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Anticipated Legislative Changes Affecting Qualified Retirement Accounts

Most of our clients own some form of qualified retirement account such as a traditional individual retirement account (IRA), 401K, 403B, SEP or Keogh. Such an account provides significant benefits to the account owner because the deposits into the account are made with pre-income-tax dollars and the assets in the account grow “tax-free” until withdrawn by the owner or received as a mandatory distribution which begins when the owner reaches 70½ years of age. The owner of such an account can name one or more beneficiaries to receive the account upon death and they, too, are entitled to tax-free growth of the assets in the account. Under the present law, the spouse of an account owner can “roll,” or transfer, the account into their own retirement account and take required minimum distributions beginning when they reach 70½ years of age and continuing based upon their own life expectancy. A non-spouse beneficiary cannot roll the account into their own account, they receive it as a separate “inherited” retirement account. They begin to withdraw minimum distributions annually based

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Mediation in Surrogate’s Court and Elder Law Matters

Mediation is a dynamic, structured, interactive form of **alternate dispute resolution** used to resolve a broad range of conflicts in a variety of settings. It is particularly well suited to the resolution of conflicts among and between family members. It is a process by which an impartial third party facilitates communication and negotiation and promotes voluntary decision-making by parties who are in dispute. It enables parties to formulate their own *interest-based* resolution outside of court and without strict regard to the remedies afforded under law. Parties are not required to be

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Finding Relatives Through DNA Testing: Adoption and Inheritance Rights

The recent popularity of DNA testing kits makes it possible to find relatives we never knew existed. Children who were given up for adoption, or “adopted out,” are now discovering siblings and half-siblings. They are finding parents, grandparents, aunts, uncles and cousins to whom they are biologically related. Apart from all of the other issues that this presents, it also raises a question as to what, if any, inheritance rights attach to these new relationships. The short answer is: It depends.

Generally, if a child is adopted by a non-family member, the birth parents are relieved of their parental duties and all future responsibilities toward the child. Once the adoption order is signed the birth parents and the adopted out child have no right of inheritance from

or through each other. The new “adoptive” parents will have the legal relationship with the child and the parents and the child will secure the right to inherit from and through each other. The adopted child also has the right to inherit from his/her adoptive parents’ relatives.

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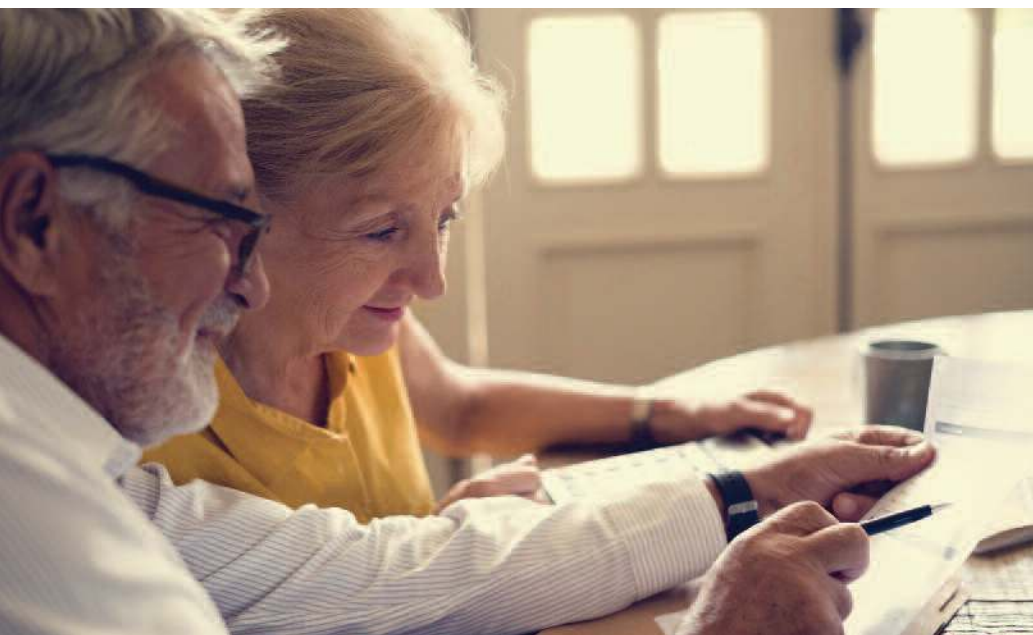
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on their own life expectancy beginning in the year following the death of the original account owner. But they, too, receive the benefit of tax-free growth for all of the time the assets remain in the account.

Recently, the House of Representatives passed, by a 413 to 3 vote, the "Setting Every Community Up for Retirement Enhancement Act" also called the "SECURE Act." Similar legislation is currently pending in the Senate and is called the "Retirement Enhancement Securities Act" (RESA). Both bills significantly affect retirement accounts.

There are some positive aspects of these bills. First, both bills postpone the age at which required minimum distributions must be taken. The SECURE act requires minimum distributions to be taken beginning when the account owner is 72 years old. Under RESA, minimum distributions need not be taken until age 75. Secondly, under current law,

people who continue to work past age 70½ are penalized because they cannot continue to make income contributions to a traditional IRA after that age (although income contributions can continue to be made to a Roth IRA). The SECURE act eliminates this limitation by repealing the age cap for traditional IRA contributions. Finally, withdrawals from retirement accounts prior to age 59½ currently incur a 10% penalty tax while under the new proposed legislation, an aggregate of \$5,000.00 can be withdrawn from a retirement plan without incurring a penalty if the withdrawal is taken within one year of the birth or adoption of the account owner's child.

Unfortunately, there are also some changes that will be detrimental to account owners. Most significant is the change in required distributions to non-spouse beneficiaries. Currently, non-spouse beneficiaries are required to take minimum distributions over their life expectancy. Under the

SECURE act, the entire account must be distributed over a ten-year period which will accelerate the depletion of the inherited account. It is anticipated that this will have a greater affect on large retirement accounts as small accounts are more typically withdrawn within a relatively short time after inheritance. The RESA bill requires non-spouse beneficiaries to take distributions over a five-year time period unless the account is less than \$400,000.00.

If the legislation passes, the impact on a beneficiary will be profound. For example, a 40 year old non-spouse beneficiary of an account worth \$500,000.00 has a life expectancy, under the current tables, of 43.6 years. Her required minimum distribution would be approximately 2% or \$2,147.00 in the first year. As the life expectancy of the beneficiary decreases each year, the required minimum distribution increases. Assuming annual growth of 5%, it will take approximately 26 years, when the beneficiary reaches 66 years, before the required minimum distribution equals the 5% growth. By that age, despite having taking minimum distributions for 26 years, totaling \$615,147.73, the account will still have grown to \$818,905.40. Under the SECURE Act, the same beneficiary will be required to withdraw and deplete the account within 10 years over which time she will have withdrawn a total of \$660,339.36 and the retirement account will be totally depleted. Proper estate planning will be essential because of the increased tax burden that will result from the quicker distributions. Roth conversions may be utilized to minimize this impact.

Clearly, because of the differences between the SECURE act and RESA, further changes are anticipated. We will revisit this topic in a later newsletter after the differences between the two bills are reconciled and it is signed into law by the president.

Finding Relatives Through DNA Testing: Adoption and Inheritance Rights

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Please note that there are some exceptions to the rule. If a child is adopted by a stepparent or a close family member, i.e. in an intra-family adoption by the child's biological grandparent or a descendant of a biological grandparent (aunt, uncle, cousin), the child does not lose inheritance rights from or through his/her biological family and can still inherit from the birth parent and

their family.

In most cases, if a parent creates a will, trust or other testamentary instruction (like a beneficiary designation), once a child is adopted out he or she loses the right to inherit from the birth parent. But, if the document expresses a contrary intention or specifically names the child, the child's right may not be severed.

So how is this significant? When someone dies, heirs are ordinarily entitled to receive notice. For the most part, an adopted child is entitled to receive notice of the death of a member of their adoptive family but not their biological family. However, in limited cases, an adopted child maintains the right to inherit from biological parents and family members.

If you wish to ensure that your estate plan properly addresses your newly found relatives or the rights of your adopted or adopted out children, give Berwitz & DiTata a call.

Mediation in Surrogate's Court and Elder Law Matters

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represented by counsel but they frequently are and counsel work together with the mediator to aide the parties in reaching their goals. The parties take responsibility for their disputes and the resolution of those disputes.

Mediation provides disputing parties with an opportunity to: define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions or "think outside the box," and reach mutually *satisfactory* agreements. Not all mediation results in an agreement but, often, even when the parties have not resolved the conflict, they have a better understanding of their adversary's position and of what it will take to reach resolution.

Because it takes less time than a court case, it is less costly. Court hearings are public, mediation remains strictly confidential. The mediation process increases the control the

parties have over the outcome of their dispute. There is no judge or jury so the parties establish their own goals. For this reason, that the result is mutually agreeable, compliance with the mediated agreement is usually high. The mediated agreement is, however, fully enforceable in a court of law.

The cornerstones of mediation are: confidentiality, the information obtained or exchanged by the parties during the mediation cannot be used in subsequent litigation and the mediator cannot be called as a witness; voluntary participation, the parties make free and informed choices as to the process and outcome; self-determination, the parties mutually agree to such issues as mediator selection, participation, process design, resolution, and termination; and impartiality or freedom from favoritism, bias or prejudice.

The issues that are commonly resolved through adult family mediation are:

- Physical, mental, emotional decline of a parent or loved one
 - parties do not agree on what "incapacity" means
 - parties struggle to secure control

- parties are at variance with medical treatment decisions
- Independence and self-determination vs. safety
 - in these disputes, the parent typically opposes the child's interference
- Caregiver issues
 - who is best suited to care for the parent or loved one
 - residence and long-term care decisions
 - powers of attorney/health care proxy - who makes which decisions
- Adult guardianship
- Estate and inheritance disputes
 - sale of family home
 - division of valuable and sentimental possessions
 - issues between spouse and children of former marriage

We suggest that, if you or a friend or family member is facing issues like these, strong consideration be given to whether mediation might assist in the resolution of the problem. We at Berwitz & DiTata LLP stand ready to assist you or answer your questions.



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At Berwitz & DiTata we often recommend that you take part in spring cleaning and review your documents to see if it might be time for an update. We have been doing some cleaning and maintenance of our own. We have worked hard to update and improve our website and Facebook page. We would love for you to visit our Facebook page at facebook.com/berwitzditata.

Do you enjoy reading our newsletters? Have you had a positive experience working with us? We would greatly appreciate it if you were to spread the word! By all means, “like” us or leave a review. No need to hunt for the site, just go to <http://bit.ly/2WJQOWM>. Do you have suggestions for future newsletter articles or issues that you would be interested in having us explain?

Has our staff impressed you with their caring attention and diligent follow-through? Please endorse our staff. Let us know on Facebook!

We are always working to improve how we reach people in order to find ways to help. Check out our new and improved website and let us know what you think: www.berwitz-ditata.com.

Are you a professional looking to stay connected with our office? Can we work together to improve the lives of our clients? Connect with us and follow us on LinkedIn at linkedin.com/company/berwitz-&-ditata-llp/.

We welcome your feedback and greatly appreciate any time you take to contribute.

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