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In the News...

As part of our goal to keep you informed, we provide the following updates:

Changes to New York State Power of Attorney Law

On December 15, 2020 Governor Cuomo signed into law changes to the New York State Power of Attorney. Changes will take effect on June 13, 2021 and new forms cannot be executed before that date. It is important to note that the new law will not affect the validity of Powers of Attorney signed prior to June 13, 2021, existing Powers of Attorney will remain effective.

Medicaid MLTC Lock-In

Beginning December 1, 2020, individuals enrolled in a Managed Long Term Care (MLTC) Medicaid plan will have the ability to change to another MLTC for the first 90 days. After this grace period, enrollees will be locked-in to the MLTC

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ACT NOW: The Affect of the 2020 Elections on Future Tax Laws

The 2020 elections were finally completed on January 5, 2021, with the election of two Democratic senators in Georgia. The Democrats retained a majority in the House of Representatives. The Senate, however is equally divided, with 50 Republican Senators and 50 Democratic Senators. Because Vice President Harris, a Democrat, casts the tie-breaking vote, the Democrats will have a slight advantage.

What impact will this have on estate taxes going forward? At present, up to \$11.7 million can be gifted during each person's lifetime or used to avoid estate taxes at death. Additionally, assets that are owned by a decedent at death, that have appreciated in value, receive a "step-up in basis." The practical effect of the step-up is to eliminate all of the tax on the "gain," the appreciation in value that occurred during the decedent's ownership of property, in determining whether there is capital gains tax liability when the property is sold.

President Biden outlined his position regarding income, estate and gift taxes during his election campaign. The most significant proposed tax policy changes were in the area of estate and gift taxes. Biden's proposals include eliminating the step-up in basis at death for inherited assets and reducing the estate tax exemption, currently \$11.7 million, to \$5 million (indexed for inflation) or



possibly even \$3.5 million, both of which were in effect at various times prior to enactment of the Tax Cuts and Jobs Act (TCJA) passed in 2017. In light of the Democratic majorities in both houses of Congress, change is likely.

Assuming that changes are implemented, what will be their effective date? The last time that a significant tax increase took effect retroactively was in August 1993, when the Omnibus Budget Reconciliation Act increased the top estate tax rate from 50 percent to 55 per-

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for nine months and will be unable to change plans without good cause.

Coffee with Kristi

Join us for Coffee with Kristi. Our monthly series will feature attorney Kristi DiPaolo who will answer your estate planning questions. The next program will be on February 23, 2021 from 8:00 a.m. to 9:00 a.m. live via Zoom. Kristi will discuss “Protecting Assets for Those You Love: When Should Estate Planning Begin?”

Additional programs will take place on the following dates, from 8:00 a.m. to 9:00 a.m., via Zoom:

March 23, 2021

April 27, 2021

May 25, 2021

To register for the February program, please check out our website (www.berwitz-ditata.com), and Facebook page (www.facebook.com/berwitzditata) or call Arlene at (516) 747-3200. For future programs, our website and



Facebook page will be updated the first week of each subsequent month for sign-up links.

Changes to Medicaid Home Care Rules

As we have previously advised, Governor Cuomo implemented, as part of the 2021 budget, changes to the rules for eligibility for Medicaid home care benefits. These changes were scheduled to take effect beginning October 1, 2020 and require a 30 month look-back for home care applications with a penalty period for transfers made after October 1, 2020. However, because of the COVID pandemic and

protections under the FFCRA Families First Cares Act, New York State cannot put restrictions on Medicaid eligibility. Therefore, the implementation has been temporarily delayed to April 21, 2021 and may possibly be delayed further to July 1, 2021. This means there is still some time to make transfers and apply for Medicaid home care benefits without penalty provided that the application is submitted before implementation of the new rules. If you are considering applying for Medicaid home care for yourself or a loved one, now is the time to act! Give Berwitz & DiTata LLP a call so we can assist you.

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cent, retroactive to January 1, 1993. Although retroactive enactment happens infrequently, it is possible that the tax increases will be retroactive to January 1, 2021.

However, high levels of unemployment and slow economic recovery resulting from COVID-19 mitigate against a retroactive tax increase. Thus, it is reasonable to expect that any tax increases would be effective

later in 2021 or on January 1, 2022, but there are no guarantees. This uncertainty makes it difficult to predict what planning, if any, taxpayers should implement now.

Being proactive is always a better alternative than keeping your fingers crossed and hoping for the best. Has it been more than three years since you had your estate plan reviewed? Have you experienced significant

changes in your life that effect your planning since the last time it was reviewed? Are you are concerned about the potential impact that changes in the taxation of estates will have on your nestegg? You should contact us to set up an appointment to review your estate plan if you have answered “yes” to any of these questions because peace of mind is priceless.

The Importance of Valid and Enforceable Advance Directives

Most people do not realize the importance of comprehensive and validly executed advance directives such as the Health Care Proxy, Power of Attorney and Living Will. These documents empower those whom you most trust to make decisions for you concerning your health, medical care, property and finances. In the event that you become incapacitated and do not have these documents in place, no one will have the legal authority to make health care decisions for you or take care of your finances.

In September 2009, the New York General Obligations Law promulgated vast changes in what had been the standard New York Power of Attorney for many years. The law was amended again in September 2010. The law is changing again this year, see “*In The News . . .*” in this issue. Because of the significant changes that have been incorporated in the document over time, a Power of Attorney that was prepared and signed before September 2009, while valid, may be difficult to enforce.

The failure to prepare advance directives becomes problematic if you become incapacitated and are no longer capable of handling your affairs. In order to empower another to make health care or financial decisions for you, a guardianship proceeding would be necessary.

A guardianship proceeding is the process by which a Court appoints a representative, called a guardian, to make personal and property management decisions for an individual who is ill or incapacitated (the “IP”) and has not done advance planning. It is costly, time-consuming and in-

trusive on affairs that most of us would prefer to keep private. It restricts the legal rights of the IP. The Court declares that the IP is unable to handle personal and/or financial affairs and needs special protection.

The process starts with the filing of a petition. Sometimes there are issues among siblings as to who should be appointed guardian for an incapacitated parent. This could lead to a contested guardianship proceeding, which is even more costly and time-consuming. The petition must be served on the IP, family members and others. The Court appoints a Court Evaluator to conduct an investigation and the Court Evaluator interviews the IP and family members, speaks with medical and care providers, reviews financial documentation and submits a report to the Court. A hearing is held to determine whether a guardian is required and, if so, who should serve in that capacity – and the Court does not necessarily appoint the person whom the IP would have selected. The process ordinarily takes several months. However, due to budgetary cutbacks in the Courts, staff at limited capacity and COVID-19, the process is taking even longer.

An attorney customarily represents the petitioner and one may be appointed to represent the IP. Court and attorneys’ fees and the fee of the Court Evaluator must be paid from the IP’s funds. A guardian is typically required to post a bond or other security and to pay annual premiums to keep the bond current. A guardian must file an accounting of monies collected and spent on behalf of the IP. The administration of the



guardianship is supervised by the Court. Frequently, a guardian must obtain Court approval before acting on behalf of the IP.

During this lengthy process, no one has the legal right to act on behalf of the IP. No one can pay the IP’s ongoing expenses such as rent, utilities, mortgage or taxes. Additionally, if Medicaid planning is necessary, nothing can be done until the guardian is appointed. The costs of both in-home and nursing home care accrue until the guardian is appointed and empowered to act.

The solution is to create advance directives — but beware. Today, many websites offer to assist the unwary in preparing these documents themselves. But it is important to comply with the ever changing rules of our state in order to ensure that your documents will perform as you want them to. That is why it is best to have qualified help in preparing these documents for you. Berwitz & DiTata LLP strongly encourages clients and friends to implement powers of attorney, health care proxies and living wills at the earliest time. Call us to help you.

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Berwitz & DiTata LLP Welcomes Christina



Berwitz & DiTata LLP welcomes associate attorney Christina A. Sammartino to the firm. After earning a bachelors degree in legal studies in business from Hofstra University, Christina obtained her law degree from Pace University School of Law. Christina has spent the majority of her career practicing exclusively in the areas of trusts and estates and elder law, handling estate planning, trust and estate administration, guardianship proceedings under Article 81 of the Mental Hygiene Law, Medicaid planning and applications. Outside of work, she enjoys spending time with her husband, daughter, dog and extended family.

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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