

# Legal Notes

Lacy,  
Katzen,  
Ryen &  
Mittleman, LLP



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Happy holidays  
and a safe, joyous  
new year to all!

## In this issue:

Year-end planning is an  
invaluable tool for future

Tips for wrapping up the old year  
that will enhance your new year

Stockbrokers are accountable

Vital information about your rights as  
an investor and how we protect them

Firm news

Activities, achievements and honors

Next issue:

Firm is at cutting edge of  
new trend in matrimonial law

Lacy, Katzen attorneys lead the way  
in new approach to handling divorce

## Our attorneys

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## Year-end planning is invaluable for starting the new year out right

One of the best ways to celebrate the end of a year is to have planned effectively for the new one to come. Attorneys at **Lacy, Katzen** have gathered invaluable tips to help make the end of this year more organized, and make the new year a lot easier to manage as well. Whether you're concerned about tax planning or lifestyle planning, here are some ways to make things go smoothly in the move from 2003 to 2004.

### Estate planning

The end of the year is a *very* important time for **personal or estate planning**, because "new rules will apply in the new year that might affect what people should do now," said **Karen Schaefer**. "Very few people are aware that, starting on January 1, 2004, \$1.5 million of your estate will be protected by the federal credit. At the state level, \$1 million still would be protected from the New York estate tax."

That means "wills that use a formula based on the federal credit may end up causing a New York estate tax of approximately

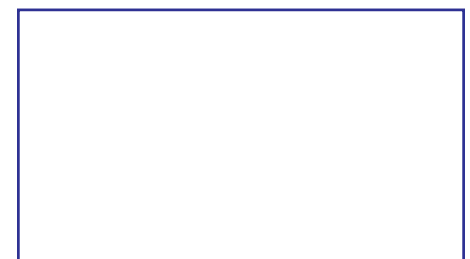
*Karen Schaefer*

\$65,000," Schaefer said. "Wills should be reviewed before December 31, 2003, or at least in early 2004."

The end of the year is an ideal time to review and update the provisions of wills, trusts and other aspects of estate planning, because it's when people catch up on family events. Use that process to make sure any changes — births, deaths and marriages — have been included.

### Corporate concerns

There are three key issues for year-end corporate or business planning, according to **Jennifer L. Chadwick** and **Leslie Kernan, Jr.**



*Jennifer Chadwick, Leslie Kernan*

• **Tax tips** — "If you're thinking of transferring shares in the business, it's good to do so by December 31, so you can file new taxes and don't need to do interim filings," Chadwick said. "This is also a good time to consider major purchases of land, equipment or real estate because, new this year,

*Continued on page 2*

## Planning, continued

the tax benefit for depreciation means you can take the whole purchase amount as a deduction. That can be especially important for a small or mid-size business.”

### • Structure and ownership —

“If you have ideas about restructuring your business, the end of the year is a good time to implement them, so you start the new year fresh,” Chadwick said. “This also makes it easier to track and process major changes from one year to the next.

“If you’re buying someone out or purchasing a business, you need to take bank relations into account; there’s so little actual work time before the end of the year that banks tend to be very busy in November and December. Attorneys and accountants also can be hard to reach or already committed.”

• **Internal issues** — annual meetings, board/officer elections, etc. “A lot of smaller companies don’t realize that they should hold an annual meeting and elect board members,” said Chadwick. The end of the year is a convenient time, but the point is to make sure such things *have* been done.

Corporate and personal planning can overlap when business owners want to include stocks or outright ownership in their estate and inheritance planning. Again, said Chadwick, *now* is the time to assess these matters, because “such items can be included in gifts for tax purposes.”

The Jobs and Growth Tax Relief Reconciliation Act of 2003 “carries other business changes you may need to know about, like reduced taxes on dividends, revamped payroll withholding rules, shifted estimated-tax payments for some corporations, and a reduction in several penalty-type corporate tax rates,” said Kernan.

Other changes are:

- For tax years beginning in 2003 through 2005, the maximum annual expensing amount is \$100,000 — four times the former ceiling.

- The \$100,000 annual expensing limit and the \$400,000 phase-out limit will be indexed for inflation.

- The expensing election now can be revoked without the IRS’s consent.

- There is a bonus first-year depreciation allowance for most types of new, non-realty assets and for qualified leasehold improvements.

- The luxury-auto dollar cap has increased by \$7,650.

- The top tax rate on dividends has been reduced to 15 percent.

- The accumulated-earnings and personal-holding company taxes have been reduced to 15 percent, and the collapsible corporation rules have been repealed.

“Timing is important for achieving both business and individual goals: Take action *now*,” said Kernan. “Scheduling a meeting with your accountant or tax advisor and legal counsel now may help you set forth objectives to be achieved by year-end. What a great way to start the new year — with things organized and in hand at the end of the old one!”

## Insurance issues

Now is also the ideal time to check **auto-insurance policies** for

two elements: adequate supplemental (SUM) coverage and spousal-liability coverage.

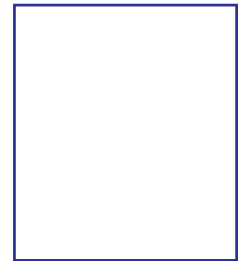
- “If you have \$25,000 of SUM coverage, you are, in my humble opinion, *very* under-insured,” warned **Jacqueline M. Thomas**. “We see many people who have excellent coverage in case they hurt someone else, but lack protection in case another person hurts *them*. If you are badly hurt, and the other driver has no insurance, you only get \$25,000. If the other driver has only the minimum — a \$25,000 policy — you get nothing extra from your policy. If you cannot work for an extended period, \$25,000 will not go very far.”

- Most insurance policies contain exclusions for coverage if one spouse causes injury to another in a car accident. “For example, a husband and wife are in the car, and the husband is driving. He gets into an accident that is his fault and the wife is badly hurt. She cannot recover for the injuries caused by his negligence,” explained Thomas. “If you think about how often you ride in the car with your spouse, you can see how important this is.”

According to Thomas, “Agents tend not to push these coverages, but neither additional SUM nor spousal coverage is expensive — I didn’t have spousal coverage, and it will only cost me an extra \$20 a year.”

Even if premiums aren’t due for several months, check your policies *now*. “If you are not sure of your coverage, I would be happy to look over your auto policy with you,” Thomas said. “Dig it out, dust it off, bring it in!”

*For help with your year-end planning, call Lacy, Katzen at (585) 454-5650 — the sooner, the better!*



*Jacqueline Thomas*

### Legal Notes

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# Stockbrokers are accountable to investors; Lacy, Katzen can help

A number of Lacy, Katzen clients have been gratified to discover that stockbrokers can be held accountable for investment losses in some situations. “There *is* such a thing as broker-dealer liability,” said **Richard Curtis**, who has seen such cases multiply dramatically recently.

Poor financial performance is not necessarily the result of malicious action by a broker, although there is some responsibility inherent in the relationship. “No broker/dealer is a guarantor of success in investing,” Curtis noted. “The mere fact that you lost money doesn’t necessarily mean that your broker did anything wrong.

“Usually these cases involve someone investing money with a broker who makes unsuitable investments that are inconsistent with the person’s goals, financial position and/or station in life. What is appropriate for a 40-year-old working person, for instance, is not appropriate for a 65-year-old retiree on a fixed income or pension.”

Brokers are required to find out

your investment objectives by using a customer profile that notes your age, income, assets, goals and level of aggressiveness with you are comfortable. “It’s not a standard form — each firm has its own,” noted Curtis, “but there are certain regulatory rules that must be followed, under the Securities and Exchange Commission (SEC) and National Association of Securities Dealers (NASD). Both have a ‘Know Your Customer Rule’ that says a stockbroker must know, and make recommendations based on, those facts.”

Problems can arise if a broker fills in the form for a new customer or asks a customer to sign a blank form. “Be sure you fill out your own form,” urged Curtis.

There are some protections, but there also are potential pitfalls. When you open an account, you sign an agreement that any disputes will be arbitrated,” Curtis said. “Essentially, you give up your right to go to court.”

The resolution service has been getting “more and more” filings recently, which Curtis called a sign

that more people are unhappy with the results of their investments. “When the stock market is up, brokers may make ‘unsuitable’ recommendations, but no one complains as long as those investments perform well,” Curtis said. “Some bad advice may work out well.”

Driving current behavior is that, of course, “everybody likes to make money, and people don’t learn lessons from the past,” he noted. “We convinced ourselves that stocks would never go down — that the ‘second Industrial Revolution’ growth would never stop — but brokers should have known better. That’s one reason to hire a broker — for experience and expertise.”

In addition to self-regulatory rules for the profession, every stock brokerage has a compliance department that sets its own rules. “Firms don’t want their brokers to misbehave,” Curtis said. “Just be firm.”

## Good news for clients

If you think your broker has mishandled your account in some way, your lawyer can represent you in arbitration. The broker will be represented by an attorney, but the arbitration process will not provide one for you. Arbitrators act as judges, and the process is much like a trial, but decisions are binding and appeals are rare. “You need your attorney to present a coherent or persuasive case for you,” Curtis said.

Arbitrators can award damages, which are calculated according to level of unsuitability — the most common finding — and out-of-pocket measures, which look at how much money was invested and how much was left after bad investments. A

Curtis  
photo TK

## If you think your stockbroker has erred

Here’s what **Lacy, Katzen** would need to represent you in a dispute with a stockbroker.

- Any documents you signed when you opened your account.
- Copies of all account statements showing activity in the account. “We analyze what took place in your account, and can come to a conclusion fairly early about whether there is a case worth pursuing.”

(Keep in mind that “the customer has a responsibility to read and review all statements; if you see anything you think is wrong, ask your broker. Don’t just accept or worry about it, or assume there’s been a temporary downswing in the market. If your broker doesn’t do anything about it, get another broker or call your broker’s supervisor — every broker has a manager. Make a written record of what you do.”)

- Confirmation of who made investment decisions. “If the broker made recommendations, were they consistent with what you said you wanted?”
- Copies as much communication as possible. “Not every action is discussed or every discussion recorded, but there should be a confirmation receipt for every transaction, showing whether the recommendation was solicited or unsolicited.” Much of such communication nowadays is via e-mail but, “if a case goes to arbitration, even e-mails will turn up.”

*Continued on next page*

## Stockbrokers, continued

“well-managed account” measure looks at what would have been the value of *appropriate* investments. “Proof of damages usually requires expert witnesses, who analyze how your account *could* have performed by looking at indexed mutual funds and bond funds,” Curtis noted.

If Curtis determines that there is a case worth pursuing, “the first step is to file a claim with the Dispute Resolution Service to state the facts,” he said. The broker/dealer must respond. Arbitrators are selected and documents are exchanged, which could include tax returns. “The implication is that, if you’re new to investing, there is a different standard of care for your broker than if you have experience,” Curtis explained.

Lacy, Katzen’s fees are on a contingency basis, but clients may be responsible for filing fees (\$1,000 to \$1,500) and for an expert. The panel of three arbitrators must be paid — “usually the parties split those costs.”

Curtis makes a point of clarifying *all* aspects of what might happen in a stockbroker-accountability case upfront. “The customer usually has put trust in a broker and been disappointed or damaged,” he said. “I want to be sure our clients don’t have any similar bad experiences with me and that they understand what to expect.”

## Firm news

- **Lara Badain** has been admitted to practice in the state of California.
- **Denine Carr** presented a lecture about “Documenting Harassment and Discrimination Claims” at a November 13 seminar for human-resource personnel and attorneys, sponsored by Lorman.
- **Jennifer Chadwick** discussed “Confidentiality Agreements, Letters of Intent and Due Diligence” at a

December 2 seminar about “Purchase and Sale of a Business” for the Monroe County Bar Association’s Bridge Gap Series, “Practical Skills in Business Law.” She recently participated in the Junior Achievement Bowl-A-Thon.

- **Louis Ryen** has joined Rosewood Finearts Gallery to exhibit his photographic work.
- **Karen Schaefer** presented a fall seminar about “Estate Planning” for the New York State Bar Association.

## Our Practice Groups

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 Collection & Creditor Services  
 Corporate, Banking & Business Law  
 Debt Relief & Bankruptcy  
 Divorce & Family Law  
 Employment Law  
 Estates, Trusts & Elder Law Services  
 Municipal Law  
 Personal Injury & Wrongful Death  
 Real Estate Services  
 Wills & Estate Planning

## Our website and e-mail

- Visit us on the Web at [www.lacykatzen.com](http://www.lacykatzen.com)
- Please feel free to send questions or comments to: [attorney@lacykatzen.com](mailto:attorney@lacykatzen.com)

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*We work with you in an office close to you!*

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