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Yearly Letter/Estate Plan Update – December, 2017

Dear Clients:

I hope you've had a joyous and prosperous year. After Thanksgiving and Christmas, some of us do self-evaluations to see where we are and what we should do to improve ourselves for the future. Thus, the New Year's resolutions come into play, usually in January-ish. We see many new clients in the timeframe from January through March, to take care of their resolutions and loose ends, and addressing any lingering issues concerning a loved one, such as an aging parent. If you are receiving this letter, then you are a client of mine and have done proper estate planning. However, I saw a client several months ago whom I had done work for in 1994. They had not seen me since that time. Preparing legal documents such as a Trust package or Will package is a great step forward, however, you do need to see your lawyer more often than once every 24 years. I usually tell my clients when leaving the office, they probably do not need to come back for the next five years, unless a major family event has occurred. Somewhere between the 5 and 10 year timeframe, they should come back in for a review. I send yearly letters to keep clients updated regarding changes in estate law and any changes made to some of our documents.

The following is a list of changes and updates to our legal documents:

- 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
- 2011 - statutory change to the General Durable Family Power of Attorney
- 2013 - digital asset language inserted into the Trust, Will and General Durable Family Power of Attorney documents
- 2013 - genetic issue (children/grandchildren) language inserted into the Trust document
- 2015 - QSST language, Dispute Resolution Clause, & Forfeiture Clause inserted into Trust documents; Agent to Control Remains document was updated in Trusts & Wills
- 2016 - Borrowing & Encumbering language, Qualified Accounts, Digital Assets, Schedule "A", revised in Trusts; Medicaid language added to Power of Attorney; Cited Florida Statute regarding the Revocation of Trust language; added Deed disclaimer on property deeds
- 2017 – added Declaration of Preneed Guardian form; PSC language to POA

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

1. The recent tax bill out of Congress increased the estate tax exemption to 11 Million Two Hundred Thousand Dollars (\$11,200,000) per person as of 2018. This exemption is portable, so any unused portion can be used by the surviving spouse. This effectively gives each married couple an exemption of more than 22 Million Dollars (\$22,000,000) from the estate/death taxes. However, the surviving spouse must file a 706 Estate and Gift Tax Return after the first death, to preserve both exemption amounts. The bill sunsets in 2025, and the exemption amount reverts back to 5 Million Dollars (\$5,000,000) per person.

2. Please make copies of your Trust documents or Will package documents, and give them to the person you have designated as your Successor Trustee, Personal Representative, or Power of Attorney. Please let them know you

have selected them for these positions so they are aware of their responsibilities. You should let them know where you keep your original documents in your home. Remember, your Trust document and Will are not recorded with the county. In addition, we do not keep copies of all the signed documents except for the actual Will and Trust document (and those copies have only been retained within the last few years.)

3. Many of our clients select an adult child as successor Trustee of their Trust. Some of our more senior clients will select the adult child to serve with them as Co-Trustee. I've 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 adult child serving as their Co-Trustee, is simply added to their accounts for the convenience of both the parent and child. Other clients have been relying on the adult child to help with bill paying, so adding an adult child as Co-Trustee, rather than joint owner on the account, is not only convenient, but a great safety net for the rest of the family.

4. Pen and ink changes on your Will or Trust documents are not recognized by law. You cannot scratch out a name or increase a dollar amount and simply initial it. These are all invalid and create nothing but costly litigation. All changes must be done in a legal manner where they are signed by you, witnessed and notarized.

5. Make sure all of your assets are titled either in the name of your Trust or payable to your Trust. When the dust settles, everything should be controlled by the Trust. Certain assets such as life insurance and annuities may be titled in your individual name, with your spouse as the first beneficiary, but the Trust should be the ultimate beneficiary. If I have discussed the situation with you and told you to do something different, then please keep the title designation as I had previously instructed.

6. Please review all deeds for real property transferred to your Trust. Each deed has a legal description, and it would be beneficial for you to review the legal description and compare it to the description on the original deed to ensure they match. We make every attempt to double check the legal descriptions; however, because some of the legal descriptions can be complicated, we recommend another review of those descriptions. Additionally, you might want to check with your title insurance company and make sure your title insurance is still in force for the property transferred to you as Trustee of your Trust.

7. 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.

8. If you have not seen me in 10 years or so, and still have an A/B Trust, it is imperative you make an appointment with my office. Over the past 17 years, I have written about whether or not an A/B Trust is still appropriate. 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 as soon as possible and review whether or not this Trust is still appropriate. In most cases, the Trust can easily be converted to the joint A/A Trust. If your spouse has died, then this conversion cannot be made and you should see me to get the general paperwork needed at the death of a spouse (if you have not already done so).

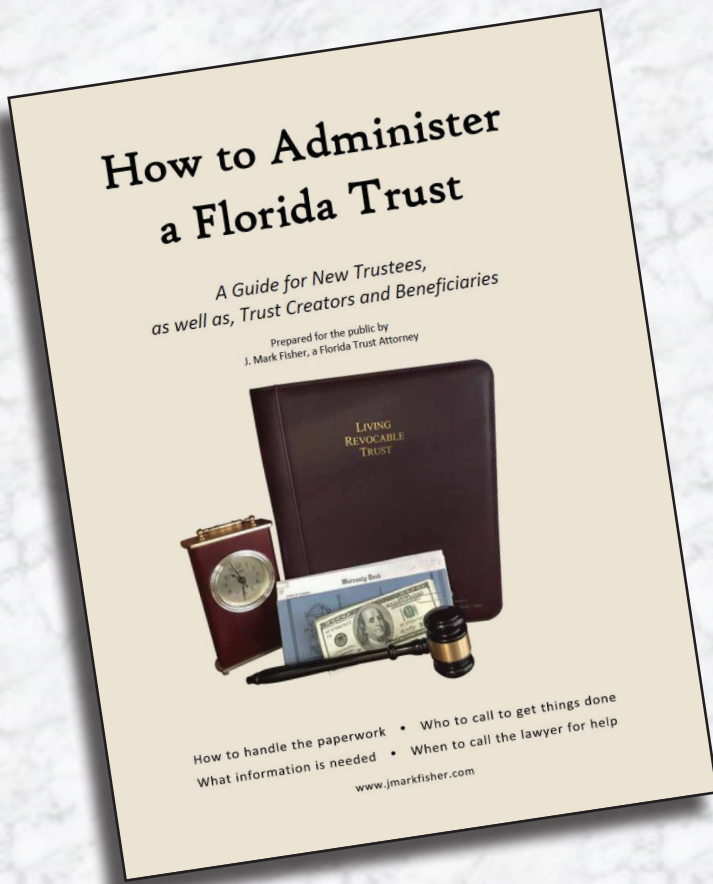
9. Section 9 of your Trust book allows you to leave tangible items (furniture, jewelry, household items, cars, etc.) to your family members or friends. Just describe the item, to whom it goes, and then sign and date the form. Keep the signed form in section 9 of your Trust book. Remember, this section will not allow you to transfer any interest in land, such as a home, or leave cash, stocks, bonds etc., to anyone.

Our office has been increasingly involved with Medicaid planning. It is imperative the proper documents be in place allowing a parent, for example, to qualify for institutional care or nursing home Medicaid. Instead of trying to get all the loose ends tied up while mom or dad is waiting for a Medicaid bed, we encourage pre-planning. A financial assessment is done so better long-term decisions can be made, which may save money for the client and family. Additionally, we like to have all legal documents in place and updated so at the time of the Medicaid application, we can go forward and complete the process even though mom or dad may lack mental capacity. If we don't have an updated power of attorney, for example, then certain documents will be much more difficult to have available for the Medicaid process.

Sincerely,
J. Mark Fisher

NEW BOOK

BY ATTORNEY J. MARK FISHER



A step-by-step guide to assist with the administration process from start to finish...AND...when to call for professional help.

First Stage of Trust Administration - Gathering the Facts

- 1. Locate the original Trust documents, including all amendments and the original Pour-Over Will.
- 2. Review provisions regarding the distribution of the Trust and the duties of the Trustee.
- 3. Sign Trustee Acceptance Form.
- 4. Obtain a new Tax Identification Number.
- 5. Sign Certification of Trust.
- 6. Obtain certified death certificates.
- 7. Open safe-deposit box.
...and more.

You can purchase a copy of *How to Administer a Florida Trust* online at amazon.com

or

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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