A STEP AHEAD

SPRING CLEANING TIME TO REVIEW AND RENEW

Tax season is over! Spring has sprung! It's time to "review and renew." It's time for the annual Berwitz & DiTata LLP "Review and Renew" program. Each spring, we encourage our clients, friends and "would be" friends to focus on estate planning, refresh those resolutions and stop procrastinating.

If you have never created an estate plan, now is the time. Although estate planning is a topic that some people find difficult, we are dedicated to helping clients identify and implement their estate planning objectives with ease and efficiency. We believe that our success is founded on this fundamental commitment to communicate with our clients in a caring and responsive manner. Those who have met with us in a one on one consultation know that we believe that everyone can benefit from estate planning regardless of personal income or net worth. Everyone has concerns regarding the future. For instance: How can I avoid probate and the dissipation of my assets to estate taxes? How can I avoid losing control of my assets if I become disabled? How do I protect myself and my family from devastating nursing home costs? How can assets be transferred if a relative is already in a nursing home? How can I protect my minor children? In designing strategies to effectuate our clients' goals, we offer detailed advice and a high level of technical expertise. Now is the time to achieve estate planning peace of mind! Ask those questions, explore the options, get it done.

If you created your estate plan, or reviewed it last, more than 3 years ago, now is the time. Are your documents up to date? Have there been changes in the law or in your life that should now be considered? The documents that address the needs of a single person are frequently insufficient when he or she marries. If a couple has children, the appointment of a guardian should be a key factor in estate planning. Those documents that were created when the kids were small may no longer reflect their parents' wishes now that the kids have grown and flown. Indeed, once your child reaches the age of 18 years, he or she should have a valid and enforceable Health Care Proxy empowering you or another to make health care decisions. The "sandwich generation" is discovering that the joy and responsibility of raising children is all too frequently overshadowed by the illness of

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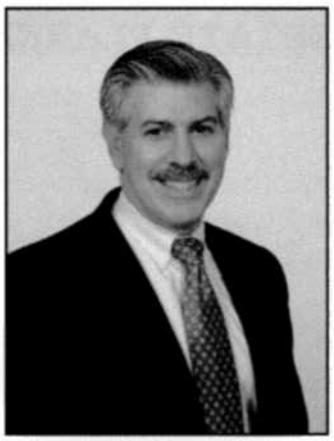

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Berwitz & DiTata LLP

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ESTATE PLANNING WHEN A RELATIONSHIP ENDS

We are frequently asked how often an estate plan should be reviewed. It is generally understood that the death of a beneficiary or the birth of a new family member should be the catalyst for an estate plan review as these events might impact the plan. Very often, perhaps because of the emotions involved, the termination of a relationship is overlooked as an event that should also trigger a review.

Typically, couples in a committed relationship name each other as beneficiaries in their wills and trusts. Each is appointed by the other to serve as the executor, trustee, agent under the power of attorney and health care proxy. Often, when a relationship ends, the confidence and the trust that each party felt for the other has also dissolved. But the will, trust, power of attorney and health care proxy are not the only documents that must be reviewed and updated. Who is named as the beneficiary on your life insurance policies, annuities, IRAs, 401ks, TDAs and other retirement accounts? Are any accounts to be "paid on death" to, held "in trust for," or jointly with the former partner?

Revising the necessary documents may be a two step process. For example, removing a spouse as beneficiary on a retirement account established through an employer may require the consent of the spouse. Thus, the owner of the account may have to await the final judgment of divorce before the change can be effectuated. Additionally, in most circumstances, until the marriage is judicially dissolved, a spouse, even one from whom you are separated, retains a "right of election" entitling him or her, at your death, to the first $50,000 of the estate or one-third of the net value of the estate, whichever is greater.

Divorce, separation or the termination of a relationship can be an emotional roller coaster. It is important to remember that the "ride" is not over and the relationship not fully terminated until you have also terminated the power to make financial and health care decisions and eliminated the right to receive assets at your death. We recommend that estate plans be reviewed every three to five years. However, that review should be accelerated in the event of a separation, divorce or termination of a relationship.

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 let us know. We will try to include it in one of our next issues.

Berwitz & DiTata LLP

CAPITAL GAINS TAX TIME BOMB

Many of our clients know that, upon their death, their beneficiaries will receive a "step-up" in basis, to the fair market value as of the date of death, for assets that have appreciated in value during their lifetimes. By eliminating the increase in value of appreciated assets earned during one's life, the potential capital gains tax is significantly reduced and, often, eliminated. For example, assume that a decedent purchased a home for $50,000 that was worth $400,000 at death. Without the "step- up" in basis, the difference between the purchase price (the "basis"), and the sale price, or $350,000 ($400,000 - $50,0000), would be subject to capital gains tax. In contrast, with the "step-up" in basis, the tax is applied against the difference between the sale price ($400,000) and fair market value ($400,000). Calculated using the "step-up," the gain is zero and no capital gains tax is due. This is true regardless of the value of the appreciated asset. So, for example, if Bill Gates were to pass away in 2009 and all his Microsoft stock were sold immediately after his death, his estate would pay no capital gains tax. Unfortunately, the calculation of capital gain realized upon the sale of appreciated assets is a ticking time bomb!

While there is currently an unlimited "step-up" in basis, in 2001 President Bush signed the Economic Growth and Tax Reconcilation Relief Act (EGTRRA) which repeals this "step-up" system commencing in 2010 and replaces it with a "modified carry-over" basis system. The new system is extremely complex. In general, it allows the executor to increase the basis of an estate's assets by up to a total of $1.3 million and up to $3 million for assets passing to a surviving spouse. EGTRRA contains a "sunset provision" which, by its terms, effectively repeals the new law and reinstates the prior law on December 31, 2010. Thus, it is conceivable that the "modified carry-over basis" rules will only be in effect for one year.

This creates a practical problem - record-keeping. Because of the elimination of the "step-up" in basis as of the death of the owner of the asset, it is necessary for all of us to carefully maintain sufficient records from which to calculate the basis of all appreciating assets.

Moreover, under the new law, the recipient of a decedent's asset receives it at the decedent's basis unless the executor chooses to allocate a portion of the $1.3 million basis increase to such asset. This gives extraordinary power to the executor. As 2010 approaches, it may be advisable for those with estates exceeding $1.3 million to designate, in a Will or Trust, the specific assets that are to receive the step-up in basis.

Now that there is a new administration, there is an expectation that the one-year suspension of the estate tax, currently scheduled to begin in 2010, will be eliminated. However, it is still uncertain whether the change in basis calculation will likewise be rescinded. We will revisit this in the future as circumstances warrant it.

Berwitz & DiTata LLP

310 Old Country Road • Suite 101 • Garden City, NY 11530
Telephone: (516) 747-3200 • Facsimile: (516) 747-3727
Website: www.berwitz-ditata.com

FDIC - ANOTHER UPDATE!

We reported in our final issue of 2008 that, as part of the "government bail-out" program, FDIC limits were increased, effective October 3, 2008 and through December 31, 2009, to $250,000 per depositor. Many of our clients have already expressed concern over the expiration of the increased limits. While the changes have not been made permanent, deposits at FDIC insured institutions will continue to be insured at the $250,000 limit per depositor through December 31, 2013. Under the new legislation, which supercedes the October 3, 2008 changes, the standard insurance amount will return to $100,000 per depositor on January 1, 2014 for all account categories except IRAs and other retirement accounts, which will remain at $250,000 per depositor.

SPRING CLEANING

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parents. The need for estate planning takes on new meaning as one approaches retirement and, if illness threatens, timing becomes more critical. Lifetime changes affect estate planning. Even if we can't imagine what changes in our lives could affect these important documents, an estate planning review is a vital element to ensuring that your wishes will be accomplished.

Because Berwitz & DiTata LLP understands the importance of keeping the plan current, we offer our clients a unique value-added component: a complimentary three year review. For those who have not yet retained our services, there is a nominal fee to review your plan. Let us help you realize your estate planning objectives.

We Practice Preventative Law!™