



nerej

Protecting and managing the family vacation home: Have a written agreement in place - by Philip Hastings

September 06, 2019 - Northern New England

Philip Hastings,
Cleveland, Waters and Bass, P.A.

Over the past few years, I have helped several clients in some variation of the following situation: “My parents recently passed away, leaving the family vacation property to me and my brothers and sisters. What do we do now?” Although every situation is unique, there are several common issues that families in these circumstances need to think about.

The first thing to think about is the form of ownership. Unless the parents have been exceptionally thoughtful in their estate planning, ownership of family legacy property is typically passed to the children as tenants in common. Other ownership options include putting the property into a family trust, limited partnership or limited liability company. Each of these legal entities has its own particular advantages and disadvantages. All are generally more effective than a tenancy in common arrangement over the long run, particularly if there are large numbers of family members involved or there is the need or desire to generate income from the property through vacation rentals or other means.

Regardless of the form of ownership, other important issues to consider are what specific rights family members will have to use the property and how conflicting demands for the property will be resolved; the mechanism for collecting funds from family members to pay the real estate taxes, maintenance and repair expenses, operating costs, the cost of capital improvements, and other expenses; and the extent to which any profits from property rentals will be distributed or retained to offset expenses and the tax consequences to the family members.

Management of the property is a key consideration as well. Day-to-day decisions may be made by a designated person (i.e., a CEO) or some subset of family members (i.e., a board of directors). Other important decisions, such as whether to undertake a major capital improvement, usually should be made by the family as a whole, either by majority rule or some other standard. Some advance thought should be given as to whether the sale of the legacy property may be allowed with something less than unanimous consent of the family members.

Similarly, any plan for the property should contemplate the circumstances under which a family

member may give away his or her ownership interest (during his or her lifetime or upon death), sell the ownership interest to another family member or a third-party, or force the other family members to buy him or her out. The estate planning needs of each individual owner should be taken into account in this regard, as well as the possibility of divorce or other marital issues, health concerns and the like.

There is no “one-size-fits-all” answer to the questions to be considered, and it is important to keep in mind that many of the answers will depend on the particular family dynamics involved – How well does the family get along? What are the relative ages of the family members? Who has children and how old are they? Do the family members have a common set of interests and expectations regarding the property? Are family members sentimentally attached to the property or more driven by economic concerns? Are some family members more or less likely to use the property due to its geographic location?

Ideally, these issues should be planned for while the parents are still living and own the property. By doing so, the transition of the legacy property can be considered as part of the parents’ estate planning strategy.

In all events, we strongly recommend having a comprehensive written agreement to govern the use of the property and the ongoing relationship between the family members with respect to the use. The proper choice of entity, together with a carefully crafted agreement prepared by competent legal counsel, with input from accounting and other professionals, will allow the property to be managed, used and enjoyed in a structured, yet flexible manner, while providing for financial and tax efficiencies, favorable succession planning, and liability protection across many generations.

Philip Hastings is the president and a shareholder and director of Cleveland, Waters and Bass, P.A., Concord, N.H.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540