J. Mark Fisher P.A.

ATTORNEYS AT LAW

J. MARK FISHER
BENTLEY M. FISHER
MIRANDA SIMPSON YANCEY
Attorneys At Law

Estate Planning/Probate

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

Panama City Office
1240 West 23rd Street
Panama City, FL 32405
Telephone (850) 235-8030

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

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

Email: jmark@jmarkfisher.com
www.jmarkfisher.com

Yearly Letter/Estate Plan Update - October, 2015

Dear Clients:

I hope you and your family are in good spirits and good health. There have been no major changes in the estate planning laws or in the estate tax code this year. The new estate tax exemption amount is $5,430,000 per person. This means a couple can each have that amount and exclude almost $11,000,000 from any estate tax consideration. Most individual clients have less than $5 million and most couples have less than $11 million. Therefore, the majority of our planning is to act as an advisor and discuss family dynamics. For example, I usually ask about your children and want to know if there are any special needs or concerns. This might be a child who has Down's syndrome, on SSI (receiving social security disability income), a child with a tax lien, a child in a bad marriage, a child with a judgment, a child who is an alcoholic, or has other issues. I need to know about their status in order to give you proper advice. If their status has changed since I prepared your documents, then I need to know. I can give advice and sometimes protect their share for their benefit. For instance, if your son has an IRS tax lien, do you want to give him money and have the IRS take every penny? If your son has a domestic judgment against him, do you want his crazy ex-wife to get all of his money after your death? If I know about these situations, then I can prepare certain types of Trusts to protect the money. If I know your son has a significant mental issue or drinking problem, then we might be able to stretch the money out over his lifetime rather than giving it to him all at once.

If your child is truly dysfunctional, then you may want to exclude him or her altogether. With the number of clients we see on a monthly basis, we exclude children frequently. Many clients relay information such as, they have not seen their child in 20 years or their child has disowned them or something of that nature. One client described a situation where the relationship with his daughter was rocky for the last couple of years and he drove to an area where she lived to try and make amends. When he called her to arrange a visit, she told him if he came to her house she would call the sheriff. I agreed with him she should be removed as a beneficiary.

A client will frequently ask, after omitting a child, if that child can now contest the Will or Trust. They are a little dismayed when I say yes. There is nothing in Florida law preventing someone from contesting a Will or Trust. In fact, there is a statute which prevents me from placing a "no contest" provision in your document. Once the omitted child hires an attorney, the successor Trustee or personal representative of your estate will defend your decision to omit that child.

There are two major legal grounds providing your omitted child a right to challenge the document. The first is, you lacked mental capacity to sign a new Will or Trust. The second is, your mental capacity was so diminished because of age and infirmity, you were unduly influenced by a significant beneficiary to omit that child. Winning a case based on lack of capacity is very rare. In Florida, a Will or Trust creator can be declared insane, be an alcoholic, or suffer from delusions, but if the document is signed during a "lucid" moment, it will be valid. Most of these contest cases are won using the second legal avenue involving undue influence. The scenario might be one where a mother is living alone and her health has been declining dramatically in the last year or so. Her son has been recently released from prison, has nowhere else to go and moves in with her and now takes care of her around-the-clock. At first, her other children

are okay with the arrangement because someone is there with their mother. But then they learn the son has taken their mother to an attorney and had her existing Will changed leaving everything to him and nothing to them. This would be a classic case of undue influence. The son was living with the mother and had a close confidential relationship with her. She relied on him to take her to the doctor, to the bank, etc. He took her to a lawyer he selected and kept all of the estate documents. In such a scenario, the other children would be entitled to hire a lawyer and challenge their mother's new distribution based upon the legal theory of undue influence. The mother did not exercise her own free will because she was influenced by her son's actions.

My son, Bentley, who is our litigation attorney, would be eager to represent you in a case like this. However, in most family situations we deal with, our clients omit a child based on very good and valid reasons as outlined above. In order to make a Will or Trust less likely to be contested, it is wise, in my opinion, to take additional action. If it is a close call where mental capacity might be questioned and a major change is in the works, I might suggest the client see a psychologist or psychiatrist for a full mental evaluation. If it is not a close call and you want to ensure the child will not be successful, strengthening the Will or Trust through Amendments over the years will provide significant benefits. For example, if you have left out the same child over a ten-year period and made three or four changes stating you leave out such child each time, a judge is much less likely to set aside your last Will or Trust. This is because you have made the same change and indicated the same child is omitted over the last 10 years.

If you have not been to my office for a review or other change in the last 10 years or so, you should be aware there are many significant updates which have occurred in the Trust and Will documents. It would be very appropriate for you and possibly other family members to visit me and discuss what has changed and what documents might need to be updated.

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

1. Many of our clients select a child to be the successor Trustee. Some of our more mature clients will select a child to serve with them as co-Trustee. I have encouraged this decision because it enables a client to turn over as much or as little of the day to day management of the Trust assets as they choose. Most of my clients still manage their financial affairs and their child, serving as co-Trustee, is simply added to their accounts for the convenience of both the parent and child. Other clients have been relying on the child to help with paying bills and adding a child on as co-Trustee rather than co-owner on to the account is not only convenient, but a great safety net for the rest of the family.

2. Our office does not keep copies of all original signed documents, only computer-generated unsigned copies. Please make a copy of your Trust documents, give them to your successor Trustee and inform the successor Trustee where the original Trust book is located.

3. 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, to whom it goes to, and then sign and date the form. Keep the signed form in section 9 of your Trust book. Remember, this section will not allow you to transfer any interest in land such as a home or leave cash, stocks, bonds, etc. to anyone.

4. Review title to all assets to determine if they are owned or payable to the Trust. Remember, any asset not titled in the Trust or payable to it, may require probate.

5. Review property deeds to determine your properties are titled to the Trust and the legal descriptions are accurate.

6. Review and save any and all digital assets. Your login/usernames, passwords, and personal identification numbers are important to ensure family members can access important online and electronic records after your death.

7. If you have not seen me in a number of years and still have an A/B Trust, it is imperative you make an appointment with my office. Over the past 15 years, I have written about whether or not an A/B Trust is still appropriate for some clients. Please go to section three of your Trust book to determine if you have an A/B trust. The first page, at the top, should say Declaration of Trust. Then, it should indicate the type of Trust with the capital letters A/A or A/B. If you have an A/B Trust, you should make an appointment immediately, to review whether or not this Trust is still appropriate. In most cases, the Trust can easily be converted to the joint Trust which I designate as A/A. If your spouse has died, then this conversion cannot be made and you should see me to get the general paperwork taken care of when someone passes away.

8. Please review all life insurance, IRA, and annuity beneficiaries to ensure the appropriate person or Trust has been named as beneficiary. Generally, most life insurance, annuity and IRA beneficiaries should first be your spouse. The second or contingent beneficiary should be your Trust. However, I may have reviewed your file with you earlier and told you to do something different. Please gather all these documents and insert them in section 4 of your Trust book so your successor Trustees can locate all important documents.

My purpose in sending this yearly letter is to get you thinking about your assets, your estate, and your decisions. If you need any clarification or have any questions, please feel free to call my office.

Sincerely,
J. Mark Fisher

Miranda writes:

While I practice in estate planning and litigate alongside J. Mark Fisher and Bentley Fisher, most of my practice at our firm focuses on Probate and Trust Administration. Probate in Florida, is a tedious and involved process, compared to other states with less formalities. It also requires an attorney, unlike some court processes that can be done without an attorney. The mandatory filings, timing, and notices can be confusing and overwhelming if your probate attorney is not guiding you closely.

Even in Trust estates where probate is avoided, I often assist Trustees in their administration. This ranges from hand-holding from start to finish, to simply acting as the "bad news" messenger to beneficiaries on particular issues. A reoccurring theme is when a parent dies, the dynamic of sibling relationships changes dramatically, even in the "best" of families. We do not realize the actual influence our living parents have on how we view and treat our siblings. "When the glue is gone," (as one client has put it), emotions surface – jealousy, control, and resentment show their ugly faces. I often fill the role of receiving a dismayed or even belligerent beneficiary's venting session, bringing new meaning to the title of Counselor. Our attorneys are willing to fill these sometimes awkward and unusual roles, and do what we can to ease the tasks of wrapping up your loved one's affairs.

Miranda Simpson Yancey

J. Mark Fisher P.A.
ATTORNEYS AT LAW
181 Eglin Pkwy. NE
Ft. Walton Beach, FL 32548

PRSRT STD
US POSTAGE
PAID
PERMIT #701
32501

Attorney J. Mark Fisher's yearly client letter

J. Mark Fisher P.A.
ATTORNEYS AT LAW

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
1240 West 23rd Street
Panama City, FL 32405
(850) 235-8030