

# **The Do's and Don'ts of Giving Away Your Homestead**

**Careful estate planning now can result in the minimization or elimination of gift, estate, and income taxes on the transfer of your home to your heirs. Additionally, be sure to have a Will or Revocable Trust because failure to do so may result in your home passing under the Florida intestacy and Homestead laws.**

If you're a homeowner who is a firm believer that "your home is your castle," you should have a plan of action in place that will lay the groundwork for transferring your "castle" to heirs. Because if you don't, the Internal Revenue Service and the State of Florida already have a plan – a scenario with an outcome that you may not like. Below are few situations to consider.

## **Intestacy Law and Homestead Law**

Without a properly drafted Will or Trust, the State of Florida has its own set of laws regarding who shall inherit your homestead. This is especially important if you are in a second marriage with no children or have children from a previous marriage. When anyone without a Will dies, the state's intestacy statutes kick in to govern who inherits.

Florida Homestead laws are in addition to intestacy laws, which specifically state who must inherit your homestead if are married or have a minor child. The law is designed to make sure you leave a roof over your spouse's head (or minor child). This means Florida Statutes will control who inherits your home. In a first marriage situation, this may make little difference. However, in a second marriage with children from a prior marriage it is essential to decide who you wish to inherit your home.

## **Homestead Waiver**

If you are married and you do not wish to pass your home outright to your spouse, then it is critical to enter into a marital agreement with your spouse. Wherein this agreement you waive the constitutional and statutory protection that would otherwise prohibit you from giving your home to someone other than your spouse. Don't leave the disposition of your home up to chance. If you enter into a properly drafted homestead waiver, then you are free to give your home to whomever you wish.

## **Joint Tenancy with Rights of Survivorship**

If you are married, you can choose to take title to your home in both you and your spouse's name. This will result in the property transferring directly to the living spouse when one passes away. However, this may not be exactly what you want, especially if you ultimately wish for the property to transfer to someone else.

## **Joint Tenancy with Non-Spouse**

You might assume that adding someone as a joint tenant would eliminate a lot of probate problems if you die. Although this may be true, the act of adding another person to your home title could result in the loss of your homestead protection and the loss of your Save Our Homes exemption.

## **Capital Gains on the Sale of Your Homestead**

There is an advantage to keeping your home until you die. If you leave your home to your family, they will inherit the property with an updated cost basis and any capital gain disappears. If you gift the home while you're still alive, the receiving individual may take your adjusted cost basis and therefore have a capital gains tax to pay upon the sale of the property. **Before changing the title to your home, seek legal advice.** The simplest solution could ultimately be the most complicated long-term.

These are just a few basic tips that Florida homeowners should know. Other articles cover more advanced techniques to reduce or eliminate gift and estate taxes, including the use of a qualified personal residence trust, a spousal irrevocable trust, or a charitable remainder trust.

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