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REALTOR AND REAL ESTATE ATTORNEY GUIDE TO ESTATE PLANNING

WHY MY REAL ESTATE ATTORNEY SHOULD PRACTICE ESTATE PLANNING

The general practice attorney or doctor is a thing of the past. Today, the complexities of law and medicine have resulted in specialization. Purchasing a home in Florida should be handled by a Real Estate Attorney who practices Estate Planning. This article is a brief checklist of important estate planning issues affecting the purchase and disposition of Florida Homestead.

Here are the Top 10 issues to consider when dealing with Florida Homestead:

1. Florida Homestead Protection

There are three unique types of Homestead protection: 1) Save Our Homes (SOH) Exemption, 2) Creditor Protection, and 3) Prohibition regarding the Alienation and Devise.

A. Homestead Real Estate Tax Savings - SOH Exemption - There is an exceptional Real Estate tax savings for primary homeowners - It is a three percent cap on increases in real estate taxes per year. You must be qualified for homestead by December 31st in the subject year and apply by March 1 in the following year.

B. Florida Homestead Bankruptcy Protection - Florida is well known for its protection from creditors and plaintiffs if you own homestead and are looking at a liability that could otherwise force you into selling the property to satisfy the liability. There is protection afforded to homesteaders under the Florida Statute and Constitution.

C. Prohibition regarding the Alienation and Devise - In Florida, if you have a spouse or minor child you must leave them a roof over their head. In other words, you cannot give the homestead away without proper planning and consent (consider using a Homestead Waiver if you wish to provide for the disposition of homestead other than as proscribed by law).

How to take title to homestead real property - Understanding Tenants by the Entirety vs Joint Tenants with Rights of Survivorship vs Tenants in Common (Title assets to avoid inadvertent disposition/estate planning). This is especially true when you have children from a prior marriage.

2. Property and casualty insurance issues in Florida

Homestead is exempt from forced sale in bankruptcy. How you take title to your homestead may have a direct effect on the insurance costs. We suggest a large umbrella policy to cover excess liability over the standard homeowners insurance coverage.

3. Change of Domicile Action Plan

It is essential to jump through the change of Domicile checklist hoops to ensure that your Florida homestead is protected and you do not have to pay unnecessary Northern State income tax or estate tax. Do not miss the deadlines for declaring Florida your Domicile and obtaining the SOH Exemption discussed above.

4. Northern State Taxes

High net worth individuals moving to Florida number one concern is estate planning - Why? To avoid the long arm reach of the northern state's department of revenue Steps to avoid Northern State taxation on all net income and in the sale or exchange of an asset, as well as Estate Taxes. Seek the advice of Florida and Northern State accountants for details.

There is a myth that you must be in Florida for six months (180 days) before declaring domicile. The key is to be out of the Northern state an adequate number of days to avoid being taxed in that state.

5. Proper legal documents for cognitive impairment

It is appropriate to "Floridize" your northern EP documents. That means that your documents should be brought up to date in Florida to cover the ability to handle finances and health care decisions locally. The Northern documents may be valid, but they may be deficient in the substantive provisions. For example, the Durable Power of Attorney must reference Florida Homestead in order to transact the sale of the homestead.

6. Probate Avoidance Strategies

Don't let the tail wag the dog - probate avoidance is okay but, state income tax planning, asset preservation, homestead exemption and so much more are all issues that are equally important to reduce the cost of estate administration. A smooth and efficient administration is what you are looking for, not to avoid probate in its entirety. Titling your homestead in a revocable trust does not eliminate the necessity for the homestead procedure which is part of the probate court process.

7. Tax Saving Strategies

There are many ways to transfer your homestead and save taxes. Be very careful because you do not want to lose very valuable homestead protection. Qualified Personal Residence Trust, Gifting Trusts and Joint Purchases are just a few tax saving strategies if you have a taxable estate. With the extremely high exemption, most people do not need to give the homestead away during their lifetime.

8. Family Agreements regarding the use of Florida property

If your children and grandchildren love your place...You may choose to leave the home to them in a "Pot Trust." This technique requires a great deal of forethought including designing a use agreement, getting homeowners association approval, obtaining proper liability insurance and structuring the ownership properly to minimize future liability.

9. Life Estates Strategies

Can I have my cake and eat it too - give away my home for asset preservation and Medicaid without losing control or use of my property? There are many life Estate strategies that work but, again, do not enter into one of these strategies without elder law counsel and tax counsel. You also do not want to give up control or the valuable homestead protection.

10. Miscellaneous

Risks associated with reverse mortgages, how to obtain Medicaid without losing your homestead to the State, intra-family loans to maintain the homestead, planning for second marriages and the impact of divorce on the homestead.

Parties to a real estate transaction often overlook the magnitude of the impact the purchase or sale of real estate has on an individual's overall financial and long-term-care planning. When working with a real estate attorney who practices in the areas of estate planning and elder law, you will have a unique opportunity to make sure these important considerations are taken into account.

Visit www.probate-florida.com to read more about this subject and other estate planning matters.

Ed Wollman is a Florida Bar Board Certified Attorney specializing in wills, trusts, and estates with over 32 years of experience practicing in the state of Florida.

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