

Time Share Headaches: What Happens to My Time Share When I Die?

If you already own, or plan to purchase a vacation timeshare, chances are that you are thinking about the sun and sand, not frustration and probate fees. Think again. What happens to your timeshare when you die a resident of a different state, or even a different country?

What happens to your timeshare upon your death depends on several factors. First, how is your timeshare titled: in your name only, as tenants-in-common with someone else, or as joint tenants with rights of survivorship with someone else? This matters upon your death because it tells the executor or personal representative of your estate how the property passes. If it is in your name only, your timeshare interest passes according to your will, or if there is no will, then according to the laws of intestacy in the state or country where the timeshare is located, not your state of residence. If you own your timeshare as tenants-in-common with someone else, your ownership in the timeshare (if you own it with one other person, then 50% unless stated otherwise, with two other people, 33 1/3% unless stated otherwise, and so on) passes according to your will or the laws of intestacy in the state or country where the timeshare is located. And if your interest is held as joint tenants with rights of survivorship with someone else (common for husband and wife), then the entire interest in the timeshare passes to the surviving owner upon the death of the first owner, that is of course, unless you have purchased a timeshare in a country that does not recognize rights of survivorship!

A timeshare titled in the name of a single owner or as tenants-in-common will have to go through probate upon the death of any owner. And a timeshare titled in the name of joint tenants with rights of survivorship will eventually have to be probated upon the death of the last surviving joint tenant. The complicated, frustrating and often costly aspect of timeshare probate is that the timeshare must be probated in the state or country where the timeshare property is located, NOT in your state of residence. So if you are a New Jersey resident with a timeshare in Florida, your executor will need to probate your estate in BOTH New Jersey and Florida. And worse yet, if you are a New Jersey resident with a timeshare in Florida and the Bahamas, your executor will need to probate your estate in BOTH New Jersey and the Bahamas!

Thanks in large part to today's technology, your executor probably will not be required to travel to state or country where your timeshare is located (perhaps to his or her dismay). However, the cost to probate open probate in another state or country just for your timeshare could be substantial. Probate in New Jersey is a relatively uncomplicated and inexpensive process. This is not necessarily the case in other states and countries, particularly those with antiquated systems of law and government.

You can avoid the need for your estate to be probated in two different states or even countries by setting up a Revocable Living Trust and purchasing the timeshare in the name of your trust, rather than in your own name. You do not relinquish any control over your timeshare interest, and unfortunately are not absolved from having to pay for the timeshare yourself. However, any assets titled in name of your trust, including your timeshare, do avoid probate altogether, saving your estate money and your executor the frustration of dealing with out-of-state attorneys and courts.

If you already own a timeshare, it is not too late to establish a Revocable Living Trust and transfer your timeshare interest into the trust. Contact our office if you plan to purchase a timeshare, or if you would like to learn more about whether it makes sense to transfer your existing timeshare into a trust.