



all in the *family*

PLANNING YOUR VACATION HOME'S FUTURE

The lakes and mountains of New Hampshire provide unlimited potential for fun. To take advantage of the possibilities, many families establish vacation homes and camps here, where children learn to fish and water ski in the summer, and how to snow ski during their winter breaks. As the children grow and establish families of their own, the vacation home becomes a memory maker for their families as well. ▶

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Property owners have a variety of options for transferring a vacation home to future generations. The simplest is an outright bequest of the property to the children in equal shares when the surviving parent dies.

Because a vacation home so often holds sentimental value, determining what should happen to it as it passes through generations requires more discussion and planning than a typical piece of property, especially if it will be shared and maintained by several children and their families. Parents want future generations to enjoy the property, not argue about its use and maintenance. However, as the number of descendants in a family multiplies, and extended family members live farther apart, it's common for disputes to arise over who can use the vacation home, when they may be there, and how it should be run. Arguments over who gets to use the lake cottage on the next Fourth of July will ruin Thanksgiving dinner faster than forgetting to remove the giblets from the bird.

Accordingly, the senior generation needs to develop legal and financial strategies to help keep the vacation home peacefully and effectively in the family for successive generations. These strategies can be used whether the property is a second home on the seacoast, an extensive family compound on a lake, or a small log cabin in the woods.

DEVELOP A SUCCESSION PLAN

The goal of a succession plan for a vacation home should be to provide an ownership and management structure that will address use and scheduling policies, establish guidelines for the care and maintenance of the property, and afford a process for heirs who aren't interested in the property to "opt out" of the succession plan. The plan also should address how future property expenses will be financed.

Done well, the plan can ease the difficult transition from parents to heirs, as well as conflicts between heirs after parents die. It also can eliminate the risk that an heir who wants to cash out will be able to force a sale in order to do so. Estate taxes also may enter into the planning picture.

Property owners have a variety of options for transferring a vacation home to future generations. The simplest is an outright bequest of the property to the children in

equal shares when the surviving parent dies. Although the concept of simplicity has a lot of appeal, an outright bequest virtually guarantees hard feelings, disputes, and lawsuits. Vacation homes left outright to heirs as "tenants-in-common" are governed by real property law, which provides minimal flexibility to address the challenges faced by multiple-owner properties.

A better idea is for the senior generation to transfer the property to an irrevocable trust, either during their lives or upon their deaths. Although a trust adds some complexity, it provides tremendous flexibility for dealing with issues regarding the property that may arise over time, many of which may not be foreseeable by the parents when they're planning for the property's succession. A trust also can be structured to protect against the transfer of the property to an ex-spouse or creditor, in the event of an heir's divorce or bankruptcy. If Cousin Henry gets divorced, no one wants to be sharing the ski house bunkroom with his crazy ex-wife over New Year's weekend.

Limited liability companies and partnerships also may be used as the governing structure. Unlike trusts, however, the owners of LLCs and partnerships must follow certain rules of business law in order for the entity to operate properly. For example, owners generally would need to pay rent for their use of the property. Nonetheless, LLCs and partnerships provide a type of flexibility that may work better than a trust in some circumstances.

When choosing which structure to use, the family should consult with a lawyer and an accountant to be sure they fully understand all of the legal and tax consequences of their vacation home succession plan. For example, New Hampshire's real estate transfer tax could apply, and a plan may have income, gift, and estate-tax consequences as well. Drafting the governing document (trust agreement, LLC operating agreement, or partnership

agreement) should be done by an attorney experienced in this area.

DETERMINE THE FAMILY'S EXPECTATIONS

Before anyone puts pen to paper, however, the parents and kids should have an honest discussion about everyone's expectations for the property. Do all of the children really intend to use the property after the parents pass away? Can they afford it? Although many parents like to think that their heirs will continue to convene harmoniously at the property every year after they're gone, in reality, geographic distance, the demands of busy young families, and the continuing expenses and burdens of ownership often prevent this.

For the children who are truly interested in using the property, the parents must determine whether they're willing and able to commit resources to it for taxes, maintenance, and capital improvements. The succession plan should include a way for heirs of modest means to keep alive a grand family tradition. This might require the parents to provide an endowment fund for the property, either by leaving some of their assets specifically for that purpose or by purchasing life insurance to do so.

Parents also should determine who will make decisions and manage conflicts after they're gone. As families grow exponentially larger over a few generations, a "one person, one vote" approach becomes unworkable. A good alternative may be to have each child's branch of the family elect a representative manager, to ease decision making among the growing contingent of heirs, who otherwise might struggle to coordinate different schedules and priorities.

It won't be possible (or even desirable) to

cover every management detail or contingency in the succession plan. For this reason, a family should build flexibility into its governing document, so that the plan can evolve as the family grows, in a way that's manageable and consistent with the parents' intent for the property. Parents—and their children—who take the time to create a plan for their vacation retreat will help maintain the property as a multi-generational gathering place for years to come. 🍷



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