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# Willson & Pechacek, P.L.C.

## Newsletter

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General Edition

JUNE 2012

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### CLAIMS AGAINST AN ESTATE

Iowa has a growing proportion of its population as elderly persons. It is important that a creditor understands its rights against the estate of a decedent.

#### Time to File

A claim against a decedent's estate in Iowa must be filed with the Clerk of Court within four months after last publication of notice to creditors in the local newspaper, or one month if notice was mailed to claimant. Normally, claims are forever barred if filed late, except for peculiar circumstances.

#### Insurance Coverage

Late filing of a claim for which there is insurance coverage does not bar claims up to the amount of insurance coverage.

#### Secured Claim

A secured claim need not be filed in order to protect security, but must be filed

in order to protect any excess over the secured amount.

#### Lawsuits

A claim upon which a lawsuit was pending when decedent died need not be filed, BUT notice of substituting the decedent's estate must be served upon the estate's personal representative within the time for filing a claim. A separate lawsuit may be commenced against the estate's personal representative within four months of the last publication of notice instead of filing a claim against the estate.

#### Proof of Claims

A claim must be entitled in the name of the claimant against the estate's personal representative, naming the personal representative and the estate, and must be correctly stated; if based upon a written instrument, must have a copy attached and must be sworn to. If the claim is

important to the claimant, it is advisable to have an attorney prepare the claim.

#### Approval or Rejection

In the absence of fraud or collusion, the claim stands allowed as a debt of the estate, if the claim is admitted in writing by the personal representative. If the personal representative rejects the claim, the personal representative must mail Notice of Disallowance to the claimant and to any attorney of record. The claim is then barred unless the claimant files a request for hearing (lawsuit) within 20 days.

Any business, including farming operations, may wish to place this article with its account receivable records as a reminder of where, when, what and how to file a valid claim against a decedent's estate.

*BY: Frank W. Pechacek, Jr.*

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## LONG TERM CARE INSURANCE

### LIFE EXPECTANCY

The average Ancient Greek lived until age 18. The median life span of a Puritan was 33. The average American life expectancy is now about 75 years for men, 84 for women. Over half of Americans will spend part of these extended years in long term care situations.

### COSTS OF LONG TERM CARE

In 1994, 7.3 million Americans needed long term care (LTC) services at an average cost of nearly \$43,800 per year. By 2000, this number rose to 9 million Americans at nearly \$55,750 per year. It is currently near \$75,000 per year. By 2030 those needing LTC will skyrocket to 23+ million Americans, with projected, individual long term care costs reaching \$300,000 annually per individual.

With a history of millions of Americans in care situations living with longevity, elder frailty, stroke, Multiple Sclerosis, Parkinson's, Alzheimer's, Spinal Cord Injury, Cerebral Palsy, accidents and other conditions affect 50+% of folks over age 65, we can testify to the need for mature thinking and adult decisions when it comes to long term care planning.

### MEDICARE DOESN'T PAY FOR LONG-TERM CARE

Similar to conventional health insurance, Medicare generally covers short-term, acute (sudden onset) medical conditions and limited related rehabilitation, not chronic care at home or in an inpatient facility. Medicaid may cover long-term care but individuals must have very limited assets and meet strict financial requirements.

### WHY CONSIDER LONG TERM CARE INSURANCE?

- ◆ Preserve your savings and other assets.

- ◆ Protect your family and friends from the difficulties of care giving.
- ◆ Stay in your home as long as possible.
- ◆ Maintain a level of independence and control of your life.

### THE LONGEVITY REVOLUTION: COSTS OF CAREGIVING

People are living longer than ever before, with today's 65-year olds having a 50 percent chance of reaching age 85 or beyond. Four million Baby Boomers turned 65 this year and the wave will continue at that rate until 2030. The longevity revolution is here, but are we ready for it?

### SOURCES OF INFORMATION

There are many fine representatives who sell excellent long term care insurance. If you would like a personal recommendation of an agent to contact, please call our office and one of the attorneys would be happy to assist you.

BY: PHIL WILLSON

## HOW TO PAY A GRAIN WAGE

Grain wages are an increasingly popular way for agricultural employers to compensate their employees. If done properly a grain or "in-kind" wage will be exempt from employment taxes (FICA and FUTA). Employers should pay attention to certain items to ensure the in-kind wage paid stays exempt from employment taxes. If an "in-kind" wage looks too much like an indirect cash payment, then it may be subject to employment taxes. Grain wages properly paid and reported will save the 13% FICA tax in 2012 and the 15.3% FICA tax in future years

The real key to a grain wage is the ownership and control of the grain must truly pass to the employee. The first step to an in-kind wage is properly documenting the transfer. This can be shown in several ways, ideally by contract, but can be done by weigh tickets at the elevator or by bills of sale. It is critical the who, what, where, and how much be clearly documented. The transfer should not, however, be evidenced by a negotiable storage receipt as the IRS considers this a payment in cash.

As the new owner, the employee should benefit from the gains or losses and be subject to the costs associated with the grain. Therefore, the employee should not only bear market risk after receipt of the grain, but should also be responsible for storing, marketing and selling the grain independently from their employer. In addition, the employee should hold his or her grain for some time as the IRS is concerned that an immediate sale may be a disguised cash payment. This is not always the case, but a same day sale should have clear evidence of employee ownership and control.

Once that the employee is paid a grain wage, the IRS requires an employer to report the fair market value of the grain paid to the employee as both grain revenue and as a grain wage expense. For payroll, this amount of the grain wages should be reported as an addition to the employee's W-2 box 1 income (but not boxes 3 or 5).

The employee reports the W-2 box 1 income as ordinary wage income, but also reports the subsequent sale of the grain as a likely small gain or loss on his or her Schedule D of Form 1040. The employee's basis is the amount of the grain wage reported on his or her W-2. The sales price of the grain is entered on Schedule D. Expenses of storage and/or transportation may be deducted from the sales price and reported as a net sales price on Schedule D.

Please feel free to contact our office if you have further questions concerning grain wages.

*By Lee Rankin*

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## FIRM PARTNERS HONORED

Iowa State Bar Association President Cynthia Moser recently appointed Willson & Pechacek partners to the following Section Councils:

Frank W. Pechacek, Jr.—Business Law Section Council

Jamie L. Cox—Employment Law Section Council

Lonny L. Kolln II—Elder Law Section Council

Lee Rankin—Tax Law Section Council

Appointment to a section council is widely recognized as an honor

bestowed upon the best lawyers in a given area of law practice in Iowa.

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