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Yearly Letter/Estate Plan Update

Dear Clients:

The past year has brought very little change in estate law. The inheritance tax exemption remains the same with little chance of movement until 2009. In 2009, the exemption will jump to \$3.5 million per person. There has been some discussion in Congress about keeping the exemption at \$3.5 million per person but under the current political climate, who knows where the exemption will end up. We should know something more by next year and I will update you with next year's letter.

I have some basic comments regarding the maintenance of your trust and some new information regarding the successor trustee duties under the new Florida Statutes (Fla. Stat.).

1. Please refer to section 9 of your trust book. This is the separate writing section where you can leave tangible items to certain family members such as a ring, table or car. This document must be signed and dated. No witnesses or notary are needed. This separate writing only controls tangible items, NOT intangible items such as cash, stocks or real property.

2. Please remember, you cannot make pen and ink changes to your trust document. All changes must be done in a legal way where the change is signed by you, witnessed and notarized.

3. Make copies of your Trust documents or Wills and give them to the person you have designated to make decisions for you, such as your successor trustee, personal representative or power-of-attorney. Please let them know you have designated them so they are aware of their responsibilities and let them know where to look for the original Trust document or Will document. We do not keep signed copies of your Trust documents in our office, nor is your Trust document recorded with the county.

4. The following information concerns the role and duties of the successor trustee pursuant to Fla. Stat. 737.303:

A. After the death of the trust maker, the successor trustee is under a duty to settle and distribute the trust estate in accordance with the terms of the trust maker's trust and Florida law. Generally, the trustee's duties are to:

- (1) Collect the assets and debts of the trust estate;
- (2) manage, protect and preserve the trust assets, including obtaining insurance if necessary, until final distribution;
- (3) pay the expense of and claims against the trust estate and probate estate; and
- (4) distribute the residuary trust estate to the proper beneficiaries in a timely manner.

B. Pursuant to Fla. Stat. 737.303, the trustee is under a duty to inform and account to the beneficiaries and to keep the beneficiaries reasonably informed of the trust and its administration. The following should be done:

- (1) Give written acceptance of the trust within 30 days.
- (2) Give complete copies of all trust and estate documents to beneficiaries.
- (3) Give beneficiaries information about trust assets and administration.
- (4) Provide annual accounting pursuant to Fla. Stat. 737.3035.

C. The accounting should be prepared in a reasonably understandable report. The accounting must show all cash and property transactions, fees, gains and losses and receipt and distribution of assets. (Fla. Stat. 737.3035).

D. No bond is required for trust administration unless the trust instrument requires it, a beneficiary requests it or a court determines it's needed to protect the beneficiaries. (Fla. Stat. 737.304).

E. The trustee has a duty to pay expenses and obligations to the trustor's estate if the personal representative makes a written request that such funds are needed. The trustee need not obtain property title insurance until the property is placed up for sale. (Fla. Stat. 737.3055).

F. The trustee is personally liable in certain situations. Such as giving estate assets to the beneficiaries before the creditors have been paid. (Fla. Stat. 737.306).

G. The trustee has a duty to file a "Notice of Trust" with the clerk of court in the County of trustor's domicile.

H. The trustee shall make a determination of the trustor's tax liability. The trustee should consider the following taxes: 706 tax return, prior-year 1040, present year 1040, prior year intangible tax, present year intangible tax, and a state income and fiduciary 1041 tax return for each year the trust is effective after the trustor's death.

5. The following information concerns clients who have an A/B Trust:

A. Certain clients have an A/B Trust and now may not need to have the A/B Trust language because of recent changes in the law. In last year's newsletter, I addressed this concern. With an A/B Trust, the death of one spouse creates a duty on the surviving spouse to add up the assets of the Trust estate and separate them into Trust A and Trust B. This is done in order to preserve the decedent's tax credit (currently \$2 million). If you have an A/B Trust and have questions on this issue, please contact our office.

B. Under the 2001 Tax Act, the tax credit is currently \$2 million per person. A couple with a \$900,000 estate may not need an A/B Trust because one credit (\$2 million) shields the entire estate from inheritance taxes. The children of the surviving spouse would not benefit from the preservation of two inheritance tax credits, and therefore, the surviving spouse may not wish to maintain two separate trusts. If you find yourself in this situation, it is very easy to convert your A/B Trust to a joint Trust (A/A), allowing the surviving spouse to receive the entire estate. The cost to do this conversion is \$850.00 and includes an Amended and Restated Trust and all new updated supporting documents.

C. If your estate is larger than \$2 million, then maintaining these two separate accounts is a small inconvenience in relation to the thousands of tax dollars that can be saved. But if there is no tax due, then why bother? One reason to maintain the A/B Trust, even if there is no tax advantage, is to insure the decedent's beneficiary designations are honored. In a joint A/A Trust, when the wife dies first, all the assets immediately belong to the surviving husband. If he remarries, there are no restrictions preventing him from re-titling all the assets jointly with his new spouse or leaving them all to his new spouse and nothing to the original children. The A/B Trust preserves the beneficiary selection for the first spouse.

As you may know, last year I completed my second book, Spending Grandma's Inheritance. It contains many interesting stories about families, inheriting money, control of parents and their assets, and why some children are left out. Twenty years of experience has left me with many unique cases (some funny and some sad) where the issues presented affect most people over the age of 65. Obviously, if your parents are over 65, you will face these same issues. I have enclosed the book jacket and an order form for those who would like to purchase a copy. I am offering my clients the opportunity to purchase one copy and receive an additional copy free!

Sincerely,
J. Mark Fisher