

# A STEP AHEAD

## **ESTATE PLANNING FOR BUSINESSES**

We are frequently retained by business owners to prepare their personal estate plans. They are often unaware that planning is also necessary to ensure the orderly transition of their businesses. Consider this: What will happen to your business if you become disabled? If you and your business partner wish to part ways? If you retire? If you die? Whether you are the sole owner of your business or own it with others, any one of these events, whether it happens to you or your partner, can destroy the relationships that have been nurtured and interrupt the operation and continuity of the business.

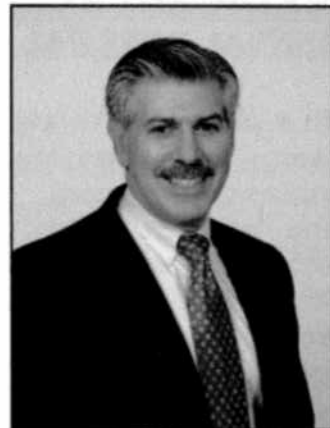
Typically, when more than one person has an ownership interest in a business, the participants know each other, they are comfortable working together, and they contribute individually to the process of running the business. They disregard the reality that even the "ideal" business relationship is only temporary and fail to plan for any of the inevitable contingencies that can interfere with "business as usual." For example, what happens if one of the business owners becomes disabled or retires and can no longer work in the business. Does that individual continue

to receive a salary or share in the profits? If so, for how long? Who will assume that person's responsibilities? Is it expected that he or she will sell his or her share of the business? If so, is this in writing? Is there any requirement that this business owner's interest be sold back to the other owner(s)?

Similar issues arise when a business owner dies. Do the remaining owners want to be in business with a surviving spouse or the children of a deceased owner? What experience do they have? What contribution are they able to make to the business? Does it justify the salary or share in the profits that they expect to receive. Alternatively, is there a plan to purchase the interest of the deceased owner? If so, how will that interest be valued? How will the purchase be funded?

Without appropriate agreements in place, an owner could sell his or her interest to a third party who is a stranger to the other owner(s). So, instead of being in business with someone you know and trust, you now have a relationship with someone who you are meeting for the first time.

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- Veteran's Administration Aid and Attendance Special Pension

# Berwitz & DiTata LLP

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## **MEDICAID BENEFITS ARE NOT GRANTED FOR LIFE: ANNUAL RENEWAL OF ELIGIBILITY IS REQUIRED FOR MEDICAID RECIPIENTS**

Just when you thought it was over, that the painstaking process of record collection and accountability, which is necessary when applying for Medicaid benefits, was just a well-forgotten memory, you receive a letter from the local Medicaid office notifying you that it is time to review your loved one's eligibility. What's this? Can it be? We start all over again?

In New York, Medicaid benefits, for both institutional and home care, are granted for only a limited period, generally not more than 12 months. Once a year, or whenever there is a change in the Medicaid recipient's circumstances, such as marital status, health, residency, or asset level, the Medicaid office must determine the recipient's continued eligibility. This process is called "Recertification."

Generally, at least sixty (60) days prior to the date coverage "expires," Medicaid notifies a recipient, or his/her representative, that current information and documentation must be provided in order for benefits to continue. It forwards a recertification/renewal package which must be completed, dated, signed

and returned with the required documentation by the deadline provided. Failure to do so may result in the termination of benefits.

For each annual recertification, Medicaid requests income verification and financial documentation establishing a continuing right to benefits. Current statements from banks and other financial institutions must be provided along with information as to other resources, for instance receipt of or entitlement to an inheritance or the proceeds of a law suit. Medicaid also seeks updated information regarding residence, marital status and health insurance. Home care recipients are required to furnish a medical form, completed by their doctor following examination. As with the initial application process, at recertification, a recipient who is married must disclose information concerning the spouse's income and resources.

Once the initial packet has been reviewed, a caseworker will either demand additional documentation or issue a notice of recertification of eligibility for the next 12 months! Take heart. You won't

hear from them for another 10 months, when you will start the recertification cycle once again.

Please remember that our office is always happy to help you in the recertification process. Please do not hesitate to contact us.

### **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.

## **VETERAN'S ADMINISTRATION AID AND ATTENDANCE SPECIAL PENSION**

Recently, we have received a number of questions about a little known veteran's benefit called "Aid and Attendance Special Pension." Aid and Attendance Pension benefits are additional veterans' benefits available to wartime veterans, and surviving spouses of deceased wartime veterans, who need the aid and attendance of another to meet their daily needs. There are now over 25 million US veterans eligible for some type of VA benefits, many of whom have no idea that this additional benefit exists. It is available to qualifying wartime veterans or surviving spouses, called "claimants" by the VA, even those whose incomes are above the congressionally mandated legal limit for a VA pension, who have significant and un-reimbursed medical expenses, including nursing home expenses.

Aid and Attendance provides benefits for veterans and surviving spouses who require the regular attendance of another person to assist in the activities of daily living such as eating, bathing, grooming, toileting, dressing and undressing. A claimant must

be "incapable of self support" and "in need of regular personal assistance." It also includes individuals who are blind, bedridden, in need of assistance in the application or adjustment of a special prosthetic or orthopedic device, or in a nursing home because of mental or physical incapacity. Individuals in an assisted living facility who require assisted care may also be eligible.

For a claimant to qualify the veteran must have served at least 90 days of active military service, one day of which was during a period of war, and must have been discharged under conditions other than dishonorable. A surviving spouse (marriage must have ended due to death of veteran) of a war-time veteran may also apply.

The applicant must also qualify financially. The Veteran's Administration considers both the resources or assets and the income of the applicant and/or spouse. This means that the applicant must have less than \$80,000 in assets including bank accounts,

certificates of deposit, annuities, stocks, bonds and retirements accounts (IRAs, 401Ks, 403Bs, Keoghs). The home and vehicles are excluded from consideration. Interestingly, the value of a life insurance policy which insures the life of the applicant and is owned by the applicant or another is not considered because the policy holder must be deceased in order to benefit from it. The Aid and Attendance Pension can provide up to \$1,632 per month to a veteran, \$1,055 per month to a surviving spouse, or \$1,949 per month to a couple.

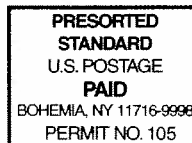
Eligibility must be proven by filing the proper Veterans Application for Pension or Compensation. This application will require a copy of the veteran's separation papers, medical evaluation from a physician, current medical issues, net worth limitations, and net income, along with out of pocket Medical Expenses.

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### **ESTATE PLANNING CONT...**

“Succession planning” is estate planning for businesses. It assures an orderly succession to the ownership and management of a business in the event of a disability, death, falling out among the business owners, or any number of other circumstances that could potentially interrupt the flow of business. In order to ensure that a lifetime of work is not destroyed, the business participants should have a shareholder or partnership agreement and a buy-sell

agreement in place.

While most business owners intellectually agree with the need for business succession planning, often they procrastinate. Regardless of the cause for the delay, i.e., not knowing where or how to begin, the misconception that no one can do as good a job, or even an inability to relinquish control, the result is the same: an end to a business that could have continued to prosper if business planning had been undertaken.

Creating a plan before a crisis occurs will help protect each business owner and the business itself. Unfortunately, once the crisis occurs, it is unlikely that an equitable agreement can still be reached. If you have not done so already, there is no better time than now to put a business succession plan in place. We at Berwitz & DiTata LLP will be happy to assist you in developing a plan that is right for you.

**We Practice Preventative Law!™**