

Cohen and Burnett, PC Legacy Analytics, LLC

Spring 2005

Estate and Financial Planning Update



Founding Partner



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The First Quarter of 2005 has been a very good one. Previously, I have talked about being involved with the adoption of the Uniform Trust Code (the "UTC") in Virginia. The UTC has been adopted by the Legislature, effective July 2006. This culminates 2 years of work by our subcommittee and helps bring Virginia trust law in line with an increasing number of forward looking states.

I've been commissioned by the Bureau of National Affairs (BNA), one of the foremost tax and legal publishers, to write their portfolio on the UTC. Being selected as a writer for BNA is a lifelong dream and puts me in the company of a rarefied group of the top trust and estates attorneys in the U.S. Being a big project, it will take me over 500 hours to complete. It will be published around March 2006.

My surgery in January was a success. I am recovering faster than expected, but it has kept me from training for 2 months. By May, I'll be able to start swim training again. The Columbia triathlon is on May 22, but I may end up doing it as a biathlon instead.

Kathy is doing fine. Rachel tried out for girl's softball and is the team manager. She participates in all the practices, goes to all the games, and is 1st in line should they need a player. Michael has an internship for the summer at the Social Security Administration with my brother, Dr. Lee Cohen, a senior economist there. He is helping solve the Social Security problems so that it will be there for his generation.

Don't Believe Everything You Read in the Newspaper

The **Supreme Court** unanimously agreed recently that all IRA's, like pensions, should be shielded from bankruptcy creditors – NOT!

We never cease to be amazed at how misleading, or just plain wrong, newspaper headlines can be when addressing complex Court rulings.

On **April 4th**, in *Rousey v. Jacoway*, a unanimous U.S. Supreme Court gave selective creditor and bankruptcy protection to IRAs. This ruling directly affects clients in at least 16 states and DC.

Most states, (including Virginia and Maryland) have separate state laws relating to bankruptcy and IRAs. This ruling does not apply to those states. For states that do not have such laws, the Court has formulated three tests must be met under the Bankruptcy Code in order for an IRA to be exempted from claims of creditors:

- (1) The right to receive the payment must be from a "stock bonus, pension, profit sharing, annuity, or similar plan or contract."
- (2) The right to receive payment must be "on account of illness, disability, death, age, or length of service."
- (3) The right to receive payment may be exempted only "to the extent" that it is "reasonably necessary to support" the account holder or his dependents.

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Spring is in the air and *I love it*.

Barbara is actually celebrating the fact that she has her weekends off and her Longfellow Middle School math team for the first time in six years is not the State Champion (runner up this year, when one team member had a really bad day) and she is not working each weekend to get the middle school math whizzes ready for nationals.

David is thriving at UVA Law School with offers from two law reviews, a paid summer job and a paid teaching assistant job in the fall.

Edward's ship deploys in May for six months. I joined him in March for a family members' cruise with the ship and crew in action and a high speed run in the open ocean. He received his first medal last Friday in a surprise award ceremony.

In May, Jennifer graduates from James Madison University cum laude with the award; Outstanding Senior, Psychology Department. She will remain this fall as she continues work on her Masters.

With the tax season winding down, my golf game is due for a tune up. Dare I say that when I play the only safe place to be is the middle of the fairway.

Additionally, in June, I will exhibit a family heirloom. In this case, it is a philatelic (stamp) collection of covers mailed by Soldiers and Sailors (including my great grandfather who had to leave my great grandmother with two small babies on a farm in Minnesota) from the Philippines during the Spanish-American War, 1898-1902.

Don't Believe Everything... continued

The Court only focused on the first two tests having determined that the third test was not before the Court. It held that IRAs meet the first test in that they are "similar" to stock bonus, pension, profit sharing and annuity plans "in that they have the same primary purpose, namely, enable[ing] Americans to save for their retirement." The Court then found that IRAs meet the second test because the 10% penalty provides "a right to payment on account of age." It found that the penalty represented a "substantial barrier" to early withdrawal of the funds.

The third factor, not addressed by the court in this ruling, is where anyone with significant assets will fail. So in the end, if you have meager resources the ruling might help you if you are a resident of one of these states: *Alaska, Arkansas, Connecticut, Hawaii, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin.*

Identity Theft and Tax Returns

Be careful about disclosing personal information. The IRS has identified several identity theft scams involving taxes. In one case, thieves sent bank customers fictitious correspondence and IRS forms in an attempt to trick them into disclosing their personal financial data. In another, abusive tax preparers used clients' Social Security numbers and other information to file false tax returns without their knowledge. Sometimes scammers pose as the IRS itself. Last year the IRS shut down a scheme in which perpetrators used e-mail to announce to unsuspecting taxpayers that they were "under audit" and could set matters right by divulging sensitive financial information on an official-looking Web site.

Please note: the IRS does not use e-mail to contact you about issues related to your accounts. If you have any doubt whether a contact from the IRS is authentic, you can call 1-800-829-1040 to confirm it.

New Friends and Faces

Legacy Analytics, LLC and Cohen and Burnett, P.C. welcome to the staff a new key person: **Caitlin Dennehy**, Administrative Manager. Look for her Bio on our website next month.

I love my jobs.

My first job was working in an orange juice factory, but I got canned ... couldn't concentrate.

Then I worked as a lumberjack, but I just couldn't hack it, so they gave me the ax.

After that I tried to be a tailor, but I just wasn't suited for it.

Next I tried working in a muffler factory but that was exhausting.

I wanted to be a barber, but I just couldn't cut it.

Then I tried to be a chef -- figured it would add a little spice to my life but I just didn't have the thyme.

Finally, I attempted to be a deli worker, but any way I sliced it, I couldn't cut the mustard.

My best job was being a musician, but eventually I found I wasn't noteworthy.

I studied a long time to become a doctor, but I didn't have any patients.

Next was a job in a shoe factory; I tried but I just didn't fit in.

I became a professional fisherman, but discovered that I couldn't live on my net income.

I managed to get a good job working for a pool maintenance company, but the work was just too draining.

After many years of trying to find steady work I finally got a job as a historian until I realized there was no future in it.

My last job was working at Starbucks, but I had to quit because it was always the same old grind.

**SO I RETIRED AND I FOUND
I AM A PERFECT FIT FOR
THE JOB!**

The Terri Schiavo Case

In all the years I have been practicing law I have never seen so much interest by the media in end of life decisions. Having represented nearly 7,000 clients, I can count on the fingers of one hand the number of clients who did not want life support terminated under Schiavo's circumstances. We are baffled by the extraordinary actions of Congress and the President, and are pleased that the courts stuck to the law and did not let the impassioned pleas of a small but vocal minority undermine the carefully deliberated laws of the state of Florida.

Every client we have represented over the years has adequate documentation to prevent a Terri Schiavo situation from happening to them. However, as we have indicated in the past, all *Durable Medical Powers of Attorney* (DMPAs) need to be updated to reflect the new HIPAA law requirements.

Regulations for the *Health Insurance Portability and Accountability Act* (HIPAA) took effect in 2004. They include privacy safeguards for patients and have criminal and civil penalties for anyone, including health care providers, who violate the law. Written waivers have to expressly reference HIPAA. Our Durable Medical Power of Attorney forms have always had a waiver of privacy paragraph, but of course it did not mention HIPAA until the regs were promulgated in 2004.

A related problem arises from the fact that the DMPA is "springing". This means it is effective only after the physician finds the patient to be incapacitated. Some doctors are refusing to talk to the agent to make the initial determination of incapacity because the agency is only created after that determination. Our new form also fixes this catch-22.

Finally, we have also updated our DMPAs with language relating to the treatment of fatal conditions that are themselves curable but will not return the patient to a reasonable quality of life. For example, an expensive and intrusive hospitalization to treat pneumonia in a stage four Alzheimer's patient. The pneumonia can be cured but the patient will remain permanently and totally confused. Because the patient is not "terminal" and the pneumonia can be cured, this situation does not fit into the law relating to the termination of life support.

The updated language is designed to address these medical decisions by allowing your agent to withhold or withdraw treatment of a secondary, fatal but treatable condition when you are, and will continue to be suffering from an underlying primary condition that prevents any reasonable quality of life. We believe that the language is helpful and preferable the alternative which only addresses terminal conditions and permanent vegetative states.

The law and words of wisdom.

"The more laws, the more offenders."
Thomas Fuller

**"Laws too gentle are seldom obeyed;
too severe, seldom excluded."**
Benjamin Franklin

**"Many laws as certainly make bad
men, as bad men make many laws."**
Walter Savage Landor

**"Men would be great criminals did
they need as many laws as they make."**
Lord C. J. Darling

**"My daddy is an actor, sometimes he
plays the good guy, and sometimes he
plays the lawyer."**
Malcolm Ford (son of) Harrison Ford

**Before going to prison I believed that
criticism of the criminal justice system
for its treatment of the poor was so
much liberal bleating and bunk. I was
wrong.**

G. Gordon Liddy

**Lawyer: An individual whose principal
role is to protect his clients from
others of his profession.**

Anonymous

Disclaimer

At Cohen and Burnett, PC and Legacy Analytics, LLC we do poke fun at lawyers in our newsletter and we are glad that you enjoy it. At the end of the day we will admit that we have the highest respect for the lawyers and the entire legal system.

So if you know any good lawyer jokes that we have not run, then by all means let's honor these professionals by getting your jokes about them into print in our newsletter.

Send your jokes to:

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Greetings and Referrals

Dear Friends and Clients,

The response for the seminars has been near overwhelming. It is gratifying to see how many people have taken the time from their busy schedules to come with friends and relatives. Upon exit, most attendees have stated how happy they are to have a source that marries together the financial, legal and, tax aspects of their lives.

Attendees are delighted when they have a chance to win a prize for guessing the answer to financial and legal questions. (The right answer is not needed, just a willingness to participate.)

Of course we are grateful to the audience members that bring their questions and concerns to the workshop forum. Those that bring questions are also receiving prizes as we find it helpful to answer the question for the entire audience.

I want to take this opportunity to thank you for being our friends and clients.

Paul Coté
Director of Communications

For Our Financial Planning Clients

We are required by law to advise each of you that a copy of the current ADV (Rev. Feb 2005) is on file and available if you request it. Make our day by calling and asking for a copy.

Other Great Quotes by Will Rogers:

"You can always joke good naturedly a big man, but be sure he is a big man before you joke about him."

"Things in our country run in spite of government. Not by aid of it."

"My ancestors didn't come over on the Mayflower, but they met 'em at the boat"

"I don't make jokes; I just watch the Government and report the facts..."