



Providing Peace of Mind by Solving Problems with Integrity & Compassion in the following areas:

ESTATE & BUSINESS PLANNING • FAMILY LAW • REAL ESTATE

IT'S THE LAW!

How Can a Deed Help Avoid Probate?

In our last Newsletter, we discussed the importance of completing and maintaining current *Beneficiary Designation Forms (BDFs)* at all of your financial institutions so as to avoid *Probate*. While *BDFs* are an easy and free strategy to avoid subjecting your financial assets to the *Probate* process, your largest asset, your home, is quite often overlooked in the planning process.

One of the reasons the home is overlooked is that when a home is jointly owned (by spouses, companions, siblings, etc.) and Owner #1 dies, Owner #2 owns it, automatically, by operation of the language in the *Deed*, thereby avoiding *Probate*. The fact that no *Probate* was necessary at the death of Owner #1 lulls Owner #2 (and Owner #2's family) into a false sense of security, thinking "if no *Probate* was required when Owner #1 died, then there will be no *Probate* when Owner #2 dies." Wrong!

Probate is, in fact, required in every case when Owner #2 dies with the property still in his/her name because the *Title Company* handling the Closing can't pass good and marketable title to the Buyer without a *Court Order* verifying that the *Personal Representative ("PR")* signing the documents actually has the Court's authority to do so. So, the only way Owner #2's heirs can sell the house is by filing a *Probate* action so the Court can name a PR to be in charge of the Estate to sign all of the Closing papers.

Rather than having to file a *Probate* action, Owner #2 can either execute a *Deed* transferring ownership upon death to certain people (just like our old friend the *BDF* does) or to a *Living Revocable Trust* in which the interest is transferred from Owner #2, individually, to the *Successor Trustee* of Owner #2's Trust. We regularly assist clients with the decision as to which method is best after an office consultation discussing the pros/cons.

Often the *Deed* does the trick without the necessity of a Trust, but, for the purposes of this *Newsletter*, let me say a few words about *Trusts* because clients often tell me that they believe or have been taught that "Trusts are just for rich folks". Not true. Unless by "rich folks" they mean people who don't want their life savings to be subjected to the *Probate* process, which should be everyone who has assets. A *Trust* allows an individual to title all or some of his/her assets in the Trust's name (rather than his/her individual name) so that checking/savings accounts, securities, real property, businesses, jewelry and/or other valuable assets flow into the Trust, either at the time the Trust is signed or at his/her death. Those assets may be big or small, but by "funding" the Trust, (i.e. naming the *Trust* as the sole beneficiary on all *BDFs* or on other ownership documents like a *Deed*), the client has ensured that the assets are, in fact, owned by the *Trust* (and NOT by the individual). No *Probate* necessary. No substantial haircut from the nest egg you worked your whole life to acquire.

If you have any questions about *Wills*, *BDFs*, *Deeds* or *Trusts*, feel free to call us and we'd be happy to schedule a consultation to educate you on the different options available to you and the costs involved. You'll be amazed at how doing a little advance planning will save your family down the road. And your family will surely thank you for it!



Why do we sign Deeds when transferring Real Property?



The current practice of Deeding a property to someone else dates back to ancient English common law. Roughly 500 years ago English law required a ceremony to transfer title to real estate.

The act involved the buyer and seller meeting on or within view of the property to be transferred. There, the seller would verbally grant the land to the buyer while giving the buyer a physical piece of the real estate – like a clump of dirt, a twig, or a key. This was referred to as the "Ritual of Turf and Twig". Thankfully, we offer a much more genteel process of transferring title and it doesn't involve dirt, twigs or the verbal passing of the property to a seller. So, keep the dirt in your garden where it belongs and come see us when it's time to Deed your property to your loved ones. You'll be glad you did.

Our Office



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ESTATE & BUSINESS PLANNING

Wills & Trusts • Powers of Attorney • Health Care Surrogates • Living Wills • Probate Estates • Succession Planning • Contracts & Purchase/Sale Agreements

FAMILY LAW

Divorce/Paternity • Child Support & Timesharing • Alimony • Property Distribution • Modifications • Collaborative Law • Pre/Post Nuptial Agreements

REAL ESTATE

Community Association Law • Residential & Commercial Transactions • Deeds • Closings



Attorney Adam S. Gumson of JUPITER LAW CENTER graduated from Duke University (1988) and the University of Florida College of Law (1991 with Honors). In addition to preparing and reviewing Contracts, he primarily handles matters involving Estate and Business Planning (including Wills, Trusts, Durable Powers of Attorney, Health Care Surrogates, Living Wills, Succession Planning, Contracts & Purchase/Sale Agreements), Probate Estates, Family Law (Divorce, Custody, Alimony, Timesharing, Same-Sex relationships, Pre/Postnuptial Agreements, Modification actions and Collaborative Law) and Real Estate (Community Association, Residential/ Commercial Transactions, Deeds, Closings). He is married and resides in Jupiter with his wife and three children.

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