

To: P&G Employees
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Re: Ohio Estate Plan When You Move To Another State

There are two different property law systems in the USA: common law states and community property law states. This article deals with common law states. I know very little about community property law. If you move into these jurisdictions, consult local counsel. Community Property States are: AZ,CA,ID,LA,NV,NM,TX,WA,&WI.

Full Faith and Credit and Comity

The Full Faith and Credit clause of the U.S. Constitution provides that various states must recognize legislative acts, public records, and judicial decisions of the other states within the United States. The principal of comity is that courts of one state will give effect to laws of another state, not as a matter of obligation, but out of deference and mutual respect. Thus, your Ohio Will is accepted by the probate court of another state as long as it complies with Ohio law.

Estate Tax

The federal estate and gift tax laws apply the same in all states. Thus, no change is necessary for the federal tax aspects of the Trust. There are some state estate tax laws that may be different and warrant review by local counsel. The states that have their own estate taxes or inheritance taxes are OR,IA,LA,IN,WI,KY,OH,TN,PA,CT,NJ & MD. Because of the federal estate tax law change, many states are reviewing their state estate tax laws and may adopt state estate tax rules.

Probate

There are three systems of probate: full probate states, opt-out states and opt-in states. Ohio is a full probate state. The opt-in and opt-out states are simpler and you only go through probate where someone wants to have the process. In Ohio we avoid probate by funding the Trust during life. Thus, if you move to a state that does not require probate with your funded living Trust, no problem. If you move to Ohio without funding your Trust, you have a probate problem. Assets in a Trust may remain in the Trust if you move to another state.

Disability Documents

Again, your Ohio Power of Attorney for Health Care and Living Will are valid in other states. However, these documents are state specific. If you go to a Florida hospital with your Ohio POAHC and LW, the Florida hospital must follow Ohio law when interpreting them. I recommend my clients to revise these documents. When my client moves to Florida and they want to maintain a relationship with me, I prepare the Florida POAHC and LW. Some clients create a new relationship with local counsel. We update the disability documents not because they are not enforceable, rather for convenience and clarity. The Florida doctor knows what the Florida POAHC and LW means.

Practical Issues

I have recently probated an Ohio Will through a Florida lawyer. The only additional paperwork required was for the daughter to sign an affidavit. Florida has a self-proving Will which means there are two witnesses and a Notary. To make our Ohio Will self-proving, we had to file an affidavit signed by the daughter.

Some people enjoy a face to face relationship with their attorney and financial advisors. Others move out of state, but continue with a Cincinnati attorney, financial advisor and CPA. The choice is up to the client. However, don't change because of fear tactics. The law is like any other business, we need new clients to make a living. My dad who lives in Ft. Myers was encouraged by his golfing friends to attend an estate planning seminar. The program touted a "New Family Protection Trust". He sent me the seminar outline. I was proud to advise him he had this "New" Trust since 1995. It was a generation skipping trust with a new name.

John