ABRAMS FENSTERMAN, LLP
ATTORNEYS AT LAW

A STEP AHEAD

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Introducing Corporate & Securities Law at Abrams Fensterman, LLP

Abrams Fensterman's corporate and securities practice provides a broad scope of legal and business services in areas that encompass the representation of public, private, and family-owned businesses, in succession planning, mergers, acquisitions, and other strategic transactions, as well as daily corporate governance matters. Abrams Fensterman is well versed in representing issuers and investors in their securities, financing, and other legal matters, across a diverse client base ranging from early stage growth companies to mature companies across a wide array of industries, including technology, real estate acquisitions and development, fitness and exercise, fantasy and on-line gaming, and culinary arts, as well as a variety of health care providers.

Our team advises clients in connection with a full range of business law matters, including:

- Succession Planning
- Business formations, including corporations, limited liability companies, limited partnerships,

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Estate Planning In A Digital Age

As the use of technology takes over our daily lives, it becomes more and more important to plan for what happens with our digital assets after we become incapacitated or die. Who will have access to our online accounts? Who will have the au-

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Making Sure Your Medicaid Budget Is Correct

In January 2023, the New York Medicaid program increased the amount of monthly income and resources that a Medicaid applicant or recipient may retain. An individual receiving Medicaid and residing at home now has a monthly *Income allowance* of up to $1,677.00. Couples on Medicaid and residing at home are entitled to keep a total of up to $2,859.00 in monthly income. The *Resource Allowance,* or assets that one owns, has increased to $30,182.00 for an individual and $40,821.00 for a couple. As a result of these increases, many Medicaid budgets, that are tracked by the Department of Social Services or the Human Resources Administration, require adjustment.

For those who are residing at home, having an accurate Medicaid budget is extremely important. It determines what portion of your monthly income is within your control and what must be contributed to a pooled trust or paid to the agency that provides care. While pooled income trusts are effective tools for helping shelter excess income in order to continue to afford to reside in the community, there is no good

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IN THIS ISSUE:

Hidden Pitfalls Of Naming A Minor As An IRA Beneficiary

Naming someone as the beneficiary of your IRA or other retirement account can be a wonderful way to provide for a loved one after you have passed away. Often, the people we name as beneficiaries of our IRA accounts are our children and/or grandchildren. Prior to the enactment of the Secure Act (January 2020), this was a powerful planning tool for the named beneficiary as, following the account holder's death, the account could continue to grow, tax free, over the beneficiary's entire lifetime. Pre-Secure Act, leaving retirement accounts to young beneficiaries was an important planning strategy, provided that appropriate safeguards were in place, because of their longer life expectancies and, therefore, smaller annual required minimum distributions.

Under the Secure Act, minors are required to take distributions annually based upon their life expectancy but, after they reach the age of 21, they must exhaust the account within ten years. This requires that they take at least the amount of the required minimum distribution in years one through nine and the balance in the tenth year, but they may take more in any given year and may even deplete the entire account.

There are several things you should consider when designating a minor as the beneficiary of your IRA account. A minor cannot inherit an IRA in their own name, outright. An adult, a parent or guardian or the trustee of a trust established for that minor's benefit, must be designated as the recipient since the minor lacks the legal capacity to own the account or make the necessary withdrawals. If the minor beneficiary fails to take the required minimum distribution each year, substantial penalties can be assessed. When the account holder dies, the minor beneficiary's parent or guardian must seek Court appointment to control and manage the account and to make the annual distributions on the minor's behalf. This is a process which can be both costly and time consuming.

Even more problematic is that the minor beneficiary attains complete control over the account upon reaching the age of 21. 21-year-olds are often not mature enough to handle this responsibility or understand the benefits of the tax deferred investment. The 21-year-old beneficiary may be more easily influenced by others to engage in spending that is not beneficial or may be more susceptible to scamming. It is usually preferable to delay control over the account for some time.

The best way to avoid those potential issues is to create a trust expressly for the purpose of serving as the repository for IRA accounts that you intend to leave to minor beneficiaries. This makes it possible to designate an appropriate person or entity to manage the minor beneficiaries' interests until they fully mature. Depending on the size of the IRA and the particular beneficiary, that may be at age 25, 30, 35 or even 40. Larry Berwitz, Maureen DiTata and/or Moriah Adamo would be happy to help you explore your options relative to this important part of your estate plan. Call for an appointment today (516) 328-2300.

Making Sure Your Medicaid Budget Is Correct

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reason to contribute more to the pooled trust than is required.

Another important Medicaid budgetary increase for 2023 was to $3,715.50 for the Minimum Monthly Maintenance Needs Allowance *(MMMNA).* The MMMNA is the monthly income contribution that a married individual residing in the community is entitled to receive from their spouse, who is on Medicaid in an institution, to bring them above the poverty level. Generally, the nursing home receives the Medicaid recipients income, deducts from this the MMMNA and pays it to the community spouse, and then reports to Medicaid when it submits its request for reimbursement. Because of all of the recent budgetary changes, some nursing homes have miscalculated or failed to recalculate the MMMNA — at the expense of the community spouse. Many community spouses are not aware of the MMMNA increase and not aware that they have a right to an explanation of how the budget was calculated.

If your budget has not been adjusted or you have not yet had to recertify your Medicaid benefits, your budget may be out of date and you could be losing money. Please reach out to one of us to help you.

Estate Planning In A Digital Age

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thority to manage those accounts? How will our digital assets be distributed to our heirs? These are very important questions that we must each address. If our estate plan does not give our "fiduciary," agent under power of attorney, executor or trustee, the authority to access, manage and distribute digital assets, these assets may be lost forever.

What are Digital Assets?

Digital assets can be any asset that exists online. Some digital assets have monetary value while others are purely sentimental. In addition to traditional email, photos, videos, and social media accounts, digital assets also include:

- Cryptocurrency keys for Bitcoin or Ethereum
- Metaverse property
- Non-fungible tokens (NFTs)
- You-tube channels, blogs or other monetized content platforms
- Website domain names
- Digital accounts such as Venmo and PayPal
- Online betting accounts
- Text, graphic and audio files
- Online marketplace stores

Who Controls Access to Our Digital Assets?

The short answer is: We control access to our own digital assets, but to grant or transfer that authority to another requires very specific activity on our part. Federal privacy laws regarding digital property, and restrictive terms-of-service agreements for online services, generally prohibit access to digital assets and encrypted information from anyone other than the original owner. So how can your executor, trustee or agent under a power of attorney gain access to our digital assets?

In 2016, New York adopted digital asset legislation which gives our named fiduciary limited access to only the "catalog" of our electronic communications (such as the "to" and "from" lines of an email). For the "content" of digital assets to be fully disclosed, even to the fiduciary, requires our express consent. Without our express consent, disclosure of our digital assets is subject to the terms and conditions of the agreement our service provider required when opening the account.

If the custodian of an online account provides a tool which allows access to digital assets through the account itself (such as Facebook's "Legacy Contact" or Google's "Inactive Account Manager"), directions given via the tool will govern our fiduciary's access. However, if no such tool is provided, or if we don't choose to use the tool, the only other mechanism for allowing or prohibiting disclosure of digital assets is through our Will, Trust, or Power of Attorney.

Adding Digital Assets to Your Estate Plan

By planning ahead and addressing digital assets in your estate plan, you can decide how your digital assets will be handled by your fiduciary. If you become disabled or die, giving your fiduciary full access to your digital assets will make administration of your estate easier, keep costs down and ensure valuable or significant digital property is not lost. In addition to ensuring that your estate planning documents give your fiduciary the power access your digital assets, you should inventory all of your online accounts, compile usernames, passwords, record estimated values, and provide instructions to your fiduciary on how to handle each account.

Contact us to update your Will, Trust, and Power of Attorney so that your digital accounts are protected and preserved.

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. Please call us for a complimentary review. 516-328-2300. We look forward to seeing you again and showing you the new office.

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limited liability partnerships and other business arrangements

- Mergers and Acquisitions
- Financing of all types, including debt (bank and non-bank borrowing) and equity (venture capital, private placements, IPOs, follow-on public offerings and PIPE's)
- Reverse Mergers
- Corporate Restructurings
- Corporate Governance
- Commercial contracts, including shareholder, limited partnership, operating, employment, license, distribution, option, warrant, supply and other agreements
- Executive compensation including equity compensation
- Our attorneys manage every aspect of corporate and securities transactions, from the development and implementation of structures, strategies, and business plans to the preparation and negotiation of the necessary documents.

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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