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The summer is nearing its end and fall always seems like the time of year to tie up those loose ends and try to realize the resolutions we made so long ago, in January. We thought that we would devote this issue to information that will help protect you and your family.

Getting Your Affairs In Order

We are always encouraging friends and clients to “be prepared.” Naturally, we mean that your estate planning documents should be complete and fully executed, that your plan should be reviewed periodically and that your agents on the health care proxy and power of attorney should be advised of your wishes in the event that they must step into your shoes and manage your affairs or make end-of-life choices for you.

The National Institute on Aging (“NIA”) has some additional suggestions. It recommends that you put your important papers and copies of

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Opting Out

If you feel like we do, you would prefer not to be bothered by junk mail or email, telephone solicitations and unwanted messages on your answering machine or voice mail. Most of the time the offers are for services or products that have no relevance to us. Sometimes they cause concern and stress. And they are almost always a waste of resources. In this digitalized world, what can be done about it? Fortunately, a lot. The Federal Trade Commission has a campaign which allows us to stop the madness of these unsolicited marketing strategies and “Just Say No.” All it takes is a few clicks of your mouse or telephone calls.

Reduce or Eliminate Telemarketing Calls:

Call 1(888) 382-1222 from the telephone number you want to register or go to www.donotcall.gov. You can register up to three telephone numbers at a time. Once your number has been on the registry for 31



days, most telemarketing calls will stop. However, not all calls are eliminated. You will continue to receive calls from companies to whom you have given permission. Calls from, or on behalf of, political organizations, charities, and telephone surveyors are not restricted. Calls from companies with whom you have an existing business relationship may call you for 18 months after a purchase or

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Protect Yourself From Medical Identity Theft

Medical identity theft is the newest, and least recognized category of identity theft. While it still only represents a small percentage of the

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Business Owners Beware

The New York State Business Corporation Law (“BCL”) sets forth the responsibilities of owners after the corporation has been formed. The BCL requires non-exempt New York



corporations to hold at least one meeting of shareholders each year and to maintain a record of these meetings. Meetings are for the election of directors, even if the same directors are elected year after year. If you are a business owner, even of a small, closely held business, the BCL applies to your business. Annual meetings do not need to be formal, they can be held in your kitchen over dinner, but an annual meeting is a crucial part of the business owner’s year. Failure to comply with this corporate formality may result in personal liability for all corporate debts and obligations.

The corporate by-laws, which are typically part of the corporate set-up, address when meetings of the shareholders and board members should be conducted and how the notice of these meetings should be given. Ordinary business of the

corporation should be addressed in addition to the election of board members and officers. Regular meetings and votes are critical. The board is responsible to keep a written report of each meeting, in the form of minutes.

The by-laws, corporate books, records and minutes are internal documents which must be maintained by the corporation. They need not be filed with the Department of State or any other state agency. Many business owners neglect their obligation to maintain the corporate books and records. This can be dangerous. If you have any questions pertaining to the issues discussed in this article, or wish to have any assistance with maintaining and/or updating your corporate books, please do not hesitate to contact Berwitz & DiTata LLP. We will be happy to help you.

Mistakes and Misconceptions

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood, can undermine the plan’s effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.

Many people believe that it is important to keep their original Last Will and Testament in a safe deposit box. Each bank has its own rules regarding the use and access to its customers’ boxes and, for this reason, unanticipated problems arise. Ordinarily, only persons authorized under the contract, or agreement under which the box was opened, may enter the box. A box that is leased in two names, jointly, means that, **while both lessees are alive**, either may freely enter the box alone, examine, remove or insert contents, and/or surrender the box. Some banks permit the appointment of a “deputy,” one who has equal access

to the box with the one who has appointed him, but only **during the lifetime** of the owner of the box. What most of our clients don’t realize is that the bank also has the right to refuse access to a box if it learns that a lessee is incapacitated or has died. This is true even if there are two names on the box and the other lessee is the one who seeks entry. Your Will should not be kept in your safe deposit box because, after your death, when the Will is needed, access may be denied by the bank and a special proceeding may be required in order to secure the Will for filing.

Protect Yourself From Medical Identity Theft

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identity theft cases reported each year, it is a problem that may have life-threatening consequences.

Typically in these cases, a thief uses your medical insurance to receive medical goods or services, such as prescription drugs, durable medical equipment, treatment or even surgery. The thief's medical information is entered onto your medical

records and is indistinguishable from yours. Imagine the consequences if the thief is diabetic and you are not, or if you have allergies and he or she doesn't. This could have a serious impact on your treatment plan, particularly if you require emergency medical care and cannot participate in decision-making!

Medical identity theft is hard to detect. To protect yourself, take these steps: (1) store your health insurance information and other personal information in a secure location; (2) closely monitor the explanation of benefits from your health insurer;

(3) request and review a copy of your medical records from your health care provider periodically.



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three months after the submission of an inquiry or application, unless the company is requested to place your number on its own "do-not-call" list. You should keep a record of the date you make each such request.

Pre-approved Credit Card Mail Offers:

It is wise to shred these offers to preclude someone from submitting an application without your knowledge. Under the Fair Credit Reporting Act (FCRA), the Consumer Credit Reporting Companies are permitted to include your name on lists used by creditors or insurers to make "firm offers" of credit or insurance that are not initiated by you. However, by calling 1(888) 567-8688 or visiting www.optoutprescreen.com, you can opt out for 5 years or permanently and, if you ever want to resume

receiving these firm offers, the same website permits you to "opt-in." Be aware that it will be necessary to provide your social security number to take advantage of this program.

Unsolicited Commercial Mail and Email:

How much junk mail do you throw out without even opening it? What a waste of resources. The Direct Marketing Association's Mail Preference Service allows you to opt out of receiving unsolicited commercial mail and e-mail for five years. To take advantage of this service go to www.dmachoice.org, and be ready to pay a \$1.00 registration fee for this service. On this site, direct mail is divided into four categories: Credit Offers, Catalogs, Magazine Offers and Other Mail Offers. You can request to start or stop receiving mail from particular companies in each category or from an entire category at once. First, determine whether you

are considered a "prospect" or a "customer." If you receive mail from companies with whom you have never done business, you are a "prospect" and your name is on a list the company is using to identify new customers. If you have done business with a company in the past, you are considered a "customer." This is an important distinction. Even if you request to be removed from an entire category, for instance, you don't want to receive any more catalogs, any company of which you are a customer is permitted to maintain you on its mailing list for invoicing or returns. You will be removed from the prospects list but will continue to receive mail. We are advised that you must contact these companies directly, through their websites or customer service departments, to be permanently removed.

We hope these tips will help make the process of managing your mail as quick and hassle-free as possible.

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your legal documents in one place. If you are a client of Berwitz & DiTata LLP, we provide you with a binder that should hold your documents, but you can use a file folder or drawer to hold related documents. We believe that these include: life and long term care insurance policies, beneficiary designations, deeds to the cemetery plot, a listing of all bank and investment accounts, etc.

The NIA suggests that you tell a trusted family member or friend where it is that you have placed your

important documents. There is no need to tell this person about your affairs, but someone should know where you keep the papers in case of an emergency. Some people suggest giving copies of your documents to your agents. Remember, however, that you can change your wishes at any time during your life. If you have given the documents to the agents, getting them back may create a “document management” problem. If you have changed an agent, how do you deliver this news without alienating that person? What if the agent put the copy of your former document in a “really good place” but now can’t find it? It is a good idea to give a copy of your most

recent health care proxy to your primary care physician and any other doctors whom you see regularly. If you change your proxy, supply the doctors with the updated form. Also, give your agent(s) access to your documents by telling them where to locate the documents.

Finally, the NIA recommends that you give consent, in advance, for your doctor or lawyer to talk with your caregiver as needed. You can give your lawyer instructions about providing copies of the documents. This way, if there are questions about you or your health care or property management, the right people will be privy to the right answers.

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