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Berwitz & DiTata LLP is proud to be celebrating a milestone in 2020: 20 years in business! It has been our pleasure to get to know our clients and their friends and family and to help them navigate "life's loopholes". Thanks so much, we couldn't have done it without you!

How Do I Encourage My Loved One to Move to a Safe Environment?

The writing is on the wall: My parent is no longer safe living at home. Maybe she has forgotten to turn off the stove or has skipped meals entirely because she simply did not remember to eat. Maybe he is no longer showering or changing clothes. Perhaps he has a history of falling - sometimes with serious consequences. It could even be that the hoarding has become so pervasive that exiting or entering the home in an emergency would present complications. Whatever the individual circumstances, no amount of

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The SECURE Act Its Affect on Retirement Accounts — How It Hurts

In our summer issue of A Step Ahead, we discussed the differences between two pieces of legislation each of which would, if enacted, have far-reaching affects on retirement accounts: one that had passed in the House of Representatives, the "Setting Every Community Up for Retirement Enhancement Act," also called the SECURE Act, and the other that was under consideration in the Senate, the "Retirement Enhancement Securities Act" (RESA). On December 20, 2019, the President signed the SECURE Act into law. This new scheme imposes major changes that will, for the most part, be detrimental to beneficiaries of individual retirement accounts (IRAs). It could also impact trusts established to act on behalf of beneficiaries who are immature, incapable or disabled.

There are some positive aspects of the SECURE Act. The age at which required minimum distributions must be taken has increased from the year in which the account holder turns 70½ to the year in which the account holder turns 72. Also, accounts holders are no longer precluded from making contributions to their traditional IRA after reaching a certain age as the SECURE act repeals the age cap for contributions to traditional IRAs. Finally, withdrawals from an IRA prior to age 59½ formerly incurred a 10% penalty tax while, under the new legislation, an aggregate of \$5,000.00 can be withdrawn from a retirement plan without incurring a penalty if the withdrawal is taken within one year of the birth or adoption of the account holder's child.

These benefits do not mitigate the detrimental affect which the accelerated distributions from an inherited IRA



mandated by the SECURE Act impose. The former rules allowed beneficiaries to extend their withdrawals over their life expectancy. Under the SECURE Act, there are now two types of beneficiaries: eligible designated beneficiaries (EDBs) and designated beneficiaries (DBs). There are four categories of EDBs: a surviving spouse who rolls the account of their deceased spouse into their own account, a disabled beneficiary, a minor beneficiary until the age of majority and a spouse who does not roll the account

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Here or There: Which State Do You Call Home?



We have many clients who divide their time between New York and another state, often Florida. If you spend significant time in two different states, there may be a question as to where you actually reside. The question is more complicated than where you spend the most time — and the answer can really matter. Regardless of how you feel about each location or the personal connection you may have to one or the other, for many legal purposes you can only have one legal residence, otherwise known as a domicile.

Which state is your legal domicile will have a significant impact on the governmental benefits or protections afforded to you, on whether your estate will be subject to estate taxes and even on your income tax liability. Your domicile might also affect your estate and retirement planning and whether your advisors would recommend gifting as a planning strategy. Property ownership is defined differently in

different states and marital rights also vary. The amount of compensation that your fiduciaries such as guardians, executors and trustees are entitled to and how it will be calculated changes from state to state, as do the rules governing the powers and obligations of such individuals.

Your domicile is generally determined by several factors but among them is your intent to make one place your legal domicile. Sometimes domicile can be established by completing and filing certain documents or declarations which evidence your intent to make a certain state your domicile. These are governed by specific requirements as to their contents and supporting documentation, if any, and where they must be filed. Other factors include the amount of time you spend in each location, where you are registered to vote, your mailing address, where you file your taxes, where your driver's license was issued, where your car is

registered, your business and other contacts, where you own property, the address listed on your passport and the address listed on your Last Will and Testament or other estate planning documents. Therefore, if you question the state in which it might be said that you are domiciled, or if you live in more than one place regularly, it is recommended that you consult with an attorney in the state in which you intend to establish your domicile. To the extent that you wish to change your domicile, it is important to consult with an attorney to formalize a change and to inquire about mandatory waiting periods for any benefits for which you may wish to qualify. Failure to properly establish a domicile in a new state and to abandon your domicile in a former state can have tax and other consequences. Ask your attorney about the consequences of changing your domicile and the impact of such a change.

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into their own and who is less than 10 years younger than their deceased spouse. Everyone else is a DB.

The rules for the EDBs are virtually the same as under the prior law - distributions are taken based upon the remaining life expectancy of the EDB. The sole exception relates to a minor child. DBs and minors who have reached the age of majority must exhaust the account within ten years. This can be accomplished by taking a 100% distribution on the first or last day, or in equal or unequal yearly distributions that result in the full depletion of the account by the end of the tenth year.

The impact on DBs will be profound. As we discussed in the earlier article, under the old rules, the life expectancy

of a 40 year old beneficiary was 43.6 years. If the account was worth \$500,000.00, the minimum distribution in the first year would be approximately 2% or \$2,147.00. As the life expectancy of the beneficiary decreases each year, the required minimum distribution increases. Assuming annual growth of 5% in the remaining account assets, it would have taken approximately 26 years, the year the beneficiary reaches the age of 66, before the required minimum distribution equals the 5% growth. By that age, despite the beneficiary's having taken minimum distributions for 26 years, totaling \$615,147.73, the account would 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.

The accelerated withdrawal schedule is not the only problem, however. Distributions from a tax deferred retirement account are taxed as ordinary income. As a result, not only will the total distributions be significantly reduced, they will be subject to local, state and federal income taxes which could reduce the amount retained from the accounts by as much as 50%.

There may be options available to you to minimize the impact of the SECURE Act. We are available to review your situation and identify and discuss the options that will help you limit the affects of the SECURE Act for a nominal fee. We urge you to contact us at your earliest convenience to take advantage of our review.

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reasoning works and despite my pleading, cajoling, bribing or visits to local assisted living facilities, my loved one simply refuses to even consider moving.

If this is your nightmare, what can you do? Some people mistakenly believe that a power of attorney or healthcare proxy gives them the authority to force their parent to move. No document gives the agent that authority. You fear that disaster is just around the corner but you cannot be there 24/7 to provide a safe environment. We are confronted with this issue with some regularity and the unfortunate reality is that, short of commencing a guardianship proceeding to have your loved one declared incapacitated, or incapable of decision-

making, there is no way to compel them to move.

With over 20 years of experience in the area of elder law, clients come to Berwitz & DiTata LLP for assistance in planning for the next move and also for guidance on how to implement ideas and present them to loved ones. Using our extensive experience and the exercise of compassion and patience, we help families navigate these trying times.

We often discourage attempts to assume decision-making for another because, apart from being costly and time-consuming, they may not have a favorable outcome. Guardianship is not an easy or inexpensive process and it may become contentious. When the matter comes to court, the court will assign a court evaluator to investigate the circumstances and act as the court's "eyes and ears." The court may also appoint an independent attorney to represent the elder. The court must conduct a

hearing and determine whether the person genuinely requires a guardian. In New York, the Mental Hygiene Law directs the court to apply the *least restrictive form of intervention* to assist those who are incapacitated in meeting their needs, while at the same time allowing them to exercise independence and self-determination. Individual preferences are respected and the court looks to implement safeguards that are in the best interests of the individual. Thus, if the individual can be maintained in their home with safety modifications and home care, that may constitute the least restrictive intervention.

Regardless of the particulars, the issues faced by individuals in this situation are heart-wrenching. Resolving issues like these takes forbearance and persistence and, sometimes, that isn't enough. If you or someone you love is confronted with this dilemma, give them this article and suggest that they call Berwitz & DiTata LLP.



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In the News....

At Berwitz & DiTata we share a commitment not only to our human clients but also to our beloved pets. Our associate, Kristi DiPaolo, who co-chairs the Animal Law Committee at the Nassau County Bar Association has been instrumental in organizing a community

program, in conjunction with the Community Relations and Public Education Committee, entitled **“Cold Noses and Warm Hearts: Laws That Protect You and Your Pets.”** Kristi will be speaking on pet trusts and other estate planning strategies for protecting your pets and their caregivers.

The program will take place on **March 31, 2020 from 5:30 to 8:30 p.m.** at the Nassau County Bar Association located at 15th and West Streets, Mineola, New York 11501. Attendance is free and open to the general public.

In addition to pet trusts and estate planning for pets, the program will cover other interesting topics regarding laws that protect individuals and their pets. Please join Kristi on March 31st. Call the Nassau County Bar Association to register (516) 747-4464.

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.

This newsletter does not constitute the provision of legal or tax advice.
It is to provide general information only and should not be acted upon without legal and/or professional assistance.

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