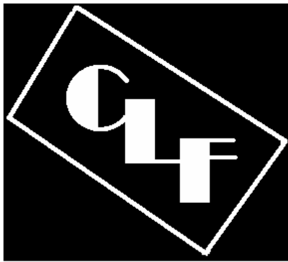

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QUARTERLY NEWSLETTER

FALL 2004

Estate Planning for Women

Estate planning is for everyone. A few simple steps- such as writing a will or setting up a trust- can prevent frustration and confusion for your family, reduce expenses and ensure that your final intentions are met.

It is particularly important to consider estate planning if you are a woman. Statistically, women are likely to live longer than their spouse, therefore making it important for women be familiar with the laws regarding probate prevention and knowledgeable of other benefits of estate planning. Women are also more likely to have large estates subject to estate taxes, because such estates may include assets that both partners accrued during their lifetime. Estate planning can dramatically lower your taxes in that case.

Unfortunately, many women put off planning their estate. According to a recent survey by Prudential, only 14 percent of women have done some form of detailed estate planning. Are you one of the millions of American women who have not written a will? Perhaps you think that you do not need a will, because you plan to leave everything to your children; or your husband takes care of financial planning. Perhaps you've put off planning your estate because you do not want to think about dying. Aside from the discomfort of facing one's own mortality the benefit of preparing ones estate can be a very comforting process. Contrary to popular conception, estate planning is not costly or time-consuming, but it has the potential pay big dividends. Talking to us is a first step in an estate plan process that will accomplish your goals and provide peace of mind.

If You Don't Write a Will or Trust…

If you die without a will, or without making a trust that conveys your assets to beneficiaries, you are said to have died **intestate**. Your assets are then distributed according to the law in your state. This does not mean that your assets will be distributed to the state. Assets are granted to the state only in very rare cases in which there are no surviving relatives. However, the law does make certain assumptions about how you would want your assets distributed. For example, some states' intestate descent laws prefer "blood" to "marriage," granting a share of your estate to your children and or to your parents, rather than to your surviving spouse. While, on the other hand, some states, grants that your surviving spouse inherits your entire estate and your children (and parents) are entitled to nothing.

In addition, the intestacy rules in most states do not consider family members whom are not related to you by blood, marriage, or adoption (i.e. stepparents or life partners) as eligible beneficiaries. For this reason, it is particularly important for unmarried couples to express their wishes in an estate plan. You might live with your partner for thirty years, but under the law—if you die without a will, the state intestacy laws would apply, and your partner could be left with nothing.

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401(k) Plans Have Promise and Pitfalls

Many employers are offering 401(k) plans to employees instead of, or in addition to traditional pension plans. Such plans often permit employees to have a say on how their money is invested and are more flexible than traditional pensions. However, 401(k) plans also have more risk for the employee. Whether you're close to retirement or not, you should understand how these plans work. Here's a quick guide to what they are and what you need to know to protect yourself. Our firm can answer any particular questions you may have.

Q. How does a Section 401(k) plan differ from a traditional retirement plan?

A. A traditional retirement plan pays retirees a certain amount per month, according to a formula that takes into account how long they were with the company, how much money they earned, etc. A 401(k) plan is a relatively new alternative. In the early 1980s, federal regulations were issued that permitted the use of salary reductions as a source of plan contributions. Since then, 401(k) plans have become very popular.

A 401(k) plan is funded by contributions you elect to make that are deducted from your salary before taxes. A 401(k) plan is thus often referred to as a deferred compensation plan. In some cases, the employer may match all or part of your contributions. There are limits on the amount that may be contributed, which increase annually. For persons age 50 and over, the law provides an additional increase in the contribution limits so that people can make "catch-up contributions." Additional limits may apply to the amount that may be contributed on your behalf by the employer.

Q. What happens to my contributions after I make them?

A. The contributions are placed in a fund and invested for your benefit. In some 401(k) plans, the employer controls the investment of 401(k) contributions made by both the employee and the employer. In other plans, employees are given control over the investment of their accounts.

Q. How are retirement benefits paid out of 401(k) plans?

A. Instead of a pension benefit, upon retirement employees receive distributions from their 401(k) accounts. Your plan may permit the distributions to begin as early as age 59½ without penalty, but you cannot defer the start of distributions any later than April 1 of the year after you reach age 70½.

Distributions upon retirement can take the form of periodic payments, installment payments, or even a single distribution of the entire amount in your account. The form of your distribution chosen can have a great affect on both economic security in retirement and tax liability therefore, it is a good idea to get professional advice before making this decision.

Unlike traditional pension plans, you may be permitted access to the funds in the plan before retirement. For example, if you are an active employee, you may be able to borrow from the plan. Also, your plan may permit you to make a withdrawal on account of hardship, generally from the funds you have contributed. If you make an early withdrawal that is not permitted by the plan, you will be subject to significant tax penalties.

Q. What rights do I have to know about my plan?

A. In general, the rules that apply to traditional defined contribution plans apply to 401(k) plans. Participants in 401(k) plans have the right to receive a summary plan description and an annual statement telling them the amount currently in their account.

Q. I have read about the retirement savings lost by employees who participated in the 401(k) plans at failing companies. How can I protect my retirement savings from similar losses?

A. First, you should study your summary plan description and your annual statement to see how the plan's assets are invested. If you have concerns about how the plan's funds are being invested, you should contact the nearest office of the Department of Labor.

Second, if your plan permits you to control the investment of your contributions, you should be careful not to put a large percentage of your account into your employer's stock or any other single investment.

401(k) Warning Signs

The Department of Labor's website urges employees to be alert to the following warning signs that your 401(k) contributions are being misused:

1. Your 401(k) or individual account statement is consistently late or comes at irregular intervals.
2. Your account balance does not appear to be accurate.
3. Your employer failed to transmit your contribution to the plan on a timely basis.
4. There is a significant drop in the account balance that cannot be explained by normal market ups and downs.
5. Your 401(k) or individual account statement shows that your contribution from your paycheck was not made.
6. Investments listed on your statement are not what you authorized.
7. Former employees are having trouble getting their benefits paid on time or in the correct amounts.
8. There are unusual transactions, such as a loan to the employer, a corporate officer, or one of the plan trustees.
9. There are frequent and unexplained changes in investment managers or consultants.
10. Your employer has recently experienced severe financial difficulty

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<u>*Wills*</u>

A **will** is simply a document in which you specify who is to receive your assets upon your death. The people and institutions inheriting your property are called **beneficiaries**. Wills are relatively easy to draft, and you can leave your property to anyone you wish—no one can stop you from leaving property to your grandchild, your lover, or even the local animal welfare center if you wish.

However, there are some limitations on your freedom to whom you give your property in your will. If you are married, you can't disinherit your spouse. State laws generally entitles a surviving spouse to take a portion of the deceased spouse's estate—regardless of the deceased spouse's will or estate plan. For example, if your husband dies with a will that makes no provision for you, or conveys less than a certain percentage of his assets, then you can take a statutorily defined **elective share of the estate**. This means that you can choose to accept the amount allowed by law, usually one-third or one-half of the estate. You do not have to take an elective share of the estate—it's your choice. If you do not exercise the choice, the will stands and the property is distributed as stated in the will. (Elective share provisions go both ways; your husband can take an elective share if you die first.)

Elective share provisions are troubling to many people entering into second marriages, particularly late in life. Even if you've only been married a couple of years, your surviving spouse would be eligible to take up to one-half of your property at your death, even if you wanted it to go to your children and your will reflected that. Recent revisions to the Michigan Probate Code (EPIC) provide a "sliding scale" for surviving spouses who take against the will. Under this approach, the longer the marriage, the higher the elective share. If the marriage lasted only a few years, the percentage could be quite low, minimizing one source of worry for older couples. You or your husband can also voluntarily give up your right to a share of the estate in a pre- or postnuptial agreement.

<u>*Trusts*</u>

You should also inquire whether a trust is a good option to consider when planning your estate. If all of your property is in trust, then your property does not need to go through probate, which may save your loved ones time and expense. There are many different types of trust that you can choose between, depending on your needs. For example, a funded **living trust** may be a good option if you can no longer manage your own finances. Because women are statistically likely to outlive their husbands, it is important for them to make plans for the issues they might face in old age, like incapacity or the need for a guardian.

You can transfer your property and other assets to a trustee, who can then manage your assets and distribute a regular income to you for the rest of your life. A living trust can also avoid the need to appoint a guardian of your estate if you should become disabled. Upon your death, your trustee can distribute your assets to the people or charitable organizations of your choice. If at any time after you create your trust, you change your mind as to any of your beneficiaries (i.e., you want to add one or eliminate one), you can make a simple amendment to your trust by a written letter or memo signed and dated by you and delivered to your trustee.

Alternatively, you might want to consider a trust for the benefit of others, such as minor children and grandchildren or disabled relatives. A trust can provide a mechanism for managing property and making distributions over the years, without court supervision. Certain trusts can also provide ways of maximizing tax credits and exemptions.

You can also use other will substitutes to get property to your beneficiaries without having to go through probate. For example, pensions, life insurance, and Individual Retirement Accounts go directly to the named beneficiary after your death. Talk to us to make sure that all these ways of leaving property are coordinated with your estate plan.

Americans Putting Off Estate Planning

A recent federal estate tax law may be cutting down on estate planning. The law, which went into effect in 2001, reduces estate taxes year-by-year and will ultimately repeal them in 2010. An unintended consequence of the law, according to recent studies, may be a decline in the number of Americans planning their estate—both because they are less worried about taxes and because they think they'll put off planning until estate taxes are finally repealed.

But in fact the law only eliminates federal estate taxes for one year, after which the old law goes into effect, so Americans concerned about taxes still have every reason to plan their estates. And writing a will or trust enables people to do much more than deal with taxes—it permits them to save money in fees, get property to beneficiaries fast, and direct exactly how they want their property distributed. Also, many people are missing out on planning for incapacity by not planning their estates, and so may not have a health-care proxy or living will

Your Guide to Products Liability

What do lawsuits involving SUV rollover accidents, have in common with lawsuits regarding defective children's pajamas, anti-cholesterol drugs, or football helmets? Surprisingly, the cases have several things in common. Each case often involves a large number plaintiffs, also referred to as class action lawsuits. Sometimes they generate big awards of damages (and big headlines too). Despite the evident differences each case is an example of product liability law. Here's a brief explanation of the general principles of products liability. We can answer any specific questions you may have.

Q. How is product liability different from other types of personal injury law?
A. Most personal injury law involves lawsuits claiming negligence. In a typical auto collision case, for example, one driver may sue the other, claiming that the other's negligent driving caused a collision and caused injury. Products liability, on the other hand, involves a legal concept known as strict liability. Courts hold some persons or companies strictly liable for certain activities that harm others, even when they have not acted negligently or with wrongful intent. For example, persons or companies engaged in blasting; storing dangerous and toxic substances; or keeping dangerous animals can be strictly liable for harm caused to others. The most prominent example of strict liability is in product liability cases—in which the manufacturers are held liable for injuries their products caused.

Q. How does strict liability apply to product liability cases?
A. Strict product liability, now the law in nearly every state, allows lawsuits against a manufacturer that sells any defective product that causes an injury to a buyer or anyone who uses it. A product can be defective in design, manufacturing, or labeling.

Strict liability holds designers and manufacturers strictly liable for injuries resulting from defective products. If a defective product injures you, you do not have to establish negligence by the manufacturer. Rather, you need to show that the product was defective—designed or manufactured in a manner that made it unreasonably dangerous when used as intended;— labeled with improper instructions; or with instructions that failed to warn consumers of dangers in the product

Q. Can more than one company be liable if a product is defective?
A. Yes. Some or all of the companies along the chain of manufacturing could be found liable, depending on the facts of the case—The manufacturer of component parts, the manufacturer who put those parts together, the wholesaler, and the retail store that sold the product could all be found liable.

Q. What are some examples of defective products?
A. According to the U.S. Consumer Product Safety Commission, products recently found to be defective include certain slow cookers, decorative light bulbs, portable electric heaters, bicycle helmets—and plush toy frogs.

Q. Can someone who suffered a severe allergic reaction from cosmetics and incurred medical expenses recover money from the manufacturer?
A. Perhaps. Did the manufacturer warn that the cosmetic could cause such a reaction? Some courts normally will not hold the manufacturer liable for failing to warn of the risk of an adverse reaction unless the plaintiff can prove that an ingredient in the product would give a number of people an adverse reaction. A plaintiff also must prove that the manufacturer knew or should have known this and that the plaintiff's reaction was because he or she is in that group of sensitive people, and not because the person is hypersensitive. In addition, courts will determine whether the product was used according to the directions provided with it. Misuse is a defense recognized in strict liability.

Q. What about people who don't find out about a health problem until years after exposure to a toxic substance? Is it too late for them to file a claim?
A. It may not be too late. Many people who suffered injuries from toxic substances such as asbestos did not know at the time of exposure that the compounds were harmful. As a result, some states have enacted laws allowing people to file lawsuits for a certain amount of time from the date when the lung impairment or cancer begins, rather than from the date of exposure.

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