

Leaving a Vacation Home to Your Children: Consider a Nominee Trust as Owner

Do you want your vacation home to stay in the family after your death? If so, you need to start planning now. First, make sure your estate has enough liquidity so the home does not have to be sold to pay estate taxes. Then address other matters, such as 1) how the children will pay expenses, including insurance, real estate taxes and maintenance on the vacation home, 2) how they will take care of administrative responsibilities, such as maintaining books and records regarding the home, and 3) how they will schedule when each may use the vacation home. Finally, assess tax considerations.

The last thing you want is for the vacation home to cause friction among your children, so you need to take care of as much as possible now. You can address many of these issues by the type of ownership you choose for the home. Many options are available, but the most direct is to have the children own the home jointly or as tenants-in-common. Under this alternative, however, there is no structure defining the terms of ownership -- your children will simply have to agree.

If your children don't get along well or you would like more structure to bind the arrangement, ownership by an entity, such as a trust, may better meet your needs. With entity ownership, all of your children can be involved in selecting a manager or the agreement can specify one. You must also consider tax issues. The goal generally is to choose a form of ownership that allows all income and deductions to pass through to the owners.

How a Nominee Trust Works

One of the more popular alternatives is holding the vacation property in a nominee trust and having either a partnership of the beneficiaries or the beneficiaries directly hold the beneficial interests in the trust. The nominee arrangement achieves the tax advantage of a pass-through entity such as a partnership -- income and deductions pass through to the beneficiaries. This type of arrangement creates several relationships:

1. ***Between third parties and the trustee.*** Third parties, such as a workman or even a buyer, will look solely to the trustee with regard to actions on behalf of the trust.
2. ***Between the trustee and the beneficiaries.*** The trustee will have the power to transfer the property without receiving approval of the beneficiaries. To protect the interests of the beneficiaries, however, the trustee should be an agent of the beneficiaries, with a duty to seek their approval before acting.
3. ***Among the beneficiaries (the children).*** The beneficiaries must establish an agreement about financial and general management decisions regarding the home. Typically, the beneficiaries, or even you in establishing the trust, will appoint a family member to be manager. The manager would be responsible for maintaining the property in good condition without having to seek the beneficiaries' approval unless major capital improvements were needed. The manager would also maintain insurance, pay real estate taxes and other charges, lease the property (if that is desired), and report periodically to the beneficiaries. The manager should receive reasonable compensation for these duties and reimbursement for out-of-pocket expenses.

Under the agreement, the beneficiaries should assume joint and several liability for home expenses, but have the right to recover from the other beneficiaries any expenses that they fail to pay. They have the duty to reimburse the manager for all reasonable expenses. The beneficiaries will have an interest in the venture itself, rather than a

direct interest in the trust assets. The agreement should restrict the transfer of beneficial interest except in the case of a right of first refusal or gift to a descendant.

Plan Now To Avoid Family Friction

If you want to leave your vacation home to your children, you face many potential problems. With careful planning, however, you can successfully address tax and ownership issues while maintaining a cordial atmosphere among the family members. Please let us know how our estate planning professionals may be of assistance. We'd be pleased to help.