate in part to records disclosure. Article 15, Section A, adopts a policy favoring

public disclosure of WSBA records. Stating in pertinent part, the bylaws provide that the WSBA “is committed to maintaining its records in a manner that makes them as open

and available to the public as is reasonably possible.

... This records disclosure section of the Bar’s bylaws

shall be liberally construed and its exemptions narrowly construed to promote this policy.”

Article 15, Section B establishes exemptions from public disclosure of certain WSBA records. Welden relies on Article 15, Section B(6)(a)(12) proscribing “Membership information” from public disclosure. There are numerous exceptions to the “Membership information” exception to public disclosure including “status, business addresses, business telephones, facsimile numbers...bar numbers and dates of admission.” Art. 15, Sec. B(6)(a)(12)

### 100 Years of Practice?

During discussion of this issue by the Senior Lawyers Executive Committee, one member suggested that Section membership be limited to lawyers with 100 years of practice or age 55, whichever comes first. Disregarding this proposal, the Executive Committee, in its infinite wisdom, decided to open Section membership to attorneys with at least 25 years of practice who wish to associate with venerable lawyers of similar vintage. For those lawyers who wish to associate only with lawyers age 55 and older, a move to Kentucky, Alabama, Utah or Virginia would seem appropriate.

When asked to comment on the bylaw changes, Philip De Turk, founder of the Senior Lawyers Section and author of the article appearing elsewhere in this issue on the history of the Section, remarked:

“I think the WSBA is tinkering with something that is not broken. If they want the senior section to be open to anyone regardless of their age, that sort of eliminates the entire idea under which it was charted with the acceptance of the WSBA to present a venue where lawyers of a certain age could have socials, a newsletter and CLE programs designed for their specific needs.”

DeTurk concluded, “I am sure the present executive committee has taken all of the ramifications into consideration while making the bylaw change. Sometimes it is better to go along rather than create havoc. Yet the examples by longtime legal counsel Welden appear to substantiate the present position of the group without the adopted changes.”

### Section Founder Dislikes the Change

**2009-2010**  
**Senior Lawyers Section**

[wsba.org/lawyers/groups/seniorlawyers](http://wsba.org/lawyers/groups/seniorlawyers)

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- Register for a CLE seminar.
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- Sign up to volunteer for the Home Foreclosure Legal Assistance Project.

## WSBA Emeritus Status

**Are you paying** for your “Active” WSBA license but not practicing much these days?

**Are you thinking** about changing your status to “Inactive” for a reduced licensing fee?

**Consider** WSBA “Emeritus” status. Emeritus is a limited license to practice with the same low licensing fee as “Inactive” without the mandatory MCLE requirements.

For more information please contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or [sharlene@wsba.org](mailto:sharlene@wsba.org).

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association nor its officers or agents.

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