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When Sharing Your Property Results in Sharing Your Estate

by Neil A. Derman, Esquire

One of the most controversial topics in New Jersey estate planning is the incorporation of a living trust. A popular and well publicized technique nationally; the living trust is not as useful a technique in a New Jersey estate plan. A living trust does not minimize estate taxes due. Rather, it is a technique used to avoid the other expense of death, probate costs. Furthermore, it is somewhat successful at keeping an estate private.

However, New Jersey's probate costs are relatively inexpensive. New Jersey has the privilege of being one of the cheapest states in the country when it comes to probate fees. The average estate in New Jersey only costs a few hundred dollars to probate. So, if you are not concerned about the privacy of your estate, why would one use a living trust in New Jersey? The answer to that question is Real Estate. If you own real property in a state, say for example New Jersey, you are required to probate your estate in that state. An estate that has real estate in multiple states, for example a Pennsylvania resident who owns a New Jersey shore home, you must probate your will in multiple states. That means you are not only subject to Pennsylvania probate costs, but New Jersey costs as well. The need for a living trust becomes more apparent

Take Jim for example. Jim visits his estate-planning attorney this year. He discloses all of his assets to his attorney, including his home in Cherry Hill, New Jersey, and his shore home in Margate, New Jersey. Jim is not interested in keeping his estate private. He informs his attorney that he has heard that a living trust is a great estate planning technique, and all his friends are incorporating them into their estate plan. Jim's attorney informs him that all estate plans are different and that may be an appropriate technique for his friend's estates, but after careful consideration, it is not a good technique for him. Such a technique would only result in a higher legal fee and avoid a minimal probate cost.

If we stop the story here, it would seem that Jim's attorney has acted appropriately and probably done Jim a favor. Although Jim has multiple properties, they are all in the state of New Jersey. Therefore, he would only be subject to New Jersey probate costs (or probate costs in 1 state). These are minimal costs (as mentioned above). But what if the story didn't stop here.

As Jim and his attorney continue through their meeting they begin to talk about their favorite vacation spots. Jim begins to talk about how his family fell in love with Florida as a place to vacation. Actually, he loved it so much, he bought a time share in Florida and his family goes

once a year during their designated week. Jim's attorney decides to return to the previous conversation about living trusts and see whether Jim would be interested in incorporating this into his plan.

Although we don't often see it this way, most timeshares are considered real property interests in the state in which the property resides. With our primary residence, we signed a deed, and were granted the right to live in that property all year long for as long as we choose to own it. With a timeshare, however, we only have a designated small period of time in which we can use the property. How can the two be the same? The answer to that question lies in the deed. Often timeshare is accompanied by the signing of a deed. This deed is written for the state in which the property resides. It therefore denotes a property interest in that state. A timeshare, accompanied by a deed is likely to result in probate being required in not only your state of residence, but the state where you hold your timeshare as well.

A proper estate plan will remove the value of the timeshare from your estate or utilize a living trust to avoid probate costs in the alternate state. By placing your timeshare in a living trust you have successfully removed it from your estate for probate purposes. For certain states this may not be the most economical technique. Like New Jersey certain states have relatively inexpensive probate procedures. However, if we revert back to our example with Jim, his property was situated in Florida. Florida has an extremely expensive probate process and therefore in this example, a living trust would be a very successful technique used to avoid unnecessary costs for the estate.

Some Timeshare companies are offering a new form of timeshare, which operates more like a stock interest than a real property interest. Instead of a deed, one's interest in the timeshare is reflected as a share or an amount of shares in the designated property. An interest in stock does not require probate to be completed in the state in which the stock is situated. If the interest is treated as a stock interest, it is unlikely that probate will occur in the alternate state and therefore will be a more favorable way of holding timeshare, than the more common deed.

If you are like Jim, and hold a timeshare interest in a state somewhere other than where you reside, it may be in your best interest to look to incorporate a living trust in your estate plan. The use of such a trust can avoid unnecessary costs that would do no more than reduce the value of what your beneficiaries receive.

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Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

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If you have any comments, e-mail us at ccaruso@begleylawyer.com

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