

Special Feature

Estate planning options abound for 'snowbirds'



By Mark Iacono

The state of Florida has seen tremendous growth as its population has increased by almost 335,000 per year from 2000 to 2006. At the current pace,

it may swell by 36 percent from 2000 to 2025. Included in this demographic is an ever-growing number of New Englanders migrating south either on a permanent or temporary basis.

Trust & Estates

Apart from the obvious climate differences, the favorable income and estate tax regime of Florida compared to Rhode Island and Massachusetts has created an even greater incentive for "snowbird" retirees to make Florida their legal home.

Florida imposes no estate tax, and the federal tax does not currently apply to taxable estates under \$2 million. In contrast, the estate tax thresholds for Massachusetts and Rhode Island are currently \$1 million and \$675,000, respectively.

Although a change of residence can be a difficult decision involving severing ties from northern roots, these differing tax

policies are the genesis for valuable planning opportunities for those who split their time between Florida and Rhode Island or Massachusetts.

Creditor protection

The most recognizable of Florida's estate planning opportunities is its friendly homestead law. This law provides significant creditor protection for Florida residents by exempting the property from forced sale, with limited exceptions for payment of taxes and assessments, purchasing obligations or certain other obligations related to the realty.

Furthermore, the courts are reluctant to impose an equitable lien against proceeds a debtor-homeowner invests in the homestead property, unless it is clear the money was obtained fraudulently or through egregious conduct.

One of the most commonly used estate planning techniques is to place the principal residence in a revocable trust for probate avoidance purposes. However, Florida attorneys were sent into a tailspin in 2001 due to a decision by a Florida Bankruptcy court that said real estate owned by a revocable trust does not qualify for the homestead exemption because the law states a "natural person" must own the real estate.

Despite many commentators expressing their disagreement, lawyers were forced to rethink the effectiveness of this technique as it applied to the largest assets of most clients. Fortunately, recent court decisions, most notably the 2006 case *Engelke v. Estate of Engelke*, are moving away from this position

stating that the grantor's ability to freely revoke the trust at any time is essentially the same as owning the residence individually.

Tax abatement

Establishing residency in Florida will also help reduce the property taxes imposed on real estate. Because Florida does not have income or estate taxes, the state derives a significant amount of its income from sales and property taxes.

In 1998, Florida's constitution was amended to limit the increase in real property assessments for residents. As a result, any increase in the assessed value of the homestead property is limited to the lower of (1) 3 percent of the assessed value from the prior year or (2) the percentage change in the consumer price index.

This favorable treatment is also available if the home is placed in an irrevocable trust, as long as the individual retains certain rights and responsibilities such as the right to occupy.

Therefore, it is possible to structure the trust so that the individual has made a completed transfer for Medicaid purposes while retaining eligibility for the favorable limitations on increased tax assessments. This technique can be used when the client is likely to return to Rhode Island or Massachusetts if long-term care is required, making the out-of-state property a countable asset, otherwise.

Avoiding estate tax on summer home

The Rhode Island and Massachusetts estate tax on individuals with estates exceed-

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