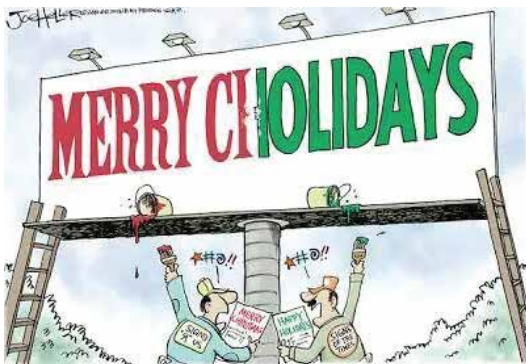




THE LEGAL BULLETIN

VOL 7. DECEMBER 2018



My Holiday Gift to You: A Politics Free Zone!

Against my better judgment – granted, the same better judgment that lead me to date that severely-unstable Romania woman a few years back – I have opted to make this issue of the Newsletter POLITICS FREE! Yes, this issue is a Safe Zone from opinions of Deplorables and Snow Flakes alike, meaning we will NOT discuss taxes, legislation or dire predictions of our alien overlords' next moves. So sit back and kick off the Merry CHoliday Season with this fun read that should teach us all a few valuable lessons, or you can listen to Uncle Jack retell that story where he single-handedly defends Da Nang during the Tet Offensive and how that flashback is why he married your aunt or something...

5 Reasons to Wrap-Up an Estate

Often the only positive thing about a person's death is that family, friends and charities (and unholy government agencies) receive a share of the deceased person's wealth. However, securing the benefits of another person's estate cannot be done without also enduring the occasional hardships of procuring that wealth. Many people talk about how Aunt Mildred's estate took 3, 5 or 10 years to finally be settled. This can be the fault of an inexperienced attorney, irresponsible Executor, whacky Court hijinx, jaded family members looking for a few extra bucks, bad planning, complex assets or a secretive decedent, but it is often a combination of a few of these factors: Epic estate train wrecks often require multiple attorneys for multiple legal actions, hiring numerous ancillary professionals, lots of legal fees, and bonding with your estate lawyer-turned-therapist / drinking buddy.

One of the misfortunes of having practiced Estate Administration for over a decade is having had to help clean up many estate calamities that make the Hindenburg explosion look like a family vacation to Hershey Park. Still, when an Executor looks back on how procrastination effected an estate's administration, it becomes clear that many steps could have been taken early-on that would have mitigated the prolonged disaster that followed. Here are five reasons to close an estate as expediently as possible:

Real Estate Foreclosure: Estates can take a long time to administer to, often far-longer than the estate attorney initially promised, because of some unforeseen circumstances. Some clients stop paying the mortgage on recently-deceased Aunt Mildred's house because they either don't have enough money or see no reason to pay for something that is going to be sold soon anyway. Well, it's going to take Bank of Hamburglar

all of 5 milliseconds to file a foreclosure action that will gum-up the sale of the residence, increase legal fees, and add time and frustration to the administration process. Executors typically have Aunt Mildred's mail being forwarded to them and will quickly find out that a mortgage payment is due or unpaid, and should immediately inform their attorney to avoid foreclosure actions.

Damage to Property: If a tree falls in the forest and no one is there to hear it, does it make any noise? Who knows? (I do: Yes, it does, case closed). But what is almost certain is that Aunt Mildred's 30 year old roof is going to get an inappropriately-forceful love tap from that falling tree. Surprise surprise: Unoccupied property gets damaged! And the longer the wait the worse it gets. I have seen unattended houses growing a fruity rainbow of molds, raccoons residing in the premises, broken sewage pipes in the basement. None of this is even remotely cool. Sometimes you want Aunt Mildred's

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house for yourself and need to purchase your sister's portion from her, since you probably want to live with your estranged sibling as much as you want to have your routine colonoscopy performed by a former collegiate javelin thrower, but the real estate has become the subject matter of a prolonged legal contest that is now playing out over the span of several years. If you are experiencing an estate dispute make sure your attorney works with opposing counsel to protect any real estate you may be interested in inheriting.

Family

Relations: Time does not heal all wounds: Some fester nice and slowly until they smell like a funky French fromage.



Sacre Bleu! If you and your family do not get along during Aunt Mildred's estate proceeding, don't expect your relationship to improve with time: Unfinished business only gets more complicated with time, since people tend to fixate on how they perceive to have been taken advantage of instead of how they may have benefitted.



Lapses of Tax Refunds &

Unclaimed Funds: Most video games have a cheat code called "God Mode" where the gaming character instantly gets every weapon and power, becomes indestructible, and no longer has any rules it needs to follow. Lest that seems unfair, the IRS and government agencies have a God Mode of their own, bastards, where they can keep an estate's tax refund if no action is taken in time. In addition, unclaimed funds do eventually lapse to the state. Next to finding a Will and collecting an estate's assets, your most important task is to make sure income taxes are properly filed and paid, and once in a blue moon in Fairytale Lollipop Land you will need to collect a tax refund for the estate.

More Deaths & Estates: And now the circle of life is complete: Aunt Mildred died, you and your cousin administered to her estate together, and years later your cousin dies. However, there remains unfinished business like the issues listed above and any one of several other problems I don't possibly have enough space to cover in this newsletter. You and your cousin may have been close, but you are likely not that tight with your cousin's children. And now, when you need to wrap up affairs, they question whether or not Shady-Kind-of-Uncle-So-And-So is trying to screw them over, thus causing new delays. Or a beneficiary to the estate passes away during the process, meaning his estate ALSO must be administered to before Aunt Mildred's estate is completed.

The longer you wait to deal with an estate the greater the chance is that you will have to wait longer to complete your fiduciary duties, because Death doesn't wait for anyone except Keith Richards and Joan Collins, but Courts assume you can wait until an estate is completed to their satisfaction before your job is done.

Watch Out Grandma: Affordable Live-In Caregiving Is GONE!!!



Caring for elderly family members is about as exciting as spending your bachelorette party watching C-SPAN reruns (elected officials excluded, of course), so why not pay another person to help your aging Grandma feed, bathe, and toilet herself while listening YET AGAIN to how granny risked it all one night in 1952 by ordering a cherry float instead of a vanilla sundae? And while you are at it, why not have that person "live-in" with Grandma 24 hours a day but only pay them for 13 hours of that work at minimum wage? These were

the rules permitted in New York for live-in caregivers, provided they had an 8-hour sleeping period and 3 meal breaks equaling one hour each.

What a deal, right? Pay some hard-working soul unfortunate enough to have to accept a job where they live outside of their own home, be available for 24 hours straight for many days in a row, and only receive minimum wage for 13 hours. Yet as cruel as it sounds on its face, this has been the format of self-pay care for elderly individuals in New York for decades.

Well, now that's gone. And with it, the possible demise of affordable self-paid home health care.

Despite the New York Department of Labor's uncanny ability to mandate an employee's right to do anything except actually having to work (I'm guessing the name "Anti-Labor Department" wasn't as catchy), the DOL condoned this usurious practice for years. Basically, the DOL allowed willing employees to only get paid 13 hours of minimum wage salary for being on-call 24 hours a day. In September of this year New York County's Supreme Court overturned DOL's standard practice, claiming that live-in workers are entitled to 24 hours of pay for being present on-site for 24 hours.

I'm about as much of a fan of New York courts as I am of a hemorrhoid flare-up: Both are a maddening pain in your behind that you must deal with during uncomfortable times. But I will give them credit for "getting it right" for live-in employees in an instance where those laborers' greatest advocate (the DOL) failed them. These live-in employees were the most important person your aging family members had in their final years, and they were being paid slave wages. However, their cost was what made their care affordable.

Now the ramifications: Grandma is going to have to pay two caregivers a day, each ostensibly only working 12 hours, and pay them for every hour worked. Essentially, the cost of private care just doubled. This will devastate lower-net worth families, effectively delete inheritances from several middle-class retirees, and leave many needy individuals attempting to qualify for Medicaid (whose increased costs may finally bankrupt the program). Families

will have to spend more time caring for their family members, including performing physical tasks (toileting, clothing, bathing) that humiliate all parties involved.

Why Annuities? Why Not Annuities?



Long, long ago in a galaxy where Star Wars movies didn't completely suck and children did not post their impersonations of Kim Kardashian's Duck Face on Instagram, I worked as an Annuities Marketing Specialist. And while many of us have a diverse work history that lent us valuable insights into our future professions - I was once a dishwasher at my private high school, which taught me I would rather live off of rich peoples' chump change than their dinner scraps - I can say that what I learned about annuities then is very different than what I know of them now

First, why annuities are a good idea:

+ Several non-qualified annuities allow you to invest in mutual fund-like sub accounts so you can grow your annuity's value, and may be "annuitized" to provide lifetime income so you are never penniless.

+ Annuities are technically insurance contracts, and many have a guaranteed minimum Death Benefit that may be paid to your choice of beneficiary even if the investment value in the annuity is less than your initial investment.

+ Annuities have many "Living Benefits" that allow your income payments to be further guaranteed even if your investment returns are negative. So you can play the stock market and still know you aren't risking future income needs. Good stuff!

+ Lastly, annuities allow for tax deferral on investment gains, meaning that you don't have to pay taxes on annual dividends and interests - you can pay taxes later.

In general, investing in non-qualified annuities is a good idea if you are healthy and expect to live a long life, and have little desire to transfer money to your heirs. The guaranteed income option allows you to budget for the future, since you know how much income you will be receiving on a monthly basis.

Now for the negatives:

- Remember that income tax deferral? You were drinking some dank Kool Aid if you thought that would last forever. When you withdraw funds from an annuity the first dollars you take out are the gains, meaning you face an income tax on them. Remember that any income you earn may bump up your total income, thereby making your Social Security benefits assess more income taxes.

- If you annuitized that annuity for the lifetime income stream there may not be any remaining funds for your beneficiaries. And if you don't annuitize the annuity your children are paying income taxes on the gains all in one year, meaning their average income tax rate will increase.

- Non-qualified annuities with any gains are like Russian-level ricin poisoning to Medicaid planning, since diminishing the value of the annuity requires those aforementioned taxes to be paid up-front. In addition, while you can easily transfer assets, it is difficult to transfer annuitized income and Medicaid has drastic spend down rules on come, so annuitized policies often pay Medicaid instead of paying to you.

- Annuities have a lot of fees and penalties: Account fees, investment fees, cost of insurance fees, living & death benefit rider fees, surrender penalties, hepatitis (okay, they don't have hepatitis), penalties on withdrawals prior to 59 1/2, etc.

Annuities are Medicaid Kryptonite and an estate heir's nightmare since annuitizing an annuity turns easily-transferrable assets into an income stream for the rest of your life (which goes to Medicaid to pay your spend down) and those payments stop at your passing (so no inheritance from it). If avoiding taxes, taking advantage of certain government programs and creating intergenerational wealth are an interest to you, don't get an annuity. And if you have one already make sure to tell me the next time we meet.

Do-It-Yourselfer's Corner

	Features	Positives	Negatives	Legal Alternative
UTMA Accounts	An investment account that holds funds for minors and is taxed at their tax rate; the funds vest when the child turns 21	1. Cheap way to hold funds for a minor 2. No legal fees 3. Can hold any type of property	1. Beneficiary gets the money at 21, even if they have creditor / substance abuse issues 2. May have to pay back Medicaid/SSI	Create simple trusts or joint accounts with the minor with you as a cosigner
ABLE Accounts	An account created for disabled individuals to protect family assets while maintaining Medicaid benefits	1. Cheap way to hold money for beneficiary - good for small sums 2. No Court oversight 3. Possible tax advantages for beneficiary	1. Still must report the account to Medicaid and Social Security 2. \$15,000 annual contribution limit 3. At time of death, the State receives remaining funds	Create an "SNT" (Supplemental Needs Trust) or provisions in your Will allowing your Executor to create an SNT, or fund a Pooled Income Trust
Donor Advised Funds	Self-funded, tax deductible investment accounts that allow you to support qualified charities either now or in the future	1. Can take entire tax deduction in one year, then distribute to charities in future years 2. Accounts allow for you to invest in your choice of investment style 3. No legal fees	1. You can suggest your choice of charities, but the Fund decides which charities actually receive money 2. There are balance minimums and fees 3. Some plan sponsors have static investment options	Create charitable trusts, donate directly from your IRA, or make direct donations of appreciated capital assets to charities

What Has Dan Been Doing?

September 14, 2018: Dan is interviewed and filmed by Investopedia.com regarding why he is an advisor. Check it out online at www.timinslaw.com/presentations

October 1, 2018: Dan teaches Continuing Legal Education entitled “Diversity, Equality & Inclusion and Lawyer Well-Being” to attorneys at the New York City Bar Association.



October 3 & 10, 2018: Dan provides Pro Bono services on Wills and life insurance at Sanctuary for Families to victims of domestic violence.

October 18, 2018: Dan teaches a Webinar on Medicaid for PSS / Circle of Care.



October 20, 2018: Dan teaches at the New York Public Library’s Science, Industry and Business Library entitled “Protecting Your Aging Parent’s Money.”

October 26, 2018: Dan teaches on “Caring for your Aging Parents” as the Financial Planning Administration of New York City’s Financial Planning Day.

November 1, 2018: Dan speaks about “Future Family Health Planning” at Weill Cornell Medical Center.



November 13, 2018: Dan provides Pro Bono services to the Multiple Sclerosis Society’s Bronx Support Group at Cavalier Hospital.

November 25, 2018: Dan’s Podcast on Establishing a Trust for Succession is posted on Purdue University’s website (many thanks to Cari Rincker, Esq., for the interview); listen to it at www.ansc.purdue.edu/SP/ALT/

December 12 & 19, 2018: Dan teaches two Webinars on Estate Planning for PSS / Circle of Care.

RATED BY
Super Lawyers®
Daniel A. Timins

For the fourth year in a row Dan was named a New York Super Lawyer Rising Star for Estate Planning Law by his colleagues in the Trusts and Estates Community.

Avvo Ratings
10.0
Daniel Alan Timins
Top Attorney

Dan continues to maintain a 10Rating, “Top Attorney” from Avvo.com, a web site devoted to informing the public of attorney’s reputations amongst their peers, the public and their clients. A continued thanks to all of his clients who helped him achieve this achievement!

Dan Says



Planning your Funeral will help inform your family of your final wishes during a time they are at their greatest grief:

- Write your financial and health care instructions in plain English, sign them, and give a copy to your attorney, your family, and your agents.
- Prepay for your funeral by the time you are 80 years old.
- Confirm you have the Deed to your desired burial plots (if any).
- Create a Disposition Of Remains or similar document naming a responsible party to handle your bodily remains.
- Choose a charity you would like funeral attendees to contribute to in your honor.
- Create an Obituary describing your life story, your achievements, your failures, your family and friends, what you have learned, and what you hope your legacy will be.

Special Thanks: Jean Philip Guizol & Savitek Information Technology

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Since I opened my first law firm’s doors in 2008 I have worked with many technology consultants. I can state with sincerity and confidence that Jean Philip Guizol (“JP”) of Savitek has been the best tech consultant I have ever worked with. A law firm is

only as reliable as its technology, and many of the systems my firm currently uses have been implemented and maintained courtesy of JP. From email to Cloud sharing, hardware to software to networking them both, JP has always been thoughtful,

helpful, and super pleasant to work with. And even though I can be a really difficult customer, maybe one of the worst, JP has allowed me to feel like a client instead of an account. I look forward to working with JP and Savitek for a long, long time.