

ON VACATION HOMES OUTSIDE THE STATE

Advising clients

By Bradley B. Wrightsel

In this day and age, you frequently will have clients who own a vacation home or plan to acquire one. There are different factors causing people to acquire such property. It may be a convenience factor for a client whom spends a large amount of time in another location, e.g., a spot where one likes to frequently vacation, or it may be a result of an inheritance, or it may have been acquired as an investment. Ownership of a vacation home poses several considerations for your client; however, the scope of this article is limited to the issue of title to property outside the State of Ohio. If a client consults with you regarding the purchase of a vacation home outside Ohio, it is imperative that you review with your client title ownership of the property. In reality, however, most clients consult with us after the fact. Therefore, if you are preparing an estate plan for a client who already owns vacation property, you need to determine how it is titled and consider whether re-titling might be appropriate. In determining titling, demand to see the deed, don't rely upon your client's understanding.

The impact of titling out of state property is similar to that of in state property. It establishes who owns the property and affects the manner in which the property will pass at your client's death. Titling and transfer of the ownership of real property is determined by the laws of the state where the property is situated. For example, your client might want the equivalent of a transfer on death deed, a relatively new form of ownership recognized by statute in Ohio. Unless you are familiar with the laws of the state where the property is located, you and/or your client may need to consult with an attorney in that jurisdiction.

Another form of titling in Ohio is joint ownership with rights of survivorship. Ohio law sets forth the language to place in a deed to effect that result. However, other states may not actually require the survivorship language. Our office recently had an estate administration that contained several out of state properties. For example, decedent owned real estate in Florida jointly with the surviving spouse. The deed did not have survivorship language, raising the question of whether an ancillary administration would be necessary. Florida legal counsel informed us that, despite the lack of survivorship language, under Florida law, husband and wife own the property in tenancy by the entirety and not as tenants in common. As we all remember from law school, the surviving spouse has the right of survivorship in this form of tenancy.

It is also important to determine how your client took title to the property, i.e., whether your client purchased the property or inherited the property. If your client recently purchased the vacation home, determining title ownership should not be difficult. However, many times your client will not know how the property is titled, particularly if it was purchased many years ago. There may even be occasions where your client doesn't even know the county in which the property is situated. This is a reason that it is important to see a copy of the document which transferred title to your



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client. If the property was inherited, determining title ownership may be a much more difficult task.¹ However, it needs to be accomplished and the beginning point is reviewing the document conveying title.

The next step is to discuss your client's estate planning goals to determine whether the title to the property needs to be changed. Your client needs to know how the property would transfer on death in the event that no further planning were done. For example, if your client owns a vacation home in another state in his/her sole name, assuming that your client dies a resident of Ohio, an ancillary administration will be required to transfer the out of state property.² An ancillary administration can be inconvenient, time-consuming, expensive, and will almost certainly involve your client needing counsel in the jurisdiction where the property is located.³ In other words, your clients undoubtedly would prefer to avoid ancillary administrations if at all possible. The simplest way to avoid an ancillary administration is to title the property so that it passes outside probate.

If your client wants to keep the property in the family, there are numerous considerations.⁴ While titling the out of state property with survivorship language in the deed may suffice, placing the property in a trust, a partnership, a limited liability company, are alternatives to consider with multiple beneficiaries. Before deciding on the method of ownership or re-titling of existing property, the client must identify to whom he/she wishes the property to ultimately pass. While in some cases this may be any easy question, there may be instances where either a child has no desire to own an interest in the property or your client has concerns with a particular child or children owning an interest.

You also will have many of the same considerations with a vacation home property that you have with other types of property. For example, if a child fails to survive your client, what should happen to that child's interest? Should the remainder interest go to the other surviving children or should the deceased child's interest pass to his/her children? How many children will own the property? If the vacation home is passed on to more than one beneficiary, how will the future decisions regarding the property be made?⁵ More times than not, a parent can identify one child above the others who is more adept at management. A limited liability company, trust or partnership may be an appropriate

method of deciding, in advance, who will make these decisions.

Another potential concern of your client might be a child's creditors. If so, the a trust with spendthrift provisions may be appropriate.

Another consideration regarding property ownership is estate taxes.⁶ One common means of reducing one's estate is gifting, utilizing the annual exclusion.⁷ If the property has appreciated in value significantly, your client might consider gifting through use of an irrevocable trust. A qualified personal residence trust (QPRT) is a possible choice in removing the value of the vacation home from your client's estate.⁸ Your client transfers his/her interest to the irrevocable trust, reserving the right to occupy the residence for a fixed term of years. At the end of the term, the residence passes to your client's beneficiaries. At the time that the trust is established, there is a gift of the value of the residence less the value of the grantor's trust term. If the grantor survives the term, the residence is removed from his/her estate. If the grantor fails to survive, the property remains in his/her estate and the unified credit is restored, making your client no worse off than if the trust was never created.

In conclusion, there are numerous considerations in advising your client regarding the purchase, ownership and the ultimate transfer, upon death or by lifetime gifting, of a vacation home. Your client is best served by your to determining their desires and goals with respect to the property. Additionally, your client should periodically update you regarding the status of the property and whether the client's goals have changed.

- ² Again, this is assuming that the deed does not contain survivorship language.
- ³ Suffice it to say that if you were the estate planning attorney, the estate beneficiaries may inquire as to whether ancillary administration could have been avoided.
- ⁴ It is possible that your client will simply want to have the property sold upon death to provide liquidity to the estate to pay debts and to make the distribution to beneficiaries easier. Even if that is the case, what provisions should be made, if any, should one or more of the beneficiaries want to purchase it from the estate?
- ⁵ These decisions may include whether certain improvements should be made, who will be responsible for the general management and upkeep of the property, and what insurance coverage should be obtained.
- ⁶ The uncertainty of the unified credit amount, the future value of the vacation home and your client's estate can make it difficult to determine immediately what estate tax planning is appropriate.
- ⁷ Any such lifetime gifting, especially of highly appreciated property, must be balanced against the loss of a "step-up" in basis at death.
- ⁸ The Internal Revenue Service's Revenue Ruling 2003-42 provides sample trust language.
- ⁹ Upon the expiration of the term, if your client is going to continue to occupy the vacation home, it should be pursuant to a lease agreement where he/she actually pays fair market rent.




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¹ This is especially true when your client inherited from an intestate estate. There are even occasions when a client comes to your office and the property's title is still in the decedent's name.

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