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Yearly Letter/Estate Plan Update – December 2020

Dear Clients:

This past year has been very busy and quite challenging. We dealt with the stress of the political campaign and outcome, and we continue to deal with the Covid-19 lockdown. Our entire office procedure and practice has changed because we now sanitize between every single client, wear masks, and practice proper social distancing. A sad thing for me occurred when one of my sweet elderly clients of 20 years wanted to give me a hug at her nursing home, but we could not. Another client lost his wife of 60 years to Covid-19 and they would not let him in her room to say goodbye. Hopefully, some of these policies will change and we can get back to a "normal" life. Unfortunately, I read an article discussing the possibility we will be wearing masks and having these COVID-19 protocols of social distancing for the next several years.

I just received my Kiplinger tax letter, and I will make several quick comments about inheritance taxes. The lifetime estate and gift tax exemption for the year 2021, is $11,700,000 per person. That means a couple can exclude (not pay any tax on) $23,400,000. That amount is scheduled to decrease to around 5 million a person on January 1, 2026, and President Biden may have additional changes he wants to make. I will report those on a later date. However, Kiplinger was very confident President Biden would not be making any tax changes during this year. Additionally, the gifting amount of $15,000 remains the same for this year. Please be aware you can give up to $11,700,000 with no gift tax, but if you do make a gift to a child for more than $15,000, you must file a 709 Gift Tax return with your next 1040 tax return. It is a 5-page document. No big deal. Your CPA can do it for you.

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

1. 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.

2. 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 these items to ensure the Trust name is accurate and the legal description is accurate.

3. 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.

4. All 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 photocopy 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 photocopy. She did not notice the bad photocopy until it was too late.

5. 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.

6. 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 Supplemental 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 Supplemental Needs Trust to your Living Revocable Trust and also create a separate First Party Supplemental Needs Trust for the handicapped child who will be receiving your military Survivor Benefits Plan (SBP).

7. 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 regarding the general paperwork usually required upon the death of a spouse.

8. 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 Wills are not recorded with the county. In addition, we typically do not keep copies of any signed documents except for the Will and Trust document (and those copies have only been retained within the last few years.)

9. 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 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 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.

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 do not have an updated Power of Attorney for example, then certain documents will be much more difficult to have available for the Medicaid process.

Remember, our office is here to assist you with any questions or concerns you might have about your estate plan. Do not hesitate to call if you have a question or need to schedule an appointment to discuss any issues in greater detail.

J. Mark Fisher
Bentley M. 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

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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* from amazon.com or Call one of the following offices to arrange pick-up or mailing:

www.jmarkfisher.com
Toll Free (800) 977-9733
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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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Yearly client letter

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