Planning Considerations for Out-of-State Real Estate, Mobile Homes and Foreign Real Estate

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Generally speaking, real estate is subject to the laws of the jurisdiction in which it is located. That makes coordination of property ownership outside your home state an especially important piece of your overall estate plan. Failing to specifically address the funding/titling of this real estate can cause, among other hassles, unnecessary court processes at death. The following are a few things to consider.

Out-Of-State Real Estate
If you utilize a revocable trust as your main estate planning vehicle and you own real estate outside of your home state, specific funding steps are required to avoid a probate proceeding in that other state at your death. The type of funding will depend on the state. Approximately 15 states (including Wisconsin) allow transfer on death deeds – this is akin to a beneficiary designation, allowing for the transfer of real property to a revocable trust or other beneficiary at the death of the owner without the need for probate. Title to the property does not change during your lifetime. This continued titling in your name during lifetime can make obtaining financing or home equity lines of credit less cumbersome while still avoiding the court process at death and are a great option for states that allow them.

If you own real estate in a state that does not permit transfer on death deeds, you will likely need to re-title the out-of-state property in the name of your trust to avoid probate at death. Depending on the state in which the property is located and the type of real estate being transferred, this change in ownership may have insurance (title insurance and/or liability insurance), banking (possible mortgage restrictions), and tax consequences, so consulting with your estate planning attorney prior to initiating such a transfer is important. The consequence of moving the property into a trust can be weighed against the costs/hassle of having an out-of-state probate process at death. The bottom line, however, is that the funding of out-of-state real estate should be addressed as part of your overall estate plan to ensure the plan works as intended.

Mobile Homes
If you own a manufactured home or mobile home in another state, how you transfer that home to your revocable trust will depend on how the home is treated under state law. How the mobile or manufactured home is treated may depend on a number of factors, including whether it is situated on a permanent foundation, or the ownership or rental arrangement with respect to the underlying real estate. In many states, manufactured homes or mobile homes are treated like motor vehicles (or personal property), and title must be registered either through the motor vehicle department or a similar department of the state government. Other states treat mobile homes more like real estate. Regardless of how the property is classified, specific planning is needed to ensure the home can be transferred to your trust outside of the court process. Because this is a state specific question, it is very important to consult with your estate planning attorney to confirm how best to transfer title to your revocable trust to avoid probate.

Foreign Property
The use of revocable trusts for court avoidance at death is largely a U.S. concept, so you should not fund foreign property of any kind, real estate or otherwise, into a U.S. trust without careful consideration and consultation with a qualified estate planning attorney. If you have foreign real estate, specific analysis of the laws of the country in which that real estate is located will be required. You may need a foreign Will to dispose of such property or to have your U.S. Will translated into the language of the country and probated there at your death. Some countries will allow you to provide for a transfer on death in the original deed as an alternative to the use of a Will, while others will not. Some countries also have restrictions on ownership of real property by noncitizens, for example:

- In Mexico, if a property is within 50 kilometers of a coast or international border, the property must be held in a 50-year trust (Mexican bank) with you as beneficiary. The trust is renewable, but the terms of the renewal are currently unknown. In addition to the normal closing costs, fees and ongoing maintenance, there are annual trustee fees related to the trust.
- Canada freely permits U.S. citizens to own residential and commercial real property. There is no residency requirement, but immigration laws must be followed, especially for extended stays. In addition, income and real property taxes will be required to be paid to the Canadian taxing authorities.
- Germany also permits U.S. citizens to own real property. German law does not allow for ownership in trust, so extra thought needs to be given to ownership and succession.

Ownership of foreign assets is something you should specifically disclose to your estate planning attorney so appropriate planning can be achieved.

Real Estate Considerations Post-Death

Post-death administration of real estate presents a number of unique issues. A trustee/personal representative has a duty to maintain the real property, which can include: mowing the lawn, shoveling snow, and paying heat, electric and property tax bills. If any of these payments are on auto-pay through a bank account that may need to be closed, alternate payment arrangements will need to be made to ensure continuation of service. Maintaining home owner's insurance during the administration process is extremely important and should be coordinated early on in the process. A change of address should be submitted to the post office so all mail is forwarded to the trustee/personal representative. Another consideration is whether to change the locks to the real property to secure the property and anything inside.

If the estate plan includes specific direction regarding the disposition of the real estate, the trustee/personal representative will need to coordinate such distribution. A deed will be required to transfer the property from the trust/estate to the beneficiary. If the real estate was not given to someone specifically, the trustee/personal representative will need to decide whether to sell the real property or distribute it in kind pursuant to the terms of the estate planning document. If the trustee decides to sell, the trustee must prepare the real property to be put on the market, determine the listing price, secure a broker or otherwise secure a buyer, work through the sales due diligence, and then collect the sales proceeds to add to the balance of trust assets or distribute according to the estate plan document. A qualified estate planning attorney can assist with these functions.

Estate and Gift Tax Exclusions and Exemptions

2023 Gift tax exclusion. The amount that can be transferred to any individual without any gift tax consequence (and without using your lifetime exemption described below), has been raised from $16,000 to $17,000 for the year 2023. Remember, this is the gift tax annual exclusion for present interest gifts only. The exclusion will not apply to a gift of a future interest, so only some gifts to trusts qualify for the exclusion. If you have questions, be sure to give us a call.

Estate/Gift Tax Exemption. The value of property that can be transferred by gift or at death without tax (the lifetime exemption) adjusts with inflation. After the inflation adjustment, the lifetime exemption for an individual for gifts made during 2023 or deaths occurring in 2023, is $12,920,000. Married couples can now share exemption so that a married couple can transfer nearly $26 million without gift or estate tax. Transfers to spouses and charities continue to be free of tax (and will not use your lifetime exemption) as long as the transfers qualify for the gift or estate tax marital or charitable deduction. There are specific rules for gifts to a noncitizen spouse and noncash gifts to charities that we can help you navigate. Remember, the increased exemption is scheduled to end on December 31, 2025, when it reverts to the levels before the Tax Cuts and Jobs Act which, with an inflation adjustment, may be expected to be between $6.5 and $7 million per person, or $13-14 million for a married couple. Of course, Congress could make other changes prior to that date.

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