

J. Mark Fisher P.A.

A T T O R N E Y S A T L A W

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

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

Panama City Office
Available by Appointment
2714 West 15th St.
Panama City, FL 32401

Email jmark@jmarkfisher.com
www.jmarkfisher.com

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

Yearly Letter/Estate Plan Update – December 2018

Dear Clients:

I hope you and your family are healthy and safe. To my Panama City clients, the loss and destruction you suffered is unimaginable. I did not recognize 23rd Street when I came over the Hathaway Bridge on my first day meeting clients after the hurricane. My firm will be available to help with Trust or Will document replacement if needed. Remember, I do not usually have a copy of your Trust book; I may have a scanned copy of your Living Trust document only. I send a yearly letter where I routinely recommend copies be made and given to your children or Successor Trustee. Hopefully this will prevent a total loss of all documents. Even photocopies will work, if we can show the original documents have been lost or misplaced. This reminds me of a story my client told me after he lost everything in his Pensacola home, after hurricane Ivan. He said “I left my Trust book on top of the refrigerator in my house just before I left to evacuate. When I came back to my house, the Trust book was gone — and so was the refrigerator!”

In our new location in Panama City, 2714 W. 15th St., we share office space with the law firm Walborsky and Bradley. If your house and/or property have suffered damage from hurricane Michael, and you need legal assistance dealing with your insurance company, please give them a call. They are extremely competent lawyers who specialize in handling insurance claims. If you have not received an offer you deem appropriate or fair, please feel free to call Walborsky and Bradley at (850) 872-9846, so they can represent you going forward.

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

1. Our office does not keep signed copies of the original Trust documents, except for the actual Will and Trust document (which have only been retained within the last few years). We typically only have an unsigned computer-generated copy. Please make a copy of your Trust documents and give a copy to your Successor Trustee or other family member and advise them where the original Trust book is located.

2. Ensure your assets are either titled to your Trust or payable to your Trust upon your death. If the account is titled in the name of the Trust, it is a Trust asset. If the asset is not titled in the Trust but has the Trust as the named beneficiary, the Trust will receive the asset after death. If the asset is not in the Trust, or payable to the Trust, or in some other way payable to a named beneficiary, then it may require probate. We have had several clients call us to say they have been unable to deposit their insurance proceeds into their checking or savings accounts because the account was still titled to them personally. The banks typically will not deposit a check made payable to the Trustees of the Trust into an account titled to you, personally.

3. Review the deeds to your real property. The deed should indicate the Trustee of the Trust owns the land. The date of the Trust should be indicated in the deed. The legal description should be accurate as compared to the prior legal description for the same property. Please review all these to ensure the Trust name is accurate and the legal description is accurate.

4. Pen and ink changes made to your Trust, Will or other documents are not valid. All changes to a Trust or Will must be done with the appropriate witnesses and a notary. In other words, please do not write on any of your legal documents. You will do nothing but create confusion and potential litigation.

5. Section 9 of your Trust book allows you to leave tangible items (furniture, jewelry, household items, cars, [not land, not cash] etc.) to anyone you desire. Simply describe the item, who it goes to and then sign and date the form at the bottom. The last signed and dated form will control. You should keep the signed form in section 9 of your Trust book.

6. All the documents prepared in my office are printed on bond paper and signed in blue ink. Please ensure all original documents are still in your Trust book. Recently, a client said her father's original power of attorney was missing. A terrible photocopy was in section 12 of her book. I do not routinely have a photo copy of a client's power of attorney in my file. She said her father sold several parcels of land that year and the power of attorney was used at the closings. Apparently, one of the closing agents must have kept the original document and given her a bad photo copy. She did not notice the bad photocopy until it was too late.

7. During my initial meeting with a new client, I ask about their family members. When I get to the children and grandchildren, I usually ask "are there any special needs or concerns, such as a mental disorder, bad marriage, IRS tax lien, alcoholism, receiving SSID etc." Most reply there are no special needs or concerns, however, there are some who indicate a child or grandchild has an issue. Once I know about the issue, I can offer suggestions how to protect the child or the assets. If a new issue develops with a family member, please make an appointment and allow me to review your Trust documents.

8. Occasionally, the special needs of a child are quite severe. If your child has Down Syndrome or some other major disability, and receiving Medicaid benefits or SSID, you do not want to leave them as a direct beneficiary. Any money received could possibly disrupt their State and Federal benefits. You would want to leave their share in a Special Needs Trust. This would allow your Successor Trustee to control their money and make it available to them but not disrupt their benefits. If you are retired from the military and have a handicapped child, you may want to see me to discuss possibly adding a Special Needs Trust to your Living Revocable Trust and, also create a separate First Party Special Needs Trust for the handicapped child who will be receiving your military survivor's benefits.

9. 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, this conversion cannot be made, and you should see me to get the general paperwork usually required upon the death of a spouse.

10. A question I routinely ask my new clients, concerns their insurance liability limits for their home and car. Most of my clients are no longer engaged in risky business activities, and therefore, the only source of significant liability would be from driving their vehicle or an injury at their home. I suggest my clients review their car insurance policy and look specifically at the liability limit. These numbers are generally indicated with an amount such as 100/300. This means \$100,000 per person and \$300,000 per accident. If you injure one person only, the most they can collect against your insurance policy is \$100,000. If you injured more than one, each person can collect up to \$100,000 with the maximum being \$300,000. Most auto accidents involve injuring one person. As you have probably noticed, the cost of medical bills has skyrocketed. A minor fender bender where you have injured the other driver and he has a chipped vertebrae in his neck, may end up being a significant case. The surgery to fix the vertebrae, the medical treatment prior to surgery, the recovery and the medical treatment expenses following surgery could easily exceed \$100,000. Additionally, the injured person is entitled to receive money for lost wages and for pain and suffering. This case could easily exceed the limits of your insurance policy if you only have \$100,000 of coverage. This is why I now suggest my clients examine their policies and increase their limits to 300/500. Also, I suggest they look into an umbrella policy. This policy covers the car and home and increases the limits to \$1 million for both. The cost of this policy runs less than \$400 per year. Talk to your insurance agent about your options.

Sincerely,
J. Mark Fisher

NEW BOOK

BY ATTORNEY J. MARK FISHER

How to Administer a Florida Trust

*A Guide for New Trustees,
as well as, Trust Creators and Beneficiaries*

Prepared for the public by
J. Mark Fisher, a Florida Trust Attorney



How to handle the paperwork • Who to call to get things done
What information is needed • When to call the lawyer for help

www.jmarkfisher.com

**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* in several ways:

amazon.com • Order form at www.jmarkfisher.com • Call one of the following
offices to arrange pick-up or mailing:

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Fax (850) 244-8428

181 Eglin Pkwy, NE
Fort Walton Beach, FL 32548
(850) 244-8989

2714 West 15th St.
Panama City, FL 32401
(850) 235-8030

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



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
 Available by Appointment
 2714 West 15th Street
 Panama City, FL 32401
 (850) 235-8030

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

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

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 US POSTAGE
 PAID
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 32501