

Estate Planning for Your Home Away From Home

Let's take a boat to Bermuda
Let's take a plane to Saint Paul.
Let's take a kayak to Quincy or Nyack,
Let's get away from it all.

– lyrics by Tom Adair and Matt Dennis

Do you have a house at the shore? A condo in ski country? Time share in Florida? In just how many states do you own real estate?

Every state in which you own real estate will be involved in the settlement of your estate unless you arrange your estate plan to avoid this complication.

Real estate law is state law. Only the courts of a particular state have authority to resolve issues about title and ownership of real property located in that state. If you are a resident of Pennsylvania when you die and own a condo in Florida, settlement of your estate will require a domiciliary probate in your county of residence in Pennsylvania and an “ancillary probate” in Florida. An ancillary probate is required in each state where real property is owned in the name of the decedent.

Not only are there probate proceedings required in the other states, but there can be inheritance and estate tax due to those other states as well. That's a lot of probates, a lot of fees, and a lot of lawyers.

The first thing your estate plan should do is eliminate the need for these probate proceedings in various states. The simplest way to do this is titling real estate in other states in joint names - first with a spouse, and then with intended beneficiaries such as children. This simple device means that the real property will pass to the surviving joint owners on your death, and no probate proceeding is required. Changing the title to include joint owners requires the preparation and recording of a new deed. It may also require the consent of a mortgagee if there is a mortgage on the property. While this is a simple procedure, there are downsides to joint ownership. Any sale, mortgage, lease or other transaction involving the property requires the unanimous consent of all owners and a joint tenant's interest is exposed to claims of his or her creditors.

Another solution is to transfer title of out-of-state real estate to a revocable trust. The title to the shore home is then held by a Trustee, not by the individual. When the individual dies, the trust continues; and there is no need for a probate since the owner did not die (the trust lives on). No title question will arise. This technique has the added benefit of retaining complete control of the property in the hands of the creator of the trust.

Sometimes these properties are transferred to entities like corporations, limited liability companies and partnerships. Again, since the decedent did not hold the title to the real estate, but rather, the entity which has a continuing existence held the real estate, there is no need for an ancillary

probate.

Most of these techniques do not remove the property from the taxing jurisdiction of the state where the real estate is located. Your executor can expect to file state death tax returns and perhaps pay tax in these other states.

What if your get-away place is an island villa in Kokomo, Antigua, or a pied-a-terr in Paris? You'll need to consider the foreign county's probate and estate tax systems in your estate plan. Your attorney will need to work with counsel in the foreign jurisdiction to co-ordinate an estate plan that will include that property too.