Berwitz & DiTata LLP

A STEP AHEAD

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Thinking Ahead: Senior Living Arrangements

We recently participated in an elder care meeting at which one of the speakers quipped: "Be kind to your children, they will select your nursing home!" While it was intended as dark humor, it can also serve as a call to action. We won't avoid the aging process. We may as well resign ourselves to the fact that the Fountain of Youth, the legendary spring that restores youth to all who drink from it, does not exist. Under the circumstances, and if we don't want to leave it to our loved ones to arrange, we should plan ahead. Many seniors have retirement accounts and have saved for their future, but relatively few really plan on how those assets are to be spent.

The sooner you begin to explore senior housing options, and the more you know about them, the greater the likelihood that you will be comfortable and satisfied with your surroundings. Visit several facilities and make a list of those things you like and those you do not. Consider, among other issues, your required level of care, the location and accessibility of the facility in relation to your loved ones, social support and, of course, finances. Thankfully, there are many senior living options and the list is growing at an exciting rate.

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Signing Nursing Home Admission Agreements

When a loved one is admitted to a nursing home, in addition to helping your loved one accept the changes that have occasioned the move and managing the details involved in the move, you are often requested, by the nursing home, to sign documentation. Nursing home admission agreements can be complicated and confusing. What do you do?

It is important to read the document thoroughly and not rush. If possible, ask for the opportunity to have your attorney review the agreement before you sign it. Read the agreement carefully. It may

contain provisions that are misleading or even inappropriate. Because you will have greater leverage once the resident has moved into the facility, if possible, defer signing until then. Even if you must sign the agreement before the

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Costly Errors Relating to Beneficiary Designations for IRAs & Qualified Plans

An IRA or qualified plan is often a family's largest investment. Improperly designating your beneficiaries, failing to name beneficiaries, or failing to update your designations, can have unforeseen and even disastrous results. A retirement plan that defaults to the estate is subject to debts, taxes and creditor claims, in addition to accelerated income tax. What follows are the most common mistakes and some simple solutions.

1. Losing the beneficiary designation form. The form controls. Banks and financial institutions frequently merge, get sold or move and the files are lost or misplaced. Do not assume that the plan administrator will have your form when you die. Without it, your loved ones are at the mercy of the default provisions of the plan. The solution is to keep your own records. Ask for a copy of the acknowledged beneficiary form from your plan administrator and keep it with your other estate planning documents.

2. The form is out of date. Have there been changes in your life? All too often, people forget to update their beneficiary forms. For example, Bob

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Independent living communities, sometimes called retirement communities, retirement villages, 55+ communities, or senior apartments, may be a good option for individuals with few medical or physical needs. Residents live in private apartments or houses and are usually very autonomous. Such communities typically offer programs and services such as transportation to grocery and other stores, home health care or help with household chores, as well as social activities.

Assisted living facilities are designed for seniors who are no longer able to live safely on their own but do not require a high level of care. Such facilities typically provide assistance with grooming and the other activities of daily living, medication management and housekeeping. They provide up to three meals a day in a common dining area and residents live in private apartments, which may or may not include a kitchen area. Staff is available 24 hours a day and most facilities provide licensed nursing services. Social activities and scheduled transportation are also usually available.

Nursing homes, or long term care facilities, offer the highest level of medical care and assistance. Twenty-four hour skilled nursing services are available from licensed nurses and residents are monitored by physicians. Residents often share a room and are served meals in a central dining area unless they are unable to participate. Social activities are available. Such facilities often have rehabilitation facilities for individuals who require a high level of care for a limited time, such as immediately following injury, illness or surgery.

One new and emerging option is the **continuing care retirement community**. The continuing care retirement community is a hybrid between independent living and facilities offering higher levels of care. A resident's lifestyle is dependent on his or her changing needs. Healthy adults enter the continuing care retirement community and reside independently in single-family homes, apartments or condominiums. Residential services often include meals, housekeeping, health and social clubs, activities, transportation to and from shopping venues, and maintenance, as well as access to medical care, pharmaceuticals and rehabilitation services. When an individual requires assistance with every day activities, appropriate care is available "on the campus" in an assisted living or nursing care facility. Some find it very comforting to know that, upon admission to this type of community, it will be their home for the remainder of their lives and they will be able to maintain relationships with friends, healthcare providers and staff members. Such options typically require a long term contract.

With so many senior housing options available, learning the differences among them in order to make the right choice for your needs requires vigilance. Berwitz & DiTata LLP and our staff would be more than happy to answer your questions and assist you in evaluating your needs.

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resident moves in, you may still request that the nursing home delete terms that are unfair or inappropriate.

The two items commonly found in these agreements that most require your attention are a provision that the one who signs the agreement is liable for the resident's expenses and a provision requiring all disputes to be resolved by binding arbitration. While these can be of the greatest concern, there are other provisions that you should also carefully review before signing a nursing home admission agreement for a loved one.

Responsible party: A nursing home may ask you to sign the agreement as the "responsible party." You need not agree to this. Nursing homes are prohibited from requiring third parties to guarantee payment of nursing home bills. It is not uncommon, however, for them to ask family members to "voluntarily" agree to pay the bills. The best practice is for the resident to sign the agreement. If the resident is incapable of doing this but has a valid power of attorney, the designated agent should sign as the *agent*. If there is no designated agent, the nursing home will still require that the agreement be signed. In that instance, clearly specify, in writing, that you are signing as the resident's agent. Signing the agreement as a responsible party may obligate you to pay for the resident's nursing home bill if the resident cannot pay. For this reason, it is most important that you review the agreement for the term "responsible party," "guarantor,"

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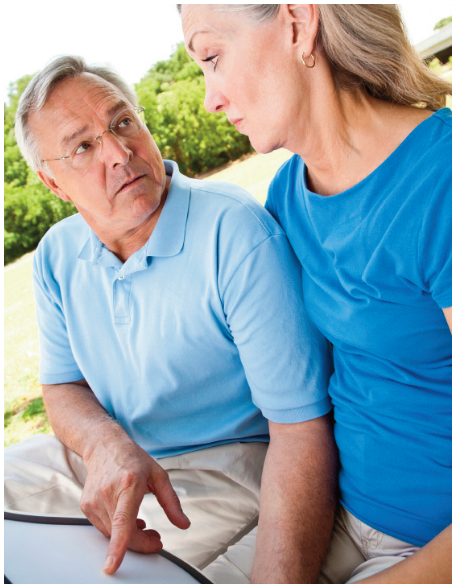
and Jane were married in 1981 while Bob was an employee of a corporation and a participant in its qualified retirement plan. Bob designated Jane as his beneficiary. When Bob and Jane divorced in 2004, her rights to Bob's retirement benefits terminated under the Decree. Bob never changed his beneficiary form. When he died in 2011, the plan administrator disbursed the funds to Jane, in reliance on Bob's beneficiary designation form! The solution is to review the form annually at the same time each year, a birthday, anniversary or even at tax time when you review your financial records anyway.

3. No "backup" beneficiary. You can designate both primary and secondary or *contingent* beneficiaries. A primary beneficiary receives the proceeds of your account at your death. A contingent beneficiary is an alternate person, organization/entity, trust or estate who receives all or a portion of your account if none of your primary beneficiaries survive you. It is important to note that your contingent beneficiary only receives the proceeds of your account if you have no surviving primary beneficiaries at the time of your death. If you fail to designate a beneficiary or if all of your primary and contingent beneficiaries predecease you, the rules of the financial institution or plan that administers your account usually contain a default provision which will govern how your account gets distributed. This default provision may be contrary to your wishes.

4. Misunderstanding the designation. Unless you understand the form, it is possible to accidentally disinherit a loved one. For example, if you name your three children as primary beneficiaries, intending each child to receive one-third, and your oldest child predeceases you, at your death your two surviving children will each receive one-half. Your oldest child's family gets nothing. Similarly, if you list your daughter, the mother of your grandchild, as the 50% beneficiary on your account and your two bachelor sons as 25% beneficiaries and your daughter predeceases you, each son would absorb half of your deceased daughter's share and receive 50% of the assets in the account. Your grandchild would inherit nothing. The solution is to ask questions of your plan administrator.

5. Naming a minor child as a beneficiary. A minor cannot control funds. There are at least two problems with designating a minor as the beneficiary of your retirement account: first, at your death a Guardian will have to be appointed by the Court to manage the assets for the child, and secondly, once the child turns 18, the assets are released into the hands of the child. The solution is to establish a Trust so the funds can be managed in accordance with your instructions by a responsible trustee of your choosing.

6. Missing out on the Opportunity to S-T-R-E-T-C-H your IRA. Stretching an IRA means allowing the account to grow, tax deferred, over the lifetime of the beneficiary. Statistics prove that this is a real money-maker. For instance, if a 30 year old beneficiary of a $100,000 IRA account takes only the required minimum distributions and the funds earn an average of 7% over the life of the beneficiary, which IRS tables estimate at 53 years, the value of the account will grow to $1,026,533! Naming a younger beneficiary can have even more dramatic results. Why doesn't this happen all the time? Because almost 90% of IRAs are cashed out within 6 months of the death of the initial account owner. The solution may be to establish a trust to preserve the "Stretch Opportunity."



With correct planning, your retirement plan can preserve funds for future generations to enjoy. The planning starts with the beneficiary forms. It is important to understand that your Will does not control who gets your IRA. The beneficiary designation trumps your Will. Filling out the beneficiary designation form correctly is critical. At Berwitz & DiTata LLP we assist our clients in understanding their beneficiary designations and, if requested, assist them in completing the forms. We also remind our clients to review the forms periodically, and suggest that they place copies of the forms in their estate planning binders so that they can be easily located when needed.

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.

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"financial agent," or any other term that binds the one who signs the agreement to payment. Before signing, cross out any terms that indicate or even suggest that the signor is responsible for payment and clearly specify that your agreement is to use only the resident's resources and income to pay.

Arbitration provision: Many nursing home admission agreements contain a provision stating that all disputes regarding the resident's care will be decided through arbitration. An arbitration provision is not improper or illegal but it is beneficial to the nursing home as, by signing it, you are waiving the resident's right, in advance, to have a court resolve disputes that arise between the resident and the facility, those concerning payment but also issues regarding the resident's care and treatment. The nursing home cannot require you to sign an agreement that contains an arbitration provision. If you are not in agreement with the arbitration provision, cross out the arbitration language before the agreement is signed.

Private pay requirement**:** Nursing homes are not permitted to require, upon admission, that a Medicare or Medicaid recipient agree to pay privately for a period of time as a condition to admission. Nursing homes are also prohibited from requiring incoming residents to indicate their eligibility for Medicare or Medicaid.

Eviction procedures: Many admission agreements specify the bases upon which the nursing home can evict a resident. Nursing homes are not permitted to evict residents for reasons other than the following: the facility cannot meet the resident's needs, the resident's health has improved, the resident's presence is endangering other residents, the resident has not paid, or the nursing home is ceasing operations. If the admission agreement specifies other permissible grounds for eviction, cross them out before the agreement is signed.

Waiver of rights: No admission agreement should contain a provision whereby the resident agrees to waive the nursing home's liability for lost or stolen personal items. Similarly, no admission agreement should contain a waiver of the nursing home's liability for its residents' health.

The items addressed above are not exclusive. There may be other objectionable provisions that we have not identified here.