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Yearly Letter/Estate Plan Update – December 2021

Dear Clients:

I just reviewed last year's letter where I was relating news from an article I read. The author forecasted we would be wearing masks and having COVID-19 protocols of social distancing for the next several years. How unfortunately true was his prediction. Additionally, my Kiplinger Tax Letter last year indicated President Biden would not make any major tax changes during this year. Again, they were correct. Now the question is, what about 2022? Kiplinger says the economy is booming with 10 million jobs open, and financially, all seems great. Inflation is kicking up a bit. Maybe we will earn more interest on our CDs. Otherwise, everything seems pretty solid. To me, this seems like very strange times. Never in the history of the car business have you been able to buy a car and after three years, sell it for more than you paid retail. I guess that is what happens when you pump several trillion dollars into the economy in one year. One thing I know for sure - taxes are going to increase. Not sure which ones, but it cannot stay at this level.

The inheritance tax rules are changing, and this has been on the books already. The amount you can give away for free at death, called the death tax exemption, is now increasing from $11,700,000 per person to $12,060,000 per person. This means while you are living and at death, or a combination thereof, you can give away up to $12,060,000 with no tax due. The yearly gift exclusion amount you can give away each year with no reporting requirements has been set at $15,000 for the past several years. This year, 2022, that amount increases to $16,000 per person. However, if you give away more than $16,000 to one individual during the year, you must file an IRS Form 709 Gift Tax Return. The $16,000 yearly gift exclusion does not affect the $12.06 million lifetime or death tax exclusion amount.

If you have a larger estate, $10,000,000+, there are significant changes brewing which you should consider. The likely result of the Biden tax plan will be to lower the amount you can give away for free. This amount as mentioned above, is already scheduled to drop from $12.06 million a person to $5-ish million a person in 2026. However, President Biden may accelerate that reduction. Clients having significant estates should see me prior to this becoming law. We can actually preserve all the lost exemption amount if I do a special irrevocable Trust, now. The type of Trust we use is called an *Intentionally Defective Grantor Trust* (IDGT). If it involves a married couple, it will be the same Trust, but each spouse will create a S*pousal Lifetime Access Trust* (SLAT). I know that is a lot to absorb, but the end result will be if you have a very large estate and you use one of these Trusts, there is a potential savings of up to $5.6 million in taxes. This means with proper planning we can save your family up to $5.6 million that would otherwise go directly to the IRS.

Many of our clients select one of their adult children as successor Trustee of the 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 the 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, but their adult child can now be added to their accounts as Co-Trustee. The child will have access to their financial accounts and be able to manage the money and use the money, but only for the benefit of the client. As an example, when my father passed away 16 years ago, I

was added as Co-Trustee on my mother's Trust. She has been mentally fine and dandy for all these years and I have done nothing to assist her yet. However, I appear on all her account statements and if a time comes when she falls and hits her head and is unable to write checks, I will already be on the account with the ability to continue writing checks immediately. I do not have to get a doctor's letter and explain to anyone why I am there. It makes my life so much easier having that immediate access and ability to pay bills and check on the status of her accounts.

Adding an adult child as a Co-Trustee does not give that child the ability to run your life, change your Trust, or take assets for their benefit. They are serving in that position as a fiduciary and can only do what is in your best interest. I have no negative results thus far, where a child has overstepped his or her duties and used money inappropriately. There are tremendous responsibilities in this job position. I ask my clients to choose the adult child that will fulfill this job in the most efficient and honest manner.

I would like to give one other quick tip about successful Trust administration. The Trusts I draft for my clients are provided in a three-ring binder which is very well organized. There are many sections providing all sorts of information, forms, and places to store information. It is a treasure trove of estate information for your children after you are gone. Sometimes, my clients will not share that information with their children and after death, the kids will locate the book but still be uncertain about how to move forward. I find the most successful Trust plans I draft are the ones where in later life, the children are involved. They have reviewed the Trust and sometimes have been included in making changes and attending the signing conferences. A parent may not want to share all the financial data, such as their net worth, but it is very appropriate to share the legal documents, so the children have a better understanding of who is in charge, and what their responsibilities are when needed. One last tip: please give a copy of your Trust book to your Co-Trustee, adult child, or successor Trustee adult child.

On another subject, our legal staff is growing. We just recently added a new attorney to our firm, James R. Green, Jr. He is a preeminent litigation lawyer from Pensacola. Jim came from another local firm and brings vast litigation experience to ours. I asked him to give me his thoughts about litigating estate matters, and his comments follow:

"Loss of a loved one is always a sad time, and too often it is made worse where the loved one's estate planning has been unlawfully changed to exclude those the deceased cared for most. Sometimes, the culprit is an end-of life caregiver, sometimes it is a family member or friend, but it always makes the loss more difficult. We have decades of experience helping clients navigate these painful times, correcting these wrongs, and obtaining for our clients, what they were entitled to under the law.

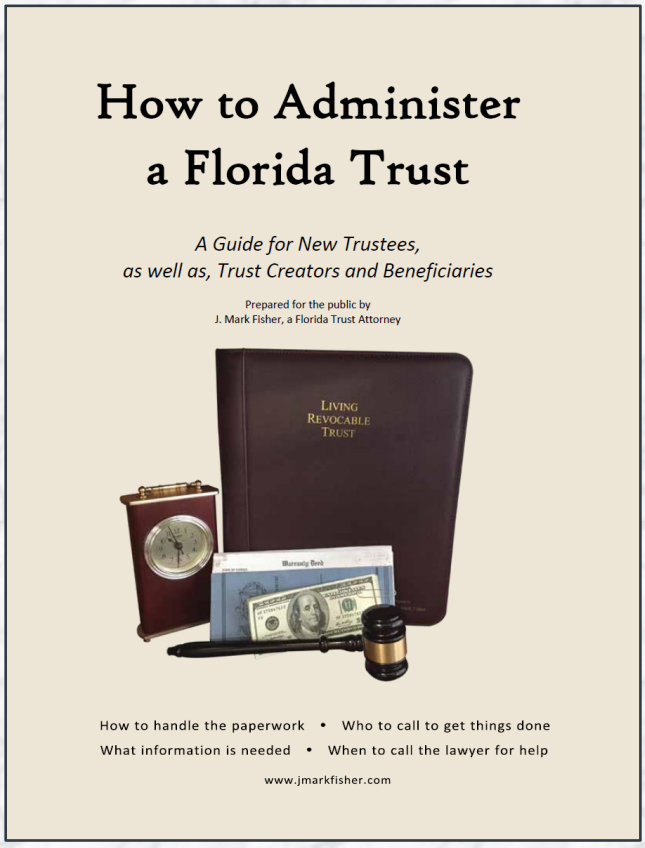
Whether the issue is the decedent's lack of mental capacity to make a change in their estate plan, or the change is the product of undue influence, coercion, or duress, our firm has the expertise and experience to help correct the unlawful changes. We have helped clients where a marriage was procured by fraud and a beneficiary murdered the decedent. We have set aside Wills, Trusts, and bank account and insurance beneficiary designations. We also have experience dealing with personal representatives and Trustees who are not fulfilling their legal and fiduciary obligations. Regardless of the issues you face with a probate or Trust administration, we have the knowledge and expertise to help, and the understanding and compassion to mitigate the burden on our clients, during such difficult times."

If you will go online to www.jmarkfisher.com, you can browse through our website and look at our prior yearly letters. Certainly, the last three or four years would be very helpful to review. We have many tips and observations for you. There are just too many to reprint, but they are all online and hopefully will be a great source of legal information about how you should manage your Trust in the future. As always, we do not charge our estate planning clients for phone calls, so please call if you have any questions.

Sincerely,
J. Mark Fisher
Bentley M. 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* 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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Fisher & Fisher yearly client letter

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