PRESERVING THE FAMILY VACATION HOME
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How to Best Preserve and Pass on the Family Vacation Home
Preserving the Family Vacation Home

• I am going to present two planning options to preserve the family vacation home for future generations: trusts and limited liability companies.

• The legal mechanism for transferring the property is only one step in the process.

• It is important to have the family come to an agreement, rather than having the older generation impose a plan on the younger generation.

• Choose something you can live with, as after you select the vehicle, you must respect the form you have selected.
Factors to Consider in Transferring Vacation Property

• Disadvantages of Outright Transfers to Descendants:
  – Increased risk of conflict
    • Usage
    • Maintenance
    • Creditors of owners
    • Right to partition
  – Estate and gift taxes

• Considerations for Selecting Transfer Vehicle:
  – Be easily transferable
  – Protect owners from lawsuits
  – Promote “shared” governance and use of the property
  – Prevent use of right to partition
  – Provide estate tax savings
Trust as Owner
Benefits of Using an Irrevocable Trust

• The trust "owns" the interests you transfer, and the trustee "manages" the transferred property for beneficiaries

• Use of living (inter vivos) trust versus testamentary trust
  – Lifetime gifts are tax exclusive while gifts at death are tax-inclusive
  – If no longer New York resident, avoid ancillary probate by transferring entire interest to trust during lifetime
  – But, ease of owning and controlling property until death or death of spouse
  – And, before and after 2010, basis "step-up" to date-of-death value
Some Limitations on the Use of a New York Trust

- Limited Duration of a New York Trust – generally 21 years following the death of the last to die of you, your children and more remote descendants alive at the creation of the trust

- Asset Protection - no protection from the creditors of the person who created the trust; but property may be protected from the creditors of the beneficiaries

- Rent – if you use property transferred without paying fair market value rent, you risk estate tax inclusion

- Changing trust terms – may be expensive to accomplish
Limited Liability Companies
Ownership Versus Control

- Separate the ownership and the control of the property
  - "Members" are the owners
  - "Manager" or a “Board of Managers“ controls assets

- Owners of the real property transferred to the LLC would be the initial members of the LLC, and may be managers.

- You could transfer all or part of your membership interests to your children.
Benefits of Using a Limited Liability Company

- Asset Protection – generally, for the property against your and your descendants’ creditors, and for your other assets from lawsuits arising from the property
- Rent – you may choose to pay rent to cover operating costs, or if you retain a membership interest in the LLC, an argument could be made that as a continuing member, you do not have to pay rent
- Duration – LLCs may have perpetual duration
- Restrictions on transferability of interests
- Avoidance of ancillary probate
- Ability of property to be managed in a democratic fashion:
  - Representative board of managers
  - Members could control certain decisions
Gift and Estate Tax Issues
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- A qualified appraisal is needed each time you make a transfer
- Discounted valuations may be available
- Value of the property transferred will be reportable on a gift tax return and may use up some of your lifetime exclusion amount
- Generally speaking, if you respect the form of the transaction, the value of the transferred property and any appreciation on it should be removed from your estate
- If your children plan to sell the property soon after your death, they may pay a smaller tax on the sale if you keep the property in your name until your death, and they receive a step-up in basis
- If your family plans to hold on to the property, the value of the basis step-up is not as important as other factors
Items to be Addressed in the Governing Instrument
Items to be Addressed by Agreement

• Annual contributions and user fees
• Consequence for non-payment of contributions/fees
• Usage schedule or mechanism to determine schedule
• Rules applicable for when the property is in use
• How expenses for maintenance, taxes, insurance, repairs and replacement of improvements will be paid
• How decisions will be made (by family line or majority vote), for example:
  – Appointing representatives to the board of managers
  – Removing and replacing the appointed representative
Items to be Addressed by Agreement

• Decisions to be made by managers and those over which members or beneficiaries will have a say

• Who will serve as manager/trustee, and how successors will be appointed

• How ownership rights or beneficial interests will be transferred
  – Only to your heirs or trusts for your heirs
  – Option to buy out the interest of the person who wants to sell the interest

• Procedure for resolving conflicts
CONCLUSION
Conclusion

• There will be a cost to the creation and ongoing administration of the entity, so weigh the costs against the goal of preserving the property.

• This discussion has been an overview, but what is right for you will depend upon your facts and circumstances, and the tax and non-tax laws in effect at the time of transfer.

• All these factors must be carefully considered with your attorney, your accountant and other estate planning advisors.

• Please feel free to contact me with any questions, or to schedule an appointment for a more in-depth analysis.
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