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## The Importance of Reviewing Beneficiary Designations

Having a well drafted last will and testament and/or trust is only the first step to comprehensive estate planning. A proper estate plan is not the result of a singular event. It is an ongoing process, affected by life events, relationships, births and deaths and changes in assets. To be truly effective, an estate plan requires periodic review. In particular, one should review beneficiary designations to ensure that they are correct, that the intended beneficiaries and contingent beneficiaries are properly named and that their respective shares or portions are properly delineated.

Assets that pass to beneficiaries directly, and not by the terms of a will or trust, such as life insurance proceeds, retirement plans, and IRAs, are distributed pursuant to a contractual form, or beneficiary designation, provided by the financial institution holding the asset. Although many people are under the mistaken impression that beneficiary designations provide a simplified

CONTINUED ON PAGE 2

## Spring Cleaning — Time to Review and Renew

Tax season is over!  
Spring has sprung!  
It's time to "review and renew."

Each spring, we at Berwitz & DiTata LLP encourage our clients, friends and "would be" friends to focus on estate planning, refresh those resolutions and stop procrastinating. We call it our annual "Review and Renew" program.

If you have never created an estate plan, now is the time.

Although estate planning is rarely a topic people look forward to addressing, we are dedicated to helping clients identify and implement their estate planning objectives with ease and efficiency. We believe that our success is founded on this fundamental commitment to communicate



with our clients in a caring and responsive manner. Those who have met with us in a one-on-one consultation know that we believe that everyone can benefit from estate planning regardless of personal income or net worth. Everyone has concerns regarding the future. For instance: How can I avoid probate or the dissipation

CONTINUED ON PAGE 3

## Your Responsibilities as Agent Under a Power of Attorney

We have, from time to time, addressed the importance of creating a power of attorney in "A Step Ahead." Through a power of attorney the "principal" authorizes an "agent" to manage property and make financial and business decisions on behalf of the principal. When an agent accepts his or her appointment, a special legal relationship, a "fiduciary" relationship, is created. This article addresses the agent's responsibilities:

- To act according to the instructions of the principal or, where there are no instructions, in the principal's best interest;

- To avoid conflicts that would impair the agent's ability to act in the principal's best interest;

CONTINUED ON PAGE 3

### IN THIS ISSUE:

Spring Cleaning — Time to Review and Renew

The Importance of Reviewing Beneficiary Designations

Your Responsibilities as Agent Under a Power of Attorney

Hidden Pitfalls of Naming a Minor as an IRA Beneficiary



## Hidden Pitfalls of Naming a Minor as an IRA Beneficiary

Naming someone as the beneficiary of your IRA or other retirement account can be a wonderful way to provide for a loved one after you have passed away. Often, the people we name as beneficiaries of our IRA accounts are our children and/or grandchildren. This is a powerful planning tool for the named beneficiary as the account can grow tax free and the beneficiary can take distributions over his/her entire lifetime. This might lead one to assume that the

younger the beneficiary the better. Take heed! There are several things you should consider when designating a minor as the beneficiary of your IRA account.

A minor cannot inherit an IRA in their own name outright. An adult, a parent or guardian or the trustee of a trust established for that minor's benefit, must be designated since the minor lacks the legal capacity to own the account or make the necessary

CONTINUED ON PAGE 4

## The Importance of Reviewing Beneficiary Designations

CONTINUED FROM PAGE 1

means of distributing assets, the truth is that they are replete with potential pitfalls for the unwary.

Often, after a financial institution receives a beneficiary designation form from its account holder, the information is entered into a computer. The form itself is discarded and the permanent record is only as accurate as the data that was entered. If the data was incorrectly entered, problems occur. It is always a good practice to request a copy of your beneficiary information after a beneficiary designation has been submitted to ensure that the information is correctly recorded.

### What happens if the beneficiary dies before the account holder?

The answer to this question depends on whether the account holder has named contingent beneficiaries

and what the financial institution's contract provides. It is possible that the assets will be distributed to the estate of the account holder, and be subject to probate, if the named beneficiary predeceases and there is no contingent beneficiary. Do not think that, if you name your children as beneficiaries and grandchildren as contingent beneficiaries and one child predeceases you, that child's children will receive the predeceased child's share. The entire account will likely be distributed to your other children.

If the beneficiary designation fails and the asset passes through the estate of the account holder, there are several disadvantages. First, is delay. Assets, like life insurance proceeds, which are paid promptly after the insured's death, are frequently needed to pay funeral and other expenses. If the beneficiary designation fails, the proceeds will not be available until an executor or administrator for the estate is appointed by the court. This can be frustrating if the assets were intended to provide immediate liquidity. The second disadvantage is

the loss of asset protection. If assets pass through the estate they are available to creditors. They are subject to estate recovery if the account holder was receiving Medicaid benefits. The failure of a beneficiary designation relating to a life insurance policy may subject that policy to the claim of a surviving spouse when it may have been exempt from the pool of assets available to satisfy the spouse's elective share. The consequences of the failure of a beneficiary designation relating to a retirement plan can also be devastating. If a retirement plan passes through an estate, it must be paid out and taxed within five years of the account holder's death. With a named beneficiary, by contrast, the distributions can be stretched out, along with the tax liability, for decades.

This important estate planning tool should be reviewed to ensure that the maximum benefit is obtained for your loved ones. Let us help you. Contact us to schedule a consultation.



## Spring Cleaning — Time to Review and Renew

CONTINUED FROM PAGE 1

of my assets to estate taxes? How can I avoid losing control of my assets if I become disabled? How do I protect myself and my family from devastating nursing home costs? Can assets still be protected if a loved one is already in a nursing home? How can I protect my minor children? How can I protect my disabled child or the assets that he or she may one day inherit? In designing strategies to effectuate our clients' goals, we offer detailed advice and a high level of technical expertise. Now is the time to achieve estate planning peace of mind! Ask those questions, explore the options, get it done.

If you created your estate plan, or reviewed it last, more than 3 years ago – now is the time.

Are your documents up to date? Have there been changes in the law or in your life that should now be considered? The documents that address the needs of a single person are frequently insufficient when he or she marries. If a couple has children, the appointment of a guardian should be a key factor in estate planning. Those documents that were created when the kids were small may no longer reflect their parents' wishes now that the kids have grown and flown. Indeed, once your child reaches the age of 18, he or she should have a valid and enforceable Health Care Proxy empowering you or another to make health care decisions. The "sandwich generation" is discovering

that the joy and responsibility of raising children is all too frequently overshadowed by the illness of parents. The need for estate planning takes on new meaning as one approaches retirement and, if illness threatens, timing becomes more critical. Lifetime changes affect estate planning. Even if you can't conceive that the changes in your life may have an impact on your estate planning documents, an estate planning review is a vital element to ensuring that your wishes will be accomplished.

Because Berwitz & DiTata LLP understands the importance of keeping the plan current, we offer our clients a unique value-added component: a complimentary three-year review. For those who have not yet retained our services, there is a nominal fee to review your plan. Let us help you realize your estate planning objectives.

## Your Responsibilities as Agent Under a Power of Attorney

CONTINUED FROM PAGE 1

- To keep the principal's property separate and distinct from the agent's assets;
- To keep a record of receipts, payments, and transactions conducted for the principal; and
- To disclose one's identity as an agent whenever acting for the principal.

### What is the Role of an Agent?

Although the power of attorney generally grants broad powers to the agent, these duties prevent the agent from doing whatever he or she wants with the principal's money. The agent must follow the principal's lawful in-

structions as enumerated in the power of attorney, must act with the highest degree of good faith in accordance with the principal's best interests, must act prudently when handling the affairs of the principal, and must make decisions based upon the preferences of the principal. If the agent overrides the wishes of the principal or takes actions that are not authorized by the power of attorney, the agent can be held liable in court for breach of fiduciary duty. Additionally, the agent has a duty to keep bank statements and all other documents demonstrating the actions that have been taken on behalf of the principal. Maintaining such records will allow the agent to address any questions that may arise with respect to the management of the principal's funds.

### When Does the Power of Attorney Take Effect?

Most powers of attorney become effective once they are executed by

both the principal and agent. Often, however, principals do not intend for the agent to begin utilizing the power of attorney until the principal becomes incapacitated or is otherwise unable to handle his or her own affairs. For this reason it is important for the principal and agent to discuss the principal's intentions.

### Conclusion

The role of agent under a power of attorney is a responsibility that should not be taken lightly. If you have been appointed as an agent under a power of attorney and are unsure about your responsibilities, you should consult an experienced estate-planning attorney. Berwitz & DiTata LLP will be happy to assist you in determining your responsibilities as agent and ensuring that you are in a position to account for your activities as agent should the need ever arise.

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## Hidden Pitfalls of Naming a Minor as an IRA Beneficiary

CONTINUED FROM PAGE 2

withdrawals. If the minor beneficiary fails to take the required minimum distribution each year, major penalties can be assessed. When you die, the parent/guardian/trustee for the minor beneficiary must seek Court appointment to control and manage the account and to make the annual distributions on the minor's behalf. This is a process which can be both costly and time consuming.

Another potential issue is that, when the minor beneficiary reaches the age of 18, he/she attains complete control over the account. An 18 year old may not yet be fiscally responsible

or understand the benefits of the tax deferred investment. It is usually preferable to delay control over the account for some time.

The best way to avoid those potential issues is to create a trust as the repository for IRA accounts that you intend to leave to minor beneficiaries. This makes it possible to designate an appropriate person or entity to manage the minor beneficiary's interest until they mature. We would be more than happy to help you explore your options relative to this important part of your estate plan.

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This Newsletter?

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