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## Yearly Letter/Estate Plan Update

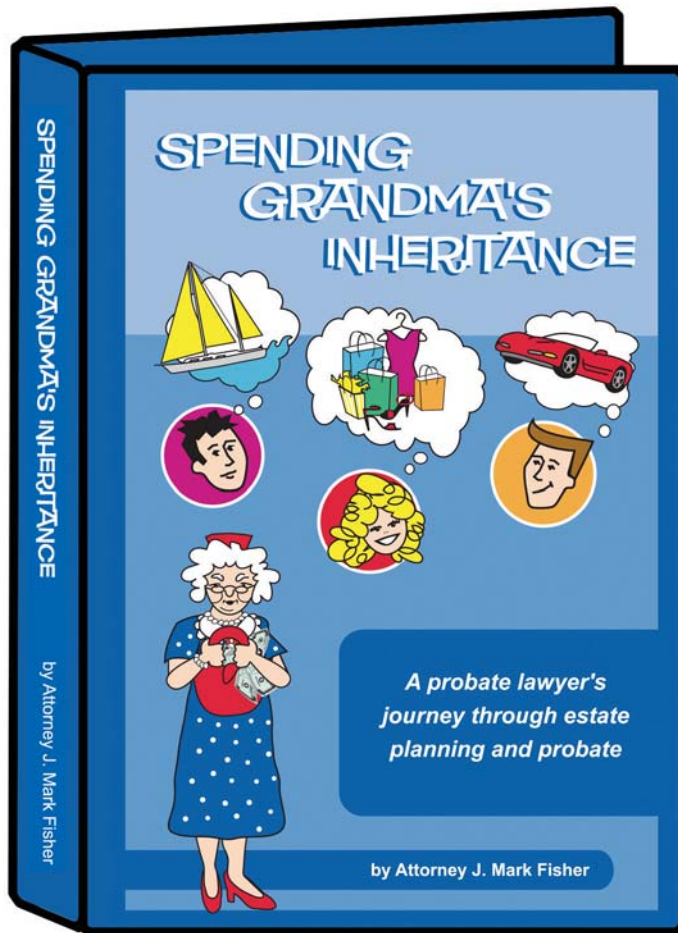
**Dear Clients:**

There are so many items to discuss this year I have listed them rather than discussing them in detail.

- (1) FDIC insurance moved from \$100,000 to \$250,000 per person and \$500,000 for a Living Revocable Trust or up to \$1.25 million based on \$250,000 per beneficiary.
- (2) Federal Estate Tax Exemption moved from \$2 million per person to \$3.5 million per person.
- (3) Federal Gift Tax Exemption moved from \$12,000 per person, to \$13,000 per person per year.
- (4) Our office does not keep signed copies of your original Trust documents, only computer generated copies. Please make a copy of your Trust documents and give them to your Successor Trustee.
- (5) Insure your assets are titled to your Trust or payable to your Trust upon death. If this is not done, your assets may require probate.
- (6) Review property deeds to determine that your property or properties are titled to the Trust and that the legal description or descriptions are accurate.
- (7) Pen and ink changes made on your Trust and other documents are not valid. All changes must be done with witnesses and a notary.
- (8) Section 9 allows you to leave intangible items (furniture, jewelry, household items, cars, etc.) to your family members. Just describe the item, who it goes to and then sign and date the form. Keep the signed form in Section 9 of your Trust book.
- (9) The following information concerns the role and duties of the successor Trustee pursuant to F.S. 736.0801; 736.0805; 736.0809; 736.0816; 736.0817:
  - 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 identify 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 (F.S. 736.05053); and
    - (4) Distribute the residuary Trust estate to the proper beneficiaries in a timely manner upon termination of the Trust. The Trustee may retain a reasonable reserve for the payment of debts, expenses and taxes (F.S. 736-0817).
  - B. Pursuant to Fla. Stat. 736.0813, 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 Trustee must do the following:
    - (1) Give written acceptance of the Trust and the full name and address of the Trustee to the qualified beneficiaries within 60 days after the Trustee's acceptance.
    - (2) Notify the beneficiaries of the existence of the Trust, the identity of the Settlor, the right to request a copy of the Trust instrument, and the right to accountings within 60 days after the Trustee acquires knowledge of the creation of an irrevocable Trust or that a formerly revocable Trust has become irrevocable.
    - (3) Upon reasonable request by the beneficiaries, furnish them with a complete copy of the Trust instrument.

- (4) Once the Trust becomes irrevocable, furnish a Trust accounting to the beneficiaries annually as well as on termination of the Trust or on a change of Trustee.
  - (5) Upon reasonable request, provide the beneficiaries with relevant information about the Trust's assets and liabilities and the particulars of the Trust administration. Attorney J. Mark Fisher advises that all relevant information be distributed on a monthly basis to the qualified beneficiaries prior to a request for information.
- C. The accounting should be prepared in a reasonably understandable report. The accounting must show all cash and property transactions, fees, gains, losses and receipt and distribution of assets. (Fla. Stat. 736.08135).
  - 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. 736.0702).
  - 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. 736.08105).
  - F. **The Trustee is personally liable in certain situations if a breach of Trust has occurred.** Absent a breach of Trust, a Trustee is not liable to a beneficiary for a loss or depreciation in the value of Trust property or for not having made a profit. (Fla. Stat. 736.1003).
  - G. The Trustee has a duty to file a "Notice of Trust" with the clerk of court in the County of Trustor's domicile. The Notice shall contain the name of Trustor, Trustor's date of death, the title of Trust, the date of the Trust and the name and address of the Trustee (Fla. Stat. 736.05055).
  - 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. The Trustee is empowered to exercise federal, state and local tax elections. (Fla. Stat. 736.0816(17)).
- (10) 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 (\$3.5 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 \$3.5 million per person. A couple with a \$900,000 estate may not need an A/B Trust because one credit (\$3.5 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 \$3.5 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 first spouse dies, all the assets immediately belong to the surviving spouse. If he or she remarries, there are no restrictions preventing him or her from re-titling all the assets jointly with his or her new spouse or leaving them all to his or her new spouse and nothing to the original children. The A/B Trust preserves the beneficiary selection for the first spouse.

Sincerely,  
**J. Mark Fisher**



**ATTORNEY J. MARK FISHER** is the author of Estate Planning for Florida Residents and the host of the celebrated radio program J. Mark Fisher on Estate Planning. Mark has counseled thousands of people over the course of his twenty-two year practice. Since he limits his practice to estate planning, he's heard it all. The stories presented here in Spending Grandma's Inheritance represent some of the most outrageous, humorous, and unique experiences a probate attorney can have:

- I got my inheritance and yours too!
- Mom liked me best
- We've ruined the kids but maybe there is hope for the grandkids
- My son's widow has all my money
- I've had six husbands and I'm still looking for a good one
- And many more

Spending Grandma's Inheritance will give you an insight into the wild world of estate planning, and keep you laughing-all the way to your attorney's office.

**\*CLIENT SPECIAL: BUY ONE GET ONE FREE!\***

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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 qualification and experience.



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**Attorney J. Mark Fisher's yearly client letter**

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