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Five Estate Planning Myths

Understanding who needs to do estate planning, what an effective plan should include and how to go about executing the documents, is key to establishing a valid and enforceable plan that is right for you. Misconceptions abound and any one of them can result in costly mistakes.

Properly crafted, an estate plan will protect you during your lifetime, even during illness or incapacity, allow you to select and empower those whom you most love and trust to manage your affairs or make decisions for you if you become ill or incapacitated, ensure that your property and treasured possessions will be distributed to those whom you have selected under the circumstances you direct, protect assets for those who are or may become disabled and can even protect assets against depletion from taxes and long term care costs!

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Supplemental Needs Trusts for Adult Beneficiaries

When one creates an estate plan, he or she will generally inquire as to the provisions that will protect the rights of minor children. What is often overlooked is planning for adult beneficiaries who may be receiving governmental benefits such as Medicaid or Supplemental Security Income. Certain governmental programs have income and resource limits and the receipt of an inheritance could affect continuing eligibility for benefits. Planning strategies can be incorporated to ensure that the adult beneficiary with special needs can receive the full benefit of an inheritance without suffering a reduction in governmental benefits. This is done through the establishment of a Supplemental Needs Trust (SNT).

An SNT can be created through a will or under the terms of a revocable or irrevocable trust. The SNT can provide that, upon the death of the creator(s) of the trust, the inheritance will be held IN TRUST and can be used to supplement and not replace or diminish any benefits or assistance the beneficiary may receive. The assets are intended to enhance the beneficiary's quality of life and supplement governmental benefits. Upon the beneficiary's death any remaining assets can pass to the creator's other beneficiaries or otherwise as the creator directs.

An SNT can also be created and funded during the lifetime of the creator. The assets of the creator of the



trust can then be used for the beneficiary's supplemental care and benefit. This can be done through the mechanism of a Third Party Supplemental Needs Trust (Third Party SNT). Since the assets are held IN TRUST, they are not considered assets of the beneficiary and will not affect their ability to receive governmental benefits. Upon the beneficiary's death, the assets can be distributed in accordance with the creator's wishes.

If you would like to discuss the establishment of a Supplemental Needs Trust for an adult beneficiary, please give Berwitz & DiTata LLP a call so we can assist you.

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Some estate planning devices will eliminate court costs and significantly reduce attorneys' fees. Most importantly, effective estate planning will allow your loved ones to mourn your loss without unnecessary red tape and financial confusion.

The following are some common myths that people have about estate planning:

Estate planning is only for the wealthy. First and foremost, irrespective of the size of your estate, a valid will is the only way to name a guardian for your minor child or children. If you have a small estate, you may not need a *complicated* will or trust, but you should have a will that directs the disposition of your estate, in other words, who gets your assets. But the real problem is that a will is not the most important

part of estate planning. A thorough estate plan must include a power of attorney and health care proxy, both of which protect you while you are still alive. At Berwitz & DiTata LLP, we like to call that "life-time planning." A power of attorney allows you to appoint someone to handle your finances in the event that you become incapacitated. A health care proxy appoints someone you trust to make medical decisions for you in the event that you are unable to communicate your wishes.

I'm too young for estate planning. Estate planning is not just about what happens after death. "Death-time planning" is of paramount importance if you have minor children but "life-time planning," planning for your own future, can start as early as age 18. Unfortunately, accidents happen — at any time, to anyone — and it is important to be prepared at every age. Every adult should have a valid and enforceable health care proxy and power of attorney.

My will takes care of everything. A will is a legally-binding statement directing who will receive your property at your death. It also appoints a legal representative, the "executor," to carry out your wishes. However, the will controls the distribution of only "probate assets," those assets that are owned in your name individually. Probate is the court process that validates your will and directs the distribution, post death, of your property to the persons named. That's all. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in a trust, life insurance proceeds and accounts with named beneficiaries, such as IRAs or 401Ks, all pass outside of probate. Thus, a comprehen-

sive plan must include more than a will. In fact, the plan may be designed to avoid probate. In addition, it should appoint someone to act for you if you become disabled or incapacitated, protect beneficiaries who are or later become disabled, protect assets against the costs of long-term care, and even save on taxes.

It is cheaper to create a will on my own. It is tempting to try to save money by doing it yourself, either with some form of online service or just by writing it yourself. Unfortunately the old adage that "you get what you pay for" holds true. The do-it-yourself (DIY) variety of estate planning documents inevitably fall far short of the mark and may end up costing more in the long run. Without a legal education and years of experience, it is impossible to know what planning opportunities are available and how to properly implement them and, if your needs are in the least bit out of the ordinary, how to accommodate them. DIY estate planning can lead to problems that prolong the administration of your estate, cost more and create headaches for your heirs.

Once a plan is in place, I'm done. Once you have a plan in place, you need to review it every few years or whenever you experience a life altering change such as marriage, divorce, the birth of a child, the purchase of property in another state, the death of a parent or spouse, a significant increase or decrease in assets. Circumstances change over time and your estate plan must keep pace with these changes. We are happy to visit with our clients periodically, on a complimentary basis, even if they have not faced major life changes.

Contact Berwitz & DiTata LLP to get working on your estate plan.

Can I Gift My Life Insurance to Charity?

Life insurance has long been touted as an essential strategy for protecting a young and growing family. As we age, however, life insurance becomes more expensive and the need for it may lessen. Recently, clients of ours asked about donating a life insurance policy to charity. They had already put away their “nest egg” for retirement and their children were grown and independent. They also did not believe that their estate would be taxable or that the policy would be needed for estate liquidity and wanted to make a meaningful charitable contribution. Upon reflection, we were able to give them several options.

First, you may donate an existing life insurance policy to your favorite charity outright. To do so, you need only change the ownership of the policy. Your insurance company can provide you with the forms. Speak with your tax adviser about whether this would qualify for a charitable income tax deduction for the value of

the policy at the time of the gift - but don't be fooled. The value is *not* the face amount of the policy. You must ask the insurance company to assist you in ascertaining the policy's value.

If you change ownership and the policy has ongoing premiums, those would be the responsibility of the charity. You can increase the value of your contribution, however, by continuing to make the premium payments to the insurance company on the charity's behalf. Alternatively, you can pay the premium to the charity and let the charity pay the insurance company. To the extent that you continue to pay premiums on a policy that is owned by the charity, your premium payments would also be tax deductible.

Another option is to convert the policy to a paid-up policy. This will reduce the proceeds upon your death but the charity will have no premium payments to make during the balance of your life. This will eliminate the possibility that the policy will lapse

because the charity cannot afford to make premium payments or because it fails to make a timely payment.

You may also consider gifting a new life insurance policy to the charity. If you are considering this option, however, please note that, if the charity is going to be the owner, it must have an “insurable interest” in the donor. Thus, unless you have a strong, ongoing relationship with the charity, you may have difficulty satisfying this requirement.

It is important to consider how best to utilize the value of your life insurance policy when doing estate planning. If you are contemplating charitable giving, a life insurance policy may be a convenient mechanism for accomplishing your goals. Remember, the beneficiary designation on file with the insurance company will govern to whom payment will ultimately be made. It is essential to review these in conjunction with any change to your estate plan. Work with an experienced estate planning attorney to ensure your charitable giving is effective!

In the News...

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

Coffee with Kristi

Join us for Coffee with Kristi. Our monthly series will feature attorney Kristi DiPaolo who will answer your estate planning questions. These programs will take place on the following dates and times, via Zoom:

September 28, 2021
from 8:00 am to 9:00 am

October 26, 2021
from 12:00 pm to 1:00 pm

November 30, 2021
from 8:00 am to 9:00 am

To register, please check our website (www.berwitz-ditata.com) or Facebook page (www.facebook.com/berwitzditata) or call Aidalee at (516) 747-3200. Our website and Facebook page will be updated during the first week of each month for sign-up links.

We want your feedback. If you have topics that you would like Kristi to discuss in future programs, please contact us through our website, email aidalee@berwitz-ditata.com or call Aidalee at (516) 747-3200.

Changes to New York State Power of Attorney

As we reported in our last issue, changes to the New York State power of attorney form became effective on June 13, 2021. A new form has been promulgated in accordance with the law and can now be utilized and the old form, if executed on or after June 13, is invalid. The new law does not affect the validity of Powers of Attorney that were validly executed prior to June 13, 2021. If you are considering updating your power of attorney or reviewing your estate plan, now is the time! Berwitz & DiTata LLP can assist you.

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Time To Say Goodbye

I have some exciting news to share... I retired at the end of June! It was a bittersweet decision, but it was time for me to go. I am going to kick back and relax for the summer: read, garden, cook, lie in the sun and spend time with family and friends. Planning the future will wait while I decompress.

I have been with Berwitz & DiTata LLP for more than 15 exciting, stressful, enlightening and crazy years. I've learned and grown so much during this time, both personally and professionally. However, my favorite part of the job has always been speaking with our clients. It has been my pleasure to be of assistance and to get to know



so many of you. I know that Larry, Maureen and our team will take good care of you in my absence, but I couldn't leave without saying goodbye and wishing you all well.

Would You Like To Read About It Here?

We at Berwitz & DiTata LLP are proud of our newsletter and hope that each issue brings our clients and friends insightful and timely information. We endeavor to write articles geared to your interests and concerns. We would be happy to receive your feedback. More importantly, if you have a question or would like us to address a particular topic, please call and let us know. We will try to include it in one of our next issues. Just call or drop us a line.

This newsletter does not constitute the provision of legal or tax advice.
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