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ABRAMS

FENSTERMAN, LLP

ATTORNEYS AT LAW

A STEP AHEAD

Moriah Adamo, Esq., Lawrence N. Berwitz, Esq. and
Maureen Rothschild DiTata, Esq.

Introducing Family and Matrimonial Law at Abrams Fensterman, LLP

Abrams Fensterman has significant experience in representing clients who are involved in domestic disputes including those with complex financial concerns. Our attorneys understand these difficult matters and are committed to delivering the best possible outcome for each client and their family. They have proven their ability to successfully resolve the most complex and/or hotly contested disputes, and leverage their litigation expertise, innovative strategies, and personalized service to ensure client satisfaction.

Separation And Divorce

Our team represents clients in all aspects of matrimonial law including:

- Preparing and negotiating pre- and post-nuptial agreements
- Preparing, negotiating and litigating marital separation agreements
- Contested and uncontested divorces
- Complex or high profile divorces
- Spousal support agreements, both local and interstate
- Equitable distribution of marital assets and marital debts

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Helping Your Graduates – The Importance of a Health Care Proxy and Power of Attorney

June is a very exciting time for parents across the country. Commencement season is here and families are getting ready to send their graduates off to college. For many, this will be the first time that their child will be living on their own. Under New York State law, an individual is considered an adult at the age of eighteen. This means that parents who, as natural guardians, had

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New Secure 2.0 Act – Key Provisions That May Affect You

On December 29, 2022, President Biden signed the “Consolidated Appropriation Act, 2023” into law which includes the SECURE 2.0 Act of 2022 (“Secure 2.0”). Secure 2.0 incorporates important enhancements to regulations affecting retirement savings and ABLE accounts.

Delay in Start Date for Required Minimum Distributions (“RMDs”)

- Among the most far-reaching of the changes brought about by Secure 2.0 is that distributions from retirement accounts can be further deferred. Prior to the Secure Act, account holders were required to begin taking RMDs at age 70½. The

Secure Act extended it to age 72. Now, under Secure 2.0, individuals who attain the age of 72 after

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Our attorneys have the expertise to assist clients in choosing the best mechanism for terminating or resolving their matrimonial disputes including litigation, mediation and collaborative divorce, and will guide clients through each phase of the proceeding. Moreover, we work together with the family and matrimonial team to ensure that the interests of disabled or special needs children are protected in a divorce proceeding.

Child Custody and Support

These issues are among the most sensitive and hotly contested. Our lawyers will help you find an

arrangement that best suits you and your family. We can help with:

- Child custody
- Paternity
- Parental access
- Modification of child custody orders and agreements
- Child support enforcement and modification
- Complex litigation involving legal and/or physical custody, relocation and interstate jurisdiction under the **Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)**

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Helping Your Graduates – The Importance of a Health Care Proxy and Power of Attorney

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the legal authority - and indeed the responsibility - to make medical and financial decisions and to access medical and other records for their children, no longer have that right. Before your graduate enters this new chapter of life, make sure that a Health Care Proxy and Power of Attorney have been implemented.

A Health Care Proxy is a document by which one designates an individual, known as the "agent," to make health and medical decisions for them in the event they are, for any reason, incapable of making or communicating those decisions. These are decisions which, under New York law, concern diagnosis and treatment. The decision making authority can be broadened to specify particular services and procedures, the selection of the service providers and whether to continue or terminate life-sustaining treatment. This

document will also allow the agent access to confidential health and medical records in the event of an emergency. The parent of a child who has reached the age of eighteen and does not have a valid and enforceable Health Care Proxy, has no legal authority.

A Power of Attorney is a document by which a child who has reached the age of eighteen can appoint an agent to manage financial and business matters. Often eighteen-year olds appoint their parent(s) and thereby extend their legal authority to access bank and financial records, handle insurance claims, file taxes, and generally act on their behalf. Traditionally, a Power of Attorney was broadly drafted, however, today many institutions, including banks, governmental agencies and insurance companies, insist that the specific act which the agent seeks to

perform is expressly authorized by the document. For this reason, Powers of Attorney should be carefully reviewed to ensure their utility.

These two documents work best in tandem. But they must also be complete and validly executed to be effective. For example, the mother of a twenty-year-old college student commenced an action against the college, on her daughter's behalf under a Power of Attorney, and alleged that her daughter had sustained serious injuries. However, because the Court concluded that the Power of Attorney had not been properly drafted, the document was considered void and the case was dismissed.

As important as these documents are for all of us, it is important that we send our children off to college with the protection of a valid Health Care Proxy and Power of Attorney as they embark on a new and independent chapter of their lives. Please contact our office and ask for one of us for a thorough discussion of the implementation of these important documents.

New Secure 2.0 Act – Key Provisions That May Affect You

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December 31, 2022 and before January 1, 2033, can delay the onset of their RMDs until they reach 73. Individuals who turn 74 after December 31, 2032, are not required to begin taking RMDs until age 75. If an account is earning 5%, excluding new contributions, the delay from 70½ to 73 will result in the growth of the account by an additional 7.6% before distributions are required to be taken.

Reduction in Surcharge for Failing to Take the Full RMD - Prior to the passage of Secure 2.0, the IRS imposed a 50% surcharge for failing to take the full annual RMD from retirement accounts. For example, if an individual took only \$40,000 of their \$50,000 RMD, a \$20,000 surcharge or penalty was imposed. Secure 2.0 reduces the surcharge, for tax years after December 29, 2022, by half, to 25%. Additionally, if the full amount is distributed by the earlier of the second year after the RMD was missed or before the IRS assesses the penalty, the surcharge is reduced to 10% for plans created under traditional IRAs and 401(a), 401(k), 403(b) and 457(b) plans. Be aware, any surcharge is counted as taxable income in the year in which the penalty is assessed!

New Rule for RMDs from Roth Plans - Beginning with tax years after December 31, 2023, participants in a 401(k), 403(b) or 457(b) plan with a designated Roth IRA feature will no longer have to consider the Roth accounts in their employer-sponsored plan when calculating

their RMDs. This will preserve participants' account balances, allowing continued growth. Also, if the participant's FICA wages from the employer sponsoring the plan exceeded \$145,000 in the prior year, subject to annual cost of living adjustments in \$5,000 increments, the age 50+ catch-up deferrals can only be contributed to the Roth IRA.

Surviving Spouse Election to be Treated as an Employee - If a participant who has named his or her spouse as the sole beneficiary of a 401(a), 401(k) 403(b) or 457(b) plan dies before his or her required beginning date, the spouse may elect to defer taking the initial RMD until the year in which the deceased spouse would have attained his or her RMD age. Exercising this election could result in the calculation of the spouse's RMD under a more favorable life expectancy table which would otherwise have been available only to the participant.

Portability of 529 College Savings Accounts - Effective in tax years after December 31, 2023, a beneficiary of a 529 account that has been maintained for at least 15 years can rollover, to the beneficiary's Roth IRA, the lesser of (a) \$35,000 or (b) the aggregate amount contributed to the 529 account (plus earnings) during the five year period preceding the date of the rollover. This addresses concerns about over-contributions to the 529 account and continues favorable tax treatment when rolling over funds left in the 529 account into a Roth IRA.

Age Modification for Qualified ABLE Accounts - ABLE accounts are accounts for disabled individuals. While there are limitations to maximum permissible account balances, the beneficiary of the account is al-

lowed to be the account owner, income earned by these accounts are not taxed, and the amount in the account is not subject to the resource limitations of governmental programs such as SSI, Medicaid or SNAP. For these reasons, these accounts are extremely beneficial to disabled individuals. Previously, to qualify for an ABLE account, it was necessary that the onset of one's disability occur before the individual turned 26 years of age. Under Secure 2.0, the individual will now qualify if the onset of the disability occurs before the individual turns 46.

If you or a loved one are affected by these changes, or if you have questions about their applicability to your circumstances, please telephone (516) 328-3200 and ask to speak with Moriah Adamo, Larry Berwitz or Maureen DiTata.

Haven't Seen Us In A While?

As many of you know, Berwitz & DiTata LLP customarily invited clients in for a complimentary review three (3) years following the execution of their estate planning documents. We will be continuing this practice at Abrams Fensterman, LLP. Has it been more than three (3) years since we reviewed your estate planning documents? Have you moved, married or divorced? Have your children become adults? Has a spouse or beneficiary passed away? Are the people whom you have entrusted to manage your affairs if you become ill or disabled still able to carry out that task? Maybe it is time for a visit. We will be reaching out to you and look forward to seeing you again, showing you the new office and introducing Moriah Adamo.

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Consideration is given to what is in the best interests of each member of the family — children, mothers, fathers and grandparents.

Valuation and Distribution of Assets

In divorces, particularly those involving high net worth individuals, issues involving the valuation and distribution of assets often drive the course of the proceedings. Our lawyers are adept at identifying and analyzing assets and work closely

with our clients to deliver a favorable settlement:

- Discovering and tracing assets and income, including those that are hidden or wasted
- Valuation and distribution of closely held businesses, professional practices, professional degrees and licenses
- Valuation and distribution of retirement accounts, 401K plans, 403B plans, pensions, stocks and bonds, ESOP and deferred compensation

If you, a family member, relative, friend or colleague requires assistance, advice, guidance or even a second opinion as to any of these matters, please contact Maureen DiTata, Larry Berwitz or Moriah

Adamo at (516) 328-2300 and we will be happy to make an introduction for you.

Having Trouble Reaching Us?

Our goal is to be readily accessible to our clients and potential clients - and their family and friends. Please call us at our *new* number, (516) 328-2300. Our dedicated staff members are always ready to assist you. If you would prefer to reach us by email, our email addresses are:

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