



THE LEGAL BULLETIN

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Summer Is Upon Us!

After an extremely frigid winter, we have thawed out and are ready to get focused and organized. Only one major change—at least in the world of trust & estate law—has taken place since December's Newsletter. For some of you, this change is very important, so I shall address it first. To those for whom this doesn't apply, read the remaining content at your leisure, and enjoy this warm weather!

Important Tax Update

This may affect clients who created trusts with me prior to 2014, so if this applies to you, read this portion of the newsletter now!

New York Increases Its Estate Tax Exemption

While the Federal Government has been increasing its estate tax exemption amount for years and currently allows

transfers of \$5,430,000 per person without assessing an estate tax, New York had been limited to \$1,000,000. This means that an individual passing more than \$1,000,000 to non-spousal family members had to pay an estate tax to New York.

That is, until April of 2014:

After joking with clients for over 6 years that New York wouldn't think of giving its citizens a tax break, I've happily been proven wrong. New York has increased its estate tax exemption amounts in accordance with the following chart:

For decedents on or after...	And before...	The exclusion amount will be...
April 1, 2014	April 1, 2015	\$2,062,500
April 1, 2015	April 1, 2016	\$3,125,000
April 1, 2016	April 1, 2017	\$4,187,500
April 1, 2017	Jan. 1, 2019	\$5,250,000
Jan. 1, 2019		Scheduled to equal the federal estate tax exemption



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While there are several intricacies attached to this increased exemption (such as an important focus on capital gains taxes, and the involvement of buzz phrases like the "cliff tax"), the bottom line is this: You can pass more money free from estate taxes if your planning is done correctly.

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Why My Clients Should Care

If you are a married couple who hasn't visited me in several years, it is possible that your credit shelter trust needs modifying. Between 2007 and 2012 most tax planning focused on the vast differential between federal and state estate tax exemptions. Now that gap is narrowing, and some of your documents may be out of date as a result.

You may be over-funding your credit shelter trust upon the passing of the first spouse. This means that your spouse may only have access to income for more funds than anticipated, and their acquisition of trust principal may be limited. My new approach is to focus on disclaimer trusts, in which everything is left to the surviving spouse outright, allowing them to "renounce" a portion of the funds into the credit shelter trust. This provides greater flexibility for post-mortem planning in this increased estate tax exemption environment.

What You Should Do:

Call me. Email me. If you see me walking down the street, yell my name and approach me. Then set up a consultation to review your trust. We can make amendments to your trust in as little as one hour.

Now that that's settled, here are some additional remarks for everyone else...

Transferring Coops To Trusts: Patience Pays

After suggesting for almost 10 years that clients should transfer their cooperative apartment shares to their trusts, the law



firms that represent those client's coops are finally permitting these transfers en masse. While I fully embrace this shift toward estate-friendly service, no good deed goes unpunished: The process can be grueling and time consuming.

Remember that a trust allows a successor trustee to take control of the asset when you are no longer able to do so yourself. The benefits are immense: 1) Your estate does not have to wait several months for an executor to be appointed under your will through probate, 2) funds should be readily available from your assets to pay for monthly expenses, and 3) the property can be listed for sale almost instantly. In short: Once your coop shares are owned by a trust you have saved your beneficiaries a major headache and substantial funds.

However, you have to give a pint of blood now to save a gallon of it later due to a few factors: 1) There are no statutes governing that a coop MUST accept the transfer to a trust, 2) There are no uniform procedures that must be followed, and 3) There is no time frame that must be followed. In short: each transfer of coop shares to a trust is a unique experience based on that coop and the coop's law firm.

Here are some things you can do to help move the process along more quickly:

- Find your original shares certificate and proprietary lease.
- Identify your coop's transfer agent. This is the party that will give you the requirements to transfer the shares, and ultimately give approval for the transfer.
- Have a copy of your trust scanned. The coop's attorney will review the trust for a fee, and may require the drafting attorney to submit an opinion letter stating that the coop can still pursue you personally if maintenance is late or lacking.
- Be familiar with the fees you will incur, which include paying an attorney to draft your trust, paying the coop's attorney to review the trust, and paying the transfer fees to move it over.
- Be patient! While this process is not in its infancy, many coops fear that the trusts are a mechanism to avoid paying maintenance. These coops and their legal counsels will be cautious, which will likely take additional time.

Additional issues may apply if you still have an outstanding mortgage on the property. Check out my blog posting for comments on this in the future.

Long Term Medicaid Preparation (or Failure)

Aging individuals are increasingly asking questions regarding their Medicaid planning. After decades of saving and sacrifice, people are loath to pay for personal care they feel could otherwise be covered by Medicaid.

Before I get into Medicaid planning over the long term, I want to reiterate the following about most Medicaid planning: 1) it divests you of a good deal of control over your assets, 2) it is typically irrevocable, and 3) it leaves you at the mercy of a government program for services that may be better managed by out-of-pocket payments. That being said...

Medicaid and estate planning are ASSET games. Income is difficult to transfer to any individual other than a spouse: Pensions and Social Security are typically only transferrable to the legally married survivor of the beneficiary. So our goal, when possible, is to invest in such a way that effectively transfers assets, while not locking us into perpetual income generation.

Commercial Annuities Outside of a Retirement Plan:

In a brief past career I was an annuity marketing specialist at an independent brokerage firm. I consistently reviewed and explained over 800 different brands of annuities to financial planners. I bring this up to show that I am well aware of the many features and benefits of annuities.

However, for Medicaid planning there is nothing more potentially ruinous than owning an annuity outside of a retirement plan. Once an annuity is annuitized, you erase the transferrable asset entirely and instead receive a guaranteed income stream for life. This means that you instantly add to the amount you must spend down in order to qualify for Medicaid's maximum income requirements of \$829 per month for home care.

If you want to instead surrender the policy you may have a surrender penalty or, more relevantly, all of your initial withdrawals will come from any gains on your policy and are entirely taxable income. Example: If you bought an annuity for \$100,000 and now it is worth \$150,000 the first \$50,000 of withdrawals will be entirely taxable income. If the annuity is in a retirement

plan, all funds withdrawn are not only taxable income but also available income for Medicaid eligibility purposes. The principle of the annuity is excluded for Medicaid resource eligibility, as long as systematic payments are being made. Still, I recommend speaking with me prior to purchasing a commercial annuity in these circumstances, due to the internal fees associated with annuities.

Permanent Life Insurance with Cash Value:

Even though you do not personally benefit from life insurance proceeds, Medicaid still only allows \$1,500 of cash value in life insurance policies. This is devastating to individuals endeavoring to become Medicaid eligible who have funded life insurance policies for many years. The only good option is to strip the policy of its cash value, thereby decreasing the lifespan of the policy, and potentially incurring income tax. The latter consequence is rare since only gains on life insurance cash value are taxable, but the loss of the potential longevity of the policy is particularly unfortunate because the policy was bought with the purpose of leaving assets to someone when you pass away.

One option is to sell the policy to a third party and use the proceeds to fund a pooled trust, but they payout is rarely favorable for the seller. Better to consult with me as to your options and consider letting the policy lapse.

Second Residences:

Medicaid eligibility rules consider only your primary residence as an exempt resource. All other real estate, such as your vacation home in Florida, is outside of Medicaid qualifying trusts and considered available assets that will invalidate your Medicaid eligibility. It is best to hold these residences in trusts for a minimum of 5 years prior to applying for Medicaid. While you are at it, you may want to place your primary residence in trust as well.

In Conclusion:

Like I said earlier, the legal landscape for most middle class individuals has been somewhat static, and that is a good thing. A predictable legal environment allows for more predictable estate and Medicaid planning, and minimizes the fees you would otherwise have to pay to an attorney, accountant and financial planner. This is a pleasant change from several years ago when changes to estate and gift tax exemption amounts / convoluted same sex couple planning due to the denial of same sex marriage / Medicaid conundrums being created by legislation in Albany that were poorly drafted and later overturned / etc. The current environment looks good for clients...

...but only if you have implemented the changes I have highlighted in this newsletter. I implore you to talk to me if we have not looked at your trust in the last year. If you own a coop and have a trust, contact me as to whether it makes sense to place the shares in your trust so it can avoid going through probate. And if you are preparing to make your finances Medicaid compliant, let's schedule some time to sit down and review your situation.

I wish you all a happy and healthy summer, and look forward to stuffing your mailboxes with my year end newsletter in December.



What Has Dan Been Doing?

January 29th: Dan taught a Continuing Legal Education program for the New York State Bar Association's Law Practice Management Committee on starting and maintaining employee benefits as a small law firm practitioner.

• **February 24th:** Dan taught a Lunch-and-Learn at the New York City Bar Association to attorneys interested in starting a law firm.

• **March 17th:** Dan provided pro bono services to victims of domestic violence at New York's Family Justice Center in conjunction with The Financial Planning Association's Pro Bono Committee.

• **April 7th:** Dan spoke about estate planning to foreign-born business owners at the Brooklyn branch of the New York Public Library's Science, Industry and Business Library.

• **April 21st:** Dan taught a Continuing Legal Education program at Fordham Law School covering retirement plans as they pertain to estate planning.

• **May 17th:** Dan provided pro bono services at the National Multiple Sclerosis Society's Legal Day in Manhattan.

• **June 29th:** Dan provided pro bono services to victims of domestic violence at New York's Sanctuary for Families in conjunction with The Financial Planning

Association's Pro Bono Committee. Dan is now offering Expert Witness Testimony for Estate Planning and Medicaid-related matters for both clients in matrimonial matters and as an impartial expert witness for the court relating to Guardianship matters.

Stay Tuned: In 2016 I am hoping to bring together more pro bono opportunities for groups of needy people facing end-of-life, guardianship, and degenerative illness issues. This is only possible with the insights you have provided me by allowing me to work with you. Thank you!

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Dan was recently named a Super Lawyers® Rising Star for 2015. Super Lawyers® are nominated by their peers as recognized practitioners in their fields of law practice. You can learn more about Super Lawyers® at www.superlawyers.com

Special Thanks

The law firm of Beck Liebman Petrone, P.C. has been allowing me to use their office space to meet with Westchester clients who are unable to have me visit them in person. I am extremely grateful to them for their kindness, and wish to personally thank them for their generosity.

The law firm of Beck Liebman Petrone, P.C. is a Westchester-based law firm focusing on real estate matters such as residential and commercial purchases and sales, representation of the Boards of Directors and Managers of Cooperative and Condominium apartments and complexes, and landlord-tenant issues. They boast over sixty years of attorney experience, and are widely recognized and respected for their excellence in client

service and client satisfaction. If you would like to learn more about their services please contact them at (914) 285-9500 and speak to Denyse Fecteau, Esq., or ask Dan to tell you more about how they can help you advance your real estate goals.

Newsletter Contributors

This newsletter is only possible due to the help provided to me by the following individuals. I give many thanks to them for helping me better inform my clients as to the legal world that affects us all:

• **Peer Review - Rosanna Roizin, Esq.:** Ms. Roizin is a Trust and Estates and Elder Law attorney practicing in New York City.

• **Editor / Creative Writer Alix Purcell:** Ms. Purcell helps professionals improve their branding by providing professionals written content describing their businesses.

• **Graphic Design & Printing** Rev Design, Inc.: **Anthony LoMeli** and **George Barbarossa** create professional-grade print materials and web sites, and provide search engine optimization services to businesses in need of greater web exposure.

• **Mailing – Jennifer Pisani:** Ms. Pisani is responsible for mailing this newsletter to my clients and colleagues.

