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Yearly Letter/Estate Plan Update

Dear Clients:

Our office has been very busy this year. Along with new clients creating Wills and Trusts, we have assisted many existing clients with amendments to old Trusts and updating their old documents. Some clients have not been back to my office for more than 15 years! Many significant changes have occurred over the years. These changes have prompted me to recommend that my existing clients consider updating certain documents. The following is a list of those updates:

- 2002 - statutory change to the Living Will
- 2005 - HIPAA language inserted into the Designation of Health Care Surrogate
- 2005 - HIPAA language inserted into the General Durable Family Power of Attorney
- 2005 - creation and addition of a HIPAA Release form to the Trust package
- 2007 - creation and addition of the Agent to Control Disposition of Remains form to the Trust package

Many other minor changes in legal documents have occurred over the years as a result of case law, statutory law, and my attendance at continuing legal education workshops. As these minor changes occur, I amend and alter my documents. Generally, estate planning lawyers recommend a review of your documents at least every five years, or sooner, if a major family event has occurred. Examples of such events include, but are not limited to, marriage, death, health issues and financial issues.

The Living Revocable Trust is created to be a very quick and efficient means to distribute the estate assets once one or both parents have passed away. It sometimes helps the surviving parent to get the children involved and meet with me as a family. Once the surviving parent passes, I usually conduct a 45 minute to one hour meeting with the Successor Trustee and children. This meeting allows me to have one final review of the estate documents and point out any particular legal issues that may be present, as well as answer general tax questions. The meeting also allows me the opportunity to file the original Will as required under Florida Statute and file the Notice of Trust, Affidavit of No Florida Estate Tax Due, and place the Successor Trustee on the proper path to resolve the estate quickly and efficiently.

Every year in my newsletter, I like to make a list of general considerations for each client to evaluate along with reviewing their Trust book:

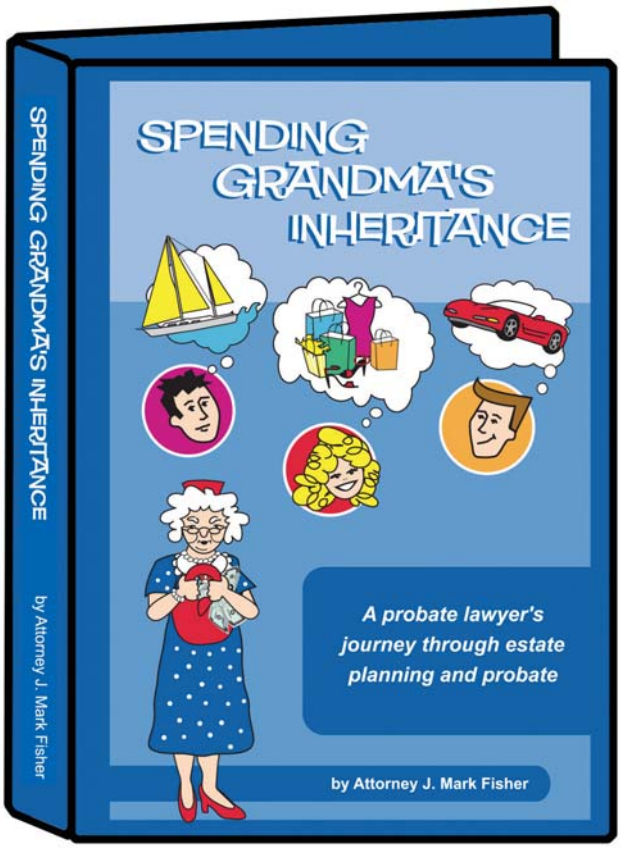
1. Our office does <u>not</u> keep signed copies of original Trust documents, only computer generated copies. Please make a copy of your Trust documents, give them to your Successor Trustee and advise the Successor Trustee where the original Trust book is located.
2. Insure your assets are titled to your Trust or payable to your Trust upon death. If this is not done, your assets may require probate.
3. Review property deeds to determine that your property(s) are titled to the Trust and that the legal description(s) are accurate.

4. Pen and ink changes made on your Trust and other documents are not valid. All changes must be done with witnesses and a notary.
5. Section 9 of your Trust book allows you to leave tangible 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.
6. At your death, distributions should be made to the beneficiaries as soon as possible unless the Will or Trust agreement provides for assets to be held in a continuing Trust.
7. 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. I addressed this concern in last year's newsletter. 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. 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 for 2009 was $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 hundreds of thousands of tax dollars that can be saved. However, 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 first spouse's beneficiary selection.

ESTATE TAXES. Part of the reason my yearly letter has been delayed is because I have been waiting on Congress to decide the fate of the estate tax. The Kiplinger Tax Letter indicates the tax writers want to reinstate the estate tax retroactive to January 1, 2010, but cannot agree on where to set the levels. There is no indication from Congress that either Republicans or Democrats want the inheritance tax level to return to the $1 million exemption amount looming under the current sunset law. It appears the real issue is whether or not the exemption will stay at $3.5 million per person with a 45% tax rate or increase in steps from $3.5 million to $5 million per person and a lowering of the top rate from 45% to 35%.

If you wish to discuss your estate plan or have changes you wish to make, please contact my office. I look forward to being of assistance to you with your estate planning needs.

Sincerely,
J. Mark Fisher



ATTORNEY J. MARK FISHER is the author of Estate Planning for Florida Residents and was 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-five 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.

You can purchase a copy of Spending Grandma's Inheritance in several ways:
Barnes & Noble • amazon.com • Order form at www.jmarkfisher.com • Call one of the following offices to arrange pick-up or mailing:

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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 qualifications and experience.

Attorney J. Mark Fisher's yearly client letter

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