



Buying a Second Home? First Consider How to Take Title

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More and more people are purchasing second homes, many of which are located in states other than the state of their primary residence. In addition, many people are buying second homes jointly with friends and family in order to both share the cost and more fully utilize the second home.

When purchasing a second home (including many time share interests), it is imperative that you anticipate a number of foreseeable, but often overlooked, events:

1. the death of an owner;
2. a dispute between co-owners over expenditures, occupancy, etc.;
3. the inability of a co-owner to contribute to required loan payments or maintenance, repair or utility costs; or
4. the insolvency or other financial difficulties of a co-owner.

Choosing the correct vehicle in which to take title to a second home can help immensely in addressing many of the above foreseeable events. It is rarely advisable to take title to a second home in an individual's personal name. It is certainly simple to take title in your personal name but the only situation in which it may make sense is if the second home is owned by a single individual, or couple, and the second home is located in the same state of the owner's primary residence.

The transfer of real estate at death is generally governed in most states by the probate laws of the state where the real estate is located. As a result, if an individual whose primary residence is in one state, say Ohio, dies owning a parcel of real estate in another state, say on Lake Cumberland in Kentucky, it would be necessary to initiate probate proceedings in both the state of the primary residence, Ohio, as well as in the county of the state where the real estate is located, which would be a county in central Kentucky.

The cost and aggravation of initiating probate proceedings in a second state as a result of ownership of a second home is easily avoided. Title to the second home can be transferred into a revocable grantor trust or in a single member limited liability company. A beneficiary transfer or distribution from a trust, even if involving title to real estate in another state, would not be governed or controlled by the probate laws of that state. Similarly, the transfer of ownership interests in a limited liability company or a conveyance by a limited liability company would not be governed by the probate laws of the state where the second home is located. This simple method of ownership avoids the possibility of the expense, aggravation and delay caused by a second probate proceeding in another state.

Ownership through a limited liability company should be automatic when owning second homes with other family members or friends. The operating agreement governing the limited liability company can address a number of issues involving required contributions, transferability of interest, occupancy, etc. In addition, since a limited liability company has a legal existence and identity separate and apart from the members, it provides an effective buffer from any adverse financial situation of any of its members. Finally, a limited liability company provides a much easier vehicle for transfer of ownership of the vacation home by utilizing membership interests as opposed to deeds to partial interests in real estate.

Before purchasing a second home either by yourself or with others, it is important that you seek legal advice in addressing the type of ownership which best suits your needs.