Who Gets the *Family Camp?*

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As the days warm and you return to your favorite place to relax, your thoughts may turn to "what happens when I am gone?"

That place might be your cottage, summer home, cabin, or camp. If you want to pass the property onto family members there are several questions that you should ask. It is important to have a clear plan to help avoid chaos, hurt feelings, and family disputes.

Putting a plan together should involve the entire family, and you should have a conversation with each prospective future owner to see if they have an interest in retaining the camp. Some may not want to keep the property and would rather have the money from the sale of the asset. Some may not be able to afford their share of costs to maintain the camp. Others want to keep the camp and pass it on to their own children. Take inventory of each potential beneficiary's feelings and concerns about the camp and to guide you in your planning.

If the camp is passed on, then how is it owned? Who decides when and how members get to use the property? Who takes care of maintenance and improvements? Does the camp stay in the family for a limited time or does it continue into perpetuity? How well do your children get along? A good plan requires answers to all these questions and more.

There are several ways for a family to share ownership. For example:

Direct Ownership

Tenants in Common - Two or more people have ownership interests in the property. The interests do not have to be equal, and the owner is free to dispose of their share to a new owner unless prohibited by a legal document. Their share can be passed onto their children or anyone they choose (even a non-family member). If an owner gets divorced or dies, the spouse could end up being the new owner of the camp along with your other children. Tenants can also force a

partition of the property, which usually means the property is sold. Tenancy in Common is probably the most widely used ownership as it is the default when there is no plan other than leaving it through the will.

Joint Tenancy with Rights of Survivorship - Two or more people have equal ownership in the property with the share of one going to the other(s) at death. The last one standing gets the property outright.

Retained Life Estate – The owner of the life estate retains ownership during their lifetime and at death the property passes to the remaining interest holder(s).

Trusts

A trust is a vehicle established by a trust agreement. The grantor (the owner of the asset) transfers property to the trust and a trustee manages the property for the benefit of the beneficiaries. A trust can be revocable (can be changed) or irrevocable (cannot be changed). The trustee can be a family member or a professional trustee. The trust document spells out how the property is to be used and for how long the property stays with the family. In most states, trusts are limited to 90 years. Funds can be placed in the trust to pay for future expenses such as property taxes and repairs. A drawback can be the inflexibility in making changes once the trust is established.

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Business Entity

Ownership of a camp can be transferred to a partnership, limited liability company (LLC), or family limited liability company. The advantage of an LLC is that it has a perpetual existence and can be more flexible in altering the ownership structure as family dynamics change. Management of the property is controlled by an operating agreement that directs the payment of operating expenses, regular maintenance, use and scheduling, and dispute resolutions. An operating agreement can allow for rental of the property if so desired to help offset some of the costs. The LLC usually will have provisions for a buy-sell agreement as to how and to whom shares in the LLC can be sold. An LLC has creditor protections as well. If a property is to be retained in the family for an extended time, then many planners see the LLC as the best solution.

An example of a Trust:

Bob and Sue own a piece of land on Great Pond that they want to stay in the family for fifteen years after they have both passed, at which time the property is to be sold and the proceeds distributed to their four children equally. They recognize that the funds from the sale will be

beneficial to their children and want the property to be available for use by the family members beyond their lifetime for a period of fifteen years. In this case – with the help of their attorney – they chose to set up a Family Trust and appoint a trustee. The trustee's duties were written into the trust document and clearly state how the property should be managed. The trust allows any family member to use the property if they are respectful and considerate. The trustee has the final say, but cannot unfairly discriminate against any family members. The trust is irrevocable, and the property was removed from Bob and Sue's estate.

Bob and Sue no longer have control of the property. They decided that as part of the trust document, the property could be sold before the 15-year period if there were unanimous consent amongst the four beneficiaries. They contributed enough funds at death through their wills to cover taxes and maintenance for the 15-year period. At the end of the 15-year period, the property will be sold, and the proceeds divided amongst the beneficiaries. They achieved their goals of keeping the property in the family and ensuring that it would be available to their children and grandchildren for a limited time and also have provided an inheritance of cash at the end of the 15-year term which may be valuable to their children at that point in their lives.

If you don't have a plan for your 'special place,' then now is the time to start thinking about it. Avoiding the discussion with your children does not make the potential future problem go away. Speaking with them and developing a clear plan with your advisors – attorney, accountant, insurance agent, and/or financial planner can ensure that your place is available for many generations to share and create their own memories.

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