

Law Office of J. MARK FISHER

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Yearly Letter/Estate Plan Update

Dear Clients:

The end of this year brings a very confusing set of choices for some of my clients. Those with less than one million dollars need not pay attention. To all others, here is what is happening. When old man time retires on December, 31, 2012, the current inheritance tax exemption will sunset. The 2001 tax exemption in place at that time (\$1 million) will be resurrected along with the 55% estate tax rate. Both parties, the Democrats and the Republicans, have expressed a desire for that not to occur. If Obama wins, he has stated he will raise the inheritance tax rate to \$3.5 million per person. If Romney wins, he will keep the current tax exemption of \$5,120,000 and possibly increase it. Since neither party is willing to tackle this topic until after the election in November, we will not know about the tax rate until the last few days of this year or possibly early spring of next year. One of my wealthy clients consulted me recently about his options. He has two children and both are very responsible. He wanted to give them each one-half of the current amount he can give away tax free while living. The current tax free gifting limit is \$5,120,000. So he wants to give each child \$2,560,000 before the end of the year. I informed him of an article I read where a "claw back" provision was discussed that would recover these large gifts. He shook and scratched his head in amazement at our government's absurdity. I believe he will make the gifts and there will be no "claw back" provision. I also believe the inheritance tax rate will stay at the \$5 million level or in the worst case drop to \$3.5 million per person. It may end up at \$1 million for a short time after the election while congress sorts out a new amount. If you need additional information or want to discuss this type of gifting, please give me a call.

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

1. After the death of one spouse, the surviving spouse should not remove the deceased spouse's name from every account. Keep at least one account that includes the deceased spouse's name. Routinely, there are return of deposit checks, insurance checks, medical reimbursement checks, etc., that will come payable to the deceased spouse. If all of the accounts have been changed removing his or her name, the banks will not cash or deposit the checks and probate will be needed. The minimum fee we charge for probate is around \$2,000.
2. **PLEASE NOTE:** After you are gone, the Successor Trustee named in your Trust document has certain legal duties. 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:
 - Collect the assets and identify debts of the Trust estate;
 - Manage, protect and preserve the Trust assets, including obtaining insurance if necessary, until final distribution;
 - Pay the expense of and claims against the Trust estate and probate estate (F.S. 736.05053);
 - 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:
- 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.
 - Notify the beneficiaries of the existence of the Trust, the identity of the creator of the Trust, 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.
- C. Please note, there are many other duties a Trustee must accomplish and the Trustee is personally liable in certain situations if a breach of Trust has occurred. Have the Trustee call me for additional information and instructions.
3. 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 (\$5 million). If you have an A/B Trust and have questions on this issue, please contact my office.
- B. Under the 2001 Tax Act, the tax credit is currently \$5,120,000 per person. A couple with a \$900,000 estate may not need an A/B Trust because one credit (\$5,120,000) 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 \$5 million, then maintaining these two separate accounts is a small inconvenience in relation to the thousands of tax dollars that can be saved; 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.
4. Many of my clients are interested in asset protection. Most think of a car accident or lawsuit as the primary reason for the loss of assets. Unfortunately, that is not what really happens. Most of my clients live a long time and some outlive their assets. It is the assisted care facility or nursing home that drains the estate assets. I saw a bumper sticker recently that read, "I am spending my children's inheritance, but it's not enough". In my opinion, long term care insurance is the number one source of asset protection. If you want to stay in your own home and govern who takes care of you, then you need long term care insurance. If you do not want to be a burden to your children, then you need long term care insurance. If you want to protect your assets, then you need long term care insurance. Florida has initiated a special program allowing Florida residents who have long term care insurance to keep significant assets and still qualify for Florida nursing home Medicaid. Call Debbie Fisher at 850-974-0484 for more information.
5. Review your distribution (where you want your assets to go after death) found in section three, four or five of your Trust book. Make sure it still conforms to your estate plan. Make sure your assets are being divided in the percentages you feel are still appropriate. If certain assets are going to certain children, make sure these assets are still in existence and properly titled. A Trust will not control an asset that is not titled and owned by the Trust. If an asset is titled jointly with a child, such as a joint bank account, then at your death, the asset will belong to the child and not be distributed according to the terms of your Will or Trust.
6. Please review your Trust book and check that all legal documents have been signed and dated. The legal documents in your Trust book are found in sections 3,8,10,11,12,13 and 15.



I hired my son, Bentley M. Fisher, as a new lawyer in my office. He is young and energetic and is accepting probate litigation cases, as well as counseling those on how to apply for and receive nursing home Medicaid benefits.

Bentley and I can be heard every other Friday on radio station 1330 WEBY AM, at 11:30 a.m. This station covers most of the Pensacola area.



Bentley and my grandson, Brecken

As always, I am here to answer questions and provide you with some sense of security in knowing that if there is a need, I will be here to help.

Sincerely,

J. Mark Fisher

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J. Mark Fisher**

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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.



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Attorney J. Mark Fisher's yearly client letter

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