

Technology Corner

By Joseph G. Hodges, Jr.

Windows Vista Is Finally Here

For several years now, we all have been awaiting the release of Windows' new operating system, called Windows Vista. Beta versions were released at various times throughout 2006. Finally, late in 2006, Microsoft announced that the beta testing period was over and that the code for Vista would be sent to the manufacturers. At the same time, they announced an anticipated release to volume license customers in November 2006 and to the general public on January 30, 2007.

The purpose of this article will be to examine some of the many new features of Vista and to give each of you some guidelines as to whether you ought to upgrade to this new operating system and, if so, when.

Vista is probably the most significant re-write of Microsoft's basic operating systems since the inception of Windows 3.0 in the 1990s. As a consequence, it is very robust and comes with high operating and equipment requirements. These new requirements often will dictate that your current PCs are not robust enough to be updated to Vista without a lot of upgrades, and those upgrades may turn out to be so expensive that the purchase of a new Vista compatible PC may be the only sensible way to go.

The core cost of Vista will vary, depending on which edition and what features are desired, plus whether the purchase is for full price or an upgrade. The Home Basic Edition, which is not very robust, will cost \$199 full price, \$100 upgrade price. The Home Premium Edition, which is the recommended one for home use, will cost \$239 full price, \$159 upgrade price. The Business Edition will cost \$299 full price, \$199 upgrade price. The top of the line Ultimate Edition will cost \$399 full price, \$259 upgrade price.

If you are in doubt as to whether your own PC is robust enough to adequately run Vista, you should download and run the Free Vista Readiness Advisor that is made available by CNET networks and System



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Requirements Lab. This is a small download that only takes a few seconds to do. It works in Windows 98, 98SE, ME, 2000 and XP. It also works with the Internet Explorer, Firefox and Netscape browsers. You have to download a secure ActiveX/Java browser component too, but you can remove this after the test is done. The nicest feature is that update and upgrade suggestions are provided for each component of your system that does not meet CNET's recommended requirements. I ran the test with a Windows 98 PC knowing full well it would not pass much just to see what sort of failures and recommendations would result. Interestingly, everything from the CPU, system RAM, video cards, hard disk free space and capacity and sound cards were evaluated. Almost all of these failed the test, so my report was replete with recommendations for minimum requirements and what sort of hardware to buy to solve those problems. I highly recommend using this free test before making any major equipment upgrades for Vista.

So, what is involved with actually upgrading to Vista since it has significantly higher minimum system requirements? It is suggested that before you start you download and read Microsoft's Windows Vista Upgrade Advisor from PC World (find.pcworld.com/54172), as it scans your system and prepares a report listing the components and software Vista likes and doesn't like. It then presents you with a list of problems and a list of tasks you need to do before and after upgrading. The first big decision is which edition of Vista to install. Next, if you have a 64-bit PC, you need to decide whether to install a 32-bit or 64-bit version of Vista. Next, you need to decide whether to upgrade your existing PC or do a clean install.

So, what is so special about Vista anyway? Well, when Vista first starts up, the opening screen is said to be distinctive and eye-catching. The colors are subtler and the overall look is less cartoonish than it is in Windows XP. What is new is the much anticipated Aero interface which, sadly, requires adequate hardware and one of the pricier versions of the operating system in order to run. With Aero, windows maximize and minimize with a visual "swoosh." The <Alt><Tab> keys for switching between open windows now invokes Windows Flip, which displays a thumbnail view of each open window. You can also stack those windows using the Flip 3D. Two other notable new interface elements are the Sidebar and Live Thumbnails. These are similar to Google Desktop Gadgets and Yahoo Gadgets. The Start menu is more compact and useful, and Control Panel is more logi-

cally organized. Several Centers have been added, including Network, Sharing and Sync.

Security is an important issue with Vista. For instance, Vista included both inbound and outbound filtering, although, to configure outbound connections, you have to launch the Windows firewall with the Advanced Security screen. Vista's Security Center is not much different from XP's, including the confused interface. Vista comes with its own Window Defender anti-spy software which provides real time protection and performs daily system scans. Other new features include Network Access Protection and BitLocker Drive Encryption. Microsoft has even beefed up Internet Explorer's defenses, and it now runs in Protected Mode. The User Account Control (UAC) feature allows you to control such things as turning the Windows firewall on and of, adding or removing user accounts, and running some applications. It is particularly helpful with controlling malware.

As far as finding files is concerned, Windows Explorer now has a new thumbnail preview pane as well as detailed panes that show a file's name, size, user-defined tags and other information. Like Internet Explorer 7, Windows Explorer now comes with a toolbar instead of a menu, although you can switch back to the menu again if you want to. In addition, Search is built into every level of Vista and uses indexing. There are advanced search tools that allow you to filter results by date, file size, author, tags and location. You can even search other PCs on your network if you have read permission. You can also save your searches so you can perform them again later with just a single click of the mouse.

As for networking, Vista has finally integrated networking capabilities into its system. It supports all of the usual network technologies, including ethernet, Wi-Fi and Bluetooth. The new Network and Sharing Center has all of the necessary tools and information readily available for the user. You can get a full map of your networks using View Full Map. The Windows Meeting Space tool leaves a lot to be desired, as it is virtually useless and need not be. The Sync Center does not function very well for other than basic syncs.

When it comes to Multimedia, the Vista capabilities for this are only moderately more advanced than Windows XP. The Windows Media Center is no longer a separate edition. Instead, its features are now built into the Vista Home Premium and Ultimate editions. Windows Movie Maker now has a much-improved interface. The

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also notify beneficiaries “in advance of any change in the method or rate of the trustee’s compensation.”²¹

Public Record

After cost and timing, another issue involved with the probate process is its public nature. Like most judicial proceedings, probate is a public proceeding. People really can read your will once it is filed with the court, sometimes without even going to the court house if the will is available on the internet as part of public records. The will of a former major league baseball team owner created quite a stir when it hit the Hamilton County, Ohio, Web site several years ago.

The public nature of the probate process is a valid concern. This legitimate concern is further magnified when personal and financial information about the decedent and or the next of kin or beneficiaries is available from the court over the Internet. While there are some benefits to open access, this openness may not overcome the real concerns of identity theft.

Estate Taxes

A common misconception is that avoiding probate avoids estate taxes. We know that having a boyfriend doesn’t mean you no longer need to mow the lawn or take out the garbage, and having a girlfriend doesn’t mean you don’t have to cook dinner. Many people do not know that a revocable trust on its own will not automatically avoid estate taxes! It is part of the process. If you are married and you have a taxable estate then an A/B trust and proper allocation of assets may reduce the estate taxes, whether or not you avoid probate.

Income Taxes

Probate avoidance can also raise basis issues for future income taxes. Assets received through a pro-

bate proceeding or a trust have a step-up in basis equal to the date of death value of the asset (or six months later if alternative valuation is selected). When or if the beneficiary sells the inherited asset, the capital gains will usually be lower because of this step-up in basis, thereby reducing the beneficiary’s income tax liability because of the sale. This is not necessarily true if property is obtained through joint tenancy or by gift.

Supervision

Although a common complaint about probate is the court involvement, court supervision can actually be a benefit. It ensures that all of your probate property is accounted for and distributed as you intended or as provided by law if you have no will. It is an orderly, objective proceeding. There is no family influence concerning the distribution of the assets. There is no discussion about the decedent’s intent because those intentions are determined by the will or by the laws of descent and distribution if there is no will. You avoid disputes about who gets what or if for some reason those disputes still exist, the court order is final and determinative.

Creditor Claims

A further benefit of a probate proceeding is that the period within which a creditor of a decedent must present its claims is usually shorter than the general statute of limitations for claims outside of the probate process. Under California law, a creditor must present his claim to the estate within four months.²² Under New York law, the creditor has seven months to present his claim²³ while under Ohio law, the claims period is six months.²⁴ Some state laws, including the laws of Florida, do allow a creditor two years within which to present its claim regardless of whether there is any probate administration.²⁵ For comparison, under Ohio’s new Trust Code, creditors with various actions pertaining to a revocable trust agreement, a non-probate vehicle, have up to two years to commence the claim.²⁶

With a probate estate, once the claims period has passed, it becomes more difficult for creditors of the decedent to enforce an interest they may have had in the decedent’s assets. Accordingly, beneficiaries can usually be more assured that the assets they receive through the probate process will not be subject to future claims.

Chart 6

Probate vs. Avoiding Probate		
	Probate	Avoid Probate
Ability to maximize estate planning opportunities		√
Cost		√
Court oversight	√	
Definitive outcome	√	
Joint Ownership Problems	√	
Length of Time		√
Privacy		√
Shorter creditor claim period	√	
Step-up in basis	√	

Can't We Just Be Friends?

Neither probate, nor the date which arrives by motorcycle, may be as bad as portrayed. Perhaps they are just an easy target for generalizations by the uninformed. Probate may actually be

preferred in those situations where the fairness promoted by the court's supervision, the orderly administration of assets and greater protection against creditors of the decedent are more important than the risks, costs and glamour associated with probate avoidance.

ENDNOTES

- ¹ *Wright v. Bloom*, 635 N.E.2d 31, 39 (Ohio 1994) (holding that "the opening of an account in joint and survivorship form shall, in the absence of fraud, duress, undue influence or lack of mental capacity on the part of the depositor, be *conclusive evidence* of the depositor's intention to transfer to the survivor the balance remaining in the account at the depositor's death") (emphasis added).
- ² See Cal. Probate Code §5302 (2006); Ind. Code §32-17-11-18 (2006); Ky. Rev. Stat. Ann. §391.315 (2006); *Deutsch, Larrimore & Farnish, P.C. v. Johnson*, 848 A2d 137 (Pa. 2004); *In re Estate of Jonas v. Stirling*, 621 N.E.2d 1107 (Ind. 1993); *In re Estate of Rock v. Rock*, 799 S.W.2d 10 (Ky. 1990).
- ³ See Ariz. Rev. Stat. §33-405 (2006); Colo. Rev. Stat. §15-15-404 (2006); Kan. Stat. Ann. §59-3501 (2006); Mo. Rev. Stat. §461.025

- (2005); N.M. Stat. Ann. §45-6-401 (2006); Nev. Rev. Stat. 111.109 (2005); Ohio Rev. Code §5302.22 (2006).
- ⁴ Cal. Prob. Code §10810 (2005); Fla. Stat. ch. 733.6171.
- ⁵ See Ohio Franklin County Loc. R. 71.1 (2005); Ohio Hamilton County Loc. R. 71.1 (2005).
- ⁶ Wash. Rev. Code §11.48.210 (2006).
- ⁷ Fla. Stat. ch. 733.6171.
- ⁸ Ohio Rev. Code Ann. §2109.301 (2006).
- ⁹ Ind. Code §29-1-16-2 (2006).
- ¹⁰ N.C. Gen. Stat. §28A-21-2 (2006).
- ¹¹ Cal. Prob. Code §10400-10406 (2005); 755 Ill. Comp. Stat. 5/28-1 (2005); Ind. Code §29-1-7.5 (2006); Mich. Comp. Laws Ch. 700; Mo. Rev. Stat. §§473.780-.843 (2005); Tex. Prob. Code Ann §145 (2006).
- ¹² Mo. Rev. Stat. §473.780 (2005).

- ¹³ *Id.*
- ¹⁴ *Id.*, at §473.787 (2005).
- ¹⁵ *Id.*, at §473.787 (2005).
- ¹⁶ Ohio Rev. Code Ann. §5808.13(A) (2006).
- ¹⁷ *Id.*, at §5808.13(C).
- ¹⁸ *Id.*, at §5808.13(A).
- ¹⁹ *Id.*, at §5808.13(B)(1).
- ²⁰ *Id.*, at §5808.13(B)(2).
- ²¹ *Id.*, at §5808.13(B)(3).
- ²² Cal. Prob. Code §9100 (2005).
- ²³ N.Y. Surr. Ct. Proc. Act Law §1802 (2006).
- ²⁴ Ohio Rev. Code Ann. §2117.07 (2006). However, the holder of a contingent claim has at least one year to present the claim to the executor. Ohio Rev. Code Ann. §2117.37.
- ²⁵ Fla. Stat. ch. 733.710 (2006).
- ²⁶ Ohio Rev. Code Ann. §5806.04 (2006).

Money and Meaning

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of losing—also 50 percent—times \$100, you end up with a gain of \$25. If you accepted this bet 10 times in a row, you could expect to gain \$250. Most people will only accept the gamble when the winning stake is raised to \$200. This would seem clearly to apply to estate planning and Pandora's box: unless the potential *gain* in well-being is very significant, families are unlikely to engage in actions that may risk some *loss* of well being.

These observations suggest a number of strategies for assisting families whose failure to plan is due to a fear of "opening Pandora's box":

- Advisors need to clarify and resolve their own feelings about "opening Pandora's box."

- Advisors should seek out other professionals who can facilitate effective family communication that does not result in "Primal Scream Therapy."
- Guidelines for effectively addressing these issues should include having a constructive and positive vision for what you want to accomplish; being committed to improving the future, rather than rehashing the past; and following other suggestions that I have made available by request in a document entitled "Ground Rules for Family Meetings."
- Families should be told clearly that in competent hands difficult discussions usually do not end up in the release of "all the evils that have ... afflicted man."
- The potential gains of open communication should be emphasized and contrasted

with the minimal risk of losses, when competently managed.

In the Pandora myth, after all the evils have been released, Hope remained. Families and their advisors should remember this.

ENDNOTES

- ¹ From The Columbia Electronic Encyclopedia Copyright ©2004, Columbia University Press.
- ² Some of which is reviewed by John Cassidy, in *Mind Games*, THE NEW YORKER, Sept. 18, 2006.

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new Windows DVD Maker makes creating self-playing DVDs with movies and pictures exceedingly easy. Similarly, the new Windows Photo Gallery has easy-to-use tools for organizing, printing, e-mailing, burning or making movies from pictures and photos. A free add-in for

editing photos called Photo Gallery is included.

When it comes to Built-In Tools, Vista offers up a real mixed bag of built-in apps and utilities. The new Backup tool is not one that will be well received because it does not let you choose to back up individual files or file types. As for Windows Calendar, it allows group calendars for family members who use the same PC and you can publish that calendar to the Web. Windows Mail uses the e-mail program that was previously known as Outlook Express and has undergone some upgrades. Windows Contacts is the new address book that integrates with Windows Mail and Calendar. When it comes to hardware, Windows Rally assists with setting up network connections. Windows SlideShow will allow manufacturers to include a secondary display of information that is on another PC. SuperFetch will preload frequently used apps into memory to speed up launch times. ReadyBoost lets you use a USB 2.0 flash drive to augment system RAM.

A great up-to-date resource for Vista information that is a must-read for anyone who is seriously considering moving to this new operating system can be found in "The Insider's Guide to Windows Vista," which was published as part of the January 2007 issue of PC MAGAZINE (www.pcmag.com).

Overall, Windows Vista offers up a significant improvement in their core operating systems. It has a much improved and far more useful interface. It is faster, does better searches and has significantly improved security. Notwithstanding this, the system requirements for Vista and the

associated costs cannot be ignored, and a lot of us are not in a position financially to once again replace or significantly upgrade our existing PCs. Thus, I predict that the introduction of Vista as our default operating system will come slower than expected and with much caution as we move into 2007 and beyond.

Featured Web Sites

- Microsoft Vista Home Page—
www.microsoft.com/windowsvista
- A free way to easily organize Web sites you visit—www.furl.net
- Legal Technology Information—
www.law.com/jsp/legaltechnology/index.jsp
- Multiple Legal Links—
www.legalresourcelinks.com

Life Insurance

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- level. If not, then change policies if possible.
2. *Intent:* Provide required insurance at an established and stated cost.
Reconciliation: Compare premiums of the existing policies against those of new policies currently available on the market. Change policies and carriers if possible to bring costs into line.
3. *Intent:* The trust is established to maintain a particular lifestyle level.
Reconciliation: Determine that the beneficiaries have not developed unexpected situations that would require substantially more money to maintain the intended

lifestyle. Examples include multiple marriages with child support payments for two or more families or a child with an unanticipated medical problem.

4. *Intent:* The trust provides benefits for stated relatives and family members.
Reconciliation: The insured unexpectedly dies without changing the beneficiary of the trust and/or the insurance policy to their new spouse and family. Now the trustee faces a discrepancy between the trust's stated intent and the revised intent of the insured and trust maker. Remember that the trustee owes a fiduciary duty to the trust's beneficiaries rather than the trust maker or insured. Our advice to a trustee given such a case is to engage qualified counsel as soon as possible.
5. *Intent:* The policy is meant to remain in force throughout the insured's life.
Reconciliation: Due to cash withdrawals and loans against cash values, or underperformance by the insurance company the policy has lapsed during the insured's life time. The trustee must take action to either reinstate the policy or acquire a new policy that accomplishes the stated intent if possible.

Action Items for Trustees

There are several additional things trustees can do to ensure