A STEP AHEAD

SOMEONE TO WATCH OVER MY CHILD:

WHAT TO CONSIDER WHEN PLANNING FOR CHILDREN WITH SPECIAL NEEDS

This is the first part of a two-part series The second part wil appear in our Winter Issue

To parents, children are always children, no matter their age. We take care of them when they are young and we want to ensure that they will be safe, comfortable and well provided for when we age, perhaps need care ourselves, or are no longer here. For this reason, estate planning is an important tool to assist us in making sure that our wishes are fulfilled.

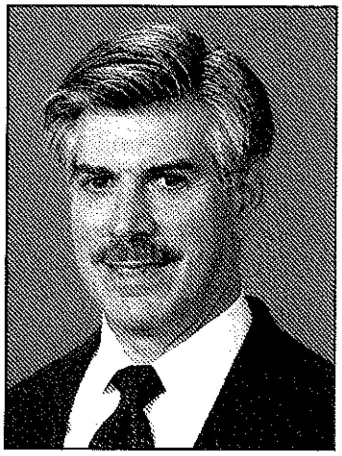
Planning is especially important for families with children who have special needs as a result of mental, emotional or physical disability. Disabled children may need to be physically cared for, may not be capable of handling their financial affairs, may have modest means and, as such, may be entitled to, or the recipients of, governmental benefits such as Medicaid or Supplemental Security Income (SSI). Trusts are often utilized to protect assets for the benefit of a disabled child but they usually contain certain restrictions on the access to the funds so that the child will continue to be eligible for governmental benefits.

Certainly, no two families are alike and estate plans should reflect this uniqueness Yet, there are certain common things that parents should consider when planning for the continued care and support of their disabled children:

- Does the child qualify for, or is he receiving, public assistance? Are all of his needs adequately met? If so, you may still wish to leave funds for the benefit of your disabled child, to meet his "special needs." "Special needs" are typically items or services which the state or governmental agency will not provide. For instance, funds may be used to take a child on vacation, a dream trip to Disney World, or to buy an I-Pod or computer, or to pay for a birthday celebration or a meal out. Governmental benefits include only day-to-day medical and custodial expenses, no "luxuries."

- What percentage of your estate should be set aside for the disabled child? Sometimes this depends on the extent of the child's disability So, for instance, if a child is severely disabled and resides in a facility on governmental benefits he may not have significant "special needs." If a child is principally independent but has an illness that is or will become

See **SPECIAL NEEDS,** Page 2



In This Issue:

Berwitz & DiTata LLP

Fall 2007

Volume 4, Issue 4

SPECIAL NEEDS, from Page 1

disabling, he may require a great deal of support later in life. Certainly this should be taken into consideration when ascertaining how to divide the estate.

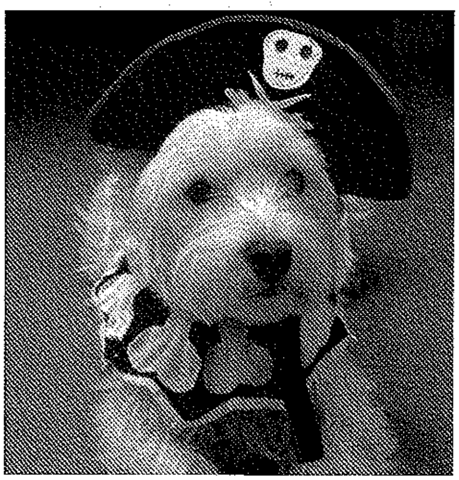
- Can he take care of himself physically? If not, who will care for him and/or supervise his care in the future? You want your child to receive the same level of care you are providing. Apart from a caregiver, he will need an advocate, someone to protect his rights. Other children may not be able to take on this responsibility for various reasons: they have their own families, they live in another state, etc.

- What impact will being treated differently from your other children have on your child? If your child is able to handle his own financial affairs consider how the restrictions of a "special needs" trust will impact him.

No doubt, awareness of various social, cultural, emotional and financial factors may increase our ability to ensure the security of our disabled children and to enhance the quality of their lives. ◆

HOW CAN I PROVIDE FOR MY PET?

Most pet owners consider their pets to be part of the family. In fact, many refer to themselves as the pet's "Mom" or "Dad." Often, our clients wonder who will care for their pets if they become ill, incapacitated or die. They wish to provide their pets with a continuity of care. Unfortunately, because a pet is considered personal property, like furniture or a car, it can not be named as a beneficiary of a Will. Often, a provision in a Will for the benefit of a pet, for instance by making a bequest to a caretaker, fails because there is no recourse if the caretaker takes the money and leaves the pet at the pound. Also, a Will is usually not reviewed until after the pet owner has died. Thus, if the owner is incapacitated or hospitalized, the pet is unprotected - and hungry!



Have you met Tycho?

In New York, and 38 other states, pet owners may now create trusts for the care and protection of their beloved pets. A pet trust is a legally enforceable mechanism for providing for the care and maintenance of pets in the event of the owner's disability and/or death. Such a trust can mean the difference between life and death for a pet. When billionaire hotel heiress Leona Helmsley's estate was made public this fall, it was revealed that she had left 12 million dollars in trust for her dog, Trouble. While this is certainly extreme, establishing a pet trust is important for pet owners who want to ensure that their faithful companion will receive proper care throughout its life.

There are limitations. The funding of the trust must be reasonable to accommodate the needs of the pet. Courts decide if the assets contributed to a pet trust are excessive. There is also a 21-year limit on the life of the trust. While this is more than enough for domestic dogs and cats, long-living pets such as parrots and turtles may be deprived of legal protection before they die.

Things to think about when establishing a Pet Trust: You will need to name a Caretaker, one who is willing and able to care for the pet and carry out detailed instructions concerning the pet's care and maintenance. The more particular the instructions, the easier it will be to care for the pet. Provisions can require the Caretaker to bring the pet for visits with an incapacitated owner. A client with multiple pets may want to specify that they continue to live together. You should designate a substitute Caretaker if the first is unable to perform. A Trustee and substitute Trustee should be named, someone who disburses the funds to the Caretaker. Pet trusts can also designate an "Enforcer," one whose job it is to make sure that the Trustee and Caretaker comply with the trust.

There are also not-for-profit sanctuary organizations that will provide perpetual care programs for pets and other organizations that will place these pets in foster care homes. Some programs require contributions. Almost all require advance enrollment. Once again, appropriate provision must be stated in the owner's estate planning documents.

If you want to ensure that your pet, who has given you love and loyalty, will be continually cared for, please call us or make an appointment to talk about this important estate planning tool. ◆

TAX PLANNING, from Page 4

would receive the benefit of a charitable deduction for the full value of the stock.

A word of caution is necessary. The effect of a gift of highly appreciated assets to a child or grandchild, instead of cash, does not eliminate the capital gains tax liability when those assets are later sold. Instead, the recipient will be responsible to pay the capital gains tax based upon the difference between the sales price and your purchase price. Moreover, if you gift assets valued in excess of the $12,000 annual gift allowance, you are required to file of a gift tax return. You will also either pay the resulting tax or utilize some of your lifetime unified credit. This, of course, will diminish, dollar-for-dollar, the amount of the unified credit available to reduce your estate tax liability after your death.

Gift planning can be an important estate planning strategy to transfer wealth to beneficiaries during your lifetime and reduce your estate tax liability. To ensure that you have sufficient time to evaluate your options and implement your planning before the end of the year, it is important to meet with your planning professional as soon as possible. ◆

Berwitz & DiTata LLP

310 Old Country Road • Suite 101 • Garden City, NY 11530
Telephone: (516) 747-3200 • Facsimile: (516) 747-3727
Website: www.berwitz-ditata.com

END OF YEAR TAX PLANNING

As we approach the end of the year, gifting strategies are often considered as a means to reduce our clients' taxable estates. For example, each person can gift up to $12,000 annually to others. Together, married couples can gift up to $24,000 per person. Multiply this sum by the children, grandchildren, and even sons and daughters-in-law, and there is the potential for considerably reducing one's taxable estate. Although this gifting strategy is often employed at year's end, it can be repeated as early as January 1 of the following year. The benefit of doing it earlier in the year is that interest or dividends that would have been earned by the gifted amounts are also removed from the estate and shifted to the recipient of the gift.

Another strategy that is often overlooked is making charitable contributions of your appreciated assets. Another strategy that is often overlooked is making charitable contributions of your appreciated assets. For example, assume you were lucky enough to have purchased stock in Google at $100/share when it first went public. On the day this article was written, Google was trading at $700 for a gain of approximately 700%. If you were to sell that stock, you would have to pay 15% federal capital gains tax on the difference between the purchase price and sales price. If you had bought 1,000 shares for $100,000 those shares would now be worth $700,000. If you sold them, a fedreal capital gains tax of $90,000 would be due. If, however, that stock were donated to a favorite charity or place of worship, you would have no capital gains tax liability and

See **TAX PLANNING,** Page 3

We Practice Preventative Law!™