

# When Your Estate Plan Includes Real Property

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**Commentary by: Charla M. Burchett and Ashley S. Hodson**

Bank accounts, life insurance, investments, furniture, jewelry, art and collectibles are among the many assets to consider when planning your estate. However, your home and other real estate may be among the most valuable and complex assets to consider. Real estate not only encompasses a primary residence, but also includes vacation homes and rental properties. When considering real estate in your estate plan, it is important to determine the best form of ownership for each type of property, which may vary depending on the type of real estate you own.

Consider the highlights below and your overall estate planning objectives as you strategize your estate:

## Primary Residence

- The type of ownership of your primary residence should be carefully considered after reviewing the laws of the state where you reside. In Florida, **tenancy by the entirety** offers married couples creditor protection from the creditors of one of the spouses (with a possible exception for federal tax liens) while still preserving relevant tax benefits. It also allows automatic transfer of ownership to the surviving spouse upon the death of the first spouse without court involvement.
- **If you are single**, transferring ownership to a revocable living trust may also allow you to retain the applicable homestead benefits with the added benefit of avoiding the probate process. If asset protection is a major concern during your lifetime, certain types of irrevocable trusts are best suited for your needs but may require you to give up some control of the property.
- **Homestead protections and exemptions** are a unique feature of Florida law, but can also involve highly complicated issues requiring a detailed analysis of your factual situation. Homestead status could be negatively impacted by transferring your primary residence to a trust, especially if you are married. It is important that you consult with your estate planning attorney **before** transferring the ownership of your primary residence.

## Vacation Home

- Owning your vacation home in your revocable trust can be advantageous to avoid probate administration (in-state or out-of-state) and the vacation home can pass to the next generation in

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a more efficient and timely manner.

- If estate and gift tax planning is one of your objectives, you could place your vacation home in a Qualified Personal Residence Trust ("QPRT") and this would help reduce the size of your estate. If structured properly, the QPRT will freeze the value of your residence at the time you create the trust and result in significant estate tax savings.
- With a trust, you are able to establish rules for how the property is to be used and maintained, as well as designate what is to happen to the vacation home once you pass away. For some families, their vacation home has not only high monetary value but also significant emotional value, so this may be an ideal solution if you want to ensure that the vacation home stays in the family for generations with minimal family conflicts.
- Since the homestead laws of Florida are extremely complex, if you purchase a vacation home in Florida and years later you retire to Florida and become a Florida resident, make sure you consult a trusts and estates attorney to ensure the title to the property is appropriate given the change in your status to a Florida resident.

## Rental Property

- Because rental property is an income stream rather than a residence, asset protection is usually the primary concern. As a landlord and owner of rental property, you face a higher probability of lawsuits arising in connection with the property because the occupants can change over time.
- A prudent option for your rental property is to transfer ownership to a **limited liability company (LLC)**. If a renter gets injured on the property, sues the LLC that owns the property, and obtains a judgment that exceeds any property insurance you have, the renter can seek satisfaction of any claims only from the accounts and property owned by the LLC, not from your personal accounts and property or those of any other owners of the LLC. Ownership by the LLC may also protect the rental property from personal creditors.

Given the various considerations for selecting a form of ownership, it is important to discuss your current and future real estate ventures with your trusts and estates attorney, so that you can protect your real estate assets for generations to come.

## About Charla M. Burchett

[Charla M. Burchett](#) is a partner in the Sarasota office of Shutts & Bowen LLP, where she is a member of the Private Client Services Practice Group. A Martindale-Hubbell AV® Preeminent™ rated attorney, Charla is a Board Certified Specialist in Wills, Trusts and Estates as certified by The Florida Bar. She has more than thirty years of experience assisting clients through challenging decisions and difficult times to preserve their legacies across generations. She focuses her practice on estate planning, estate and gift taxation, estate administration, and trust administration.

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### About Ashley S. Hodson

Ashley S. Hodson is a senior associate in the Sarasota office of Shutts & Bowen LLP, where she is a member of the Private Client Services Practice Group. Ashley has practiced law in Florida since 2009 and focuses her practice on estate planning, estate and gift taxation, and estate and trust administration. She designs and tailors her clients' estate plans to meet their specific personal and financial goals. She also has significant experience administering complex estates and trusts, including the preparation of federal estate tax returns.

### Professionals

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Trusts and Estates

### Offices

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