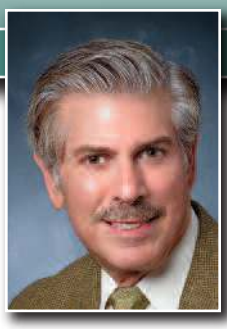
Berwitz & DiTata LLP

A STEP AHEAD

SECOND QUARTER 2019 • VOLUME 16 • ISSUE 2



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Wills Do Not Avoid Probate

We are frequently asked whether having a Will avoids probate. Actually, the opposite is true. If a Will is the foundation of your estate plan, a probate proceeding is required after your death in order to retitle the assets that you owned prior to your death.

The purpose of the probate proceeding is to validate the Will. It is the job of the Surrogate, the Judge who presides over the Surrogate's Court, to ensure that the Will that is presented to the Court was the *last* Will, that it was executed in accordance with all of the formalities required under the laws of our state and that the person who executed it did so voluntarily and of their own free will. Once the Judge is satisfied with the Will itself, the appointment of the executor, the person who was named to manage the estate, is reviewed and approved - assuming that he or she is available, willing and able to serve in that role and has not been convicted of a crime. If the Court believes that the executor can serve and is qualified to do so, it will issue a document called "Letters

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SPRING CLEANING — Time To Review and Renew

Tax season is over! Spring has FINALLY sprung! It's time to "review and renew." Each spring, we at Berwitz & DiTata LLP encourage our clients, friends and "would be" friends to focus on estate planning, refresh those resolutions and stop procrastinating. We call it our annual "Review and Renew" program.

If you have never created an estate plan, now is the time. Although estate planning is rarely a topic people look forward to addressing, we are dedicated to helping clients identify and implement their estate planning objectives with ease and efficiency. We believe that our success is founded on this fundamental commitment to communicate with our clients in a caring and responsive manner. Those who have met with us in a one-on-one consultation know that we believe that everyone can benefit from estate planning regardless of personal income or net worth. Everyone has concerns regarding the future. For instance: How can I avoid probate or the dissipation of my assets to estate taxes? How can I avoid losing control of my assets if I become disabled? How do I protect myself and my family from devastating nursing home costs? Can assets still be protected if a loved one is already in a nursing home? How can I protect my minor

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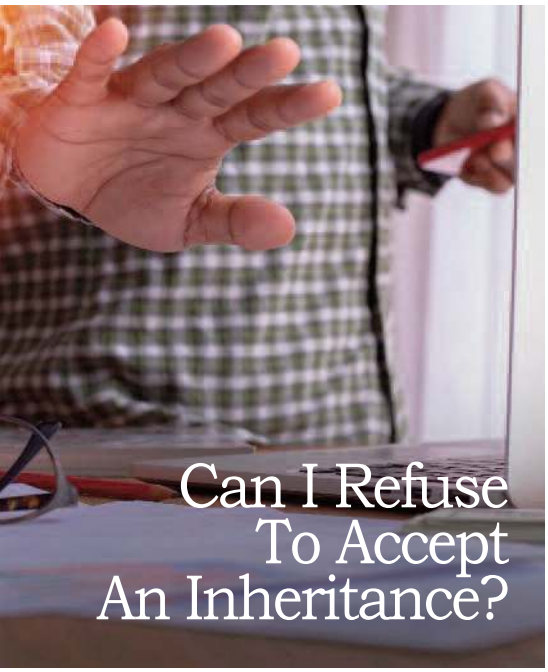

Can I Refuse To Accept An Inheritance?

Believe it or not, there are reasons why people occasionally ask about refusing an inheritance. Sometimes the inheritance is of property that is undesirable or it is an asset that is of no value or one that would be costly to maintain. There are individuals who, for religious or philosophical reasons, do not wish to acquire or increase their wealth. Sometimes one's reason for refusing an inheritance concerns a desire to benefit persons who will receive it instead, i.e. "My children will get it and I would prefer for them to have it." There may be tax implications in accepting the inheritance and disclaiming property could be part of the beneficiary's own estate planning.

An estate disclaimer or renunciation is a mechanism for relinquishing one's inheritance. Disclaimers are very particularized legal documents. To be valid and binding, they must be in writing, must state the name of the deceased person and the identity of the disclaiming heir and they must conform with both state and federal law. The document should state that it is being freely given, without coercion, and typically it should specify that the heir has not received compensation or other benefits for agreeing to disclaim. The executor of the will must receive a copy of the disclaimer.

Typically, a disclaimer must be filed with the Court that has jurisdiction over the estate within nine months of the decedent's death. These time constraints are predicated upon the time within which federal and state estate taxes are due and payable. Depending upon who is disclaiming an inheritance or bequest and what the value of the disclaimed asset is, the disclaimer may affect the calculation of tax liability.

One can disclaim all benefits to which he or she may be entitled, only one item or a specified class of benefits, i.e. all furniture. After the disclaimer is filed, it is the executor's obligation to distribute the disclaimed assets. One is not permitted to specify to whom those disclaimed assets will pass. Ordinarily, the will names the beneficiary(ies) and then indicates who will receive the asset or assets if the named beneficiary(ies) disclaims or predeceases the testator.

If you or a loved one has questions concerning this issue, you should seek the assistance of experienced counsel. Call Berwitz & DiTata LLP for help.

Wills Do Not Avoid Probate

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Testamentary." If there was no Will, the document issued by the Surrogate's Court is called "Letters of Administration." This document is issued following what is referred to as an administration proceeding.

For purposes of illustration, would a bank close an account belonging to someone other than you just because you came into the bank holding a death certificate for the account owner and a Will that named you as the beneficiary of the account? Of course not. To protect itself against possible claims of others, the bank would require you to present the official Court document, Letters Testamentary or Letters of Administration.

Apart from the cost and delay associated with a probate or administration proceeding, the public nature of the proceeding is often quite distressing. Everything in the Court's file, including the names and addresses of your closest family members and beneficiaries and a list of your assets and their values, is a public record. This information is accessible to the general public and can be used to contact your family members, for solicitations regarding estate property and sometimes for other reasons.

Your decision as to the best and most efficient mechanism for disposing of your assets after your death is a personal one that should only be made after consultation with an experienced and qualified attorney. Let Berwitz & DiTata LLP help you!

The Health Care Proxy and the Living Will

It is not unusual for people to misunderstand the purpose and intent of a living will - not to be confused with a last will and testament. In fact, when we review estate planning documents with our clients before they execute them, we are often asked about the differences between health care proxies and living wills. We thought that this might be a good forum to clarify this issue as it reaches a much wider audience.

A health care proxy is the formal designation of another to act as your agent in health care decision making in the event that you become ill or incapacitated or are unable to communicate your wishes or instructions. These are decisions concerning diagnosis, treatment, services and procedures relative to your physical or mental condition and may include end-of-life decisions such as whether to continue or terminate life-sustaining treatment. Under New York law, the health care proxy form must designate a single agent and must be properly signed and witnessed. In addition, ever since the revisions to HIPPA (the Health Insurance Portability and Accountability Act), we strongly recommend that your health care proxy expressly afford your agent access to your confidential medical records and other personal health information, a protection that standard forms available online and in doctors' offices do not provide.

A living will is the written expression of your most significant health care decisions. It is a recommended supplement to a valid health care proxy and constitutes a guide for the agent you designate in your health

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SPRING CLEANING — Time To Review and Renew

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children? How can I protect my disabled child or the assets that he or she may one day inherit? In designing strategies to effectuate our clients' goals, we offer detailed advice and a high level of technical expertise. Now is the time to achieve estate planning peace of mind! Ask those questions, explore the options, get it done.

If you created your estate plan or reviewed it last more than 3 years ago - now is the time. Are your documents up to date? Have there been changes in the law or in your life that should now be considered? The documents that address the needs of a single person are frequently insufficient when he or she marries. If a couple has children, the appointment of a guardian should be a key factor in estate planning. Those documents that were created when the kids were small may no longer reflect their parents' wishes now that the kids have grown and flown. Indeed, once your child reaches the age of 18, he or she should have a valid and enforceable Health Care Proxy empowering you or another to make health care decisions. The "sandwich generation" is discovering that the joy and responsibility of raising children is all too frequently overshadowed by the illness of parents. The need for estate planning takes on new meaning as one approaches retirement and, if illness threatens, timing becomes more critical. Lifetime changes affect estate planning. Even if you can't conceive that the changes in your life may have an impact on your estate planning documents, an estate planning review is a vital element to ensuring that your wishes will be accomplished.

Because Berwitz & DiTata LLP understands the importance of keeping the plan current, we offer our clients a unique value-added component: a complimentary three-year review. For those who have not yet retained our services, there is a nominal fee to review your plan. Let us help you realize your estate planning objectives.

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care proxy. If a question should later arise as to whether the decisions your agent makes on your behalf are consistent with your wishes, a living will can provide the necessary support and ensure that you receive the care and attention that you have directed - and only that.

Even after you have appointed a health care agent, you have the right to continue making health care decisions for yourself for as long as you are able to do so. Your agent does not begin making your health care decisions until you can no longer communicate or doctors determine that your ability to make decisions is impaired. Remember, it is not just Alzheimers or stroke that causes incompetence, mental faculties may be impaired as a result of accident and other illnesses.

Every one of us should be protected by a valid and enforceable health care proxy. Apart from the preparation and execution of the document, however, it is imperative that we fully and frankly discuss these issues, and the way in which we wish to be treated, with our designated agent. Unless your agent knows your preferences regarding, for example, artificial hydration and nutrition (the provision of food and water through a feeding tube), he or she may make decisions that are contrary to, or inconsistent with your wishes.

At Berwitz & DiTata LLP we can assist you with the implementation of these important documents.

Have You Relocated?

Do You Want to Keep Receiving This Newsletter?

If you have moved to a new home, either permanently or temporarily, please contact our office with your up-to-date address, telephone numbers, and e-mail addresses. We want to be sure that you will continue to receive communication from us.