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OUT OF STATE REAL ESTATE AND ESTATE PLANNING

It is fairly typical for people to own real estate in another state. This can be a second home, vacation home, lot, family farm, or timeshare interest. For this issue, assume that the person is an Ohio resident and owns a second home in Florida. The assets are:

Ohio House	**$400,000**
Florida House	**$400,000**
Investments	**$1,000,000**

The state that controls the process is Ohio because the person is an Ohio resident. Thus, Ohio's Probate Court, Ohio's laws, and Ohio's estate tax structure applies. In this case, only an Ohio Will/Trust will be needed. You **do not** have both an Ohio Will for the Ohio property and a Florida Will for the Florida property.

What happens next depends on the type of one's estate plan. Dying with a Will or without a Will (i.e. no Trust) results in the same process. However, the person who dies without a Will has a higher cost of administration. The other plan is a person who dies with a Living Trust.

It should be noted, before I go further, that Ohio has jurisdiction over the investments irrespective of where the investments are located. Whether the investment account is located in Florida, California, Ohio, or Texas is irrelevant. Ohio has jurisdiction and Ohio estate taxes apply. Real estate is the only asset caught up in the multiple jurisdiction quagmire.

Person Dies With or Without a Will

The Ohio Will would be filed in Hamilton County Probate Court and the Executor would be appointed. If there is no Will, an Administrator would be appointed by the Court. The Administrator is usually a family member but may also be an outsider. The Ohio Court has jurisdiction over the Ohio house and the investments. An exemplified copy of the Will and Letters of Authority are requested from the Ohio Court. An exemplified copy is a copy of those documents certified by the Court and contains the Court's seal stamped on it as an official Court document.

The exemplified Ohio documents are then filed in Florida Probate Court to open an Ancillary Estate Administration in the county where the Florida property is located. The Florida Court appoints the Executor and gives him/her Florida's Letters of Authority. If there is no Will, then a Florida person has to be appointed as the Florida Administrator. Therefore, if the deceased person does not have a Will, an Ohio person will be appointed as the Ohio Administrator and a Florida person will be appointed as the Florida Administrator.

The Ohio Executor/Administrator processes the Ohio real estate and the investments through the Ohio probate process. The Florida Executor/Administrator does the same for the Florida real estate. The two lawyers, one for Ohio and one for Florida, work simultaneously to sell or re-title the properties pursuant to the terms of the Will. Needless to say, the cost of two administrations can be substantial.

Person Dies With a Trust

If the person had a Living Trust as a part of the estate plan, Ohio's Probate Court and Florida's Probate Court would not be needed. Only one attorney would be needed for the Trust administration. The successor Trustee has authority, in the Trust document, to sell or re-title the properties pursuant to the terms of the Trust.

Estate Tax

Estate taxes are prorated between the states based on the real estate, if both states have an estate tax. In this example, Ohio would tax the value of the Ohio house and the investments. The Florida real estate is non-taxable to Ohio. Florida does not have an estate tax. Therefore, nothing is paid to Florida for the Florida house. The Ohio estate tax on $1,400,000 is $72,700. Assume we reverse the place of residency. The person described above is a Florida resident, not an Ohio resident. Florida would not tax the Florida house or the investments because there is no estate tax. Ohio would calculate the Ohio estate tax on $1,800,000. The Ohio estate tax would be $100,700. The tax would then be prorated based on 4/18. Of the $1,800,000 estate, $400,000 is located in Ohio. This is 22% of the total. You would pay Ohio 22% of $100,700 or $22,154.

This is one reason people become Florida residents. The estate tax savings is $50,546.

Timeshares Properties

Timeshare properties are real estate interest. Thus, you must open an Ancillary Administration in every state where you own a timeshare. Further, timeshare interests are not worth much. The typical timeshare is worth $5,000 to $15,000. I had a client who had three timeshares in Hilton Head. We had to hire a local attorney who charged him $2,500 to probate the three of them. They were worth $15,000 in total. Thus, the legal fee was 16% of the value of the asset. It is essential to buy new timeshares in your Trust name and to re-title existing timeshares into your Trust to avoid multiple probates in multiple states.

I hope this helps you with your retirement planning, estate planning, tax planning, and financial planning journey. Let me know if I can be of assistance. I welcome the opportunity to be a part of your team.

John B. Cornetet