

# A STEP AHEAD

## **ESTATE PLANNING FOR CHILDREN WITH SPECIAL NEEDS**

All too often, when we review the estate plan of a new client, or are retained to assist in the administration of the estate of a decedent who was not our client, we find that the options which are available to protect the inheritance of a special needs beneficiary have not been properly implemented.

Understandably, the parent of a child with special needs does not want that child's future inheritance to reduce or interfere with governmental benefits the child is, or will be, receiving. Do-it-yourself estate plans, or those which are prepared by uninformed attorneys, "disinherit" the disabled child by giving that child's share of the estate to other children with the expectation that a healthy sibling will segregate the disabled child's share and use it for the disabled child's benefit.

Unfortunately, this frequently doesn't work. What if the healthy child dies before the disabled child? Where will the money intended for the disabled child go? What if the healthy child's marriage fails? Will the divorcing spouse wind up with some of the money intended for the disabled child? What if the healthy child falls into financial difficulties or has creditor problems? All of these very real situations can jeopardize the assets intended to benefit the special needs child.

In New York, one can provide for a disabled beneficiary by creating a Supplemental Needs Trust which is specifically intended to supplement *but not replace* the benefits provided by the government, to enhance the beneficiary's quality of life. By redirecting the disabled beneficiary's inheritance to an SNT, ordinary testamentary goals can be achieved without any of the risks. The healthy sibling can be named as a trustee without jeopardizing the plan. The trustee's death, divorce or creditor problems do not invalidate the trust or place the trust assets at risk. A successor trustee can assume the responsibility of administering the trust if a trustee dies or cannot otherwise serve. The assets in the trust are insulated from a trustee's divorcing spouse or the trustee's creditors.

We can not overemphasize the importance of having your estate plans reviewed periodically by an attorney who is familiar with this type of planning. While we can modify estate plans that do not meet your goals during your lifetime, there will unfortunately come a time when the plan can no longer be changed. Do not let this happen to you. ♦



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# Berwitz & DiTata LLP

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## QUESTION FROM READERS: IRA ACCOUNTS

One of our readers, Warren M., writes: "Traditional IRAs have required minimum distributions after reaching 70½ but not Roth IRAs. I have been told that Roth IRAs are also subject to required minimum distributions re Medicaid nursing home costs. They use a single table vs. IRS using the joint table? True or not?"

Beginning at age 70½, traditional IRA account owners are required to take annual minimum distributions based upon their life expectancy. The IRS has established various tables to determine the life expectancy of the account owner in order to calculate the minimum distribution. What was formerly the IRS table utilized by a married account owner is currently utilized by both single and married individuals. If a married individual has a much younger spouse/beneficiary, a different table may be utilized to calculate the annual required minimum distribution. In contrast, no distributions are required to be taken by the account owner of a Roth IRA.

Generally speaking, the value of the assets in either a traditional or Roth IRA are not utilized in determining

eligibility for Medicaid benefits *provided* that the account is in "pay-out status." Pay-out status means that yearly distributions are required to be taken from the account. For account owners of a traditional IRA, the account is in pay-out status upon reaching 70½ years of age. A Roth IRA, or a traditional IRA owned by someone who has not attained the age of 70½ years, can only be in pay-out status if the account is annuitized, meaning that distributions must be made from the account at least annually. In Nassau, Suffolk, New York City and many of the other counties in New York State, the local Medicaid office requires the utilization of a table created by the Social Security Administration (SSA), not the IRS, to determine the annual required minimum distribution for Medicaid applicants. The SSA table contains shorter life expectancies, resulting in larger annual distributions. There are some counties that will allow the IRS table to be utilized.

The distributions made from the retirement account are considered income in the year received and must be accounted for in determining Medicaid eligibility and budgeting. Additionally, distributions are

considered taxable income in the year taken and could increase income tax liability for that year.



Our thanks to Warren M. for his question. Just a reminder: obtaining Medicaid benefits for those who have assets they wish to protect or those who have previously transferred assets can be a minefield that if incorrectly handled, can result in significant financial problems and the delay or denial of benefits. It should be done with the assistance of an attorney who has a complete understanding of the Medicaid eligibility rules. ♦

## DEBT RELIEF STRATEGIES FOR SENIORS

More and more of our clients who are retired thought that they had planned well for the future only to find that rising medical costs, shrinking investment portfolios and other factors have caused them to incur debt. "USA Today" recently reported that more seniors are in debt than ever before. Most live on fixed incomes and have no way to pay off debt such as credit cards and home equity loans. Sometimes the debt is incurred to cover deficits in the household budget. In order to meet their financial obligations, seniors sometimes skimp on food or decline to take medications. They pare down their lifestyles, pinch pennies and still don't make ends meet.

Most have worked hard all their lives and managed their debt. They didn't anticipate the most recent recession, the rising costs of health care and prescription drugs, or the possibility that they might outlive their savings. The good news is that help is available for some of these individuals.

Reverse mortgages - A Home Equity Conversion Mortgage (HECM), or reverse mortgage, provides seniors with an opportunity to tap into their equity interest in their home without the obligation of repaying the loan in monthly installments. Instead, the cash flow is reversed and the senior receives payments from the bank, hence the title

"reverse mortgage." A reverse mortgage may provide a solution for seniors who have owned their homes for a long time and are "house rich but cash poor."

Life settlements - Life insurance policies that have cash value can be sold under the right circumstances. Often, the sales prices is significantly greater than the cash surrender value. Even some term life insurance policies which contain the option to convert coverage to permanent life insurance will qualify for a life settlement.

Government Programs - Seniors should not overlook government programs which subsidize the purchase of food and housing, help with medical expenses and provide tax credits. For veterans there is free health care, inexpensive prescription drugs and disability income. Area agencies on aging offer individual counseling, legal help and advice.

For seniors living on a fixed income, dealing with debt can be an overwhelming burden. The advice of knowledgeable professionals can assist in easing this burden. ♦



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