



FISHER & FISHER

— Attorneys at Law —

J. MARK FISHER
BENTLEY M. FISHER
ERICH M. NIEDERLEHNER

Attorneys At Law

Estate Planning/Probate

Ft. Walton Beach Office
181 Eglin Pkwy., NE
Ft. Walton Beach, FL 32548
Telephone: (850) 244-8989

Toll Free (800) 977-9733
Fax (850) 244-8428

Panama City Office
Available by Appointment
2714 West 15th St.
Panama City, FL 32401

Email jmark@jmarkfisher.com
www.jmarkfisher.com

Pensacola Office
508 E. Government St.
Pensacola, FL 32502
Telephone: (850) 434-6090

Yearly Letter/Estate Planning Update - December 2019

Dear Clients,

I hope this letter finds you and your family happy, healthy, and prosperous!

I have been in business so long, I've had clients come to me in their mid-60's, grow old with me, die, and then pass their estate on to their children. Now, their children are my clients. It's hard for me to believe all those years ago, I was a one-man operation. Now I have 11 people working at the firm, including two other lawyers.

Recently, I took on my first partner, my son, Bentley M. Fisher. The firm is now known as Fisher & Fisher. We still focus exclusively on Wills, Trusts & Estates. Bentley, along with attorney Erich M. Niederlehner, not only help me with the estate planning work, but also administer our probate and trust cases. They also focus much of their efforts in assisting our clients with issues related to paying for a nursing home when homecare is no longer possible.

Like all laws in general, our legal documents have evolved over the last 25 to 30 years. The Trust book I use has gotten so much bigger, I was forced to buy a larger Trust book with larger rings to hold the extra documents I have added over the years. Nearly every document I drafted has evolved over time due to changes in the law. If you have not seen me in 8 or 10 years, you should make an appointment to do so.

Our firm's website, www.jmarkfisher.com, is packed full of useful information, including my yearly letters for the past 20 years. This includes general information about Wills and Trusts, along with workshop material I created to teach other lawyers how to practice in estate law. My latest book, [How to Administer a Florida Trust](#), is featured on the website with ordering instructions. In each yearly letter, I summarize the important points you should consider and documents you should review. Please look at your copy of last year's letter or go to my website for a review of those items. In this letter, I am covering the top two areas of concern today:

Proper Insurance- Most people have their car insurance with limits in the amount of 100/300. This means \$100,000 of coverage per person, with a max of \$300,000. In most car accidents, only one person is injured, so effectively, your coverage is only \$100,000. As you have probably noticed, the cost of medical bills has skyrocketed. A minor fender bender where you have injured the other driver and he/she has a chipped vertebra in their neck, may end up being a significant case. The surgery to fix the vertebra, the medical treatment prior to surgery, the recovery, and the medical treatment expenses following surgery, could easily exceed \$100,000. The injured person is also entitled to receive money for lost wages and for pain and suffering. This case could easily exceed the limits of your insurance policy if you have only \$100,000 of coverage. I now suggest my clients examine their policies and increase their limits to 300/500. That means \$300,000 of coverage for a single person. Your homeowner's policy should also have the liability increased to at least \$500,000. This insurance provides you with liability protection wherever you go worldwide. For example, if you accidentally injure someone in New York while walking on the sidewalk, then your homeowner's policy will provide you with coverage.

Additionally, I recommend you consider an umbrella policy. This type of policy covers the car and home and increases the limits to \$1 million for both. The cost of this policy usually runs less than \$400 per year. Talk to your insurance agent about your options.

Review your Trust book and all other estate documents- Recently, clients returned to see me for the first time since I did work for them 25 years ago. As you can imagine, the documents we now draft have changed dramatically. You should definitely meet with your estate lawyer more frequently than once every quarter century! In fact, every 5 to 10 years you should come back to my office for a review of all your estate documents. When we execute original estate documents, I review the book in my office, section by section, and I feel like I do a thorough job. However, it is a lot of information to absorb in a short period of time. Please take the time today to open your Trust book and look at your table of contents. You will see the documents you need for almost any kind of legal issue. If I prepared a Will package for you, take a moment to review those documents as well. The Power of Attorney, Health Care Power of Attorney, Living Will, etc., should all be in their proper place. Every so often, a client will call in a panic saying they need a Power of Attorney and I simply ask them, “What is wrong with the Power of Attorney in the Trust book?” They forgot they had that legal document. Other times, they will go to another lawyer and have legal documents prepared, duplicating what I have already done.

Remember, our office is here to assist you with any questions or concerns you might have about your estate plan. Do not hesitate to call if you have a question or need to schedule an appointment to discuss any issues in greater detail.

J. Mark Fisher

Bentley’s Corner

According to the Department of Children and Families’ policy manual at Appendix A-35, the average monthly private pay nursing home rate is \$9,485 as of July 1, 2019. This extraordinary cost has made long-term care planning a hot button issue. I have found clients who educate themselves on the matter not only save time and money, their perspective shifts from doom and gloom, to encouraged.

The basic rules responsible for the “doom and gloom” perspective are that a nursing home Medicaid application consists of a three part test. Test 1: Medical Necessity (such as activities of daily living). Test 2: Income. Test 3: Assets. The current income threshold is \$2,313 in gross monthly income. The asset threshold is \$2,000 in *countable* assets. The regulations also dictate the applicant cannot make an uncompensated transfer within sixty months of applying for benefits.

Now, for the encouraging news. If you have more than \$2,313 in gross monthly income, you can still pass the income test by creating a Medicaid Income Qualifying Trust (MIQT) and funding it with your income. By streaming your income into the MIQT, it becomes exempt from the income test. The issue to consider regarding the income test is who can create and sign the MIQT. The regulations say the applicant, the applicant’s spouse, the applicant’s court appointed guardian, or the agent under a properly worded Power of Attorney, can create and sign the MIQT. Make sure your Power of Attorney contains a sentence that states: ***I allow my agent to create, fund, and modify a MIQT***, and has your initials next to the statement.

The asset test is what I spend most of my time discussing in client meetings and workshops. It’s all about the asset test. Some highlights regarding the asset test are: your homestead is exempt up to \$585,000 in equity value; the principal balance of your retirement account is exempt as long as you are taking your required minimum distributions (RMDs); and income producing property is exempt. Without doing any planning, other than properly categorizing your assets according to program guidelines, you could have a home worth \$500,000, an IRA with a balance of \$300,000, a rental property worth \$200,000 (a net worth of one million dollars), and pass the asset test.

Other important concepts in long-term care planning that deserve attention are:

- a. Personal Service Contract;
- b. Transfers of assets between spouses;
- c. Spousal refusal;
- d. Curing past gifts or uncompensated transfers, avoiding Medicaid recovery.

If you need to utilize these tools or want to get informed on the process, please give us a call. We are happy to speak to our clients regarding proper Nursing Home Medicaid Planning.

Bentley M. Fisher

NEW BOOK

BY ATTORNEY J. MARK FISHER

How to Administer a Florida Trust

*A Guide for New Trustees,
as well as, Trust Creators and Beneficiaries*

Prepared for the public by
J. Mark Fisher, a Florida Trust Attorney



How to handle the paperwork • Who to call to get things done
What information is needed • When to call the lawyer for help

www.jmarkfisher.com

**A step-by-step guide to assist
with the administration process
from start to finish...AND...when
to call for professional help.**



First Stage of Trust Administration - Gathering the Facts

- 1. Locate the original Trust documents, including all amendments and the original Pour-Over Will.
- 2. Review provisions regarding the distribution of the Trust and the duties of the Trustee.
- 3. Sign Trustee Acceptance Form.
- 4. Obtain a new Tax Identification Number.
- 5. Sign Certification of Trust.
- 6. Obtain certified death certificates.
- 7. Open safe-deposit box.
...and more.

You can purchase a copy of *How to Administer a Florida Trust* from
amazon.com or

Call one of the following offices to arrange pick-up or mailing:

www.jmarkfisher.com
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Escambia County

508 E. Government Street
Pensacola, FL 32502
(850) 434-6090

Florida Toll Free (800) 977-9733
Florida Fax (850) 244-8428
Email: jmark@jmarkfisher.com
www.jmarkfisher.com

Okaloosa County

181 Eglin Pkwy. NE
Fort Walton Beach, FL 32548
(850) 244-8989

Bay County

Available by Appointment
2714 West 15th Street
Panama City, FL 32401
(850) 235-8030

The hiring of a Lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask me to send you free written information about my qualifications and experience.

Yearly client letter

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Ft. Walton Beach, FL 32548

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