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Estate Planning: A Guide for New Florida Residents

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Welcome to the "Sunshine State!" If you are like many Floridians, you may have already executed a revocable living trust, last will and testament, power of attorney, and medical directives, or some combination thereof, and may have questions about your "old" documents. This newsletter will address a few key aspects of Florida law as it relates to these documents as well as several issues I normally discuss with new Florida residents.

Homestead Exemption. Owning your primary residence in Florida means you are probably eligible for reduced property taxes via the homestead property tax exemption. In addition to the exemption, there is a limit on the amount your home's taxable value may increase annually. This limit automatically applies starting the year after you receive your homestead exemption and is commonly referred to as the "Save Our Homes" cap. Floridians owning homestead property should take advantage of the Florida homestead property tax exemption and Save Our Homes cap, and you may contact your county's property appraiser for more information. You may not be eligible for the exemption in Florida if you or your spouse are still claiming homestead property tax benefits in another state.

Transfer of Homestead after Death. Florida has restrictions on how a married person may transfer homestead property after death. If the home is owned in only one spouse's name, Florida law may require that upon that spouse's death, the surviving spouse receives a life estate and the deceased spouse's children will receive the remainder interest. The surviving spouse does have the right to elect to receive a one-half interest as tenants in common with the deceased spouse's children. For many Florida residents, either result is not desirable and may be avoided by reviewing the title to your Florida home. This problem may be avoided by devise of the homestead to the surviving spouse or entry into a valid pre-or post-nuptial agreement.

Trust and Last Will. Florida law generally requires that both a trust and a last will must be executed by signing the document at the end, or acknowledging your signature, in the presence of two witnesses and the witnesses must sign in your presence and in the presence of each other. That being said, if your trust was signed in another jurisdiction or if you were not a Florida resident when you signed your last will, these documents are still valid in Florida if the execution complied with the law of the jurisdiction where they were signed.

Florida does not impose an income tax on trusts. To take advantage of this tax break, Florida residents should consider changing the location or situs of the trust as well as

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the governing law of the revocable living trust, especially if the state of your prior residence imposes an income tax on trusts. You should also consider removing the trust's connections to the state of your prior residence, such as a changing your trustee or advisor who is materially connected to the administration of the trust, since this may subject the trust to that state's income tax, if any.

Another common pitfall is naming a personal representative, also known as executor or executrix, for your last will. In general, Florida law requires that your personal representative be either a Florida resident at the time of your death or blood relative or adopted child or parent. Therefore, if you have named a neighbor, friend, or even your spouse's relative and that person resides in the state of your prior residence, he or she may not be qualified to serve as personal representative. A bank or trust company named as personal representative may serve if it is authorized and qualified to exercise fiduciary powers in Florida. A local bank from the state of your prior residence may not be qualified to serve as personal representative.

Power of Attorney. Florida statutes provide that a power of attorney executed in another state is valid if the power of attorney and its execution complied with the law of the state of execution when it was executed. That being said, Florida has some unique requirements for powers of attorney that may make part, or all, of your power of attorney ineffective in this state. First, your agent named in the power of attorney may only exercise authority specifically granted to the agent; general provisions in the power of attorney do not grant any authority to the agent. Under this rule, a power of attorney giving the agent "all legal authority" but not specifically stating types of powers granted to the agent are not valid grants of authority to your agent. Further, certain powers given to the agent, such as creating trusts, changing beneficiary designations, making gifts, and making disclaimers, must be separately initialed or signed by the principal creating the power of attorney.

Health Care Surrogate and Living Will. Medical directives from another state, including a heath care surrogate, power of attorney for health care, and living will, may still be valid in Florida. That being said, references to another state's statutes and the absence of a release of medical records that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") may prompt you to sign Florida medical directives so that health care professionals in Florida more readily accept these documents. The HIPAA release will allow your surrogate to obtain and review your confidential medical records under the HIPAA regulations.

Moving your residence to a new state is one of the many reasons why you may want to have an estate planning attorney review your documents. If you have questions about your existing documents or other Florida residency issues you should consult a Florida estate planning attorney.

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