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FAMILY REAL ESTATE PLANNING

When is it time to plan transferring ownership of a main residence?

When it comes time to retire, when preparing to move to another country or canton or as part of one's estate planning, at some point a property owner has to think about transferring title to his or her main residence.

What alternatives does a property owner have within the family?

An owner can transfer title to real property while keeping the right to use it (usufruct, right of occupation or right to rent it) or, conversely, can maintain title to real property while allowing family members to use it. The choice will mainly depend on whether he can remain financially independent. The transferee's ability to pay for the property is also an important factor in making this decision. Whatever the situation, it is necessary to analyse the transaction from a tax standpoint to determine its costs.

How can a property owner transfer title within his family?

He can sell the property (for a cash settlement or an annuity) or make a gift of it (in whole or in part). In either case it is essential to conduct a prior study of the consequences for each of the parties to the transaction as regards liability to income and wealth tax, property taxes and gift tax.

How can one retain title to property while transferring use of it?

The owner can choose to rent the property, in which case he receives taxable rental income and the property continues to be taxed as an asset.

Use of the property can also be granted free of charge to a beneficiary (in the form of usufruct or right of occupation. From

a legal point of view usufruct is the right of full use of a building ("quasi-property"), unlike a right of occupation which only entitles the beneficiary to live in it. From a tax standpoint the usufructuary replaces the reversioner (the bare title-holder) in full: it is he who is liable to income tax on the property's rental value and to wealth tax.

What are the main differences between the above two alternatives in the event of death?

In law the property is part of the deceased owner's estate. If he has left no instructions in writing (a will or agreement as to succession), the property remains undivided until the estate is divided up. In this situation conflicts often arise between the heirs and can lead to the property's sale by auction.

Transferring the property as a gift during the owner's lifetime is a way of settling the division between heirs. However, it is the property's market value at the moment of the owner's death, and not at the time of the gift, that determines the amount of each heir's share. If the property has gained value, the donee may then have to compensate the other heirs.

The owner should integrate these factors into his estate planning by considering all his assets (both real and personal property). Prior to any transaction it is very important to draw up a complete inventory (including debts, particularly any mortgages) and analyse the family situation (marital situation, descendants, etc.).

How can Bonhôte Services SA assist owners and beneficiaries?

As advisers and specialists in legal and tax matters, we analyse the personal situation of the owner and the beneficiaries and provide them with our recommendations. We then help them implement the chosen solution and follow up on it, factoring in the notary's advice and making sure of the tax aspects.