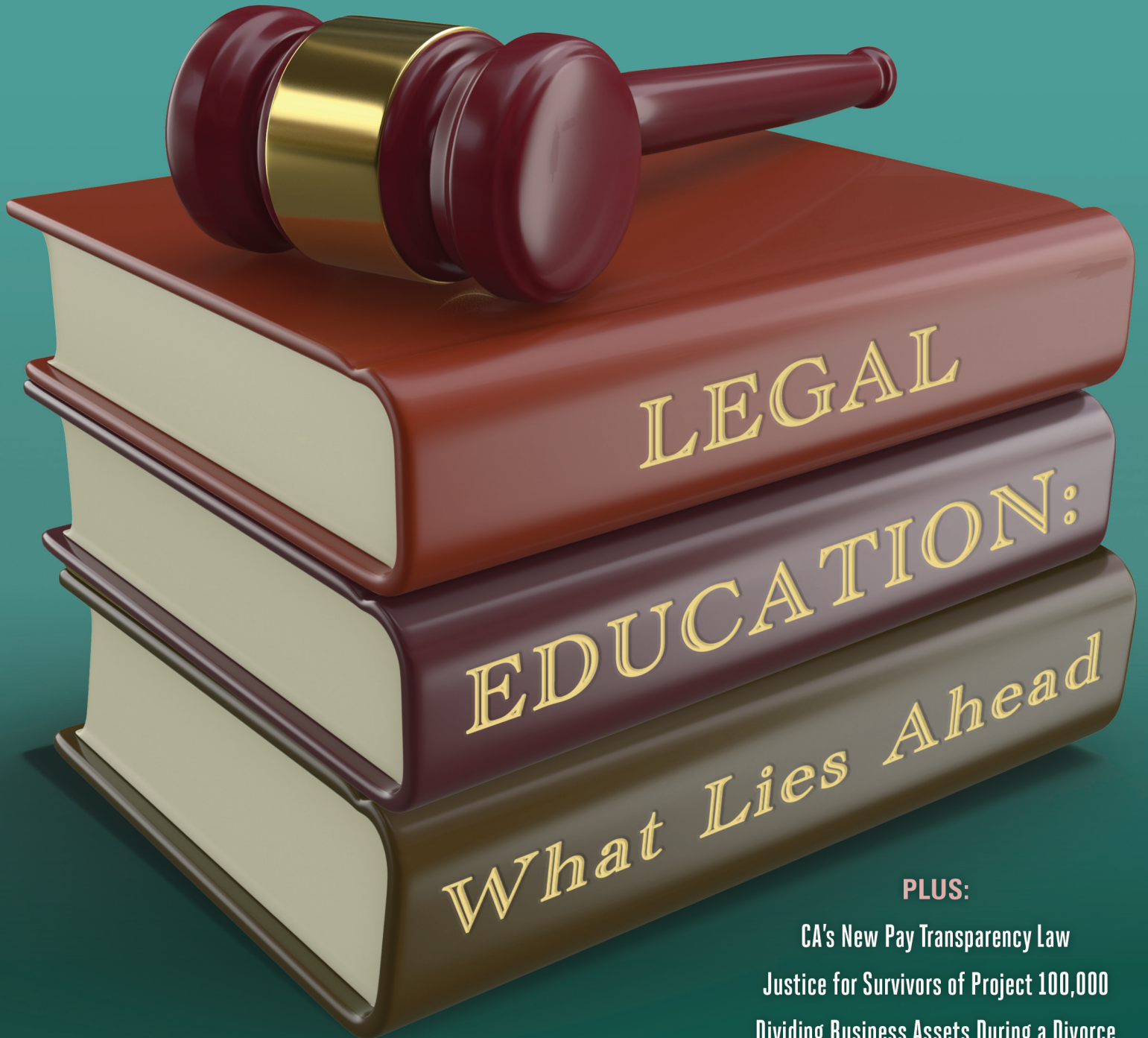


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PEEK AT PRO BONO

SHEILA-MARIE FINKELSTEIN and SCOT G. DOUGLAS

Estate Planning for Veterans: VLI's Pro Bono Estate Clinic

Veterans Legal Institute has served over 9,000 low-income veterans! Veterans Legal Institute (VLI) is a non-profit legal service provider for veterans founded in 2014 by Antoinette Naddour and Dwight Sterling. In the eight years since its inception, VLI has served over 9,000 service members, averaging over 1,125 per year. VLI is able to assist so many veterans because of extensive volunteer efforts. We salute the approximately 300 lawyers and law firms who have logged over 10,000 volunteer hours between 2014 and 2021. A full impact report is available at <https://www.vetslegal.com/about-us/financials/>.



How We Help Veterans

VLI offers free legal services in many practice areas, including but not limited to Veterans Benefits and Discharge Upgrades, Family Law, and Housing. These services are provided in-house, through legal clinics, and through volunteer attorneys/firms. Many may not be aware that Probate and Estate Planning is the fourth largest practice area that VLI provides.

Sheila-Marie Finkelstein began volunteering with VLI in 2014 and Scot Douglas began in 2016. Scot soon became a staff attorney with VLI. Given the need for services, Sheila-Marie suggested starting an Estate Planning Clinic. Together, we designed and launched the monthly free estate planning clinic. VLI has more than 600 Estate/Trust/Probate matters, of which Scot is the lead attorney for more than 475 matters. Since starting the clinic, VLI serves about 100 veterans annually with estate planning and probate matters. Prior to starting the clinic, VLI served fewer than 40 annually. We (Scot and Sheila-Marie) have personally prepared over 145 pro bono comprehensive estate plans for veterans. When compiling the data for this article, we realized that, although Sheila-Marie is in private practice, 37% of her legal work by matter volume and 44% by value is pro bono through VLI. At AHAVA Law, P.C. (Sheila-Marie's firm) estate planning is prepared on a fixed fee schedule. The average fee for a "simple" probate avoidance estate plan is \$3,500, which means that—not accounting for the specialty planning we have done—we have provided over \$507,500 in free legal services to our veterans, in addition to saving them thousands of hours in court and millions of dollars in fees by avoiding conservatorship and probate.

In California, probate takes an average of two years to complete, and the fees are set by the probate code based on the gross value of the estate (not the net). So, even if the only asset is a home with no equity due to a mortgage, the estate will still be responsible for probate fees. For example, according to the Los Angeles Almanac, the average home value in Orange County is \$1,195,000, for which the probate attorney and executor's fees are an estimated \$50,000 plus costs! Often families are forced to sell or foreclose the property instead of being able to pass them to their families because of these costs. So, saving veterans potential probate fees can be life changing. We have also prevented the costs of conservatorship, which are not as easily estimated, but have been compared to a "living probate" for every year the conservatee is conserved.

VLI's Pro Bono Estate Planning Clinic

We formally established the Estate Planning Clinic in 2017. The Clinic is typically held on the second Thursday of each month. Prior to the pandemic, we would meet with clients in person in the VLI offices. Then, during the pandemic, we were able to pivot and run the clinic virtually. The clinics continue to be held virtually, handling most estate planning needs as well as basic probate in pro per assistance.

The most frequent requests for services we receive are for:

- Initial Estate Planning (with and without real property) for Individual or Couples,
- Updating Estate Plans (i.e., DIY, other attorneys, repeat VLI clients, etc.), and
- Analysis of prior plan or analysis of a plan for which the veteran/service member is a beneficiary.

Please ask prospective clients to apply at www.vetslegal.com/application.

An important aspect of estate planning is whether the client has the appropriate level of capacity. Capacity is determined on a sliding scale, from incapacity to Testamentary Capacity (i.e. the capacity to create a will) up to the Capacity to Contract (necessary in order to create a trust). Under Probate Code section 810, there is a presumption of capacity, even if the client has a diagnosed mental or physical disorder. If capacity is at issue, either because of your personal interactions with the client, or because the concern has been raised (i.e., by a family member, or concern over a diagnosis such as dementia), then use Probate Code section 6100.5 as a guide. The determination of capacity is very fact specific. The client must be able to:

1. Understand the nature of the Testamentary Act,
2. Understand the nature and situation of their property, and
3. Understand their relations to natural heirs/beneficiaries.

Also, when in doubt, you can always request the client provide a letter of capacity from their appropriate medical provider.

Estate Planning Documents

A complete estate plan is more than just a will or a trust. A complete estate plan should account for all aspects of living, incapacity, and passing. Through the VLI Estate Planning Clinic we provide comprehensive plans, the cornerstone of which is usually a revocable living trust. Our typical plan includes the following documents:

Revocable Living Trust: The principal purpose of the trust is to avoid probate of assets and the time, expense, and publicity involved in a probate proceeding. The trust essentially acts in place of a will to make sure that property passes to the surviving spouse/beneficiaries with a minimum of hassle and expense. Another important advantage of a trust is that it allows the designated successor trustee to promptly take over the management of the client's affairs if they should become unable to do so due to illness, accident, Alzheimer's (Oldtimers), etc. This avoids the expensive, lengthy, and potentially embarrassing court process of a conservatorship. The trust remains fully revocable or changeable during the trustor's lifetime, and no special accounting or tax returns are necessary.

Certification of Trust: The certification sets forth the existence of the trust and the trustor's unlimited right as trustee to deal with any account or asset held in the trust. The certification is a privacy shield. It acts as a short version of the trust and gives any third party all the information required from the trust without sharing the confidential dispositive provisions.

Pour-Over Will: Commonly referred to as a "pour-over" will, this document provides that any assets held by the trustor that were not previously transferred into the trust will be added to the trust upon the trustor's passing through a probate proceeding commonly known as a Heggstad Petition. The purpose of this is to catch all of the assets and distribute them according to the dispositive plan established by the trust.

A will is also necessary to establish guardianship when there are minor children. Please

note that a neither a will nor a trust will override a beneficiary designation on any transfer on death accounts (i.e., bank accounts), which is why trust funding is so very important. You do not want to undermine an intentional estate plan with an unintentional beneficiary designation failure.

Durable Power of Attorney for Finances: This “general power of attorney” gives the designated agent broad powers to manage the client’s financial affairs, including authority to dispose of, sell, convey, and encumber real and personal property. The power is “durable” because it survives the client’s incapacity (indeed planning for incapacity is a primary purpose). It may also be immediately effective, or it may be “springing” and only become effective upon the principal’s incapacity.

Advance Healthcare Directive: The Advance Healthcare Directive gives the designated agent the power to make medical decisions, sign consents and/or releases with hospitals and/or doctors. It also acts as a “living will” for medical care and end-of-life decisions. It is important to note that the VA has a VA Healthcare Directive, which is only available and valid within the VA system. However, the California Advance Healthcare Directive is valid nationwide. Through the clinic, we provide the California statutory version.

Final Disposition Instructions: The Final Disposition Instructions give clients the opportunity to specify their preference for cremation or burial, to designate the person to carry out the wishes, and to provide information regarding prior arrangements.

Guardianship Package (if applicable): When a client has minor children, we prepare a stand-alone Nomination of Guardian for Minor Children for temporary and permanent guardianship, as well as a minor’s power of attorney, and a minor’s healthcare power of attorney.

Deed to Trust: If the client has an ownership interest in California real property, we prepare the deed transferring the property from individual ownership to ownership under the trust. A “Deed to Trust” should not be confused with a “Deed of Trust” which evidences an encumbrance/mortgage.

Ancillary Documents: We also provide ancillary documents including, but not limited to, a summary of the estate plan, assignments of interest, VA pre-need forms, Trust Funding Instructions, etc.

Trust Funding

It is very important to remember that a trust only protects the assets that are

properly titled in the trust (or for which the trust is the designated beneficiary). We provide extensive trust funding instructions to clients. We explain the importance of transferring title of their assets such as real estate and financial accounts to the trust, and of designating the trust as the beneficiary of tax preferential accounts such as retirement accounts or life insurance policies. It is very important to properly fund the trust, not only to make sure that everything is protected, but also to avoid unnecessary tax complications.

For most VLI Estate Planning Clinic clients, their biggest asset is their home. Typically, a client’s home has increased in value substantially since they purchased it. AHAVA Law has the ability to electronically record the deeds. So, when a client has real property, we are able to record the deeds for them almost instantaneously.

Veterans’ Benefits


Veterans Benefits is a broad topic which cannot be covered in depth here. In the VLI Estate Planning Clinic, there are a few key benefits that we highlight. Primarily, encourage your clients (and any service members or veterans you may know) to apply for their VA benefits as soon as possible. This is important because, the longer they wait, the fewer benefits they will be eligible to access. Moreover, many benefits are funded on a use-it-or-lose-it basis. So, although veterans commonly forgo applying for benefits because they feel their brothers and sisters in arms need them more, these veterans are actually doing everyone a disservice when programs are funded based on total usage.

It used to be that a veteran had to die before their family could determine eligibility for interment in a military cemetery. Now we have VA Form 40-10007, which is a pre-need form to determine eligibility. We highly encourage veterans who are interested in a national cemetery to apply now and save their families the grief later. The VA recently began accepting electronic submissions. Please note, a separate application is necessary for a veteran and their spouse. The veteran’s DD-214 will need to be submitted with each application. State cemeteries have their own specific forms and require the spouse to be responsible for their burial fee.

Call to Action

VLI needs more pro bono attorney volunteers. We can continue to provide these services only with support from attorneys in

our community. The Estate Clinic specifically needs pro bono attorneys to help clients who do not have email/access to technology and thus cannot participate in our virtual clinic, who have more complex planning needs (i.e., special needs trusts), and/or who need help with basic probate for those clients who do not want to complete a probate in pro per. Attorneys interested in volunteering with VLI should email info@vetslegal.com to be added to the case list.

Please encourage all veterans you know to apply for their complimentary comprehensive estate plan through www.vetslegal.com/application. The monthly estate clinic currently meets via Zoom. Applications and estate plan intake questionnaires must be received ten days prior to the clinic date, or they will be scheduled for the following clinic date. 

Sheila-Marie Finkelstein, Esq., LLM (Tax), MEd, is the Principal and Founder of AHAVA Law, P.C., a California Bar Board Certified Specialist in Estate Planning, Trusts, and Probate Law and a VA Accredited Attorney. She served as a USAF JAG Law Clerk and is married to a Navy veteran. For more information on pro bono for veterans, please read her other OC Lawyer and ABA GPSolo articles available at ahavalaw.com/sheila-marie-finkelstein/. Sheila-Marie recently joined Klinedinst Attorneys in Irvine, and the best way to reach her is at sfinkelstein@klinedinstlaw.com.

Scot G. Douglas, Esq. MBA, is a U.S. Army veteran who served in Vietnam, and the Veterans Legal Institute Lead Staff Attorney for the Estate Clinic. Prior to becoming an attorney, he served for over eight years in the Army, and delivered mail for twenty-five years. He can be reached at sdouglas@vetslegal.com.

Peek at Pro Bono is an occasional column that offers insight into meaningful pro bono work being done by an Orange County lawyer.

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