

Louisiana Residents Who Own Property in Other States

Louisiana residents who purchase property in other states should consider how that property is to be titled. Generally, individuals purchase real estate located outside of Louisiana in their individual names without giving much thought to its disposition after their death. However, these other states require ancillary probate proceedings within their states to pass title upon the death of the owner(s) for property held in individuals names.

How can these ancillary proceedings be avoided? What kind of ownership can prevent the necessity of these proceedings?

My client, Ms. Smith is a single woman and has no children. She does have nieces and nephews. She owns real estate in Louisiana plus five other states. It is her desire to maintain absolute control of the real estate during her lifetime, however, she does not want her heirs to be forced to open ancillary proceedings in the other states in order to inherit her property. Additionally, she wants the income from the real estate during her lifetime with the income and principal passing to her nieces and nephews upon her death.

After discussing the various options, the use of a revocable trust was recommended. A revocable trust was established with her as sole income beneficiary during her lifetime with the nieces and nephews becoming the income and principal beneficiaries at her death. The out of state properties were transferred to the revocable trust. Therefore, the properties are titled in the name of the trust and not in her individual name.

The revocable trust, which can be terminated at her discretion should she change her mind, becomes irrevocable at her death. At her death the real estate will pass automatically to her nieces and nephews as income and principal beneficiaries of the trust without the necessity of ancillary proceedings.

Thus, Ms. Smith's two concerns, avoiding of ancillary proceedings and being the income beneficiary for life, were solved with the use of a revocable trust.

Mrs. Jones and Ms. Washington, both successful business women in Louisiana, are pursuing the purchase of investment properties in Louisiana, Florida, California, New York and North Carolina. It is their desire that upon

the death of one of them that the surviving person have the right of ownership of the whole. They are also concerned about the liability issue.

After a lengthy meeting, the use of one or more limited liability companies was recommended. Limited liability companies will be formed, and each property will be taken in the name of the one separate limited liability company. Only having one property per limited liability company protects the other investment properties should one company be sued.

This limited liability company's ownership of the real estate will avoid the necessity of ancillary proceedings in the other states. The limited liability company ownership will also remove the liability issue from them individually. Naturally, the property must be insured in the name of the company not in their individual names.

Additionally, the members of the limited liability companies will execute an operating agreement to provide for a right of first refusal to the surviving member to purchase the deceased member's interest which will allow the surviving member the right to maintain total ownership of the properties. Without the operating agreement, the surviving member may not have the right of first refusal because that is not usually found in the Articles of Organization.

Therefore, the use of limited liability companies with operating agreements solved their concerns for the surviving person as well as protected them individually from liability issues. It also eliminated the necessity of opening ancillary proceedings.

Jim and Mary Jones, husband and wife, plan to purchase a condo in Mississippi. Mississippi has joint tenants with the right of survivorship. If the property is acquired by either spouse or both spouses individually without any further designation, an ancillary proceeding will be necessary. If the property in Mississippi is acquired by Jim and Mary Jones as joint tenants with the right of survivorship, no ancillary estate proceeding will be necessary. At the death of the first spouse, the property will pass automatically to the surviving spouse.

In conclusion, Louisiana residents who own real estate in other states can avoid ancillary estate proceedings in those other states by titling the

properties in such entities as trusts, corporations, limited liability companies or other interests such as joint tenants with the right of survivorship.