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THE FAMILY CAMP: OWNERSHIP AND FUTURE MANAGEMENT

Whether you call it a camp, a cottage, or a cabin, the place where your family comes together is special. There are several techniques for transferring the family camp to the next generation. It is imperative to consider your family's goals and dynamics when choosing which technique is best for your family.

Tenants in Common

If your children receive the camp from you without any special planning, they will own the property as tenants in common. Each co-owner has a fractional share of the whole property that he or she can sell, lease, or transfer by gift or will without the consent of the other co-owners. Each co-owner has the right to use the property at any time, subject to the rights of the other co-owners. Each co-owner's share is potentially subject to claims of creditors and divorcing spouses. Each co-owner may be personally liable if someone is injured on the property. There are no absolute rules regarding contribution for expenses unless the co-owners come to an agreement amongst themselves. Each co-owner has the right to seek judicial partition to force either a physical division or a sale and division of the proceeds.

Tenancy in common is the simplest form of ownership because it does not involve the creation of any separate entity. The co-owners can have a written or unwritten management agreement among themselves, but the arrangements may become unmanageable as the property passes to the next generation. Therefore, many families decide to convey the camp property to a limited liability company or a family trust.

Limited Liability Company

A limited liability company (LLC) is created by filing articles of organization with the Secretary of State. An LLC is usually operated and taxed like a partnership, but the owners are referred to as "members." An LLC can be managed by the members or by one or more managers elected by the members. The members may create an agreement with provisions for management of the company, use of the property, contributions for expenses, and any restrictions on transfer of ownership. The members usually have the right to sell or transfer their individual membership interests, often subject to a right of first refusal held by the other members. An LLC has the advantage of limited personal liability. An LLC differs from a trust by giving the members maximum control over their individual ownership interests.

A family camp LLC is often used to transfer ownership from parents to children over a period of years. The parents convey the camp to the LLC and are the initial members. They then make annual gifts of membership interests to their children. The parents continue as members or managers as long as they wish, which allows them to maintain some control of the camp while gradually transferring ownership to their children. A group of children (or other co-owners) can also create an LLC after they receive a gift or inheritance of the camp.

Family Trust

A trust is created when an individual (called the grantor or settlor) conveys property to another party (called a trustee) for the benefit of one or more beneficiaries. You can establish a trust in your will or by a revocable or irrevocable trust agreement during your life. The will or trust agreement gives the trustee powers to manage the property and specifies the rights of beneficiaries. A family real estate trust may provide that each beneficiary's share of the property automatically passes to the beneficiary's descendants. The beneficiaries are usually prohibited from selling or transferring their interest in the property at least outside the family. This may provide protection from creditors and in case of divorce. The trust can continue indefinitely or for a period of time set in the trust document. The trust agreement can include specific rights for use of the property or can allow the trustee to make rules with or without the participation of the beneficiaries. A trust differs from an LLC by giving the settlor maximum control in dictating how the camp will be managed and owned over generations.

Questions to Consider

If you decide to create a family camp trust, LLC, or co-tenancy management agreement, here are some of the questions to consider:

- Who will be the initial owners? Who will be the beneficiaries? What happens upon the death of an owner or beneficiary?
- Who decides the schedule for use by owners and family? What are the rules for use of the property and how can the rules be changed? How will disputes be resolved?
- Who will be the trustee or manager? How will a successor be chosen?
- Who will be responsible for paying the bills? How are the expenses allocated among the owners? What is the penalty if any owners or beneficiaries fail to pay their share?
- Who decides whether to make capital improvements? Who pays for improvements?
- Are owners or beneficiaries allowed to withdraw? Can an owner sell to an outsider? Are the other owners required to purchase if a co-owner sells his or her share? How is the purchase price determined?
- Can the camp property ever be sold, with or without the consent of all owners?

Each form of ownership has many possible variations, and each has its own tax consequences. The tax consequences also depend on whether the property is conveyed by sale, gift, or inheritance, and what rights are retained by the grantors. It is important to consult your legal and tax advisors for a more detailed discussion of the options, and to be sure that your family camp plan is consistent with the rest of your estate plan.

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