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Yearly Letter/Estate Plan Update

Dear Clients:

During the late hours of December 17, 2010, Congress made significant changes to the estate tax code. The new law allows the amount of $5 million to pass free of estate/death tax for the years 2011 and 2012. This means if you die with less than $5 million, there is no death tax due. There are two other significant benefits to the new law. The $5 million per person death tax exemption is portable between spouses. Upon the husband's death, the wife can receive all assets. Then upon the wife's death, the estate can use the husband's credit of $5 million and the wife's credit of $5 million for a total of $10 million passing to the heirs free, without using an A/B trust.

The last benefit allows the $5 million death credit to be available for use while living. Under the prior law, while living, you could give away $13,000 with no filing requirements with the IRS and $1 million with no tax consequences. Under the new law, you can give away $13,000 with no filing requirements and $5 million with no tax consequences. If the gift is greater than $13,000, you will be required to file Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return, showing the total amount of the gift, but no taxes will be due. This new law will be re-assessed in 2013 and I will keep you informed about possible changes.

The following are this year's observations and comments for your consideration:

1. Our office does not keep copies of original signed 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 the death of the surviving Trustor, a complete inventory of all Trust assets should be taken. The inventory will assist the Successor Trustee in preparing the annual and final accountings as required under Florida Statute. 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. Normally, your vehicles do not trigger probate and thus, are not included in the Trust. However, if the beneficiaries of your Trust estate are not your children, then the vehicles should be placed in the Trust or mentioned on the separate writing found in Section 9 of your Trust book.

8. There is a new Florida Homestead rule regarding a surviving spouse when no prenuptial or postnuptial agreement is used and the home is titled in the deceased spouse's name only. Under the old rule, the surviving spouse could not sell or mortgage the home but could remain living there for life. Under the new rule, the surviving spouse can force the sale of the home and split the home proceeds 50/50 with the decedent's children. This election must be done within six months of the decedent's death.

9. I have recommended adding a Co-Trustee to many of my client's Trusts. My clients create the Trust and are called the Trustors. They maintain control of the Trust. However, adding a daughter or son as Co-Trustee allows the son or daughter to access all accounts and take care of all Trust financial business. Normally, the Successor Trustee child has access only after a death or lack of mental capacity is determined. The Co-Trustee position allows them to act immediately and provide seamless assistance when needed. In many cases, the child's help is not needed until years later, but when needed, they are already on the Trust bank accounts, brokerage accounts and other cash accounts.

10. When a death occurs, the surviving spouse should make an appointment to see me. There are several required documents to be filed with the County of decedent's residence. There are many questions and possibly new documents to be prepared once your spouse is gone. When both spouses are gone, the children should schedule an appointment to see me and review the Trustee duties and make sure they comply with the Florida Trustee statutes. If an asset is left out of the Trust and the Trustee is unable to control it, a probate is usually required. We have staff members who do nothing but probate for the many people who have only a Will and those who have done no estate planning at all. If probate is needed for your estate or someone you know, then let us help make the process as painless as possible.

11. The many bank mergers have produced much confusion. I recommend all accounts be titled to the Trust, however, some clients have elected to keep certain accounts out of the Trust and have made the account payable to a separate person. If you have done this, please review the payable on death (POD) election with the bank. The mergers and new bank regulations may have allowed the original POD designations to be lost or misplaced.

12. If you named a bank as your Successor Trustee and that institution has subsequently been acquired, it is not necessary to update your documents to reflect the new name. However, you may want to confirm the minimum amount required for them to administer your estate. It is best to know this in advance and to amend your documents to include an individual Trustee as a backup to the bank in the event they decline to serve based on the total assets of your estate.

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

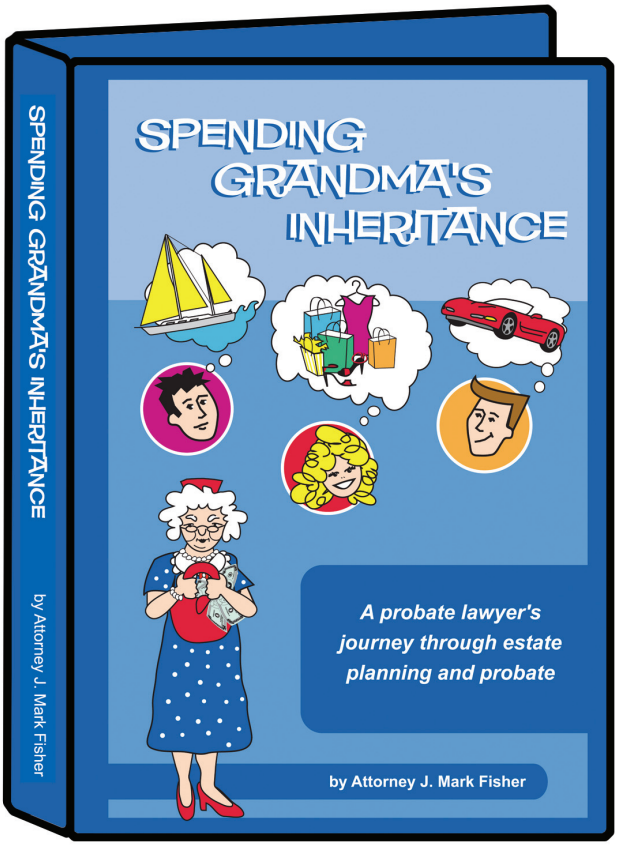
A. Many clients have an A/B Trust and now may not need to have the A/B Trust language because of recent changes in the law. I addressed this concern in last year's newsletter. With an A/B Trust, the death of one spouse creates a duty on the surviving spouse to add up the assets of the Trust estate and 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 2011 is $5 million per person. A couple with a $900,000 estate may not need an A/B Trust because one credit ($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 $950.00 and includes an Amended and Restated Trust and all new updated supporting documents.

C. If your estate is larger than $10 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 retitling 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 designation(s).

If you would like to discuss your estate plan, make changes or if we can provide any additional information, please feel free to call.

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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