Law Offices of
Daniel Timins, P.C.

THE LEGAL BULLETIN

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Happy Holidays and New Year! I hope this letter finds you in good spirits.

2014 was a very busy year in the Trusts & Estates and Elder Law field. Most of my predictions were wrong (again). I tend to err on the side of caution, however, so when I am wrong my clients typically win. Please allow me to share some legal highlights of this past year with you, and some professional insights as to how 2015 may look in the Trusts & Estates and Elder Law arena:

The Bad News:

Inherited IRA Change: Beneficiaries No Longer Protected

Issue: In the past, your IRA and other retirement plans were protected from creditors, with the exception of a spouse whom you were divorcing and possible child support modifications. This creditor protection extended to the beneficiaries of that IRA, who transferred that IRA into an Inherited IRA. This is no longer the case. In the Summer of 2014 the U.S. Supreme Court heard the case of Clark v. Rameker and ruled that Inherited IRAs are NOT protected from bankruptcy creditors.

How does this affect you? First, your IRA is still protected from your creditors, including the IRS and people who win lawsuits against you. However, upon your passing and the transfer of that IRA to an inherited IRA owned by your (potentially spendthrift) beneficiaries, the funds may be available to bankruptcy creditors. Even worse, the general feeling - and my prediction - is that if the court allowed corporate creditors to go after Inherited IRA assets, they would almost surely allow government agencies, such as The IRS and The Department of Social Services, to go after these funds as well. For the time being, no government agency has succeeded in winning any binding legal decision in their favor. However, this doesn't make that impossible. Trials and appeals take years to reach completion, so I will be particularly vigilant in my attention to this area over the coming years.

What can I do? It is possible that naming a trust with retirement "see through" provisions as the beneficiary may be the best course to protect these assets, though you may not want to name the beneficiary as the trustee of the trust. If you have substantial retirement plan assets, make sure to reach out to me to discuss your options.

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The Good News:

Medicaid Allows For Spouse Impoverishment

Issue: On the surface this title does not sound good, but it is. Until recently, a couple with one ill spouse had to transfer significant amounts of money to Medicaid or pooled trusts to preserve the family assets—some of which were meager in the first place—or else exercise a "spousal refusal" in order to receive Medicaid benefits. Inevitably, the healthy spouse became very concerned that maintaining the Medicaid benefits for the ill spouse would impoverish them because of the asset and income limitations that apply to Medicaid. Realizing that spouses were effectively becoming impoverished, despite New York's favorable spousal protections, Albany decided to acknowledge the family's asset levels that were close to current asset and income carve-outs, by creating "spousal impoverishment" rules for Medicaid.

How does this affect you? Remember that New York is still the gold standard for Medicaid exceptions: I can't think of any state that allows a family to protect more assets and income than the Empire State. This new category of Medicaid exception will avoid the need for exercising spousal refusal for healthy spouses whose assets are within the reasonable range of current exceptions to Medicaid approval. On the possible downside, this may be the first step in doing away with spousal refusal rules. I have worried about this outcome and warned clients about it year-over-year, and to this day the spousal refusal rules remain intact (as you can guess, I do not gamble much).

What can I do? If you have a spouse or family member on Medicaid and the healthy spouse exercised Spousal Refusal during the Medicaid application process, please touch base with me in the beginning of each year so you may be apprised if you are still "grandfathered" into the Medicaid system. If you are contemplating Medicaid planning, it is always important to speak with me earlier rather than later: Time is your greatest asset for proactive Medicaid planning and your greatest nemesis when you have to take steps at the last minute.

New York's Estate Tax Exemption Increases Drastically

Issue: Until April of 2014 you could only transfer $1 million before being assessed a New York estate tax. Yes, there were several exceptions (spouses and charities received funds tax free, etc.), but if you owned a home or had a half-way substantial life insurance policy you basically had to pay an estate tax to New York. I have been telling clients for years that we will find the Holy Grail, the lost city of Atlantis, and Elvis (living, of course) before New York would raise this exemption amount.

Well, realizing that every New Yorker with some money and half a brain was moving to Florida to escape these taxes, and the awfully cold winters, Albany finally got its act together. In a moment of such extreme clarity that I now believe anything is possible, they raised the exemption to 1.05% over $2,062,500 (only Albany can make things this complicated). This will increase it to over $3,000,000 by April of 2015, and slow increasing further until 2019, when it will mirror the Federal Exemption, which by that time should be somewhere over $5.5 million.

How does this affect you? First, I still pinch myself every day to make sure I am not dreaming; I am almost convinced I am awake. Yes, you can now pass more than $2 million without a penny of estate taxes, and that amount is going to go up substantially over the next several years. You no longer have to move to a state with unbearably hot Summers to avoid getting taxed by New York upon your passing. However, for married couples, some trusts stating the amount that should be held in a marital Credit Shelter Trust must now be updated to avoid too much money going into these tax-savings trusts.

In addition, this means that capital gains tax is now an important focus for estate planning attorneys. Remember that any property you gift during life goes to the recipient with the original cost basis, but property transferred upon death gets a date-of-death "step up" in basis. As a result, people should seriously consider NOT transferring highly-appreciated stock and property to other family members, and instead choose more recently-acquired property to transfer over.

What can I do? First, figure out whether you want cold winters or hot summers.

Next, if you plan on living for a few years and your net worth less than $5 million feel comfortable knowing that your estate should not face an estate tax. Make sure to speak with your accountant and attorney prior to making gifts of highly appreciated stocks and real estate, since the capital gains tax owed may seriously diminish the actual value of the gift.

HUH?

But New York's Estate Tax Is All Messed Up Anyway

Issue: HOWEVER…if you live in New York and your estate is over the current exemption amount you "may" pay a tax on the entire amount you transfer, in other words you do not get any exemption at all. (Now I know I am awake after all). While I cannot say whether or not this "Cliff Tax" was intended, it happens to be the facts on the ground.

How does this affect you? For people who skirt the New York exemption amount on any given year, especially those of us who are in our golden years, it is important to consider pre-paying certain expenses to stay within the "zone" of the exemption.
What can I do? If your estate is remotely close to the New York exemption on any given year please contact me. A 20 minute phone call may save you thousands or tens of thousands of dollars in taxes.

Trends

(insights, observations, opinions)

Guardianships:
The State Owns You

Issue: I know this title sounds ominous, but this is important so I want to grab your attention. I have been indirectly involved with several Article 81 Guardianships this year and noticed a disturbing trend: Where there is ANY doubt whatsoever as to whether a family member is the appropriate person to represent you if you become incapacitated, the state will appoint an Attorney to act as your Guardian of the Person. This means that if you lose your mental capacity and ability to handle your finances, the State is more willing than ever to appoint someone who charges $300+ per hour to oversee your financial affairs.

How does this affect you? My clients know that I am both cynical when it comes to many aspects of the law, and extremely distrustful of any government agency or authority getting involved in my client's personal affairs, so they take my sensationalist comments with a grain of salt. However, I can honestly share that there is no trend more concerning to me than me witnessing the state declaring individuals incapable of choosing whom they want to handle their financial and health care decisions if they become incapacitated. As an attorney responsible for your best interests and desires as you age, I am now distrustful toward the Courts in many instances. You may be equally incensed and disillusioned if you've recently had your status as Power of Attorney for a family member revoked so that your judge's golf buddy or Mai Jong partner could receive a high paying position.

What can I do? Contact me if you feel your mental faculties are starting to wane. Even more importantly, contact me immediately if you feel the Power of Attorney, Health Care Agent, Executor, or Trustee you initially named no longer had your best interests at heart.

And take every concern I voice with a grain of salt, but don't empty the entire shaker: I see far too many new clients after it's too late to entirely help them, and too many existing clients after too much time has passed for me to completely rehabilitate their desires. I attempt to be respectful in not hounding clients to meet with me every six months in order to needlessly charge recurring legal fees, and am grateful that my clientele typically comes to me when they are in need. Reach out to me: I need to hear from you when you have questions.

Remember that the laws governing wills and real estate are based on hundreds of years of Anglo-American jurisprudence, but retirement plans, tax laws and Medicaid regulations change every year. You have paid me to stay up to date on these laws and I am both willing and eager to share what I have learned so that we can protect you during your life and your friends, families and charities thereafter.

I wish all of you a long and healthy life, and a happy 2015.

Special News

In September of this year Dan entered into an Of Counsel relationship with Zimmet Bieber, LLP. Brian J. Zimmet, Esq., has over 20 years of experience as an attorney and focuses on Guardianships, Contested Probate matters, general litigation and real estate transactions. Dan has been working closely with the firm for several months and shall be referring litigation matters to Mr. Zimmet. In addition, Dan executed a Springing Power of Attorney with Mr. Zimmet, so if anything happens to Dan, Mr. Zimmet will be able to access your legal files and records.

You can read more about Brian J. Zimmet at: www.zblaw.com

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