



PROPER PLANNING MAY CREATE PEACE OF MIND



July 2007

PROTECTING THE HOME FOR DOMESTIC PARTNERS

Florida law does not provide the same legal rights to domestic partners (same sex couples or heterosexual unmarried couples) as to married couples. One of the areas of law in which this is most noticeable concerns real property. The titling of real estate can have an impact on whether the surviving partner is protected at the owner's demise.

Tale: John and Dan were in a committed relationship and living in a house titled in John's name. Although both John and Dan had contributed to the down payment as well as the on-going mortgage payments, Dan's name was not on the deed. Neither John nor Dan had a Last Will & Testament indicating that their individual assets were to be distributed to the partner at the owner's death. Unexpectedly, John died. John's family traveled to Florida. When Dan returned home from the funeral, he found that John's family had changed the locks and he was refused entry to the house. The family had placed a suitcase with Dan's belongings on the walkway.

"The titling of real estate can have an impact on whether the surviving partner is protected at the owner's demise."

Tip:

Careful planning must be undertaken by domestic partners in order to:

1) avoid probate; 2) obtain the tax savings under the "Save Our Homes" tax cap; and 3) receive homestead protections. If a couple desires that the surviving partner inherit all of the homestead property, title to the deed can be stated as "joint tenancy with rights of survivorship." This means that each partner owns 100% interest. The result is that the property will avoid probate.

Domestic partners who own real estate as joint tenants with rights of survivorship should **each** file for homestead tax exemption. This will ensure that when one partner dies the property is not reassessed causing taxes to increase. Once a person applies for homestead exemption they automatically get the benefit of the save our homes tax cap. This limits the property's assessed value to increasing each year by no more than 3%.

If the couple desires that the surviving partner inherit only half of the property then title can be taken as 'tenants-in-common.' Each partner would own 50%. The deceased partner's share would be distributed pursuant to their Will. Again, filing for homestead is necessary to prevent large tax increases.

Ask about participating in our **free Advanced Level CLE** at your office.

DISSENT IS THE HIGHEST FORM OF PATRIOTISM -- Thomas Jefferson

Practice Areas

Estate & Incapacity Planning

- ◆ Last Will & Testament
- ◆ Probate & Trust Administration
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

Emergency & Advocacy Services

- ◆ Emergency & Standard Guardianships
- ◆ Long Term Care Facility Residents' Rights
- ◆ Medicaid Applications & Appeals

Government Assistance

- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust's Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery