DANIEL TIMINS LAW OFFICES

TIMINS LAW GROUP, PLLC

THE LEGAL NOTICE: **REBOOTED**

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I was sitting at home this summer and thought "Hey, wouldn't it be a great idea if every 6 months I created a printed Newsletter and mailed that Newsletter to my clients so I could update them on new legislation, changes in tax laws, and share my insights into current events concerning Estate and Medicaid planning? Clients would be informed. Other professionals would learn about my services. And I would have a blast making fun of any event, politician, and incel group that gave me a macroaggression. It would be a blast!"

And then I remembered that I used to send bi-annual Newsletters. From 2014 to 2020. 13 of them. And just like when HBO inexplicitly aired the last episode of Velma, I stopped producing Newsletters for no good reason whatsoever.

So, I am taking a page out of the Hollywood playbook and REBOOTING the Newsletter! Only this time it will be racier, have a bigger budget, cast a central character with an even bigger ego, and clearly fail to equal the interest and classiness of the original Newsletter. But we're going to do it anyway because a lot has happened in 30 months, and I better get out a few more publications before ChatGPT (I.e., "Skynet") starts publishing on my behalf.

HBO Rebooted VEEP with Kamala Harri as Vice President? Who's going to believe that?

Speaking about reboots that require no new material...

IMPORTANT PSA: COVID ERA VIDEO WILLS SHOULD BE RE-EXECUTED

If you executed your Will with me over video during the covid pandemic (March 2020 – June 2021) I strongly recommend you re-execute your Will with me in person.

Surprise! Remote notarizations lend themselves to an extra line of questioning and judicial review during Will disputes, and this can mean a half-whit judge may overturn what you wanted to achieve with your estate plan.

It is Time for You to Switch from a Will to a Living Trust

Rebooted Plot Twist: It is (Probably) Time to Use a Living Trust Instead of a Will

Do you remember when people couldn't wear a hoody and shorts into a 5 Star restaurant? Do you recall all those times I assured some of you that we could effectively manage your estate plan using a Will, and that you probably didn't need a Living Trust? Do you recollect the time Diane Feinstein atomic dropped Matt Gaetz during Barbenheimer II? No reboot is complete without a major plot twist from the original, and some ideas that once made sense occasionally need to be updated. And so, after 500+ years of Anglo-American jurisprudence, it falls on me to tell you that transferring your estate using a Will is probably a financial mistake, and it is time to reconsider using a Living Trust instead.

WILLS: When you execute your Will your job for creating your estate plan is done: The Will stays in some cabinet and does nothing until you pass away. At that time your chosen Executor files a Petition, the Will, and some other paperwork with the Surrogate's Court. Many months of paperwork and waiting takes place (more on that below). Once the Court "approves" your choice of Executor your Executor does the hard work of transferring your assets to your estate. This next step often takes a few months because financial institutions require both the Court's paperwork and their paperwork to be correct, reviewed, and properly submitted.

LIVING TRUSTS: When you sign your Living Trust your work has just begun: You still have to change your Deed, brokerage account, business, and some back accounts to be owned by your Living Trust. You also need to update beneficiary designation forms for your life insurance and retirement plans to (possibly) name your trust as beneficiary.

Of course, you will be dead when all this goes down, but I'm guessing heaven has a $5 blackjack table.

AND SO: When you sign your Will you are leaving the future "heavy lifting" to your Executor after you die; when you create a Trust you are doing all of the hard work up front, leaving your Successor Trustee with very little work to clean up when you pass away. Remember that when you die a lot of your knowledge dies with you. You likely save 5 times the cost, time spent and frustration by creating a Trust and funding it during your lifetime rather than leaving the hard work to your Executor when you die.

Wills	Trusts
• Probate is Public	• Trusts are Private
• Contract with the State	• Contract with Settlor and Trustee
• Court involvement is required	• No Court paperwork or oversight
• Takes a lot of time (6 – 12+ months)	• Fast (2 days after your passing)
• No work required after signing (your Executor does the hard work during Probate after you pass away)	• Still need to "Fund" your trust: accounts, Deeds, business entities and beneficiary designations

Why Was Probate So Bad *(and Why is it Terrible Now)*?

When you die your Will goes through the public court process known as Probate. But Probate does not only require that the Surrogate's Court oversee the administration of your Will:

1. Court Costs: You must pay a filing fee to the Court, which costs $500 - $1,300.

2. Attorney Costs: You typically have to pay an attorney to oversee the process, costs $5,000 - $20,000 (or more, depending on complexity, or even more for Will disputes).

3. Someone Else Pays These Initial Costs: Since the Court hasn't granted your Executor power over your assets yet, they will have to use their money to pay initial costs.

4. Your Will Becomes Public: When the Court receives your Will it becomes public record.

5. Nearest Family MUST be Informed: Your "next-of-kin" *(your nearest family members)* MUST be given a copy of your Will, even if you have disinherited them.

6. Legal Burden is On Your Executor: ALL of your next-of-kin must agree with your Will, if even one person does not, your Executor is burdened with fighting against him or her to validate the Will *(more time and money)*.

7. Foreign Family Members Cannot Serve as Sole Executors: The Court has no jurisdiction over non-US citizens and non-Green Card holders, so the Court will not risk appointing them.

8. Your Estate May Pay for Court Appointed Attorneys: The Judge's mahjongg partner or campaign contributor may be appointed by the judge to represent minor children, disabled beneficiaries, or family that cannot be found. And yes: Your estate pays their attorney fees.

All of this has been true for hundreds of years, which is why Probating a Will already has a bad reputation. But there is a new, more compelling reason that makes switching to a Living Trust even more relevant at this time:

9. The Burden of Time

I remember when this guy weighed a buck eighty in July of 2022 when I saw him at Kings Surrogate's Court

Due to mandatory "E-Filing" of Probate paperwork in 2020, historically meager pay raises and hiring freezes for clerks in New York's Surrogate's Courts, more people trying to conduct complex Probate without hiring legal help *(thereby over-burdening already-overworked clerks)*, more foreign owners of New York real estate, and the ever-increasing complexity of today's financial world, the most basic Probated estates *(which used to take 3 months to have an Executor appointed)* ***may now take as long as 9 - 12 months*** *in many large New York counties (and the Bronx and Kings –the current disgrace of New York's Surrogate's Court system - may take 18 – 24 months).*

- Because Probate now takes so long, the REAL waste of Probate is waiting on the Court to appoint your Executor.
- During this wait, your estate is still paying real estate taxes and maintenance.
- Your desired Executor cannot liquidate your assets in the bank to pay these expenses.
- Your investments in the stock market cannot be liquidated to minimize market risk.
- Your real estate cannot even be listed for sale with a real estate broker.

So the money wasted merely by waiting for the Court to appoint your Executor may cost your estate TENS OF THOUSANDS OF DOLLARS in avoidable real estate taxes, and huge percentages of stock market losses on your portfolio.

In a few words: Even in the most-simple estate matters, Probate is now a guaranteed 5-figure burden on everyone's estate who is hoping to transfer money using a Will.

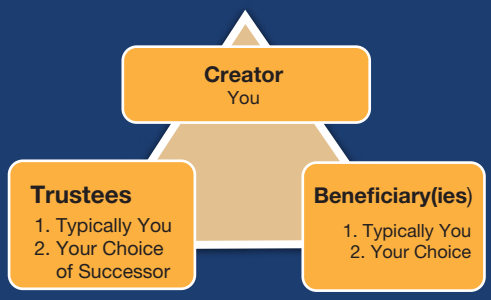
So Why Spend the Time & Money on Creating a Living Trust?

Fully funding a Living Trust to avoid your Will going through Probate ultimately saves you 5 times the cost and time spent by your friends and family collecting and distributing your estate in the future. And here are the reasons why:

1. No Court Intervention: When you die the Court is NOT involved with your Living Trust. There are no Court filing fees.

2. Minimal Attorney Fees: Unless you have complex business affairs, there should be no major attorney fees, perhaps as little as $1,000.

3. Your Trust is Private: You and your Successor Trustee do not have to file it with the Court, it is private from all family and friends whom you don't want to know about it.



4. No "Notice Requirements": No one who is not a Trustee or Beneficiary needs to know about your Trust *(I.e., your disinherited son never needs to know about it).*

5. Burden to Dispute is on Disinherited Individual: Your Trustee is NOT responsible for reporting to your next-of-kin. In fact, your next-of-kin has the active legal burden of disputing your Living Trust *(which is very difficult because he likely does not need to know it exists).*

6. Foreign Family Can Be Sole Trustee: If your family overseas are the only people you trust, you may name them as sole Successor Trustee of your Living Trust.

7. No Court-Appointed Attorneys: Provided you correctly draft your Living Trust, the Court will not appoint an attorney to represent minors and disabled Beneficiaries.

And here is the MOST RELEVANT reason to switch to a Living Trust:

8. You Preserve Your Estate Assets & Don't Waste Your Trustee's Time:

- As opposed to waiting 6 – 12 months for Court processing and paperwork, all your Successor Trustee needs for your Trust is an original copy of your Death Certificate.
- So, within **2 days** of your death your home can be listed for sale.

Your Trustee, free from having to go through Probate! Seriously

- Within **2 days** your brokerage accounts can be liquidated to minimize investment risk.
- Within **2 days** your banking assets can be collected, so your Successor Trustee can utilize your money to administer to your post-mortem affairs *(instead of them having to use their money to begin the process).*

Who Should REALLY Consider Creating a Living Trust?

1. People who want to distribute more money to their beneficiaries with less time and costs.
2. If you want to disinherit near family members.
3. If you want your estate affairs kept private.
4. People who do not have close family members (Example: Your closest relatives were cousins, or you have no siblings, nieces and nephews).
5. If you have beneficiaries who are minors or disabled.
6. If you want to control when your beneficiaries receive money.
7. If you want to protect your estate from your beneficiaries' soon-to-be ex-spouses, creditors and poor financial decisions, and substance abuse.

8. If most of your family are non-US citizens and live overseas.

Who Should Not Bother Creating a Living Trust and Just Keep their Will?

In a perfect world every person has a Living Trust which is effective and fully funded. But in a perfect world everyone eats 30 net carbs a day, does 40 minutes of cardio, and calls their Aunt Martha in Florida to ask her for the 30th time about that time Paul Newman took her out for dinner. So here are people who can live without a Living Trust:

1. People who either don't want the added costs of Living Trusts or are not concerned with spending legal fees to leave more money to their beneficiaries when they die.

2. Married couples with no children and no primary beneficiaries other than one another, and don't expect a Will dispute when the second of them dies.

3. Families whose beneficiaries don't need the money and can wait for the estate to be distributed.

WOW! That's a Lot to Think About! Dan, Where Can I Get More Information?

What am I? Chopped Liver? ME! You already know that I love talking about Estate Planning and am happy to discuss your questions and comments with you. I also have several Webinars, Newsletters, Presentations and Blogs on my website. Please feel free to reach out to me if you have any other questions or comments about Wills, Trusts, taxes, or other ways to build your assets, save money on fees and court costs, and maintain control of your money for the rest of your life and thereafter.

GIFTING: 529 PLAN, OR GRANDCHILD TRUST?

In an inflationary death spiral where a 6 pack of paper towels you bought last month can be resold in a back alley for a $40 profit, me opining on gifting money may come off a little…rich. Get it? Anyhow, if you are lucky enough to own a home without a mortgage, on track for retirement and living without financial fear you are clearly a Congressman or a Baby Boomer and (if you are the latter) wondering why your adult children cannot afford to buy a toolshed in West Virginia.

Who imagined these people would be so good at spending future generations' money?

So, when it comes to funding higher education costs for your grandchildren, you will want to know how to pull off a Grandma and Grandpa come to the rescue film without looking like Indiana Jones releasing himself from the Hebrew Home to start a fight with some 35-year-old ruffians. Ageism aside, give Harrison Ford a break: He's probably paying for his grandkid's college costs too. But should he be leaving funds to a 529 Plan, or instead be creating trusts for his grandchildren that may pay these expenses?

Wasn't Indy scolded by aliens in the 1960s? Han Solo meets Han Senior.

Annual Exclusion Gifts

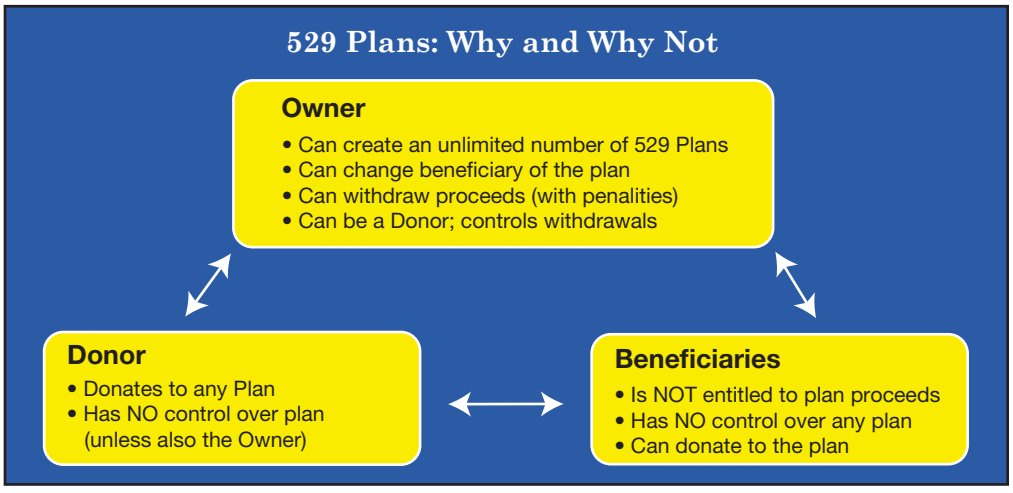
Remember that you can gift all your wealth at any time, as long as you are willing to possibly pay estate taxes. You can also gift the Annual Exclusion amount (or less) every year of your life - which is currently $17,000 per year - to everyone US citizen or green card holder, and twice that amount if you are married.

EXAMPLE: If you want to make gifts to your 3 grandchildren and you are married, every year you can gift up to:

$17,000 (current Annual Exclusion) x 3 (# of grandchildren) x 2 (you and your spouse) = **$102,000 per year**

And once you gift more than $17,000 per year to a specific person, you can STILL gift from your lifetime gift and estate tax exemption of $12,920,000 gift tax free, but you have to file a Form 709 with the IRS letting them know your lifetime exemption has been slightly decreased.

The point is that Annual Exclusion gifts (a) can be made every year, (b) does not need to be gifted in full any given year, and (c) avoid needing to be reported to the IRS as long as you do not exceed giving that maximum amount in any given year. However, you are LIMITED by the Annual Exclusion amount: You can either gift up to $17,000 a year to the 529 Plan, or $17,000 to an irrevocable trust for the same grandchild, or any combination thereof provided the ***combined amount*** you give to both the 529 Plan and the irrevocable trust does not exceed $17,000 in that one year.



+ Contributions to a 529 Plan are tax deductible on New York State and NYC income taxes up to $5,000 per donor per year

+ Investments grow tax deferred, and distributions for education expenses are distributed without any taxes on gains

+ You can choose from a few investment options based on the recipient's investment timeframes, and your risk tolerance

+ You can "front-load" a 529 Plan with 5 years of Annual Exclusion gifts (I.e., $85,000 in 1 year)

+ You can easily change the beneficiary of the plan if you are the owner of the 529 plan to other family members, stepchildren, etc.

- If the donor does not live in New York state or NYC, they receive no income tax deduction

- Distributions not used for qualified education expenses face income taxes and a 10% penalty on all gains

- You cannot choose your own investment choices, so you are stuck with these (often disappointing) investment options

- You cannot give any additional gifts to the beneficiary during those 5 years

- If you are a donor but not the owner of the plan, the owner can change the beneficiary from another person (including themself)

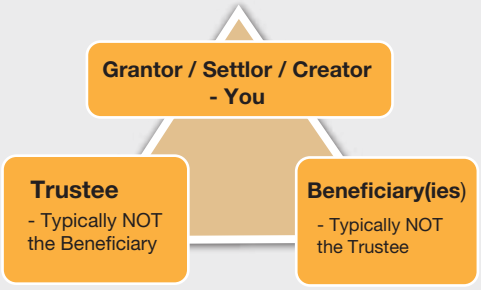
Two Added Caveats:

1. If you are a grandparent and own the 529 Plan, the funds in the plan are excluded from being reported on your grandchild's FAFSA form, so your contributions do not count against financial needs-based student aid programs. If, however, you gift the funds to your child who owns the plan on behalf of your grandchild, those funds are countable toward excluding your grandchild from student aid programs. But before you freak out about giving years of gifts to your grandchild's 529 Plan owned by your child, be realistic about how likely it will be for your grandchild to receive this student aid.

2. Legislation now allows up to $35,000 of funds in a 529 Plan to be converted to the beneficiary's Roth IRA after those funds have been in the plan for 15+ years. This is a nice side benefit for funds that are remaining in the 529 Plan after all higher education costs have been accounted for. But again, be realistic: First, most people cease funding 529 Plans when they feel the balance of the plan is getting too large, and second, remember that your grandchild is in control of that Roth and who knows which crazy vacation spot they are going to spend that money on the week after they graduate.

Simple Irrevocable Grandchildren Trusts

An alternate approach to gifting all your Annual Exclusion to a 529 Plan is to instead gift them to an irrevocable trust set up for your grandchildren. You can set up the trust and have either your spouse, your grandchild's parent, or a third-party act as Trustee of the trust. The trust could state that the Trustee has the power not just to pay for education, but can also use funds for health care, a sensible automobile, off-campus housing, a potential first time home purchase, or any other expense you are willing to make available to your grandchild either now or in the future.



Unlike a 529 Plan, the Trustee can invest in whatever investment he or she thinks is appropriate or advantageous. While you are stuck with a handful of investment options for a 529 Plan, an irrevocable trust can invest in individual stocks, better mutual funds, real estate, limited partnerships, and any other type of investment you or I could invest in as individuals.

Perhaps the largest benefit is if you or your spouse have ample funds and live to see your grandchild graduate college: You can directly pay for your grandchild's education without using any of your lifetime exemption.

Think about it this way: If you are trying to minimize your gift and estate tax savings you should pay for as much of your family's education expenses as possible without negative tax consequences. If you live long enough to directly pay your grandchild's college tuition yourself you can in addition transfer your $17,000 annual exclusion gift to that grandchild's trust which can be utilized for any expenditures you desire to provide his or her (because you paid for their college education directly). If you instead gifted to a 529 your grandchild could roll over $35,000 of their 529 Plan to their Roth IRA 15 years after your donations, but the remaining funds in the 529 Plan could face income taxes and a 10% penalty.

Irrevocable trusts do have additional costs and taxes that may make them less attractive than 529 Plans for some grandparents: Irrevocable trusts need to file income tax returns any year the trust earns more than $600 of income. There is also the preparation cost of that income tax return. In addition, irrevocable trusts often do pay higher income taxes than individuals do, so your choice in investments should be weighted more toward capital appreciation than investments prone to generating large dividends and interest. Lastly, remember that the creator and the trustee cannot be the same person, so if you create the trust you need to find another person who is not you that you trust to act as Trustee.

In Conclusion:

There are a few good arguments for at least partially funding a 529 Plan using Annual Exclusion gifts: The New York income tax deduction for New York domiciliaries can reduce your income taxes by $500 - $1,000 per year, and the tax deferred growth and tax-free distributions may make a meaningful financial difference if your investment gains are sizable. And don't get me wrong: If you do not have enough money to worry about gift and estate taxes then don't let me dissuade you from trying to minimize taxes that are not a part of your financial future. But for

flexibility and wealth transfer purposes, fully funding a 529 Plan is likely not your best option. Consider speaking with an estate planner or financial planner to better understand creating trusts for your grandchildren's benefit.

Flash From The Past:
Aretha Franklin's Will Found Inside Her Sofa Is Valid?!?!

Here is a juicy flash from the past. I wrote a blog post on August 31, 2018 titled "Don't be so Sure Aretha Franklin Didn't Have an Estate Plan." When the Queen of Soul passed away the media (who for the first and only time in history did not gather enough facts and inexplicably decided to sensationalize Franklin's estate matters) declared that she died without a Will. My opinion in the post was basically that just because someone is a musician does not mean they don't plan, and that she almost certainly had taken some action to leave her estate to her chosen loved ones.

Well guess what!? Eight months later someone found not one, but TWO documents which Franklin probably intended to be her Wills. The first was a handwritten document found locked in a bookcase. The second document was also a handwritten document: A spiral notebook found inside her couch! It even had hand-scrawled smiley faces, so that sounds totally legit. This immediately took the air out of the media's insinuation that artists are dim pseudo-humans (and TMZ, the Huffington Post and the Enquirer apologized and promised to practice journalistic integrity for the rest of human history). And SPOILER: Neither document was witnessed.

Of course, there were a few minor problems: (1) the documents contradicted each other regarding who received her estate, (2) while Franklin did sign the documents in front of a notary, there were no witnesses who signed either documents, (3) some of the instructions in the documents were not lawful, (4) because the latter document did not revoke the older document, some aspects of the earlier document would have to be incorporated into the more recent document (but only if BOTH documents were found to be valid), and (5) it took almost one year to find both documents (one of which was a spiral notebook with smiley faces found inside a couch).

Aretha's children opted for a jury trial because jury verdicts are as guaranteed as Republicans naming a Speaker of the House before 2026. A majority of those jurors came up with some zany ideas, and that was that: After a 5 year proceeding, a "family divorce" between her children, a bunch of obnoxious estate litigators generally acting turdy, and a love seat manufacturer updating the Amazon description of its product to "Great to sit on, lie down on, and store your most important legal documents in", the jury agreed that the spiral notebook found in the couch was good enough to be considered Franklin's Will.

My legal take: This made as much sense as the New York Times recently rebranding as the go-to publication for Anti-Semitic blood libels. Granted, a sofa is not the most conventional storage area for a document which gifts busloads of money, but where you keep your Will is your business (provided other people can eventually find it). And doodles of yin yangs and upside-down stars on your Will does not necessarily invalidate that document. But almost every state requires witness signatures on your Will, and their absence should have been game over, no valid Will. I'm sure at least one attorney argued that the Testator's donative intent should be the most important factor in this case (which is a good argument), but what is the purpose of living in a common law system with hundreds of years of caselaw and Will execution requirements if they can just be ignored by people willing to spend a bagillion dollars on legal fees? What is the point of blind justice? Isn't our legal system built on the rule of law and not on the whims of the rich and famous?

Oh, right.

This is what can we learn from Aretha Franklin's estate troubles:

1. Create and execute legal documents with a lawyer, or risk Matlock level Probate fees.

2. Share your documents with trusted individuals. This can be your family, or a lawyer, or a friend, whatever. Just make sure someone knows about them.

3. Keep your original legal documents in a convenient place for people to find (unless the people likely to find them are disinherited, in which case leave them with a trusted individual)

4. If you are disinheriting family members, use a Living Trust instead of a Will.

5. Strive to avoid having the media, a jury, or your sofa playing center stage in your disputable estate.

HELLO NEYCI LOPEZ, Esq.!

Hello, everybody! My name is Neyci, I am the newest addition to the Firm, and I am very excited to work with you. Prior to working with Dan, I was a litigator travelling to court multiple times per week, sometimes multiple courtrooms in the same day. As a litigator I learned much about the courts and civil procedures and was able to hold my own in front of some less than happy judges. While that experience provided me with several skills, litigation was not the ideal career course for me.

Now that I am here, I am happy to be able to learn from the Master! *(Yes, I am sucking up to Dan!)* For a while, I was a bit adrift as to my career path, but with a lot of research and soul searching, as well as opinions from some very good friends, I found estate planning. This area of law is complex and requires a good number of problem-solving skills but can also be very fun for a nerd like me. I am eager to be able to grow as an attorney and I hope that I can assist you all in your estate planning goals.

Dan Says: Who should (and should not) reconsider setting up a living trust

Who Should REALLY Consider Creating a Living Trust?

1. People who want to distribute more money to their beneficiaries with less time and costs.
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THE LAW FIRM GETS REBOOTED

I try to practice what I preach, and early in my career I created a succession plan for my law firm in case I was to ever become incapacitated or pass away unexpectedly. I attempted to do this through business Power of Attorneys and specific provisions in my Will. While these solutions were practical, I never felt they adequately protected for my client's longevity and changing needs because I was the only attorney at the firm, thus any of my future "replacements" did not know anything about these clients.

After over a decade of having the law firm registered as a Sole Proprietorship, I have finally decided to switch over to a Professional Limited Liability Company [a "PLLC"]. The Sole Proprietorship is truly the business owner's firm, and if that business owner becomes incapacitated, dies, or has a nervous breakdown and runs away to Monte Carlo to find himself, your legal records may be left unattended to. Changing to a PLLC allows the firm to bring in more attorneys who have a vested interest in maintaining long-term relationships with you, my clients. A PLLC also allows the firm to simplify our bookkeeping, economize expenses so we do not have to raise legal fees to unreasonable levels, and to better assure your records and legal documents are protected from something bad happening to me.

I want to thank all of you who have joined my through my professional journey these last 16 years as I look forward to growing the firm, growing our continued trust with one another, and growing older together. Thank you for your support.

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