

Legacy Property Planning Considerations

The word “camp” has a meaning of its very own in Maine. You will hear the term used to describe everything from a modest cabin nestled deep in the woods to a sprawling waterfront compound, but the trait most camps have in common is that they are gathering places - where cherished memories are made and traditions are passed down from one generation to the next.

Yet, as families expand, too often their shared use of vacation properties becomes unwieldy and unworkable. Indeed, if you own or have an interest in a second home, and you wish to mitigate family conflict, provide a means for funding maintenance and capital improvements, and protect the property from potential creditors or a forced sale, you and your family may want to consider establishing a specific plan for the management and use of the property.

Planning Considerations:

There are many different vehicles available to property owners who wish to establish guidelines for their families’ shared ownership and use of a vacation home, such as limited liability companies (“LLCs”), trusts, family limited partnerships, and tenants in common agreements. You will want to discuss with your attorney which approach makes the most sense for you and your particular circumstances, but, regardless of which you ultimately select, there are many common issues that you will want to address in your plan.

Decision Making

How will decisions be made regarding the management of the property? Will you have a designated manager or will decisions be made by all interested parties? If all stakeholders have a say, you may wish to delineate that a majority vote is required for some matters, such as a capital im-

provement, for example, whereas a unanimous vote may be preferable for a more serious issue, such as a sale of the property.

Contributions

Do you want to establish an endowment to cover future expenses of the property? If so, how much will be enough to cover the expenses in perpetuity? If an endowment is not in your plans, how will the expenses of maintaining or improving the property be shared by the co-owners? For example, financial contributions may be based on ownership (e.g. if you own 10% you are responsible for 10% of expenses) or use (e.g. you pay a daily/weekly rate to use the property). May contributions be made by providing goods or services instead of cash? And what happens if someone cannot pay their share? Perhaps their use of the property may be suspended or interest will accrue on outstanding obligations.

Use

Will use by co-owners be shared or exclusive? You may wish to designate “peak” dates that are rotated among family members or have a lottery system whereby weeks are selected each year. May you rent the property to a third-party during your allotted time period? May a surviving spouse of a family member continue to use the property after their spouse has passed away? Will there be a cap on total days of use by any one co-owner or may any co-owner use the property on dates when it would otherwise be unoccupied?

Partition

Maine law affords all co-owners of real estate with the legal right to a judicial division of the property, which is commonly known as the “right of partition.” In such a proceeding, if the court finds that the land may not be physically divided,

it may order a sale of the property and a division of the sale proceeds among the co-owners. As you can imagine, there are many instances where you may not want to give this much power to a single co-owner. Accordingly, a waiver of the right to partition is an important reason to have an entity/agreement in place.

Transfers of Interests

To whom may you transfer an interest in the property during your lifetime or upon your death? Many agreements restrict transfers to lineal descendants of the person who puts the plan in place. Do you have the right to sell your interest to another family member or be bought out? How will the value of your interest be established? For example, will a formal appraisal of the property be required or will a discounted method be used such as a percentage of the property's tax-assessed value?

Implementing the Plan:

Many estate planning attorneys provide questionnaires to families who are considering putting this type of plan in place. This is an effective way to solicit the input of all potential stakeholders and try to determine if there is a majority opinion on any of the particular issues mentioned above before your attorney begins drafting. If your attorney does not utilize such a questionnaire, con-

sider having some of these conversations with your family members when they come up to camp this summer. For instance, a good starting point would be to flesh out how the next generation anticipates using the property over the next 5, 10, or 20 years, given that these answers will fundamentally bear on many of the provisions you will want to address in your document.

The next step in the planning process would be to contact an attorney to prepare your governing document, whatever form it may take, and have them prepare a deed to transfer ownership of the property to the LLC/trust/partnership. From there, it is of the utmost importance that you adhere to the formalities of your respective arrangement. For example, if you form an LLC, you will want to open a bank account in the name of the entity and be sure to run all income and expenses through the same so you do not risk compromising the limited liability status of your entity.

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