



GREEN·SEIFTER
ATTORNEYS, PLLC

PRESERVING THE FAMILY VACATION HOME

GREEN & SEIFTER, ATTORNEYS, PLLC

*Presented by:
Lowell A. Seifter, Esq.*

August 5, 2010

How to Best Preserve and Pass on the Family Vacation Home

Preserving the Family Vacation Home

- I am going to present two planning options to preserve the family vacation home for future generations: trusts and limited liability companies.
- The legal mechanism for transferring the property is only one step in the process.
- It is important to have the family come to an agreement, rather than having the older generation impose a plan on the younger generation.
- Choose something you can live with, as after you select the vehicle, you must respect the form you have selected.

Factors to Consider in Transferring Vacation Property

- Disadvantages of Outright Transfers to Descendants:
 - Increased risk of conflict
 - Usage
 - Maintenance
 - Creditors of owners
 - Right to partition
 - Estate and gift taxes
- Considerations for Selecting Transfer Vehicle:
 - Be easily transferable
 - Protect owners from lawsuits
 - Promote “shared” governance and use of the property
 - Prevent use of right to partition
 - Provide estate tax savings

Trust as Owner

Benefits of Using an Irrevocable Trust

- The trust "owns" the interests you transfer, and the trustee "manages" the transferred property for beneficiaries
- Use of living (inter vivos) trust versus testamentary trust
 - Lifetime gifts are tax exclusive while gifts at death are tax-inclusive
 - If no longer New York resident, avoid ancillary probate by transferring entire interest to trust during lifetime
 - But, ease of owning and controlling property until death or death of spouse
 - And, before and after 2010, basis "step-up" to date-of-death value

Some Limitations on the Use of a New York Trust

- Limited Duration of a New York Trust – generally 21 years following the death of the last to die of you, your children and more remote descendants alive at the creation of the trust
- Asset Protection - no protection from the creditors of the person who created the trust; but property may be protected from the creditors of the beneficiaries
- Rent –if you use property transferred without paying fair market value rent, you risk estate tax inclusion
- Changing trust terms – may be expensive to accomplish

Limited Liability Companies

Ownership Versus Control

- Separate the ownership and the control of the property
 - "Members" are the owners
 - "Manager" or a "Board of Managers" controls assets
- Owners of the real property transferred to the LLC would be the initial members of the LLC, and may be managers.
- You could transfer all or part of your membership interests to your children.

Benefits of Using a Limited Liability Company

- Asset Protection – generally, for the property against your and your descendants' creditors, and for your other assets from lawsuits arising from the property
- Rent – you may choose to pay rent to cover operating costs, or if you retain a membership interest in the LLC, an argument could be made that as a continuing member, you do not have to pay rent
- Duration – LLCs may have perpetual duration
- Restrictions on transferability of interests
- Avoidance of ancillary probate
- Ability of property to be managed in a democratic fashion:
 - Representative board of managers
 - Members could control certain decisions

Gift and Estate Tax Issues

Gift and Estate Tax Issues

- A qualified appraisal is needed each time you make a transfer
- Discounted valuations may be available
- Value of the property transferred will be reportable on a gift tax return and may use up some of your lifetime exclusion amount
- Generally speaking, if you respect the form of the transaction, the value of the transferred property and any appreciation on it should be removed from your estate
- If your children plan to sell the property soon after your death, they may pay a smaller tax on the sale if you keep the property in your name until your death, and they receive a step-up in basis
- If your family plans to hold on to the property, the value of the basis step-up is not as important as other factors

Items to be Addressed in the Governing Instrument

Items to be Addressed by Agreement

- Annual contributions and user fees
- Consequence for non-payment of contributions/fees
- Usage schedule or mechanism to determine schedule
- Rules applicable for when the property is in use
- How expenses for maintenance, taxes, insurance, repairs and replacement of improvements will be paid
- How decisions will be made (by family line or majority vote), for example:
 - Appointing representatives to the board of managers
 - Removing and replacing the appointed representative

Items to be Addressed by Agreement

- Decisions to be made by managers and those over which members or beneficiaries will have a say
- Who will serve as manager/trustee, and how successors will be appointed
- How ownership rights or beneficial interests will be transferred
 - Only to your heirs or trusts for your heirs
 - Option to buy out the interest of the person who wants to sell the interest
- Procedure for resolving conflicts

CONCLUSION

Conclusion

- There will be a cost to the creation and ongoing administration of the entity, so weigh the costs against the goal of preserving the property.
- This discussion has been an overview, but what is right for you will depend upon your facts and circumstances, and the tax and non-tax laws in effect at the time of transfer.
- All these factors must be carefully considered with your attorney, your accountant and other estate planning advisors.
- Please feel free to contact me with any questions, or to schedule an appointment for a more in-depth analysis.

Circular 230 Notice

- Pursuant to and in compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice included in this presentation is not intended or written to be used, and cannot be used, for the purpose of: (1) avoiding federal tax-related penalties; or (2) promoting, marketing or recommending to another party any transaction or any matter addressed herein.



GREEN-SEIFTER
ATTORNEYS, PLLC

110 West Fayette Street
One Lincoln Center, Suite 900
Syracuse, New York 13202
(315) 422-1391

www.GSLAW.com

1433050.1