

# Cohen and Burnett, PC Legacy Analytics, LLC

Winter 2006

## Estate and Financial Planning Update



### Founding Partner

I. Mark Cohen  
JD, LLM & CFP™



It's been a quiet quarter for the Cohen family. We had a great trip to Tucson to spend the holidays with our family. We left the freezing, icy weather of late December to Tucson's balmy, sunny breezes and 100 mile plus visibility.

Michael is doing indoor track, and Rachel is on the swim team again. Michael can, and does, do track or cross country all year long. For Rachel, however, the swim season is only during the winter quarter. She is looking to get into Dunn Loring pool so she can swim on the team there with her friends through out the summer and into the fall.

Michael scored in the top 99% on his PSAT and is expecting to make National Merit Scholar as the result. Rachel is going to turn 16 this March and we are planning a fun trip by train into New York City to see "Wicked" on Broadway in honor of her birthday.

As you probably know, I am in the midst of writing the new BNA Portfolio on the Uniform Trust Code and am also the Virginia Reporter on the Virginia Uniform Trust Code. Both these activities are keeping me very busy during my non-work hours. I hope to be able to report the completion of the UTC project by the next news letter.

I am continuing to train but I am not scheduled for any triathlons as of yet. As you will see in Wes' column, he and I are going climbing, and I am training for backpacking in high altitude.

Kathy continues to teach ESL and provides the critical supporting role in our household that allows everything else to happen.

### The Uniform Trust Code

As many of you know, Mark Cohen has been and continues to be closely involved with the promulgation of the Uniform Trust Code (UTC). In fact, he has been appointed as the Virginia Reporter for the Code. He is pleased to announce that, after many hours of work starting in 2002 by the Virginia Bar Association committee that Mark was a member of, the Virginia UTC has been enacted into law by the Commonwealth of Virginia and will become effective as of July 1, 2006.

The law of trusts dates back to before the time of William the Conqueror (11<sup>th</sup> Century). However, the widespread use of trusts as will-substitutes is a relatively recent phenomenon. Much of the older law of trusts does not adequately address modern concerns such as representation of children, modification of irrevocable trusts to account for changes in the tax law, creditor's rights to assets in a revocable trust, revocation of joint trusts by one spouse, and so on.

The UTC is a comprehensive codification and modernization of the law of trusts. It consists largely of a set of default rules that would apply only if the trust does not provide otherwise. But, for the first time ever, the drafters of the UTC also collected all the fundamental, non-waivable principles of trust law in one place (Section 105).

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## Managing Partner

Weston D. Burnett  
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I hope all of you had an opportunity to be with loved ones and friends over the holidays and New Year. Barb and I enjoyed seeing our children, fiancées and their families, their friends, our parents, and both of our sisters and their families.

**David** is half way through UVA Law School and will be working in the Big Apple this summer. He called us yesterday from Pinkham Notch at the base of the Presidential Range in N.H. He had just finished a hike and overnight on Mt Adams, where it was 20 degrees inside the hut. Before that he and his cousins were walking on 60-mile-long and frozen-over Lake Winnepesaukee and figuring out how far they could hit a golf ball on ice.

**Edward** is back from deployment. His ship goes in the yards soon (never fun for the crew as the ship is torn apart and unlivable) and hopes to rotate to a second ship as a navigator by the third quarter of this year. His fiancée, Praneet Gill, will start her MBA at Columbia University this August. **Jennifer** is way too busy, but thoroughly enjoying her graduate student work and teaching at James Madison University.

**Barb** had close to 200 middle school students try out for her Longfellow Middle School MathCounts teams, eclipsing the previous year record of 130 kids trying out. Math whizzes now move to her school's district or stay here even when one parent moves overseas or to their home country just so they can be on this team which is the perennial Virginia state champion (19 out of last 22 years) and usually finishes in the top five nationally. She and I are both addicted to Sudoku math puzzles and if you do not know what the are, my advice is don't try to find out.

**For myself**, I have set a goal with Mark of climbing Mt. Rainier in Washington State in June. My neighbors may regard me with caution, when they figure out that the 40 pound backpack I now carry in training on my weekend walks with Barb is full of bar bells and golf balls.

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## The Uniform Trust Code Cont.

If you want to know the unchangeable rules of trust law, that is a good place to start. In addition to modernizing the law and filling in many gaps, the UTC standardizes the law across the country, all of which is of benefit to you.

One of the underlying themes of the UTC is that people should be able to handle most routine matters of trust administration without court supervision. In furthering this objective, the UTC provides for non-judicial settlement agreements, representation of children, unborn, and unascertained beneficiaries by other family members (absent a conflict of interest), rules for how co-trustees act, and for replacing a trustee, and many other rules, all intended to work without court supervision.

Virginia's adoption of the UTC is a major step forward for the law of trusts in Virginia. Mark Cohen was pleased and proud to have been a part of that process.



“That is a coincidence dear. I have just discovered something that will benefit all WOMANKIND...

**THE DIVORCE LAWYER!”**

## Laughing so hard it hurts.

**Alimony:** The ransom that the happy pay to the devil.

**Lawsuit:** What lawyers wear to work.

To some lawyers, all facts are created equal.

“Do you claim that this man hit you with malice and forethought?” asked the lawyer.

“Look, you can’t mix me up that easy,” replied the elderly man. “I said he hit me with a Ford, and I am sticking to it.”

The tiresome jury selection process continued, each side hotly contesting and dismissing potential jurors. Don O’Brian was called for his question session.

“Property holder?”

“Yes I am, Your Honor.”

“Married or Single?”

“Married for twenty years, Your Honor.”

“Formed or expressed an opinion?”

“Not in twenty years, Your Honor.”

“Do you suppose I’ll have justice done to me?” the anxious criminal inquired of his attorney.

“I am afraid you won’t,” replied the lawyer coldly. “I see two men on the jury who are opposed to the death penalty.”

One attorney speaking with another, “I learned Law so well, that when I passed the bar, I sued the law school and got my tuition back.”

Proud mother: “My son is a brilliant lawyer. He can look at a contract and tell you immediately whether it is written or oral.”

## Trustees Insurance

Article at page D1 of Wall Street Journal October 27, 2005 reports that Fireman's Fund has taken to offering a new insurance policy that covers insured family members serving as trustees to protect them from allegations that they bungled the family trust funds. I have never been asked by a client if there was such insurance. We have very, very seldom seen litigation among family members over an estate. Most estates are taken care of quietly and quickly with some tax and other titling work perhaps even probate but no substantive fights. Still there are some high visibility cases you get to read about in the papers where they are fighting over the money.

As an interesting aside, when lawyers serve as trustees, their legal malpractice insurance should apply. When other professionals serve as trustees, their errors and omissions insurance may apply. When a bank serves as trustee they have large financial reserves to pay for any trustee mistakes. When an individual serves and they do not want to risk their personal net worth in discharging their duties, this new insurance policy may be the avenue they pursue to protect themselves and the trust.

## Stupid Criminal Moments



Police in Los Angeles had good luck with a robbery suspect who just couldn't control himself during a lineup. When detectives asked each man in the lineup to repeat the words, "Give me all your money or I'll shoot," the man shouted, "That's not what I said!"

## Legal Humor

Mr. Milkums was briefing his witness, Ms Harrison, before calling her to testify.

"You must swear to tell the absolute truth" the lawyer instructed. "Do you understand?" "Yes, I'm to swear to tell the truth." "Have you any idea what will happen if you don't tell the truth?" Ms Harrison looked up. "I expect our side will win."

The Judge solemnly regarded the case-hardened criminal snapping his gum and rolling his eyes in boredom. "Because of the gravity of this case," the judge said, "I am going to give you three lawyers." "Never mind the three lawyers," replied the experienced defendant, "just get me one good witness."

A brief tribute to the comedy styling of the late **Henny Youngman**

A law firm is more successful when it has more clients than partners.

A judge is a man who ends a sentence with a sentence.

A truly successful lawyer owns his own ambulance.

"A guy calls his lawyer. He says, 'Can I ask you two questions?' Lawyer says, 'What's the second one?'"

An 800 Lbs. Production



## New Medicaid Eligibility Rules

The Deficit Reduction Act of 2005 (DRA 2005) contains three major changes to the rules for Medicaid eligibility. Generally (the exact rules vary from state to state), to be eligible for Medicaid, a person must use up, or spend down, all but \$2,000 in cash and investments. A house and car are excepted.

First, under current law, outright transfers were subject to a 36-month look-back period. Under DRA 2005, the look-back period will be from 36-months to 60-months for ALL transfers. All transfers made within the look-back period will have to be documented and explained to Medicaid authorities.

Second, under current law, the penalty period for institutional Medicaid commences on the month after the transfer is made. Under DRA 2005, the penalty period does not begin until the individual is in a nursing home, is receiving a level of care in any institution equivalent to that of nursing facility services, or is receiving home or community based services furnished pursuant to a Medicaid-waivered program and that individual has applied for Medicaid and is otherwise eligible. This means that the penalty period may not commence until five years after the assets have been transferred, if that is when the person who made the gift is in a nursing home and applies for Medicaid.

Third, under current law, a person's home is exempt regardless of value, if certain conditions are met. Note that even if the home is exempt, it may still be subject to estate recovery if proper planning is not implemented. Under DRA 2005, with some exceptions, the equity in a Medicaid applicant's otherwise exempt home will be countable to the extent it exceeds \$500,000. In other words, a person with equity in a home of more than \$500,000 would NOT be eligible for Medicaid.



You should have used **Cohen & Burnett, PC**. But since you didn't, you are now qualified to take all of the blame yourself.