

Legal Notes

Lacy,
Katzen,
Ryen &
Mittleman, LLP



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

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invaluable tool for future

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in new approach to handling divorce

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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 estate-tax 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 \$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.**: taxes, structure/ownership and internal aspects.

"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



Leslie Kernan, Jr.



Karen Schaefer

Continued on next page

Planning, continued

new year — with things organized and in hand at the end of the old one!”

• **Tax tips** — “If you’re thinking of transferring shares in the business, it may be beneficial to do so by December 31, to avoid interim filings (if your company is structured on a calendar year-end) and for other tax benefits,” Chadwick said. “This is also a good time to consider major purchases of land, equipment or real estate because there may be a tax benefit for you or your company, including the ability to take the new bonus first-year depreciation allowance. 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 December.”

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

Insurance issues

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

adequate coverage. In your auto policy, pay particular attention to uninsured/underinsured supplemental (SUM) and spousal liability.

- New York state law requires a *minimum* of \$25,000 in SUM coverage, but “if you have \$25,000 of SUM coverage, you are *very* under-insured,” warned **Jacqueline M. Thomas**.



Jacqueline 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 have the minimum coverage and are badly hurt, you only get \$25,000 if the other driver has no insurance. If the other driver has only the minimum — a \$25,000 policy — you get nothing extra from your policy. If you can’t work for a long time, \$25,000 won’t go far.”

- Most insurance policies contain an exclusion 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.”

You can purchase a rider that would provide coverage for this situation. “Agents tend not to push these coverages, but neither additional SUM nor spousal coverage is expensive,” Thomas said. “Adding spousal coverage to my policy only cost \$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, read it! After an accident is too late.”

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Some clients have been
inadvertently dialing 858.

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 been seeing more of such cases recently.

Poor financial performance is not necessarily the result of inappropriate conduct 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 which you are comfortable. “It’s not a standard form — each firm has its own,” said Curtis, “but there are certain regulatory rules that must be followed, under the Securities and Exchange Commission (SEC), New York Stock Exchange (NYSE) and National Association of Securities Dealers (NASD). Both the NYSE and NASD 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.

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,” he said.

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 NASD dispute-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.”



Richard Curtis

If you think your stockbroker has erred

Here’s what **Lacy, Katzen** would need to represent you in a dispute with a stockbroker, according to **Richard Curtis**. If you do not have all of the needed documents, you or your lawyer can obtain them from the brokerage firm.

- 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. 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 of 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 by e-mail but, “if a case goes to arbitration, even e-mails will turn up.”

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; decisions are binding and appeals are rare. “You need your attorney to present a coherent and persuasive case for you,” Curtis said.

If the arbitrators find that a broker acted improperly, they can award damages. Damages are usually calculated based upon out-of-pocket

Continued on next page

Stockbrokers, continued

losses — how much money was invested and how much was left after the account was mismanaged. The “well-managed account” method looks at what *would* have been the value of appropriate investments if the broker had acted properly. “Proof of misconduct and damages usually requires an expert witness, who analyzes your account and determines the amount of damages,” Curtis said.

If Curtis determines there is a case worth pursuing, “the first step is to file a claim with the appropriate arbitration forum, stating 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 usually on a contingency basis, but clients may be responsible for filing fees (\$1,000 to \$1,500) and for an expert. The parties usually share the cost of payment for the arbitrators.

Curtis makes a point of clarifying all aspects of 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 understand what to expect.”

Firm news

- **Lara Badain** has been admitted to practice in 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. She served on the organizing committee of the Junior Achievement Bowl-A-Thon, in which several firm members participated.

- **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.

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Debt Relief & Bankruptcy
Divorce & Family Law
Employment Law
Estates, Trusts & Elder Law Services
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Real Estate Services
Wills & Estate Planning

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