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The Family Cabin: Preserving the Memories for Future Generations

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Learning how to swim. Catching your first fish. Listening to the plaintive song of a loon as the sun rises. For many Minnesotan families, the family lake home is the setting where such happy memories are made. Even though the lake home may be used only on a seasonal basis, it often has significant sentimental value for the whole family. How do you compare the value of these memories with an investment account? There are a few methods for transitioning ownership of a cabin to the next generation. Each has advantages and disadvantages and we will describe the general alternatives, along with the pros and cons of each. Without delving into a deep discussion of tax implications and benefits of each of these, this article discusses three of the most common options (and pitfalls) for transferring the family lake home to the next generation.

OUTRIGHT TRANSFER

First, an outright transfer of the lake home in equal shares to children is the simplest method of passing property. The benefits of this simple transfer include ensuring that all children are treated equally: equal access to and equal responsibility for maintaining the property. There are challenges to this disposition, though, which include practical considerations such as a child living too far away to enjoy the cabin, differing financial circumstances and goals. In addition, children may have differing emotional reactions about preserving the lake home. These differences can create conflicts among children over the use of the property, the payment of maintenance costs or improvements, and the responsibility for maintenance. While having the benefit of being “simple and direct” in the short-term, an outright transfer of the lake home to children does not provide a mechanism for dealing with changing and sometimes conflicting interests, leaving these issues to be resolved by the children. In addition, problems may arise due to claims of creditors of a child or the consequences of a child's divorce, and outright common ownership does not address the disposition of a child's interest in the property at his/her subsequent death.

USING A TRUST

A second method of dealing with the transfer of the cabin, while avoiding potential problems created by common ownership of the family cabin, is to place the property in a trust designed specifically to hold the property. Each child has an equal beneficial interest in the trust and the right to use the home, and a trustee has the responsibility for managing and maintaining the home. While the primary asset of the trust is the cabin itself, cash or other liquid assets are frequently transferred to the trust to provide funds for maintaining and operating the home (i.e., taxes, insurance, utilities, ordinary maintenance and improvements). An agreement for having the beneficiaries contribute to costs of maintenance may also be made if trust funds are insufficient. A trust is advantageous because it protects the property from claims of a child's creditors, including claims of a former spouse in the event of a divorce. The irrevocability of a trust, however, creates inflexibility which can be complicated when unforeseen issues arise.

USING A LIMITED LIABILITY COMPANY

A third method of transferring the family lake home to the children is to create a limited liability company (“LLC”) and transfer the property to it. As its name suggests, members of an LLC are protected from personal liability. An LLC is a flexible tool because the governing document can set forth rules for handling many predictable circumstances (i.e. restricting how interests can be transferred, providing for protection from creditors or the claims of a spouse in the event of divorce, and the succession of the membership interests in the event of a child's death). An LLC agreement can be amended, and can be set up to be governed by either one manager or by all the members. An LLC can provide a mechanism for managing the potentially conflicting interests of children who inherit the property, including the issue of contributions of funds to provide for the maintenance and use of the property or the liquidation of the interests of a member who no longer wants to own part of the property. While there are costs to set up an LLC, the flexible structure and liability protection provided may be worth the expense and effort.

The sentimental value of the family lake home can make planning for its disposition complicated. However, with proper planning and effective communication, the potential problems can be minimized and future generations can all continue to enjoy the cabin.