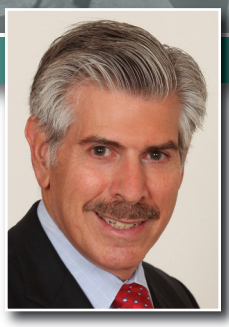
Berwitz & DiTata LLP

A STEP AHEAD

First Quarter 2015 • Volume 12 • Issue 1



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Protecting Retirement Accounts from Creditors

Individual retirement accounts were always believed to be protected from creditors. On June 12, 2014, the Supreme Court decided otherwise.

Here are the facts: Ruth Heffron died owning an IRA. Ruth had not designated a spouse as beneficiary of her IRA. She would have been allowed to "roll" the account into her own IRA. Instead, Ruth designated her daughter, Heidi, as the beneficiary. Heidi, and any non-spouse beneficiary of a retirement account, receives it as an "inherited IRA." Thereafter, Heidi filed for bankruptcy. She identified the inherited IRA she had received from her mother as an "exempt" resource, not subject to her creditors' claims. The trustee in bankruptcy and the unsecured creditors objected, arguing that the funds in the inherited IRA were not protected "retirement funds" within the meaning of the bankruptcy statute.

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Understanding Home Care

Our clients are frequently confused by the various types of services that fall under the general term "home care." Generally, home care helps disabled adults and chronically ill or cognitively challenged seniors live independently for as long as possible, given the limits of their medical condition. It covers a wide range of services and is designed to delay the need for long-term nursing home care. To understand home care, it is important to first understand what is meant by the term **Activities of Daily Living (ADLs)**. This term is used by healthcare professionals to refer to routine activities that people can ordinarily do themselves, such as bathing, grooming, dressing, eating, ambulating (walking), toileting and transferring, i.e. moving from bed to chair. A person's ability to perform ADLs is key in determining the typeof care that may be required.

Next, it is helpful to understand the difference between **Home Health Care** and **Home Care Services**. They sound the same, and Home Health Care may include some Home Care Services, but Home Health Care is more medically oriented and usually involves helping a *patient* recover from an illness or injury. For this reason, the people who provide Home Health Care are often licensed or certified and most work

for home health agencies, hospitals or public health departments licensed by the state.

So let's distinguish the titles! **Registered Nurses (RNs)** are licensed by the New York State Education Department. While they can assist with ADLs, more often they perform skilled nursing care: monitoring vital signs, cleaning, dressing and caring for wounds, changing bandages, administering

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The matter ultimately reached the Supreme Court which concluded that funds in an *inherited* IRA are not "retirement funds" as that term is defined by statute and are therefore not insulated from creditors' claims. In support of its conclusion, the Court identified three distinguishing characteristics of inherited IRAs. First, the original IRA owner can make contributions to the account while the beneficiary of an inherited IRA may not invest additional funds into that account. Secondly, owners of an IRA are not required to take distributions until they attain the age of 70 1/2 years while beneficiaries of an inherited IRA must take required minimum distributions annually, commencing with the year after the original account holder's death, regardless of the beneficiary's age. Lastly, holders of an inherited IRA may withdraw the entire balance at any time without penalty. In contrast, the original IRA owner is penalized for taking distributions before attaining the age of 59 1/2 years.

There is a way to safeguard assets in an IRA so that, when they are inherited, they are not exposed to creditors of the non-spouse beneficiary. First, a trust is established by the original account owner, naming the non-spouse as beneficiary. Then, the trust is named as the beneficiary of the IRA upon the original account owner's death. In this way, the age of the non-spouse beneficiary will determine the required annual minimum distribution and the funds in the inherited IRA will be protected from the non-spouse beneficiary's creditors. This type of trust can also be implemented or beneficiaries who are under the age of majority, immature or incapable of managing their affairs. It allows beneficiaries who receive governmental benefits, such as Medicaid or Supplemental Security Income, to insulate the inherited IRA from consideration in determining his or her eligibility for benefits, allowing the distributions to supplement, rather than replace, the governmental benefits and to enhance the beneficiary's quality of life.

This strategy must be implemented during the lifetime of the original account owner. If you are the owner of an IRA and have named or wish to name a non-spouse as the primary or contingent beneficiary, contact our office for a consultation to discuss whether a retirement trust is an appropriate mechanism for the protection of these assets.

Have You Relocated?

Do You Want to Keep Receiving This Newsletter?

If you have moved to a new home, either permanently or temporarily, please contact our office with your up-to-date address, telephone numbers, and e-mail addresses. We want to be sure that you will continue to receive communication from us.

Understanding Home Care

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injections, administering tube feeding and dispensing medication. **Licensed Practical Nurses (LPNs)** are also licensed by the Education Department. They assist with ADLs and can accommodate some skilled nursing needs. **Certified Home Health Aides** are trained and certified by a training program approved by the State Department of Health to assist with ADLs. There are also Home Health Aides who have not been certified. They may also be referred to as **Personal Care Attendants (PCAs)**. The services provided by PCAs vary based on the specific needs of their clients or care recipients. They regularly assist with ADLs and may also perform minor housekeeping (laundry and ironing, dusting and vacuuming), food shopping and meal preparation, or they may empty bedpans, change soiled bed linens and care for a bed-ridden or disoriented client. In addition to these designations, seniors and others also benefit from the services of **Companions**. Companions are usually untrained and offer conversation and social interaction, help with hobbies, run errands, provide transportation to and from appointments, perform house-keeping and meal preparation and care for pets and plants.

Home Health Care is medical and/or skilled nursing care in the home for homebound patients. It is a benefit of Medicare, Medicaid and most health insurance policies, provided the patient meets very specific criteria. More specifically, Home Health Care may include physical, occupational and speech therapy, skilled nursing and helping the care recipient with ADLs. It may even include assistance with meal preparation and housekeeping but usually for a very limited time period. Home Health Care is typically initiated upon hospital discharge and is provided on a short-term, temporary basis. It must be ordered by a physician to be covered by insurance. Occasionally, a patient who has not been hospitalized can qualify, but only if there has been a significant change in health status, such as an acute illness or injury. For example, a patient who has extreme difficulty breathing as a symptom of congestive heart failure, or one who is physically debilitated due to an illness or injury and needs therapy to regain strength and balance, could qualify. The patient must be homebound, meaning they only leave the home for medical appointments.

Home Care Services is a non-medical designation. The services are provided by private caregivers, Home Health Aides, Personal Care Attendants and Companions. They are considered custodial in nature and do not require a physician's order. Services are designed to help the care recipient remain at home. The scope of services is determined by the care recipient and/or family. Home Care Services are not covered by health insurance. Most services are paid for out of pocket, by long-term care insurance or by Medicaid.

A discussion of home care would not be complete without reference to **Hospice Care**. Hospice is care for the dying. It can be provided in the home, a dedicated hospice facility, a long-term care facility or a hospital. Medicare, Medicaid and most private health insurance covers Hospice Care. One must have a physician's order to qualify but the patient is not required to be homebound. Hospice is initiated based on a terminal diagnosis. It is no longer necessary that the patient have less than 6 months to live although it is understood that death is impending from a terminal diagnosis.

Hospice Care includes the services of nurses, home health aides, social workers, spiritual care providers, volunteers and even a bereavement counselor. Care recipients and their immediate family members may use all or some of the services based on their needs and preferences. Visits are short, typically between 45 and 90 minutes, although longer visits are typical if the patient is in need of pain control or other palliative care. Some Home Health Care agencies offer Hospice Care as well, and often have a transitional program. Care recipients may start out with Home Health Care and, as they decline, transition to Hospice services.

The focus of Home Health Care and Hospice are very different. Home Health Care concentrates on improvement while Hospice concentrates its efforts on the process of dying, pain management, comfort, support and quality of life for the remainder of the care recipient's life.

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How To Help Someone You Love When They Grieve

May 13, 2015 – RESERVE YOUR SPOT TODAY

We are pleased to be sponsoring an unusually powerful, educational evening. We hope that many of our clients and friends, and perhaps *their* friends and family, will join us.

With exceptional grace, good-natured humor, and rock-solid science, Amy Florian teaches people how to support their friends and family in times of grief, loss, and transition. Regardless of cause - death, divorce, dementia, terminal illness, job loss or other major life crisis - in the midst of grief it can seem that hope and happiness have evaporated. Those times are when we need each other the most. Yet our words get lost in the torrent of "me too" platitudes and our actions fail to comfort.

Would you like to know what to do and say to genuinely help yourself and those you love navigate the toughest times of life? Learn about grief – what the experience is like and what is normal. Learn practical strategies for comforting, what to do when you don't know what to do, and how to help yourself or your loved ones become whole again.

Amy Florian is not just an expert in grief and bereavement; she has been there. Her husband's sudden death in a car accident prompted Amy's lifelong mission to help people heal from devastating grief. Amy has worked with more than 2,000 grieving people over the past 25 years. She teaches at Loyola University of Chicago and has published over 90 articles. She holds both a Master's Degree and a Fellow in Thanatology. She is a nationally recognized speaker and teacher known for her dynamic and engaging presentations.

We will meet at the **Milleridge Inn on May 13 from 6 to 9 p.m**. Please bring someone with you, a friend and/or family member who you believe will benefit from our discussion. There is no cost to attend but, because seating is limited, we suggest that you reserve your spot(s) as soon as possible by calling our office at (516) 747-3200. We will remind those who have reserved seats as the date approaches! The evening promises to be a moving one.