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# Wilson & Orcutt, P.C.

## Business Law Newsletter

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## Year 2000 Computer Failures

### What You Must Do Now To Protect Yourself

Whatever you do, do not underestimate the size and complexity of the problems you will be facing on the morning of January 1, 2000 when widespread failures of computer systems throughout the world cause significant business disruptions across all sectors of the economy.

Most software currently in use allows only two digits to signify a year (e.g. "97"). Unless modified to handle the change of centuries, the year 2000 ("00") will be interpreted as being earlier than 1999 ("99"), and so on. The possible consequences of year 2000 failures include:

- A breakdown in the orderly shipment and delivery of parts and supplies by vendors
- Freight companies becoming unable to locate, track or complete deliveries
- Accounts payable and accounts receivable software packages failing to accurately age accounts, resulting in widespread payment defaults and disrupted cash flows
- Wholesale failure of computerized support systems, including telephonic voice mail and fax machines with timed transmission capability
- Building maintenance systems, such as HVAC, security and alarms, and timed lighting, signage and watering ceasing to operate
- Automated payroll, investment and retirement systems becoming unable to issue timely payments
- Disruptions in power generating systems and other essential infrastructure
- Inability of banks and other financial institutions to properly process wire transfers, electronic funds transactions, credit card payments and deposits.

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It would not be alarmist to say that there is a chance of a worldwide economic slowdown or worse. In addition, it is anticipated that many businesses will fail to achieve year 2000 compliance in time, resulting in an explosion of litigation brought to fix the blame, and assess the cost for the inevitable losses. In fact, some commentators have predicted that the costs and awards of year 2000 lawsuits will exceed the costs of fixing the problem itself. As part of any year 2000 compliance program, every effort should be made to identify those critical business relationships in which compliance, and the consequence of non-compliance, can be controlled through the use of appropriately worded contract terms. In addition, there are several steps which can be taken to preserve claims against those who may be responsible for year 2000 losses.

### **What To Do**

Immediately conduct full business and legal audits in order to identify sources of potential business interruptions (both in internal systems and in the systems of suppliers, vendors and customer) and in order to identify liability issues.

### **Business Audit Areas**

- Review all computer hardware and software systems for date dependent components (e.g. inventory control, vendor relations, time and billing, accounts payable and accounts receivable).

- Review all systems which use microprocessors for date dependent components (e.g. voice mail, fax, security, automated lighting and sprinkling).
- Review all maintenance contracts to determine responsibility for year 2000 compliance (e.g. does your software license for your accounts receivable package require the vendor to provide you with a "patch" to fix the problem?)

### **Legal Audit Areas**

- Review all important vendor and customer contracts and determine responsibility for achieving year 2000 compliance and liability exposure for failure to achieve timely compliance.
- Review all contracts and insurance policies and identify indemnification responsibilities and potential coverage issues.
- Identify all third parties (e.g. software publishers, maintenance vendors, major suppliers and customers) who need to be contacted in order to coordinate year 2000 compliance programs.

As soon as you have identified potential sources of business interruption and possible points of liability exposure, a comprehensive plan of remediation should be drafted and put into action.

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## Remediation Action Items

- Start and maintain a timeline for all required remedial actions, including start dates, estimated completion dates and “drop-dead” dates. Use a “critical path” structure in order to coordinate remedial action on inter-related systems.
- Initiate written contact with third party suppliers, customers and vendors and inquire about their remediation programs.
- Thoroughly document your compliance program to establish due diligence and adherence to reasonable business judgment requirements.
- Where necessary, revise in house forms and contracts to limit liability exposure.
- Negotiate appropriate changes in supplier, vendor and customer contracts to establish responsibility for compliance.
- Negotiate appropriate changes in insurance policies (e.g. General Liability Policy) to provide necessary coverage or identify insurance carriers who are willing to provide such coverage.
- Where indicated, notify insurance carriers of potential claims.
- Obtain Compliance Certifications, Warranties and Indemnification Agreements.

- Where necessary, insert termination rights in important contracts. Your right to terminate should be triggered by a supplier or vendor not bringing their systems into compliance by a defined date.

Consider requiring that all future vendor contracts contain the following kind of warranty and representation:

*Vendor hereby covenants, warrants and represents that Vendor is now and at all relevant times shall remain Year 2000 Compliant. For the purposes of this contract “Year 2000 Compliant” shall mean that all of Vendor’s hardware, software, computer and information systems shall operate prior to, at and after December 31, 1999 without any error or malfunction and shall not terminate ordinary operations or produce incorrect data, as a result of the input of data that includes the year 2000 or later years or as a result of the mere passage of time from the year 1999 to the year 2000.*

The year 2000 computer problem is real, its huge, you do need to pay attention to it, and time is already running out. It is not an isolated technical problem which the “computer people” will automatically fix for you.

Every business should form a Compliance Committee with at least one person given responsibility to implement audits and remediation actions. Since every business is different, some of the action suggestions contained in this Newsletter will not be appropriate in every case and there may well be others which have not been mentioned but which will turn out to be critical for your continued

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success. The most important thing is to act and to act now, starting with a thorough review of your own indi-

vidual circumstances and the development of a Compliance Program specially designed to meet your particular needs.

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## Suggested Year 2000 Internet Sites

Year 2000 Warranty at:  
<http://www.year2000.com/archive/warranty/html>

GSA year 2000 contract language at:  
<http://www.itpolicy.gsa.900/library/4209rfpr.html>

To download programs from the Net to check your computer for Year 2000 Compliance:

<http://www.righttime.com>  
<http://www.sbhs.com/y2k/index.htm>  
<http://www.rigel.co.nz>

Internet Info for Real People: The Year 2000 Bug:

<http://www.thebee.com/bweb/iinfo28.htm>

The Year 2000 Information Center:  
<http://www.year2000.com/>

Information Technology Association of America:

<http://www.ita.org>

Year 2000 Issue - Microsoft's Frequently Asked Questions:

[http://www.microsoft.com/CIO/Articles/YEAR\\_2000FAQ.htm](http://www.microsoft.com/CIO/Articles/YEAR_2000FAQ.htm)

2k-Times(tm)HomePage  
(Year2000Newspaper):  
<http://www.2k-times.com/y2k.htm>

Believe me it's real:

<http://www.year2000.com/archive/NFbelieveme.html>

### The Wilson & Orcutt, P.C. Business Law Newsletter

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