

Estate Planning for Waterfront Properties – How to Keep the Family Camp in the Family

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WATERFRONT CAMPS

- Unique Family Asset
- Reasons to Keep
 - Emotional Attachment
 - Family Unity
 - Wealth Accumulation
 - Family Tradition

OVERVIEW

- Estate Planning & Real Estate Basics
- Problem: Lack of a Plan
- Potential Solutions
 - Goal: Avoid Family Conflicts

HOW PROPERTY IS PASSED

- Last Will and Testament
- Law of Intestacy (NH RSA 561:1)
- Trust Agreement
- By Agreement or by Operation of Law
 - Beneficiary designated assets, e.g. life insurance, IRA's, etc.
 - Joint tenancy with right of survivorship

WHAT IS PROBATE?

- Process - Decedent's Debts Paid and Estate Assets Distributed
- Applies to Testate and Intestate Estates

WHAT IS A LIVING TRUST?

- Agreement between Grantor and Trustee
- Probate Avoided if Assets Properly Titled
- Types:
 - Revocable
 - Irrevocable

REAL ESTATE TITLES

- Individual
- Joint Ownership – joint tenancy with right of survivorship or tenancy in common
- Trustee of Trust
- Business Entity (Corporation, LLC, etc.)

REAL ESTATE CO-OWNERSHIP

- Joint Tenancy with Right of Survivorship
 - Interest automatically passes to surviving joint tenant
- Tenancy in Common
 - Interest passes to heirs of deceased TIC

TENANCY IN COMMON

Tenants in Common:

- Have Right of Partition
- Hold Undivided Interests
- Can Transfer Interest
- Do Not Owe Rent
- Can Rent to Third Parties
- Can Have Unequal Burdens

QUESTIONS?

- Wills
- Trusts
- Probate
- Real Estate

THE PROBLEM: LACK OF A PLAN

- No Plan = Tenants in Common
- Heirs May Not Get Along
- A Valued Legacy or a Recipe for Disaster?

TENANT IN COMMON PROBLEMS

- Share Passing to Child's Spouse
- Child Can't Pay Share of Costs
- Child's Bankruptcy or Creditor Problem
- Child Wants to Cash Out
- Conflicts Over Cottage Management
- Discord or Litigation Among Heirs

PARTITION ACTION

- One Child May Force Division of Property
- Court Decides How to Divide the Property:
physical division vs. sell and split money

QUESTIONS?

- Heirs as Tenants in Common
- Partition Action

THE SOLUTION: SUCCESSION PLANNING

GOALS:

- Family Harmony
- Creditor Protection
- Personal Liability Protection
- Restrict Transfers of Interests
- Management and Use Standards
- Insure Long-term Family Ownership

SHORT-TERM SOLUTIONS

- Life Estate Deed
- Tenant in Common Agreement

LIFE ESTATE DEED

- Used to prevent a TIC from transferring interest to third party
- Divides ownership of a TIC interest between life tenant and remaindermen
- Example: A, B & C are heirs (tenants in common). A & C don't want B to transfer interest outside of family. B conveys to A & C with reserved life estate. A & C pay B's share of camp costs.

TENANT IN COMMON AGREEMENT

- Waive Right to Partition
- Agree about Shared Use of Camp
- Agree about Shared Expenses
- Decision-making (unanimous? simple majority?)
- Transfer Restrictions
- Rights of First Refusal

LONG-TERM OPTIONS

- Trust
- Limited Partnership
- Corporation
- Limited Liability Company

LLC FEATURES

- Prevents Partition Action (LLC holds title to real estate)
- Prevents Transfer Outside of Family
- Creditor Protection
- Framework for Scheduling Camp Use
- Sanctions for Nonpayment of Expenses
- Vehicle to Establish an “Endowment”

NEW HAMPSHIRE LLC

- Creation/Filing Requirements
 - NH Secretary of State filing (\$100 fee)
 - Annual report filing (\$100 fee)
- Structure
 - Members = Owners
 - Manager (Can be members or 3rd party)
- Operating Agreement = Key Document
- Immediate vs. Springing Use

OPERATING AGREEMENT

- Defines Membership
- Controls Transfer of Member Interests
- Member Exits –
 - “Put” option (right to sell interest to LLC)
 - “Call” option (right of LLC to buy interest)
- Scheduling Use of Camp
- Endowment

TAXATION-FEDERAL

- Federal Transfer Taxes
 - Estate
 - 2009 - \$3.5 Million exemption (45% tax rate)
 - 2010 - No federal estate tax
 - 2011 - \$1 Million exemption (55% tax rate)
 - Generation-skipping transfer tax
 - 2009 - \$3.5 Million exemption (45% tax rate)
 - 2010 - No GST tax
 - 2011 - \$1,060,000 exemption (55% tax rate)
 - Gift
 - 2009, 2010 and 2011 - \$1 Million exemption
 - 45% - 35% - 55% tax rates 2009, 2010, 2011

MINIMIZING FEDERAL TAXES

- Lifetime Gifting of LLC Member Interests
 - \$13K/per person annual Gift Tax exclusion
- Fractional Discounting
 - Reduced value of LLC member interests due to lack of marketability and control

NH TAXATION

- No New Hampshire Estate Tax
- NH Real Estate Transfer Tax
 - Rate is \$15 per thousand dollars of value
 - Ex. \$1.0 Million property, RETT= \$15,000

QUESTIONS?

- Planning Options
- NH Limited Liability Company
- Importance of LLC Operating Agreement
- Taxation

RESOURCES

- *Saving the Family Cottage*, by Stuart J. Hollander, Rose Hollander & David S. Fry
3rd edition (2009), published by NOLO
- New Hampshire Secretary of State-
Corporate Division
www.sos.nh.gov/corporate/

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