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## Making Your Estate Plan Work For You

Having properly executed estate planning documents, such as a Will, Trust, Power of Attorney, Health Care Proxy or Living Will, is an essential step in the process of estate planning. Many people think that their work is done once the documents are signed. However, an estate plan can only be effective if it is properly implemented. What good is your Last Will & Testament if, after you die, no one knows it exists or it cannot be found? There are a few simple steps to ensure that your wishes will be carried out upon your disability or death.

**Create a document or inventory that recites your pertinent financial information.** Identify your financial assets. Be sure to include all bank and investment accounts, individually owned investments (stocks, bonds and mutual funds that are not held in an account), retirement accounts, real estate, insurance policies and employee

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## Aftermath of Hurricane Sandy

In the wake of Hurricane Sandy's widespread destruction, please know that all of us at Berwitz & DiTata LLP extend our deepest sympathies and support to those of you who have been affected by this catastrophe. We know that this storm and its aftermath have created many challenges for our friends and family. Please know that

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## Special Needs Planning - For the Future of your Child or Loved One

A large segment of our population is disabled, either physically, intellectually, cognitively, emotionally or psychologically. In a study reported in 2007 by the National Organization on Disability it was estimated that more than 54 million Americans, nearly one in five of us, are disabled. Generally, "special needs planning" is estate planning for the benefit of persons with disabilities. It is designed to accommodate the unique needs of the individual and to protect and preserve assets to enhance their quality of life. This planning can be done by or on behalf of the disabled individual. It can involve assets that already belong to the disabled person, assets that the disabled individual is or will be entitled to receive, and assets that others may wish to give or leave to

the disabled individual. Today, it is totally unnecessary to disinherit a disabled beneficiary to prevent his or her loss of benefits. Planning for a loved one with special needs can be accomplished as part of general estate planning or it can be separately handled. What's important to remember, however, is that the time and attention that is devoted to this type of

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benefits. Also, list any outstanding liabilities you may have such as mortgages, loans, and credit card debt. Include your full name, other or previous names, date of birth, and Social Security number. You may also wish to specify the name and contact information for your lawyer, accountant, insurance agent, and other financial representatives. It is important to update your inventory regularly, as changes occur. Those of you who have done your planning with us can use the forms in your binder.

**Determine where to store your important documents:** the estate planning documents (Will, Trust, Power of Attorney, Health Care Proxy, Living Will), life insurance policies, deeds for real property, financial records, tax returns, and your inventory of financial information. When determining where to keep your legal and financial documents, it is important to select a location that your family can locate and that they will have access to after your death. While it is not necessary to disclose the specifics of your estate plan, you want to be sure that a trusted family member or friend knows what documents comprise your plan and where they are located. In general, your *original* Will should not be stored in a safe deposit box because it will be unavailable, after your death, as the bank will seal the box. This will



require your nominated executor to bring a proceeding to open the box before your Will can be probated. Instead, you may want to consider leaving the original Will with your attorney for safekeeping. Berwitz & DiTata LLP offers this benefit to all of our clients free of charge. If you decide to retain your original Will, it is advisable to store it in a waterproof and fireproof container.

**Notify your health care agent.** Under New York law, you can appoint only one agent at a time to make health and medical decisions for you if you become incapable of communicating your wishes. Once you have selected your agent, and even before you execute the Health Care Proxy, it is advisable to tell your agent and to discuss your end-of-life choices. Once the document has been executed, make a copy for your primary care physician and bring a copy with you if you undergo any medical procedures, particularly

those requiring anesthesia. It is inadvisable to create a new Health Care Proxy at the hospital or clinic unless there are changes you wish to implement and, if this is the case, it is better to revise your Health Care Proxy before scheduling the procedure.

**Advise your loved ones that you have implemented your plan.** Let your family know that you have completed your estate plan. This may give them peace of mind. Inform a family member, such as the nominated executor or trustee as to the whereabouts of your documents. We also recommend that you provide them with your attorney's contact information or even introduce them!

Following these simple steps will not only alleviate some of the stress the family faces when a loved one becomes ill or passes away but will also help to ensure that your wishes are faithfully accomplished.

## Helping Our Loved Ones Manage Medication

As our loved ones age, their ability to manage their medication may be compromised - by age, illness, poor memory, failing eyesight or otherwise. The greater the number of medications, the higher the likelihood that they may become overwhelmed or make mistakes. These mistakes can be life-threatening. According to the U.S. Surgeon General, medication non-adherence is a problem that causes more than one-third of medicine-related hospitalizations and nearly 125,000 U.S. deaths each year. Here are some tips to ensure that your loved one is safe when it comes to medication:

- Maintain a list of all of the medications that your loved one is taking. This list should include prescription and non-prescription medications, the time of day that each is taken and the dosage. It may be helpful to include a physical description of each medication.
- Put a copy of the list in your loved one's wallet and in your own. In case of an emergency it is always better if the list can be readily accessed.
- Check labels for accuracy in patient name, medication, dosage and expiration dates.
- Establish a system to organize medication and dosage, such as a weekly pill box set or electronic dispenser.
- Inquire of the physician or pharmacist about restrictions, interactions or customary side effects.
- Make sure your loved one visits his or her primary care physician at least annually. Bring the list of medications and review it with the doctor.

## Special Needs Planning - For the Future of your Child or Loved One

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planning will make all the difference to your loved one in the future.

The most common tool to accomplish this type of estate planning is the Supplemental Needs Trust or "SNT." SNTs are used to protect the assets of the disabled individual who is receiving, or may eventually qualify to receive, needs-based governmental benefits such as Medicaid and Supplemental Security Income. The goal is to ensure that the assets will be used to supplement rather than replace governmental benefits, to provide quality-of-life enhancements such as special furnishings or equipment, a specially equipped van, a computer, an entertainment center, vocational training, a vacation or other recreation.

There are two types of SNTs, "First Party" and "Third Party" Trusts. A First Party SNT is funded with the beneficiary's *own* money. Often, the source of this money will be an inheritance, a recovery from a malpractice or personal injury lawsuit, or a divorce settlement. These SNTs require a post-death Medicaid payback, which means that at the end of the disabled beneficiary's life, Medicaid is reimbursed from the trust for funds it expended on the disabled beneficiary's behalf. A Third Party SNT is funded with the property of someone *other* than the disabled beneficiary and is typically established through a Will or Trust. Depending upon the circumstances, the assets are utilized



for the disabled beneficiary and then "remainderpersons," typically other family members, can be designated to receive the remaining assets after the disabled beneficiary has passed away. Medicaid receives no reimbursement from a Third Party SNT.

While estate planning is important for everyone, it is even more important for those who wish to benefit a loved one with special needs.

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we are here to answer any questions or concerns that you may have regarding your estate planning documents. Rest assured that all Wills that have been stored in our Will safe have been protected and are safe and dry. If you have retained your original Will, please be sure to locate the original as soon as possible. This may be a good time to reconsider where this important document is stored. If you cannot locate it or it was damaged or destroyed, please notify our office. If any of your other original documents have suffered damage, please call us and we can assist you in determining

whether and how to replace them. If your original documents have not suffered damage, this may be a good time to invest in a fireproof, waterproof container for storage if you have not already done so. Additionally, we are aware that many of you have relocated, either as a result of the storm or otherwise. If this is the case, please contact our office with your most up-to-date address, telephone numbers, and e-mail addresses.

### 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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