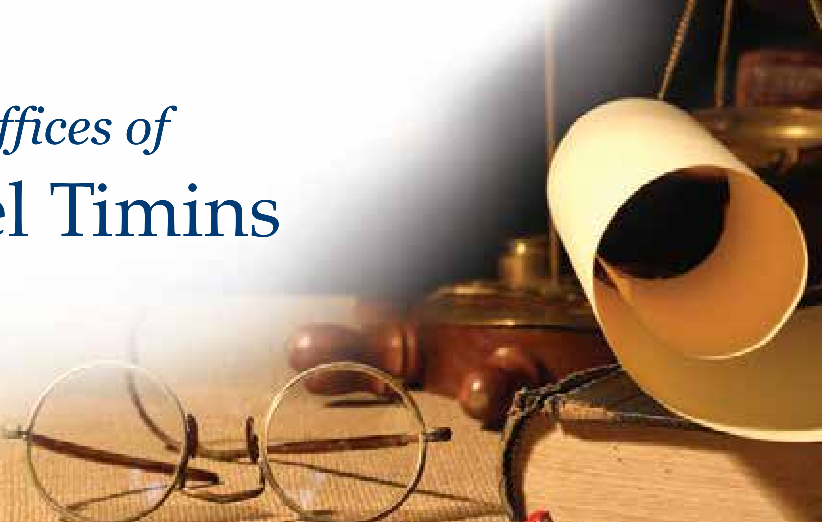
Law Offices of
Daniel Timins



DANIEL TIMINS, ESQ., CFP®

THE LEGAL BULLETIN

VOL 3. JUNE 2016

Happy 2016!

I have several great things to share with you in this Newsletter, so without further delay...Let's get started!

Dan Is Moving!

By mid-2015 it became clear to me that I needed to expand the size and quality of the firm. As so, I am excited to inform my clients and friends that I will be moving into the new offices of my Of Counsel, Brian Zimmet, Esq., in Midtown East starting this summer. Brian and I have built a very solid business relationship, and he is still my Attorney-in-Fact for my own business affairs. If anything unexpected happens to me, Brian and his staff will be able to easily help with your urgent matters while maintaining client confidentiality.

I want to thank Mark Cohen and Edward Newman, my former landlords and current CPAs. I look forward to continuing working with them after the move, and am very grateful I met them when I did.

30 Minute Legal Checkup

As a way to welcome you all to my new space, I shall be offering a 30 minute free consultation for my existing clients between July 5th and September 3rd. I will be reaching out to you in the coming weeks to schedule a time to meet. Feel free to schedule an in-person consultation, or be prepared to speak over the phone.

For Your Reading Pleasure

2016: A "Safe" Year for Estate Planning & Medicaid Law Changes

After more than a decade of constant changes in estate planning law, from ever-changing estate tax deductions to same-sex marriage, 2015 and 2016 are a breather for the middle class client. Most government tax and benefit exemptions are based on interest rates, and since we are living in a near-zero interest rate environment, these amounts have barely changed since last year.

The federal estate tax exemption increased slightly to $5.48 million. As of April, New York's exemption is currently $4,187,500, and the annual exclusion stands at $14,000 per person. For those of you who read my materials, you know that I never win a bet (so I don't gamble). However, if I were to gamble, I would say that the issues relating the New York's "cliff tax" on its estate tax will not be determined in 2016.

For Medicaid planning purposes, the asset and income limitations were as follows:

	Income Limit	Asset Limit
Single Person on Medicaid Home Care	$825 / Month	$14,850
Couple on Medicaid Home Care	$1,209 / Month	$21,750

Why My Clients Should Care

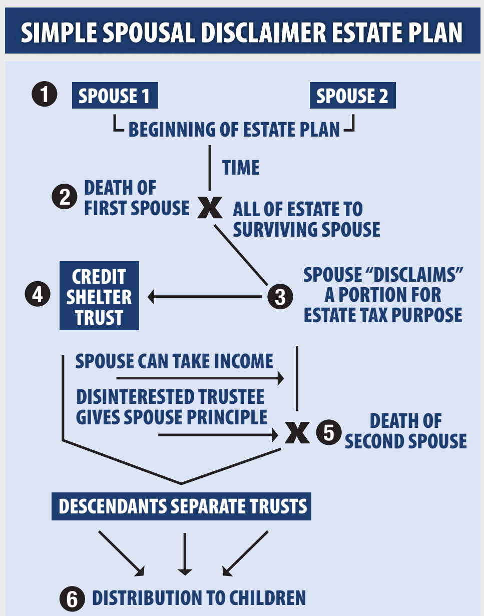
Basically, very little has changed. The prospect of a new Executive Branch may give us a moment to think things will change in 2017, but just like estate taxes, Medicaid appears to be set in place in New York without any major changes on the horizon for the rest of the year.

Keeping it Simple: The Spousal Disclaimer Estate Pattern

My mentor Judith Volkmann, Esq., CFP® often told me that the best way to achieve a goal is usually with the most simple and obvious solution. One simple estate planning method that still works for a married couple with joint finances is the "Spousal Disclaimer" estate plan:

1. Spouses create estate plan with joint monies and shared goals
2. First spouse passes away, leaving all funds to surviving spouse
3. Surviving spouse Disclaims / Renounces some or all of the deceased spouse's property
4. Disclaimed share goes to a Credit Shelter Trust
    a. Funds in trust grow estate tax free
    b. Surviving spouse may take income from the trust at any time
    c. A disinterested trustee may distribute principle to the surviving spouse at any time
5. Second spouse passes away, with all money going into separate trusts for the children
6. Children's creditor issues are resolved prior to outright distribution of funds

This plan allows future flexibility for estate tax planning (as we do not know the couple's future asset values or estate tax exemption amounts), leaves the surviving spouse in control of how much money she/he wants to control directly, and continues to protect future generations from their creditors. However, this strategy typically only applies to married couples with shared estate goals, and may not be appropriate for some second marriages, couples with separate finances, and the like.



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The Passing of a Music Legend: Prince's Royal(ty) Pain

Prince's estate faces two primary difficult issues: (1) The nature of his property, and (2) the absence of a natural heir.

2016 is seeing its share of celebrity deaths: Glenn Frey, Abe Vigoda and Garry Shandling. But none so far, aside from perhaps David Bowie, left as much of an impact on our world as Prince. And none, I would dare to say, has such a complicated estate.

Considering the sheer amount of wealth Prince's estate will create, starting with the millions of dollars it made from iTunes downloads mere hours after he died, Prince needed to carefully consider who would receive his music royalty rights. Copyrighting music ensures several financial rights, such as charging a radio station or organization for playing it for profit, licensing its use to another performer for a live performance or sample in a song, and all sales and sampling in iTunes, YouTube and Pandora. That's a lot of sources of future money.

Starting in 1978, music copyrights last for 70 years after the death of its author. For example, Elvis Presley died 40 years ago and his estate earned $55 million in 2015. Due to the large number of sources an artist's estate can collect from and the significant amount of time it can collect, Prince's estate can earn a fantastic amount of money.

It was reported that Prince supposedly died without a will. Keep in mind that his sister is reporting this and because Prince was unmarried and has no known living children at the time of his death (Prince's only child sadly passed away soon after birth), and his sister is his closest living heir, she would be entitled to the estate. I can guarantee you that there shall be some type of dispute over this absence of documentation. Prince was exposed to more legal jargon than an editor proofreading law school textbooks. He literally had law all over the place, whether he wanted it or not.

He was also a devout Jehovah's Witness who, it would seem, wanted to financially benefit his faith. To imagine he died without a will, trust, or some other type of legal document just seems unbelievable.

It appears that Prince's royalty problem may become a royal pain in the near future…

Assets vs. Income: Looking Beyond the Numbers

While guaranteed retirement income may benefit people with good health, focusing on accumulating assets may open up opportunities to optimize government program participation and family wealth planning.

As many of my clients know, I firmly believe that the path toward building intergenerational wealth is to focus on asset accumulation, not increasing your income.

Today's retirees are probably the last generation that can expect a reasonable lifelong pension at retirement. Combined with Social Security, octogenarians are aging knowing they can pay for their needs (food, clothing, utilities and modest entertainment) for the rest of their lives. For people who want to ensure their own casual comfort and financial independence, a guaranteed retirement paycheck is a good deal. However, due to the structure of government programs and taxation, people with assured lifetime incomes will find it difficult to transfer their wealth to their children and maximizing needs-based government benefits.

Here is a fact that should surprise no one: America's tax system favors people who already have assets over people who earn a salary that is immediately taxed. What many people may not know is that large incomes usually hurt your ability to receive government assistance, but owning substantial assets often does not preclude you from utilizing these programs. Lastly, the difficulty in transferring income to other people almost ensures that workers with income producing jobs will have many hurdles to transferring wealth to their children. So yes, while stable incomes may be good for non-active retirees with minimal health needs and no desire to give money to their families, any person who truly wishes to leverage their wealth will want to also consider having assets available to them.

Here are a few examples why people should consider focusing on building assets instead of maximizing their guaranteed income:

Example 1: Income Taxes versus Capital Gains & Estate Taxes

Many laborers have an income that federal, state, and some city governments tax before it even reaches the worker's pocket. If you are not taking advantage of pre-tax investments, such as IRA's, this leaves little for post-tax investment, especially after money is spent on daily needs.

Meanwhile, capital gains tax rates on "passive investments" are significantly lower than "sweat labor" income tax rates, meaning people who own assets that appreciate in value pay a lower percent in taxes than people who earn it by working. And even though gift and estate taxes have some of the highest taxation rates of all taxes, there are many exemptions, exceptions and planning mechanisms to minimize these transfer taxes. The fact that one tenth of one percent (1/10 %) of families pay a federal estate tax when they die should shed some light into the benefit of transferring assets vs. income in our current tax system.

Example 2: Government Programs

Much like our tax systems, most government programs have advantages for people with assets over people who earn incomes. Medicaid planning for aging family members is the best example. Families have 5 years to transfer any and all assets to avoid Medicaid liens being placed on their property, but people with large incomes, such as former employees who did not have great savings potential while working but instead now receive pensions, face a very hard time preserving the fruits of their labors. Income must be paid over to pooled trusts or directly to the government to qualify for Medicaid. Meanwhile, Medicaid prospects with assets can transfer them to family members with proper planning.

For example, an individual can receive an apartment under a New York rent control program for disabled individuals because he receives less than $1,200 a month of disability income; the fact that he has over $200K in the bank is irrelevant to the city's calculation. Others are able to transfer money (i.e. assets) into trusts for disabled family members so they may continue receiving Medicaid benefits without surpassing Medicaid's asset and income limits.

Example 3: Assets Are More Private than Income

While your assets are private information, the government (and sometimes the public) has the ability to acquire substantial evidence of your (legal) income. You can probably find out how much money your favorite movie star, most admired athlete, and most gregarious corporate CEO earned last year. But if you try finding out how wealthy these people are all you will usually see is an estimate of their net worth.

What Has Dan Been Doing?

August 5th: Dan was quoted in **Financial Planning Magazine** about account titling mistakes disrupting estate plans

August 27th: Dan was quoted in **Financial Planning Magazine** regarding how to manage state estate tax issues

September 26th: Dan spoke to the public about Medicare and Medicaid planning at **Financial Planning Association of New York's** Financial Fitness Workshop

October 4th: Dan spoke to the public at the **New York Public Library's** Science, Industry and Business Library about avoiding common Wills mistakes

October 23rd: Dan provided pro bono services to the public about their personal finances at the **New York Public Library's** Science, Industry and Business Library on behalf of FPANY.

October 25th: Dan provided pro bono services at the **National Multiple Sclerosis Society's** Legal Day in Manhattan.

October 27th: Dan provided pro bono services to victims of domestic violence at **New York's Queens County Family Justice Center** in conjuncture with the **FPA's Pro Bono Committee**

November 3rd: Dan spoke to teachers about their estate planning options at the **W!SE Money Power Conference** in Manhattan

November 16th: Dan provided Pro Bono Services to **Sanctuary for Families** on behalf of FPANY

February 8th: Dan taught a Continuing Legal Education class at the **Brooklyn Bar Association** regarding drafting Wills that avoid Surrogate's Court complications.

April 6th: Dan introduced students at **Brooklyn Manhattan Community College** to the concept of Wills and post-mortem planning

April 26th: Dan provided pro bono services to victims of domestic violence at **New York's Bronx County Family Justice Center** in conjuncture with **FPANY's** Pro Bono Committee

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Super Lawyers®
Daniel A. Timins

I have been voted in once again as a New York Super Lawyer Rising Star in Estate Planning for the 2016-2017 year. Thank you once again for allowing me to pursue a job that I love while I simultaneously have the opportunity of helping you.

Example 4: Income is Inflexible and Difficult to Transfer

Your income is usually set in stone: When you retire your income remains somewhat static between pensions, Social Security, and interest or retirement plan requirement minimum distributions. Because income is stable there are less options that professionals have available to plan for changes. And you can usually only transfer some of this income to one person: A spouse.

People with assets, however, can change how their assets are invested within a few days, or transfer their investments to other people quite easily by just writing a check or drafting a legal document like a Deed or business agreement.

The moral of the story: In order to take full advantage of government programs while also creating family wealth transfer opportunities, learn to build your asset base and avoid turning all of your assets into irrevocable income generators when you can, especially in low-interest rate environments. Consult with professionals regarding lump sum retirement plan options, be cautious when annuitizing commercial annuities, and avoid locking up your assets in long term income-generating investments.

Income for life looks good, but it is usually only good for your life and only if you are opposed to receiving government assistance.

The second moral of the story: If you have no desire to transfer money to your heirs, start spending it: Every client I have ever met eventually slows down his / her spending as they age, so enjoy the money while you can best utilize it.

Special Thanks

I have been fortunate enough to have worked closely with **Amy Jo Neill**, owner of Get Organized, for almost three years. Amy Jo Neill is an independent Daily Money Manager serving clients in the tristate area. Her services include acting as attorney-in-fact, executor, trustee, health-care proxy and care manager. With over 10 years' experience, she has been an invaluable resource to me and my clients. She specializes in working with the elderly and their families to help them live independently for as long as possible.

If you would like to learn more, contact her at (917) 579-7316, or ask Dan how she might assist you and your loved ones.

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