

Estate Planning and Time Share Units

Proper planning for your loved ones after you are gone can save them significant time, cost and headaches. Every year the association sees situations in which an owner's family is forced to pay thousands of dollars and spend hours of time that would not have been necessary had the ownership of the timeshare week been considered and handled properly in the deceased owner's planning. Many times these owners will have paid an attorney to prepare a good plan and, either because the owner did not tell the attorney of the timeshare week or the attorney did not understand the nature of the timeshare week or just because its "only a timeshare week", the ownership of the timeshare was not properly dealt with like other assets and therefore must be dealt with totally on its own at significant expense.

Types of Ownership

When the first timeshare resort was created, Minnesota decided to require all Minnesota timeshare units to be deeded weeks and treated like any other piece of Minnesota real estate. This provides both protection for you as the owner, as well as some additional costs and responsibilities. Thus, a timeshare week is in every way like owning your own home except on a scaled-down basis. You get a deed to your timeshare week that is recorded with the county in the land records like ownership of all other real property in the county. Thus, while you rent or swap use of your home with someone else, the bottom line is that you own the home that is deeded to you and recorded in the county records. To permanently transfer ownership, you must sign a deed and that deed must be recorded with the county (paying the fees for that recording).

If you die owning your home in your name alone, then your beneficiaries must go to probate court to transfer that ownership because you are not available to sign the deed yourself. The exact same procedures and the exact same costs are involved if you die owning a Minnesota timeshare week that is in your name alone also. Just because your timeshare week may sell for less money or be available for your use for less than full time does not change any of the real estate laws, procedures and costs that go with ownership of Minnesota real estate.

Other states may be different. There are many timeshare weeks in use and on the market from other states and countries that are simply based on a contract for use. In some cases, you are actually purchasing a lease term for a fixed period of time. In other cases, you are contracting only for the right to use the facilities for a week, sometimes with a specific unit specified and sometimes a "floating" usage that does not pertain to any specific unit in the resort, but only promises that you may use some unit in the resort that is available at the time that you book it. There are even other timeshare arrangements where only a club membership is what is being purchased without any direct or indirect relationship with any specific resort or real estate involved. Generally any of these arrangements not involving a deed to a specific week or unit are subject to much less stringent (and costly) transfer requirements and have a much better chance of being transferred after one passes away outside of probate court unless it is part of a larger general probate action.

Probate in Minnesota

Briefly, we should mention that probate costs in Minnesota are much less than the horror stories that you hear from other states. Some states set not only their court filing fees by statute as a

percentage of the estate, they also specify the attorney fees and the personal representative fees as a percentage of the estate by statute. New York goes even further and specifies that the personal representative fees include a “commission” that is payable to the personal representative every time the personal representative transfers funds, renews a certificate of deposit, transfers stock, etc. These costs are on top of the normal costs, if any, paid to the institution or financial advisor you have hired to assist in managing those items. Minnesota has a flat court filing fee that applies to every estate regardless of size, Minnesota attorneys generally charge only for their time involved in handling the estate matters and generally individual personal representatives will waive a fee for their services. However, as mentioned above, the procedures are the same for small estates as they are for large estates and, therefore, the costs of probating one or two items in Minnesota can closely approximate the costs of probating many items. Probate is the legal process where the court appoints someone to act on behalf of the decedent, who obviously no longer can sign a deed or make transfers him/herself.

Alternatives to Probate

Any asset must go through probate only if there is no other owner or transfer vehicle available to move the ownership of an asset out of the decedent’s name. If ownership is in the name of two or more individuals as joint owners with rights of survivorship (“joint ownership”) then once someone passes away but one or more survivors exist on the title, the ownership passes to those survivors. (This differs from ownership as tenants in common whereby each co-owner owns only their own percentage of the asset and once they pass away their ownership passes according to their Will or statute which, if not otherwise handled, will require a probate proceeding.) If all joint tenants die, then the asset will need to go through probate as there will be no one left to sign a deed to transfer the asset.

Another way of avoiding probate is through a designation of a beneficiary. This has been available for years through POD accounts at banks and with securities. A few years back, Minnesota adopted Transfer on Death Deeds (TODD), whereby owners of real estate may specify how title shall pass upon their death without having to take the asset through probate. A TODD must be signed and recorded before the owner passes away in order for it to be effective. TODDs do not work well in complicated circumstances and have no effect on the ownership or control of the real estate until the actual owner passes away. Before death, the owner can change any designation on a TODD by preparing and recording a new TODD with the change in designation. (Since in Minnesota all owners and all of their spouses need to sign the deed transferring the real estate, TODDs do not work well with large multiples of beneficiaries. For example, if you want to leave your home equally to your three children and list them on a TODD, when you are gone, not only do all three of your children need to agree, but also their spouses in order to sell the house and give a deed to the new buyer.)

Another alternative to probate is to use a revocable trust. The advantage of using a revocable trust is that you may specify alternative dispositions of your property based on changing circumstances that may occur after you are gone. There are many advantages and other considerations that are involved with a revocable trust that are beyond the scope of this article. Many people use revocable trusts for their estate planning and, with some diligence on their part or their advisors part, they can work very well when then the owner passes away.

With a revocable trust, the individual setting up the trust essentially does the work of making transfers before they pass away, thereby making probate unnecessary but, because the work is done up front, revocable trusts involve more costs on the front end than preparing a Will. If essentially everything is put into trust before the person passes away, that additional cost is roughly equal to the cost savings to the family after death.

The most common vehicle for estate planning is a Will. Having a plan and using a Will is generally a very good thing and does significantly help the transfer of one's assets after death. A Will does not avoid probate; in fact, to be effective, a Will must go through probate to be "proved up" and approved by the court. In fact, the word "probate" comes from the Latin term "to prove". (If you do not do any estate planning and do not have a Will, the state provides the Will for you by statute with detailed instructions on how your assets shall pass.) A Will can provide many tax and administrative benefits that revocable trusts can provide, except that it does not avoid probate.

Estate planning is necessary for all of us. Unfortunately, the question is not whether our passing will happen, but when. Having a deeded timeshare week in Minnesota gives us many protections, but it also requires that we plan for the transfer of our week, just like we need to plan for the transfer to our loved ones of our home or any other piece of real estate that is in our name. Timeshares can be easily overlooked in this process, both in our own minds and in the minds of our professionals. The cost to our beneficiaries if we fail to properly plan for their transfer, can be significant relative to the value of our timeshare week. It is therefore important to discuss the transfer of your timeshare week with your estate planning professional when you consider your own planning.