

Cohen and Burnett, PC Legacy Analytics, LLC

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Estate and Financial Planning Update



Founding Partner

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Summertime and the living is... working on my BNA portfolio. The book is coming along well and I hope to be finished by the end of summer. Nevertheless, I am going to take a week off to go on a family vacation to Seattle and Victoria, and at the end of the summer, an additional week or so for our annual family camp in the Berkshire Mountains in Mass. We are also starting to look at colleges for Michael. He is showing some interest in Brandeis, so we will check it out while we are in Mass.

For those of you following my triathlons – I did not compete in Columbia after all. I broke a bone in my foot and could not run or bike for 6 weeks. I am now back up to speed and thinking about doing “Make A Wish” in Delaware this fall.

Michael’s summer internship at Social Security was called off at the last moment. It seems that with all the attention focused on “fixing” Social Security, somebody high up did not want three bright high school interns to see what is really happening there. So he is keeping busy by getting his Wisdom teeth out, driving lessons, SAT prep courses and reading a long list of books.

Rachel is now training with me most mornings at 5:00am. Pretty impressive considering she is 15 years old and most of her friends don’t wake up until after noon. She also has a summer job serving ice cream at Baskin Robins.

Kathy is now teaching ESL to three new students, keeping busy and enjoying her summer.

New Bankruptcy Laws

On April 20th the President signed into law the most comprehensive changes to the bankruptcy laws we have seen in a generation. Most of the changes will take effect in October, 2005. Here is a summary of some of the important estate planning changes.

Fewer fresh starts. Access to Chapter 7 filings is restricted and more filers will be going with Chapter 13 where you pay off your creditors over time rather than have the debts discharged.

No more “flight to Florida.” In the good old days, if you were facing a bankruptcy filing, you could move to Florida, buy as expensive a house as you could afford, and have the entire value excluded from the bankruptcy. Some of you may recall a once popular football player who did just that to avoid civil liability for crimes he allegedly committed. (He was acquitted of the criminal charges). The new law ignores any State exemptions above \$125,000 if the homestead was purchased within 1215 days (4 years, 3 months), and even if it was purchased before 1215 days, the court can still collect the excess over \$125,000 if the filing was abusive or the liability was due to securities fraud (like Enron), civil RICO fines (Mafia types) or from a violent crime causing serious injury or death to another (like a certain football player).

Retirement plan protection enhanced. All the current exemptions for ERISA retirement plans are preserved and now IRAs and Roth IRAs are exempt up to \$1 million in the aggregate. **Continued on page 2**

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I am sad to report that Brian Pasley, our Financial Planner, for love and family, left us in June headed for Chicago with his fiancé to start anew. We will truly miss him and welcome aboard Catherine Chang, a fellow graduate of GWU with a Masters of Science in Finance.

On the person side, our summer is full of work and play. Highlights include an escape from the summer heat to a cruise north of the Arctic Circle and an extended weekend clan gathering of roughly 40.

Barb and I recently hosted a pool party for her top math middle-school math students, including some who finished top in the state and one who went on to nationals. I was fascinated to watch the mature behavior of the girls and compare that to the boys who spent most of three hours in the pool competing with each other in water games and hitting each other on the head with wet Styrofoam noodles. Two of Barb's MathCounts students, now high-school students, comprise 1/3 of the USA Team at the International Math Olympiad. Our children are doing well. David is working as a summer intern for a litigation firm. Edward is on the USS MITSCHER stationed in the Mediterranean. Jennifer starts her graduate teaching position in Psychology in August at James Madison University.

Guess whose golf game never got the tune up as hoped, but has had great putting competitions over several weekends with his mother who once used only 22 putts in a competitive round of golf! I did have fun winning a gold medal with my stamp exhibit.

New Bankruptcy Laws *continued*

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What if you rolled over more than \$1 million into your IRA? The exemption for roll-overs from qualified plans is unlimited. Remember, however, that the exemption is only for a bankruptcy filing. You still need to look to state law for protection from any other creditor situation.

Life insurance and annuities retain their favorable status under the new bankruptcy law, essentially unchanged.

What about all the new asset protection trusts (APTs) that we have been hearing about such as the Alaska, Delaware, and Nevada APTs? Here is my take – even if you do everything right, you have to wait 10 years before they will protect your assets. But you can not do everything right since all the trustee in bankruptcy needs to show is “actual intent to hinder, delay or defraud” a creditor. No need for malice, and the intent can be shown by circumstantial evidence – such as “why would you use an APT if you didn't intend to hinder or delay a creditor?”

The tide has turned. The new bankruptcy law is not a refuge for a weary debtor hoping to get a fresh start; it is another weapon in the hands of the creditors.

Timeless Words of Wit and Wisdom

I suppose the congress ought to get their pay raise, but if they do then every young man will want to run for public office. And everybody knows that once an old boy holds public office he ain't good for no honest work anymore.

Samuel L. Clemens

Morning After

One night in the House of Commons, Churchill, after imbibing a few drinks, stumbled into Bessie Braddock, a corpulent Laborite member from Liverpool. An angry Bessie straightened her clothes and addressed the British statesman.

"Winston," she roared. "You are drunk, and what's more, you are disgustingly drunk."

Churchill, surveying Bessie, replied, "And might I say, Mrs. Braddock, you are ugly, and what's more, disgustingly ugly. But tomorrow," Churchill added, "I shall be sober."

New Friends and Faces

Legacy Analytics, LLC and Cohen and Burnett, P.C. welcome to the staff a new key person: **Catherine Chang**, Senior Associate, in charge of Financial Planning. Look for her Bio on our website next month.

Laughing so hard it hurts.

A young attorney was attending a funeral. A friend arrived a bit late and seated himself, whispering, "At what stage of the service are they?" The young attorney replied, pointing toward the minister, "He is just opening for the defense".

A verbal contract isn't worth the paper it is written on.

Samuel Goldwyn

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

H.L. Mencken

"Your Honor," said the jury foreman solemnly, "we find that the man who stole \$20,000.00 is not guilty."

My cousin's attorney got him a suspended sentence, they hanged him.

A jury consists of 12 people chosen to decide who has the better lawyer.

Robert Frost

Other Great Quotes by Winston Churchill

A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.

Everyone has his day and some days last longer than others.

If you're going through hell, keep going.

We make a living by what we get, but we make a life by what we give.

Look Before You Leap

In Private Letter Ruling (PLR) **200513032** Client died leaving his trust as the beneficiary of his IRA. The Trustee then requested, completed and submitted forms to complete the rollover of the IRA from the investment company to another investment company. The next year, Trustee received a 1099R for the entire amount of the IRA, requiring that the entire proceeds be included in income and losing the very valuable prospect of a stretch IRA. The Trustee then tried to reverse the earlier transaction but the investment company refused stating that the 60 days for a rollover had passed.

The Trustee then asked the IRS to waive the 60-day rollover requirement on the IRA distribution, claiming that failure to waive such requirement would be against equity or good conscience under the provisions of Code Section 408(d)(3)(I) and Revenue Procedure 2003-16.

The IRS denied the request on the grounds that since a rollover is not permitted for an inherited IRA, the 60 day rule does not apply so it cannot be waived.

There is a difference between a rollover and a trustee-to-trustee transfer. In a rollover, an IRA owner or spouse/beneficiary receives a distribution, and then rolls some or all of the distribution over into an IRA (or in some cases a qualified plan) within 60 days of the distribution. In a trustee-to-trustee transfer, an IRA owner or beneficiary transfers IRA benefits from one trustee or custodian to another. Note the distinction. An IRA owner or a spouse who is a beneficiary can do either a rollover or a trustee-to-trustee transfer. However, a beneficiary OTHER than a spouse is limited to a trustee-to-trustee transfer, and cannot do a rollover.

It's critical to understand that inherited IRAs cannot complete rollovers, and that any account transfers must be completed by trustee-to-trustee transfer. Attempting to complete a transfer by distribution and rollover will cause immediate, full taxation of the account proceeds – which may prevent decades of tax deferral for an existing designated beneficiary!

It is also important to note that, unlike other situations where "IRA rollover mistakes may happen", erroneous distributions from inherited IRAs cannot be remedied by trying to simply "put the funds back in the account", nor can the IRS grant rollover relief to fix the problem. With inherited IRAs, it's absolutely critical to 'look before you leap', and fully understand the rules before making any distribution or transfer transactions.



"Now wasn't that nice? We talked, we agreed on some things, we disagreed on some things, and noone threatened to sue anybody."

Telephone Blues

The reports of our demise, by the phone company, were grossly exaggerated.

As some of you may have noticed, we have been having some issues with our phone company. Sadly not everyone who promises good service can follow through with their promises and it impacts negatively on us. The last thing in the world we want is to be cut off from the people we love. To be certain, this has been very distressing for us and some of you as well. For our part, we apologize to you for any aggravation that this problem may have caused you.

Being believers in solving problems, I am pleased to announce that we are going to be moving on to another phone service provider very soon. Our phone numbers will remain the same and the service should be more reliable for you and us.

Only In Louisiana

**"You gotta love this lawyer - it's too funny not to share!"
Everyone who has ever bought a house will enjoy this.**

A New Orleans lawyer sought an FHA loan for a client. He was told the loan would be granted if he could prove satisfactory title to a parcel of property being offered as collateral. The title to the property dated back to 1803, which took the Lawyer three months to track down. After sending the information to the FHA, he received the following reply (*Actual letter*):

"Upon review of your letter adjoining your client's loan application, we note that the request is supported by an Abstract of Title. While we compliment the able manner in which you have prepared and presented the application, we must point out that you have only cleared title to the proposed collateral property back to 1803. Before final approval can be accorded, it will be necessary to clear the title back to its origin."

Annoyed, the lawyer responded as follows (*actual letter*):

"Your letter regarding title in **Case No. 189156** has been received. I note that you wish to have title extended further than the 194 years covered by the present application. I was unaware that any educated person in this country, particularly those working in the property area, would not know that Louisiana was purchased, by the U.S., from France in 1803, the year of origin identified in our application. For the edification of uninformed FHA bureaucrats, the title to the land prior to U.S. ownership was obtained from France, which had acquired it by Right of Conquest from Spain. The land came into the possession of Spain by Right of Discovery made in the year 1492 by a sea captain named Christopher Columbus, who had been granted the privilege of seeking a new route to India by the Spanish monarch, Isabella.

The good queen, Isabella, being a pious woman and almost as careful about titles as the FHA, took the precaution of securing the blessing of the Pope before she sold her jewels to finance Columbus' expedition. Now the Pope, as I'm sure you may know, is the emissary of Jesus Christ, the Son of God, and God, it is commonly accepted, created this world. Therefore, I believe it is safe to presume that God also made that part of the world called Louisiana.

God, therefore, would be the owner of origin and His origins date back, to before the beginning of time, the world as we know it AND the FHA. I hope you find God's original claim to be satisfactory. Now, may we have our damn loan?"

The loan was approved.

