PLF ASSESSMENT INCREASES $400

The PLF requested, and the Board of Governors approved, a $400 increase in the PLF assessment. This increase will return the assessment to its 1997 level of $2,200. This is the first increase since 1997. The assessment is determined by using 2001 claims experience to project 2002 claims expenses (projected severity of claims times projected frequency of claims), projecting expenses of operation, projecting investment income, and taking into consideration availability of other assets.

The increase is necessary for a combination of reasons. First, the PLF’s recent claim experience has been worse than expected with claim costs in 1999 and 2000 reaching historic highs. This worse than expected experience has resulted in an increase in projected claim costs for 2002. Second, reduced expectations for investment returns have led to a reduction in income projections. In the past, investment income has paid expenses that otherwise would have been included in the annual assessment.

The overall picture, however, appears to be improving. The early 2001 claim experience reflects a trend quite different than the experience of 1999 and 2000. For the first six months of 2001, indemnity paid on claims was significantly lower than indemnity paid on 1999 and 2000 claims. There have been some increases in defense costs, but they are more than offset by the decreases in 2001 indemnity payments. In addition, the frequency of claims is running slightly lower than the projected level. While it is early to tell if these trends will continue, they are encouraging.

The factors affecting the PLF’s experience are being felt by all providers of legal malpractice insurance. As a result, nationally, lawyers are finding it more difficult to purchase legal malpractice coverage. Many insurers are withdrawing from the legal malpractice market. Others are insisting upon minimum premiums set at a rate that many sole practitioners and small firms find difficult to manage. Some providers are increasing their underwriting

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1987 - 2002*

Assessment

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Claims

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*Projected

2002 MALPRACTICE COVERAGE COST COMPARISON

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<tr>
<td>Idaho</td>
<td>$1mil/$1mil</td>
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<td>Oregon (PLF)</td>
<td>$1mil/$1mil</td>
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Note: The PLF's primary $300,000/no deductible coverage is not available in the commercial market in other states. Comparisons are made using the more commonly available $1,000,000 in coverage with a $1000 deductible. The PLF rate represents the combined cost of PLF primary coverage plus $700,000 in excess coverage and assumes some prior participation in the PLF Excess Program.
criteria, making it difficult for some attorneys to find coverage. As a result, rates for attorney malpractice insurance are increasing throughout the country. In fact, many carriers' rate increases are significantly higher than the PLF's 22% increase. Rates in Washington are projected to be as much as 100% higher for comparable limits. Other insurers in the region estimate that increases in 2002 will be from 25% to 40%. (See chart on page 2.)

The PLF was founded in 1977, in part, in response to similar marketplace conditions. The PLF was created to provide stable malpractice coverage to all Oregon lawyers, even during times of significant disruptions of the insurance market. The PLF Board of Directors is pleased that the considerable strengths of the Oregon approach are reflected in the current stability of PLF coverage. In addition to accomplishing the goal of market stability and consistent availability of coverage, the PLF also serves Oregon lawyers well in many other ways — a coverage plan with no deductible, extensive loss prevention services (including CLE programs, practice aids, practice management advisors and the Oregon Attorney Assistance Program), and an experienced high-caliber claims attorney staff.

I am happy to discuss the assessment, or any other aspect of the PLF, with you. Feel free to call me anytime.

Ira R. Zarov  
Chief Executive Officer  
Professional Liability Fund

HOW THE ASSESSMENT IS SET

Generally, the PLF assessment is calculated by projecting claims cost and operating expenses, and dividing these expenses by the number of lawyers in private practice.

Of the two expense categories (claims costs and operating expenses), the cost of claims is by far the more significant factor affecting the assessment. The total cost of all claims is the projected severity multiplied by the projected frequency of claims for the year. Projected severity is the actuaries' estimate of the combined indemnity and defense expense per claim. Projected frequency is the actuaries' estimate of the number of claims for the year. The actuaries project claim severity and frequency by reviewing the PLF's claims history.

Once the claims expense projection is made and operational expenses taken into account, the BOD looks to other factors that affect the finances of the Fund. Available investment income and the level of retained earnings are both considered. "Retained earnings" are assets that are above the total claim liabilities of the PLF. Whenever possible, the PLF keeps retained earnings at a level that is reasonable to absorb higher than projected claims expenses. The actuaries help determine this level. The final assessment is set at a level that is projected to provide enough income to pay for the costs of claims and PLF operating expenses for the year.

The PLF's Excess Program, which provides coverage up to $5,000,000 above the primary level, is accounted for separately and does not affect the primary program assessment.
YOU MAY NEED TO GIVE YOUR CLIENT NOTICE OF YOUR PRIVACY POLICY

If you have access to nonpublic personal financial information about your clients, and you provide those clients with services that are for the client’s personal, family, or household purpose, read on. The Gramm-Leach-Bliley (GLB) Act may require you to give your clients a notice that explains what nonpublic personal information you collect and how you protect their privacy.

LAWYERS PROVIDING FINANCIAL SERVICES

Among other things, the Act defines certain activities as “financial activities” and requires businesses engaged in these activities to tell their customers how the business will protect the customers’ privacy.

Enacted to enable the banking, securities, and insurance industries to offer more services to clients, the GLB Act applies to lawyers because of some of the Act’s definitions. For example, “financial institution” includes an “accountant or other tax preparation service” and “an entity that provides real estate settlement services.” The GLB took language from the Bank Holding Act of 1956 (an Act that established certain activities as being “financial in nature” for the purpose of banking regulation) and established them to be “financial activities” that required specific notices. (Regulations that were enumerated for one reason in the Banking Act to establish activities that banks could do were used in the GLB Act to define “financial activities.”) The Federal Trade Commission (FTC) staff suggest that lawyers use the list of “financial activities” in section 4(k) of the Bank Holding Act of 1956 and in 12 CFR Part 225.28 as a guide to help determine if they need to provide notice to their clients. Of the listed activities, those most clearly applicable to lawyers include “providing tax planning and tax preparation services to any person” (12 CFR 225.28(b)(6)(vi)), and providing “real estate settlement services” (12 CFR 225.28(b)(2)(viii)). (See related box “Real Estate Settlement Services.”) If a lawyer provides tax planning services, tax preparation services, or real estate settlement services to individuals who use the service for personal, family, or household use, the lawyer must give the required notices. (See page 7.)

The Act only applies to “financial institutions” “significantly engaged” in “financial activities.” Accordingly, the FTC’s outline of the GLB Act posted on the FTC website, whether a “financial institution” is “significantly engaged” in financial activities is a flexible standard that takes into account all the facts and circumstances. According to a recent ABA CLE presenter, the FTC has taken the position that lawyers who hold themselves out as providing the services specifically named in the Act as “financial activities” are “significantly engaged in the activity” and must give their clients the privacy notice.

FAMILY LAW/BANKRUPTCY APPLICATION DEPENDS ON SERVICES

The tax planning/preparation and real estate settlement descriptions are specifically noted in the Act and are reasonably clear and easy to interpret.
Unfortunately, other terms in the Act raise questions that no one is presently able to answer. For example, the Act defines “acting as investment or financial advisor to any person” (12 CFR 225.28(b)(6)) as a “financial activity.” When I recently asked a member of the FTC staff whether this regulation applied to services such as those provided by lawyers who handle personal bankruptcies or family law cases, the staff person stated “the application would depend on the nature and extent of services provided. If any financial services were de minimis, no notice would be required.” If you practice in these areas and you are concerned about the application of the GLB to a specific fact situation, the FTC staff is available to discuss the issue with you. They can be reached at the FTC’s Division of Financial Practices 202-326-3224.

FTC HAS ENFORCEMENT AUTHORITY

The Act gives enforcement authority to the FTC for entities not otherwise under the jurisdiction of other agencies. Although the GLB Act does not designate penalties, the rules can be enforced by a federal agency under its enabling acts. If considered an unfair and deceptive trade practice, the fine could be up to $11,000 per day per offense.

NOTICE REQUIREMENTS OF THE ACT – CURRENT CLIENTS

The Act covers businesses that provide individuals with financial services for personal, family, and household purposes. 16 CFR § 313(e) and 313(h).

DOWNLOAD PLF PRACTICE AIDS/
ORDER CLE TAPES
AND MATERIALS

PLF practice aids can now be downloaded from the new PLF web site: www.osbplf.org. (See page 14 for complete list.) The web site can also be used to order CLE tapes and materials. The site is designed for use by Oregon lawyers. To access the site, enter your bar number. (Law office staff may enter the bar number of firm members when viewing the site.) For a list of CLE tapes that are available on the site, see insert to this issue of In Brief.

The Act requires “financial institutions” to send a notice to “customers” by July 1, 2001. The regulations define the “customer relationship” as “a continuing relationship between you and a consumer under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.” A consumer is defined as “an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes.” 16 CFR Part 313 § 313.3(e)(1), (h), (j).

The regulations give some examples of when a “customer” becomes a “former customer.” For tax preparation, a customer is a “former” customer if the lawyer has provided and received payment for the services and no longer provides any statements or notices to the customer concerning that relationship. 16 CFR Part 313 § 313.5(b)(2) example (v). For real estate settlement activities, a customer is a “former” customer if the transaction closed and the law firm has discharged all of its responsibilities with respect to settlement. 16 CFR Part 313 § 313.5(b)(2) example (vi). In general, a customer is a “former” customer if there has been no communication with the individual for a period of 12 consecutive months, other than to provide annual privacy notices or promotional materials. 16 CFR Part 313 § 313.5(b)(2)(viii).

NOTICE TO NEW CLIENTS AND ANNUAL NOTICES

After July 1, 2001, new “customers” (i.e. clients) of the “financial institution” (i.e. law firm) must be provided with notice of the “institution’s” (i.e. law firm’s) privacy policy and practices. Most lawyers who fall within the Act satisfy the requirement by providing new clients with the required privacy notice at the same time that they provide the client with their retainer agreement and engagement letter.

Beginning in 2002, lawyers who fall within the Act will need to continue to give new clients the initial notice and will also have to give its privacy policy annually to current “customers” (clients) for whom it performs the listed financial services. The annual notice must be given to all current clients at least once every 12 months. Therefore, lawyers must decide what kind of system they will use to track the notices given to applicable clients. For example, if a

Continued on Page 7
SAMPLE PRIVACY POLICY NOTICE

Attorneys who provide legal services involving their clients' financial matters are now required by federal law to inform those clients of their policies regarding the privacy of client information. The purpose of this notice is to explain what we will be doing with the financial information that you provide to us and how we will protect your privacy.

Oregon attorneys are bound by the Oregon Code of Professional Responsibility. This Code of Professional Responsibility governs our conduct and requires us to protect your confidentiality. These professional standards are even more stringent than those now required by federal law. Therefore, we have always protected your right to privacy and will continue to do so. Federal law now also requires that we let you know how we are protecting your privacy.

TYPES OF NONPUBLIC PERSONAL INFORMATION WE COLLECT

We collect nonpublic personal information about you that is provided to us by you or obtained by us in order to provide you with the legal services you have requested. In some cases, this information includes details about your personal finances and property.

DISCLOSURE OF INFORMATION

We disclose nonpublic personal information about you only to individuals or entities necessary in order to provide you with the legal services that you have requested. For instance, our staff may have access to your nonpublic personal information in order for us to efficiently provide you with the legal services you have requested. In some situations we may provide information to another organization (such as your accountant, realtor, or insurance company) in order to obtain information or assist in providing the legal services you have requested.

We do not disclose any nonpublic personal information about you to anyone, except as is necessary in order to provide you with the legal services that you have requested. The only disclosures we make are those that are permitted by law and by the Oregon Code of Professional Responsibility.

OPTIONAL PARAGRAPH

YOU HAVE THE RIGHT TO PROHIBIT DISCLOSURE

If for any reason you do not want us to provide nonpublic personal information about you to others in the course of providing you with legal services, you may direct us not to make those disclosures. If you wish to direct us not to disclose information, please call (insert law firm contact person and telephone number).

YOUR PRIVACY IS IMPORTANT TO US

We retain records and files relating to the professional services you have asked us to provide. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with the Code of Professional Responsibility that governs our profession. Please call us with any questions you have about protecting your privacy.
REAL ESTATE SETTLEMENT SERVICES

The FTC website provides this list as guidance in defining “real estate settlement services:”

1. Review the status of the title in the title commitment, resolve any exceptions to the title, and review the purchase agreement to identify any requirements in it in order to ensure compliance with them;
2. Verify the payment of existing loans secured by the real estate and verify the amount of and then calculate the prorating of special assessments and taxes on the property;
3. Obtain an updated title insurance commitment to the date of closing, prepare the required checks, deeds, affidavits, and obtain any authorization letters needed;
4. Establish a time and place for the closing, conduct the closing, and ensure that all parties properly execute all appropriate documents and meet all commitments;
5. Collect and disburse funds for the parties, hold funds in escrow pending satisfaction of certain commitments, prepare the HUD settlement statement, the deed of trust, mortgage notes, the Truth-in-Lending statement, and purchaser’s affidavits;
6. Record the appropriate documents as required under law; and
7. Provide real estate abstracting services: conduct title search and prepare abstract of title.

Source: www.ftc.gov

person becomes a client on September 1 and is given a privacy notice with his or her engagement letter, the firm must decide if 1) that client will get an annual notice in September or 2) the firm will send out all annual notices at one time. If you choose the option of sending out the annual notices all at one time, new clients will get two notices during their first year as your client – the initial notice and an annual notice. If you don’t send out annual notices all at once, and instead send individual annual notices, you will have to calendar when each client’s annual notice is due – a system that is probably more time and labor intensive than the first system.

SAMPLE FORM

Accompanying this article is a sample notice and a list of resources on this topic. The notice provided must include information about the type of nonpublic personal information you collect and how you protect your clients’ confidentiality. It must also inform the client that you only disclose information as permitted by law. Although the FTC rules probably do not require lawyers to include an “opt out” provision in their notice, some lawyers prefer to include a paragraph giving the client the right to notify the firm if the client wants to direct the lawyer not to disclose certain information to anyone. (In some circumstances, if a client chooses to “opt out” of disclosure, the lawyer may be forced to resign either for ethical reasons or because he or she is unable to provide the legal services requested.) The opt out provision is noted in the sample as optional.

THE FUTURE

The American Bar Association recently requested that lawyers be exempt from the Act. The FTC is currently considering the request but has not yet taken a position on it.

Barbara S. Fishleder
Director of Loss Prevention
Professional Liability Fund

Our thanks to Hal Scoggins, Farleigh Wada & Witt PC, for his assistance with this article.
WHY ASSOCIATES LEAVE

An estimated 25 percent of all associates in large firms leave each year. Here are some of the reasons why:

1. Hours. In 1980, major firms wanted associates to bill 1,500 hours per year. These days, twelve-hour days, six or seven days a week, has become the norm in many big cities. The worst part? Few firms actually require this many hours, but associates think the partners will like them better if they work that hard. Of course, the associates can stand the heat for only so long.

2. Unpredictability. An associate tried all day to get in touch with a partner to see if he would need her to work that night. The associate hoped to go home “early” (8 p.m.) to celebrate her wedding anniversary. She called the partner, sent him e-mail, sent him faxes, lingered outside his door. He never responded, so she went home. At 11 p.m., he called her at home, demanding she come back to draft a document. (She later left the firm to become in-house counsel. When the partner made a pitch for her company’s business, she laughed in his face.)

3. Money. Associates complain of not receiving the same pay rate as associates in competing firms, although they work just as hard and do the same kind of work.

4. Feedback. Nothing causes insecurity like a lack of feedback. Insecure associates think you are going to fire them, even though they bill tons of hours. Preemptive strike: They leave.

5. Partnership. Associates want to know what their chances are, and they can not assess their chances without feedback. What are the firm’s criteria? What are the benefits of partnership? Is it just earning more money for working even longer hours?

6. Thank you. Everyone needs to be acknowledged. Every once in awhile, say something like “I really appreciate the quick turnaround” or “You represented the firm well on that deposition” or “You’ve been working hard—take the entire weekend off.”

7. Mentoring/training. Law is still a profession taught through apprenticeships, and associates are really apprentices. Just because they are paid huge salaries that make you crazy every time you think about it does not mean associates know how to do what you need them to do. They can’t read minds. Reach out to those who need guidance — and even to those who don’t appear to. For example, help associates set professional goals. “This year you should depose more experts. You need to operate like a scalpel with them, not a blunt instrument. You’ll get it with practice.” “You’re ready to handle this closing by yourself; I’ll be available by phone if you need me.”

8. Rainmaking. Want your associates to be rainmakers? Train them. Expecting them to bring in clients without guiding them is like giving a teenager a motorcycle with no manual or hands-on training. Include associates in rainmaking sessions so they can get the hang of it. Encourage them to practice rainmaking skills on people they know. Praise them when they bring in business, even if the firm can’t accept it because of conflicts of interest or because of the scope or nature of the matter.

9. Isolation. Associates (and some partners) complain that whole days can go by without speaking to a client, a partner, even another associate. Empty corridors, closed doors, long hours, looming deadlines, the surreal quality of a high-rise at 2 a.m. for the third night in a row, can be demoralizing. People who are isolated and lonely fail to thrive. A friend once suggested that every new law firm employee be given a kitten. Sort of a crazy suggestion, but then again, maybe not.

10. Abuse. You might not believe the stories about partners who scream, throw objects, or ignore associates for days because of some perceived misstep. I believe them, because I find new jobs for the associates who get tired of the abuse.

Martha Fay Africa
Major, Hagen & Africa

Major, Hagen & Africa is an attorney search firm in San Francisco, 500 Washington St., San Francisco, CA 94111; (415) 956-1010.

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Governor Kitzhaber signed SB 171 (revising the Uniform Commercial Code Secured Transactions - Article 9) on June 19. The Act became law on July 2. The text of the final enrolled version of the bill can be viewed by visiting http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB171.pdf. This document is in Adobe Acrobat Reader. If you do not have Adobe Acrobat Reader, you can load it from the PLF's web site, www.osbplf.org. Click on loss prevention material, then on practice aids and forms. Or, download from www.adobe.com.

TRANSITION RULE COMMENTARY

The PLF web site, www.osbplf.org, also has the New UCC Article 9 transaction rule commentary. Click on “Loss Prevention Material” and then “Alerts and Special Information.”

The transition rules in SB 171 (Sections 188 - 195/pages 113 - 117 of the document link referred to above) are very similar to the transition rules recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). You can download the comments to the NCCUSL rules from the PLF web site.

CHOICE OF LAWS

For choice of law issues, visit the NCCUSL’s web site posting of the NCCUSL Permanent Editorial Board Interim Report. This report is an analysis of choice of law issues that affect perfection of security interests when a financing statement must be filed. Once at www.NCCUSL.org, select the “What’s New” tab at the top and view the section under June 14, 2001 Part 1 & Part 2. Or, at the homepage box “Select Act Title,” select Uniform Commercial Code Article 9, Secured Transactions and click on “search.” This will get you to another page that has the choice of law information and other information as well.

COMPARISON HANDBOOK

The Oregon State Bar has published A Comparison of Former UCC Article 9 and New UCC Article 9. This handbook includes a chart showing the differences between the old and new Uniform Law, including references to topics and sections and annotations to Oregon law where it differs from the Uniform Law. The handbook is $35 and includes a disk that allows you to search for specific terms and sections. To order, call the OSB Order Desk at 503-684-7413 or 1-800-452-8260 ext 413.

OREGON STATE BAR CLE PROGRAM

The Oregon State Bar presented a CLE entitled: UCC Article 9 Update on October 5, 2001. Topics included the transition rules, security agreements, collateral, perfection, priority, default, third party rights, remedies, automatic stays, noncompliance and ethics in secured transactions. For video replay or to purchase a tape, call the OSB CLE Order Desk at 503-684-7413 or 1-800-452-8260 ext 413.

OTHER USEFUL WEB SITES:

- Commercial Finance Association
  www.cfa.com
  (Site index at bottom - select Revised Article 9.)
- Intercounty Clearance Corp.
  www.intercountyclearance.com (Select RA9 Resource Center on left of screen.)
- CT Corporation
- American Bar Association-Business Law
  www.abanet.org/buslaw/efs-ucc/ucc/article9/
TIPS FROM THE PLF CLAIMS DEPARTMENT

• Call the PLF immediately if you have made a mistake – or if someone accuses you of making a mistake. (This includes if someone moves for a default or has taken a default – do NOT try to fix it yourself.)

• Always keep your original file, if possible. If the client prefers the original file, be sure to keep a complete copy.

• Call the PLF if someone wants to “review” your file.

• Call the PLF if your deposition is requested – for ANY reason.

The PLF has eight experienced claims attorneys on staff and hires defense attorneys all over the state. Get the most out of your assessment dollars, reduce your stress, and minimize any future problems – call the PLF EARLY! 503-639-6911 or 1-800-452-1639.

VALUABLE TOOLS

Have you ever wondered why some lawyers seem to be so much more skillful at using their computer than you? No one could reasonably dispute that computers have become one of the most important tools in today’s law office, and proper use of this tool can make your job easier and faster. Case management software, time and billing software, accounting software, and practice-specific software for the law office are important tools in running any law office, but other software not specifically designed for lawyers can be just as valuable. A few of these products are discussed below.

ANTI-VIRUS SOFTWARE

While anti-virus software may not make your law office more efficient, it can certainly save your computer and data if a virus is introduced. New viruses are created and distributed daily, and anti-virus software is your first line of protection. Today’s anti-virus software now has several components, including periodic scanning and frequent updating over the Internet. Make sure your computer is protected, especially if you use e-mail – the latest method of distribution.

The two leading anti-virus software programs are McAfee Virus Scan and Norton AntiVirus. Prices vary, but both programs include a free year of updates (which can be renewed annually). At any price, this is a necessary program for all computer users.

ADobe Acrobat Reader

This program is a valuable tool that allows you to view or print a document on your computer no matter what platform or program it was created in. This eliminates formatting problems that may turn a document into an unrecognizable jigsaw puzzle. Adobe Acrobat Reader files use a PDF (portable document format) that can be used by Mac and Windows users alike. Virtually all downloadable documents on the Internet, including all the forms from the PLF’s web site, are Adobe Acrobat Reader files.

The best part about Adobe Acrobat Reader is that it is a free program that can be downloaded from the Adobe web site at www.adobe.com by just clicking on the “Get Adobe Reader” link at the
This free software will allow you to read any PDF files; however, you must purchase the Adobe Acrobat software to create these files. If you distribute documents frequently, you may wish to purchase this software and learn how to use it. Both Corel WordPerfect and Word allow you to save documents in the PDF format.

**QUICK VIEW PLUS**

If you have ever received a file from someone that you cannot open because your computer cannot recognize the file format, you need Quick View Plus. This program allows you to locate, view, copy, and print virtually any document, even if you do not have the originating application. The most important feature of Quick View Plus is that it allows you to view e-mail attachments without actually opening the file or executing macros which may spread viruses.

The program is available for a 30-day free trial at [www.jasc.com](http://www.jasc.com) and can be purchased for $59. For Corel WordPerfect users, a version of Quick View Plus is included with versions 6.1 through 8, but it is not loaded during a typical installation. Load your installation disks or CD and choose custom install to see if you already have this product and just need to install it.

**COMPRESSED FILES**

File compression is used for storing and distributing large documents. Usually the documents "archived" in a zip file are compressed to save space, but the zip process also makes it easy to group files and quickly copy them. Netzip, WinZip and PKZip are just a few of the file compression utility programs available for free online. For a small registration fee, you can purchase additional features and receive updates. One such feature allows you to create self-extracting zip files, which can be unzipped (or uncompressed) by anyone whether or not they have the same compression software.

**UNINSTALLERS**

Each time you install a new application, files land in the Windows system folder, shortcuts end up in the Start menu, and program settings drop anchor in the Windows System Registry. And when you are online, web sites send even more files to your hard drive for storage. All this extra junk takes up valuable space. More importantly, a bloated hard drive runs more slowly and is more likely to crash than a lean one.

So how do you get rid of this junk completely when you want to remove a program from your computer? The Windows Add/Remove Programs utility is of little help, and often leaves unnecessary files on your hard drive. Your best bet is a software uninstaller. Uninstallers not only remove programs from your hard drive, but also clean out old baggage, such as temporary and cached files. Today's uninstallers even help you move applications from one machine to another and back up important data. Some popular programs to choose from are CleanSweep from Norton, Uninstaller from McAfee, or WinDelete from IMSI Corp.

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**PLANNING AHEAD**

The PLF's free handbook, *Planning Ahead: A Guide to Protecting Your Client’s Interest in the Event of Your Disability or Death*, can be ordered by visiting [www.osbplf.org](http://www.osbplf.org) or by using the PLF Free Educational Information Order Form in this issue.

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**ESTATE TAX REPEAL...?**

In late May, Congress passed the Economic Growth and Tax Relief Act of 2001, and on June 7 President Bush signed it into law. The Act made significant changes to the federal estate and gift taxes. This article will address some issues that should be considered in reviewing estate plans in the context of the new law.

**ESTATE TAX EXEMPTION AMOUNT**

Although the new Act has often been described as repealing the estate tax, there is some question as to whether repeal will actually take place. In general, the estate tax will be phased out over the next 10 years, so that persons dying in 2010 will pay no estate tax. However, the entire bill will expire on
December 31, 2010 and, if future Congresses do not extend the provisions of the Act, persons dying in 2011 will be subject to the law as it existed prior to the Act. In other words, the estate tax might be reenacted automatically in 2011. Also effective in 2010 only, the income tax stepped-up basis rules are changed so that capital gains will no longer be completely forgiven at death.

The new Act increases the current $675,000 estate tax exemption amount to $1,000,000 on January 1, 2002, and in future years as follows:

<table>
<thead>
<tr>
<th>Year of Death</th>
<th>Exemption Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>2003</td>
<td>1,000,000</td>
</tr>
<tr>
<td>2004</td>
<td>1,500,000</td>
</tr>
<tr>
<td>2005</td>
<td>1,500,000</td>
</tr>
<tr>
<td>2006</td>
<td>2,000,000</td>
</tr>
<tr>
<td>2007</td>
<td>2,000,000</td>
</tr>
<tr>
<td>2008</td>
<td>2,000,000</td>
</tr>
<tr>
<td>2009</td>
<td>3,500,000</td>
</tr>
<tr>
<td>2010</td>
<td>No estate tax</td>
</tr>
</tbody>
</table>

CHANGES IN ESTATE TAX RATES

The new Act also reduces the estate tax rates. Under current law, the maximum rate for very large estates is 55 percent. Beginning on January 1, 2002, the maximum rate will slowly decrease, as follows:

<table>
<thead>
<tr>
<th>Year of Death</th>
<th>Maximum Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>50%</td>
</tr>
<tr>
<td>2003</td>
<td>49%</td>
</tr>
<tr>
<td>2004</td>
<td>48%</td>
</tr>
<tr>
<td>2005</td>
<td>47%</td>
</tr>
<tr>
<td>2006</td>
<td>46%</td>
</tr>
<tr>
<td>2007 through 2009</td>
<td>45%</td>
</tr>
<tr>
<td>2010</td>
<td>No Estate Tax</td>
</tr>
</tbody>
</table>

After 2010, the Unified Credit will revert to $1,000,000, and the maximum estate tax rate will revert to 55 percent, unless a future Congress passes legislation to extend or otherwise modify the Act.

GIFT TAX AND GENERATION-SKIPPING TAX CHANGES

The new Act also makes significant changes to the gift tax and the generation-skipping transfer tax. The $10,000 annual exclusion for gifts will remain in place and will be adjusted for inflation, as under prior law. The maximum gift tax rate will decrease according to the rate schedule for estate taxes (except in 2010, when the maximum gift tax rate will be 35 percent), while the estate tax will be eliminated entirely. The exemption amount for gift taxes will increase from its current level of $675,000 to $1,000,000 on January 1, 2002, but unlike the exemption amount for estate tax it will not increase further. Thus the gift tax will remain in place after the estate tax is phased out, and the gift tax exemption will remain at $1,000,000 indefinitely. In addition, all transfers to irrevocable trusts after 2009 will be taxable gifts. As a result, the $10,000 annual exclusion will no longer be available for gifts to irrevocable trusts for minor children.

The current $1,060,000 exemption for generation-skipping transfers will increase as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Exemption Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 through 2003</td>
<td>$1,060,000</td>
</tr>
<tr>
<td>2004 and 2005</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>2006 through 2008</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2009</td>
<td>$3,500,000</td>
</tr>
<tr>
<td>2010</td>
<td>No generation-skipping tax</td>
</tr>
</tbody>
</table>

The changes to the gift tax and the generation-skipping tax are also complicated by the fact that the entire Act will expire in 2011. The gift tax rates will then return to their former level and the generation-skipping tax exemption will also return to its former level unless a future Congress extends the Act or makes other changes. In the meantime, estate planning will need to take all of these contingencies into account.

INCOME TAX BASIS

The income tax provisions of the new Act are also very significant. Under present law, most assets passing at death receive a new stepped-up income tax basis equal to the value of the asset on the date of the decedent’s death. As a result, the income taxation of capital gains accrued prior to death is generally forgiven. Under the new Act, after the estate tax is repealed on January 1, 2010 the increase in basis available under the old law will no longer be available. Instead, assets will pass to the heirs with the decedent’s original cost basis. As a result, the heirs will eventually be required to pay capital gains taxes on the capital gains that accrued during the
decedent's lifetime, although those capital gains taxes will generally not be due until the heirs sell the assets. However, the new Act does allow the executor of a taxpayer's estate to increase the cost basis of some of the decedent's property so that the capital gains accrued on those particular assets during the decedent's life will be forgiven. The amount of increased basis will be limited to $1,300,000. In the case of transfers to a surviving spouse, an additional basis increase of $3,000,000 will be allowed, but only on assets passing to the spouse or to certain trusts for the benefit of the spouse.

The new Act contains numerous other provisions, but the provisions discussed here are the primary provisions that affect estate planning. The consensus appears to be that the repeal of the estate tax will not stand, at least not in its current form, but at this time no one knows whether future Congresses will act to ensure that the estate tax will disappear permanently in 2010.

FORMULA BEQUESTS

In this section we discuss some (but not all) of the estate planning issues that arise as a result of the 2001 legislation.

The scheduled increase in the estate tax exemption amount may require the review of existing wills and trusts utilizing a "bypass" or "credit shelter" formula. Under the new law, the formula will result in a decrease in the amount passing to the residuary beneficiary. This may be particularly relevant for clients whose exemption amount will pass to children or others rather than in trust for the surviving spouse. For example, suppose a client with an estate of $2,000,000 decides to give his $675,000 exemption amount to his children and leave the rest, $1,325,000, to his wife. As is usual, the bequest to children is expressed in the form of a formula based on the exemption amount existing as of the year of death. However, with the increase in the exemption amount to $1,000,000 in 2002, $1,500,000 in 2004, $2,000,000 in 2006 and $3,500,000 in 2009, the formula may result in the client's wife receiving significantly less than the client envisioned - and possibly nothing. Formula bequests need to be reviewed to ensure that they will produce the intended bequest to the surviving spouse regardless of the year of death. Alternative plans might be considered involving "disclaimer" wills or trusts or the possible use of partial Qualified

EXCESS APPLICATIONS

Applications for PLF Excess Coverage will be mailed in November. If you have any questions, call Jeff Crawford at 503-639-6911.

TERMINABLE INTEREST PROPERTY ("QTIP") elections.

ADDITIONAL GIFTING OPPORTUNITY

Some clients make lifetime gifts of assets that are expected to appreciate significantly in value so as to remove that future appreciation from their taxable estates. With the increase in the gift tax exemption to $1,000,000 in 2002, an opportunity exists for making additional gifts for these reasons without the imposition of gift tax. Again, however, unlike the estate tax exemption amount, the gift tax exemption is not scheduled to increase after 2002. Due to the current uncertainty about the future nature or existence of the estate and gift taxes, practitioners should be wary about recommending strategies that result in imposition of gift taxes (or premature imposition of estate taxes).

POWERS OF PERSONAL REPRESENTATIVE/TRUSTEE

If the basis allocation rules actually take effect in 2010, it may be wise to add provisions to estate planning documents specifically empowering the personal representative or trustee with discretion to allocate basis among assets regardless of whether or not this allocation has the effect of discriminating among beneficiaries.

ASSETS NEEDED FOR AN EFFECTIVE ESTATE PLAN

After January 1, 2002, married clients should make an effort to each control $1,000,000 of the family’s assets in order to fully utilize their exemption amounts, and in subsequent years that amount should increase in accordance with the schedule shown above.

RECORD KEEPING

Under current law, death cleanses the past sins of poor record keeping by giving a new date of death value to most assets. If, in fact, the partial elimination of the step-up in income tax basis at
death comes to pass, it will be even more crucial than before that clients retain records reflecting the amount they paid for their assets.

To put it mildly, the 2001 tax act has left a number of uncertainties for estate planners. What seems clear is that the estate and gift taxes will remain with us at least through 2009. Due to the likely further changes in this area in the future, practitioners are well advised to exercise increased diligence in monitoring legislative developments that could impact their clients’ estate plans.

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Duffy Kekel LLP
Our thanks to Christopher Cline, Lane, Powell, Spears, Lubersky, for reviewing this article.

**FREE PRACTICE AIDS FROM THE PLF**

The practice aids listed below are available at no cost from the Professional Liability Fund’s web site [www.osbplf.org](http://www.osbplf.org). If you do not have Internet access and you would like to receive forms by e-mail or mail, call Reiko Park 503-924-4175. Please identify if you want a hard copy, e-mail or 3.5 disk; specify Word 97/Windows 95-98 or WordPerfect 8/Windows 95-98; and leave your name, street address, phone, and e-mail address.

- Adoption 03/01
  - Agency Checklist - Documents for Attorneys
  - Checklist Adult Adoption
  - Checklist Agency Adoption
  - Checklist Foreign Re-Adoption
  - Checklist Independent Adoption
  - Checklist Stepparent Adoption

- Bankruptcy 11/99
  - Bankruptcy Checklist

- Business 11/99
  - Corporate Information Sheet
  - Sale of a Small Business Checklist

- Client Relations 05/00
  - Client Relations
  - Client Service Questionnaire

- Closing Your Law Office 6/01
  - Checklist for Closing Your Own Office

- Conflicts of Interest 4/01
  - Conflict Article
  - Conflict Audit
  - Conflict of Interest Systems Procedures

- Construction Liens 8/01
  - Federal Public Works Checklist
  - Oregon Lien and Bond Intake Checklist
  - Oregon Construction Lien Checklist
  - Oregon Public Works Checklist

- Criminal 10/99
  - Criminal Case Checklist
  - Indigent Defense Task Force Report

- Docketing & Calendaring 4/99
  - Calendaring and File Tickling Systems
  - Calendaring Note
  - Diary-Tickler Systems
  - Docket Control Checklist
  - Docket Sheet Follow-Up

- Domestic Relations 03/01
  - A packet of over 20 forms, including checklists, sample letters, client handouts, and more.


- Entity Formation 9/98
  - Choice of Entity Lawyers as PCs, LLCs & LLPs

- File Management 08/01
  - File Closing Checklist
  - File Retention
  - New Client Information Sheet

  - Billing and Time Slips
  - Client Ledger Card and Trust Journal
  - Daily Time Sheets
  - General Ledger
  - Trust Accounting

- Guardianships & Conservatorships 12/00
  - Conservatorship Checklist and Duties
  - Guardianship Checklist and Duties

- Litigation 03/00
  - Personal Injury Case Settling or Commencing
  - Plaintiff’s and Defense Case Info. Sheets
  - Checklist for PI
  - Statute of Limitations
  - Litigation and Appellate Time Limitations
  - Tort General Information Sheet
  - Litigation Checklist and Litigation Update
  - Service of Process Checklist
  - Exhibit and Pleading Indexes
  - Settlement or Judgment Disbursal Checklist
  - Settlement Letter and Accounting

- Office Manuals 11/98
  - Office Manual Index and Using Form Books

- Office Systems Audit 02/00
  - Audit Checklist

- Opening or Moving a Law Office 3/99
  - Moving Checklist
  - Opening a Law Office Checklist
  - Opening an Office Article

- Partnership and Office Sharing 11/99
  - Associate Agreement

- Probate and Estate Planning 02/00
  - A packet of over 10 forms, including checklists and sample letters.

- Real Property 11/99
  - Landlord-Tenant Form
  - Lead Paint Disclosure for Leases
  - Lead Paint Disclosure for Sales
  - Residential Real Property Transactions Checklist
  - Trust Deed Foreclosure Checklist

- Staff 12/98
  - Appointments
  - Confidentiality in the Office
  - Ethics
  - Mail Handling
  - New Secretary Checklist
  - Reception Article
  - Reception Duties

- Workers Compensation 10/99
  - Claim Disposition Agreement
  - Disclosure
  - Disputed Claim Settlement
  - Disclosure
  - Workers Comp Intake Form

(Dates shown are revision dates.)

**BOOKS & PUBLICATIONS**

- A Guide to Protecting Your Client’s Interests in the Event of Your Death or Disability
- A Guide to Setting Up and Running Your Law Office
- A Guide to Setting Up and Using Your Lawyer Trust Account
- Oregon Statutory Time Limitations Handbook
TECHNOLOGY TIPS

TIMESLIPS SECRETS:

1. Customize the Tab Order in the Time Entry Screen. This allows you to “jump” between the fields you use, rather than cycle through every field on a slip. Version 8 users can click on Special, Preferences in the TSTimer screen. Version 9 and 10 users can click on Setup, at the top of the main screen, then Preferences, and then click on the Slips tab.

2. Create Custom Abbreviations. Abbreviations allow you to type only a portion of a commonly-used phrase, and Timeslips will fill in the rest. You can even insert prompts so that a dialog box that you specify will pop up and ask you for details about the text. For example, if you want to enter a description about a phone call with a client, you can set up an abbreviation so that when you type “pc” the phrase, “phone call with ______ regarding ______” will appear. The user will then be prompted to fill in the blanks. Version 8 users can click on Settings, Custom Text, Abbreviations, from within TSReport. Version 9 and 10 users can click on Setup, Abbreviations.

3. Create a Private Text Indicator. Many offices want timekeepers to enter a complete description of time spent on their timeslips, but don’t necessarily want the entire narrative explanation to appear on the client bill. To control the content of the time description on the client’s statement, just create a Private Text Indicator and all text appearing between the indicators [brackets for example] will be excluded from the client's bill. Version 8 users can set up this indicator by clicking on Settings, Terminology. Version 9 and 10 users can click on Setup, General, Other.

4. Keep a Record of the Time of Day That Work Was Performed. By using the start and stop time of a task, Timeslips will fill in the duration. Just place your cursor in the Time Spent field of a slip and press the “S” key. You will be prompted for a start and stop time. These values may also be included in some reports.

OFFICE 2000 USERS: If you’re currently running Office 2000 or any of its stand-alone programs, it’s time to patch up the residual original-release holes with the first official service release update, Microsoft Office 2000 Service Release 1 (SR-1). The SR-1 update fixes many of Office 2000’s major and minor design flaws and is available for free at the Microsoft Office Update site.

LOOKING FOR AN ISP? Visit http://thelist.internet.com/areacode.html and enter your area code. It will bring up all the Internet Service Providers that service your area, along with information on pricing, types of services, and direct links to the ISP.

FREE SOFTWARE PATCHES AND PACKS: Visit the Internet site of your office software three or four times a year for patches, plugs, service packs or updates that you can download. You need to know the version of your software to do this. (Click on “Help” and then “About.”) Once you have the version number, go to the software manufacturer’s web site and see if there are suggested improvements.

Another option is on-line utilities. Norton LiveUpdate Pro www.nortonweb.com and Oil Change (now McAfee Clinic) www.mcafee.com will do this for you for about $40 for two years. Another service is Updates.com http://updates.zdnet.com/, a free service of Ziff-Davis.

Do a back up BEFORE you update!

TECH TERM SITE: www.webopedia.com is an on-line encyclopedia dedicated to computer technology. With explanations ranging from the latest extensions to the latest techie jargon, this site can help keep you on the information highway.
TIPS, TRAPS, AND RESOURCES

DOMESTIC RELATIONS - Child Support Calculation Program: The Department of Justice, Division of Child Support (DCS) now has an online Oregon Child Support Program Guidelines calculator program. The program compiles with Oregon Administrative Rules 137-050-0330 to 137-050-0490 that are authored by the Division of Child Support. All you need to do is complete appropriate data fields and the program will handle the calculations.

The first phase of this calculator program is currently active on-line and provides for standard, shared custody, and split custody calculations. Application of rebuttals will be added in future phases.

To use the Division of Child Support On-line Guidelines Calculator, access the web site at: www.dcs.state.or.us/ or www.doj.state.or.us/

If you have any other questions about the services provided by the Department of Justice, Division of Child Support, call 1-800-850-0228, 503-373-7300, or contact your local DCS office.

NEW TAX CLINIC: The Tax Program at the Lewis & Clark Legal Clinic is funded by an IRS grant and is for low-income taxpayers. Law students work on cases under the tax program director, representing low-income clients at all stages – audit, appeals, tax court proceedings and collection problems. Economic guidelines for eligibility are 250 percent of the present poverty guidelines. For a family of four, the maximum family income can be $42,625. For information call 503-222-6429.

SAMPLE BUSINESS PLAN AVAILABLE: The American Institute of Small Business has published a sample business plan that includes an executive summary, mission statement, marketing plan, advertising and PR plans, production plan, funding sources, future products, financial analysis, competitive strengths and weaknesses, key employees, advisors and more. It also includes spreadsheets for three years, including profit and loss balance sheet and cash flow. The Business Plan Example is available for $29.95. For information call 800-328-2906, fax 612-545-7020, or e-mail aisbofmn@aol.com.

IN BRIEF
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