

KEEPING THE CABIN IN THE FAMILY: A GUIDE TO JOINT OWNERSHIP AND USE

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I. INTRODUCTION

With all the current attention being given to family dissolution, institutions, which promote family solidarity over the generations, are usually ignored by the media and researchers. A summer house may contribute to either outcome: if the heirs disagree over their inheritance and its use, the fighting may lead them to sell it and never speak to each other again. Thereby they earn the fate to which Dante consigned traitors to kindred in *The Inferno*: two brothers who killed one another over their inheritance ended up entwined together in an icy eternity of hatred in the lowest, most frozen level of Hell. However, if the founders and their heirs use the summerhouse wisely, it serves as the sacred hearth for all, to which they return for personal and familial renewal....

Judith Huggins Balfe, *Passing It On: The Inheritance and Use of Summer Houses* at vii – viii (1999).

Why do some family homes serve as a magnet that pulls the family together, and others become the family battleground, literally and figuratively? The answers to these questions are both sociological and legal. While the sociological component is fascinating and important to understand, it is beyond the scope of this paper. For an analysis of the sociological component, see Judith Huggins Balfe, *Passing It On: The Inheritance and Use of Summer Houses* (1999) and Judith Huggins Balfe, *Passing it On: The Inheritance of Summer Houses and Cultural Identity*, 26 *The American Sociologist* 29 (Winter 1995). This paper will focus mainly on the equally important legal component of how families succeed in passing on ownership of a cabin from one generation to the next. Note the term “cabin” is used herein collectively to refer to second homes of all shapes, sizes, styles, and fair market values.

One reason that the transfer of the cabin is more emotionally loaded than other property transfers between family members is that it typically involves a property with multiple uses, often located in environmentally pristine areas, and tends to embody the family’s values and sense of identity. Cabins are often located in desirable areas where the property values have increased at a rate far beyond the family’s other assets. Cabins also often represent a large percentage of a family’s financial holdings, posing unique estate tax and liquidity issues for the senior generation. For the junior generation, keeping a cabin in the family poses financial issues, and brings with it the challenge of reaching a consensus among family members as to how to deal with this property -- whether wanted, or in some cases, not wanted.

The legal mechanism for transferring the property is only the first of many challenges. Following the transfer, the next generation must determine how it will be maintained, how taxes, insurance, and maintenance will be paid for, and how its use will be divided among the family members, to name only a few of the issues that may arise.

This article will outline some of the estate planning tools for transferring these properties, followed by a brief discussion of some unusual transfer issues: Cabins in British Columbia; and cabins on public land. However, transferring the property is relatively easy, compared to maintaining harmony among its owners following the transfer. Methods of management and organization to accomplish this more daunting task are also discussed below.

II. CREATING A MASTER PLAN

Before a plan to transfer the family cabin to the next generation can be implemented, the family needs to reach a consensus as to what will be done with it. A plan imposed by a senior generation upon the junior generation is almost doomed to fail. The most successful plans involve detailed and thoughtful advanced planning involving both generations. See James S. Sligar, *Estate Planning for Major Family Real Estate Holdings*, 133 *Trusts & Estates* 148 (Dec. 1994) for a comprehensive discussion of master plans.

Once the family members are informed of the various options (which may include identifying portions to be set aside for conservation purposes; identifying portions that could be sold to raise capital to support the remaining property, and determining which portions are to be transferred to succeeding generations), the first step in creating a master plan is to have each family member interviewed. Ideally, a neutral third party facilitator or mediator trained in this style of communication would do this. The use of a mediator or other trained neutral third party can be invaluable in developing a master plan. See Olivia Boyce-Abel, *When to Use Facilitation or Mediation in Estate and Wealth Transfer Planning*, *Family Office Exchange*, Vol. 9 No. 35 (1998) for a discussion of the role of a facilitator.

The interview process is an opportunity for each family member to freely express his or her wishes and apprehensions with respect to the property. Not all family members have to participate in the interview process, but all should be given the opportunity. The neutral third party could then prepare a report summarizing their findings, identifying areas of consensus, if any, and pointing out areas where feelings and opinions diverge. This report can be shared by the family members, and used by the members of the senior generation and their attorney to begin to develop the master plan.

In some cases, the family members can make decisions with respect to the property jointly. Ideally, a series of family meetings would be held by a facilitator to resolve areas of dispute, further define areas of agreement, and continue building a consensus. This process is especially useful where the senior generation has already ceded control of the property to the next generation, and questions and issues concerning actual management have arisen.

Of course, the use of a facilitator in estate planning is not going to be accepted by all clients. It is understandably difficult to impress upon clients the value that could be added by employing a facilitator to guide this process. At a minimum, the lawyer could offer to distribute a survey to family members that they could respond to anonymously, in order to give the senior generation insight into the wishes and apprehensions of the next generation. As a result of the facilitator's work or the lawyer's survey, the senior generation may discover that some or all of the members of the younger generation honestly have no interest in retaining the cabin. They also may be able to determine the apprehensions of those who do want to retain the cabin, and resolve those issues before the cabin becomes a battleground.

Often, the next step in developing a master plan is the creation of a mission statement to address the family's goals and values with respect to the cabin. Issues to address in the mission statement could include: (1) What is most important to the family about the cabin; (2) What

does the family value most about how it uses the cabin; and (3) How would the family like to see the ownership of the cabin affect the ways the various members interact.

It may be the case that rather than transferring all of the property to the next generation as part of the master plan, the property may need to be divided into separate portions, each to be dealt with differently. The different uses may include: (1) Development, (2) conservation, and (3) residential use. There are estate planning techniques to accomplish each of these objectives, which are discussed below.

III. DEVELOPMENT OF PROPERTY

As part of the master plan, the family may decide to sell some of the property to raise funds to maintain what is remaining, and/or to reduce the ongoing costs of maintaining the property. The proceeds can be set aside in a trust to maintain the property, or transferred with the cabin into any of the entities discussed in Section V below, for ongoing management of the cabin.

IV. CONSERVATION AND PRESERVING OPEN SPACE

Frequently, families determine that certain portions of their land should be preserved as open space, and may choose to restrict development or other uses. There are several ways this can be accomplished, described below.

a. Conservation Easements.

One common way to restrict development is with a conservation easement. A conservation easement is a permanent restriction on the use of privately owned land that promotes land conservation by preventing most types of land development. For a comprehensive analysis of conservation easements and their uses, see Russell J. Speidel, *The Use of Conservation Easements, Land Trusts, and Community and Private Foundations in Charitable Giving and Estate Planning*, Real Property, Probate & Trust Section of the Washington State Bar Association Midyear (#03704B, June 2003). The Internal Revenue Code permits income and gift or estate tax deductions for a grant of a conservation easement over certain real property. I.R.C. §170(h), §2055(f) and §2522. The Treasury Regulations set forth detailed requirements for deductibility. Treas. Reg. §1.170A-14. Typically, a conservation easement reduces the value of the underlying property, thus reducing transfer tax costs.

There is a three-prong test to determine whether a gift is a qualified conservation contribution (i.e., qualifies as a conservation easement):

- i. The property contributed must be a “qualified real property interest.” In other words, it must be a perpetual interest in land. Treas. Reg. §1.170A-14(b)(2).
- ii. The property must be donated to a “qualified organization” that will enforce the easement and has a commitment to protecting the conservation purposes of the donation. I.R.C. §170(h)(3) and Treas. Reg. §1.170A-14(c)(1).

- iii. The gift must be exclusively for “conservation purposes,” (I.R.C. §170(h)(1)(C) and §170(h)(4)), which means that it must satisfy one or more of the following three purposes:
 - (1) Preservation of land areas for recreation or education of the general public;
 - (2) Preservation of a natural habitat of fish, wildlife or plants; and/or
 - (3) Preservation of open space, including farmland and forestland, for the scenic enjoyment of the public, or pursuant to a clearly delineated federal, state or local conservation policy that will yield a “significant public benefit.”

Few families want to open up their land for use by non-family members. So, preservation of a natural habitat and preservation of open space are more likely to be useful conservation purposes than preservation of land for use by the general public.

A family may want to convey a conservation easement, yet retain certain development rights over the property. There are two ways of accomplishing this: The “reservation method” and the “carve-out method.” The reservation method permits the grantor to convey an easement over an entire parcel, and reserve a right to develop a discrete number of lots (e.g., one single-family dwelling for every 40 acre parcel) on the property. The carve-out method permits the grantor to carve out specific portions for development. The carve-out method allows the parcels not subject to the easement to be developed, and often enhances the market value of these parcels because of their proximity to the parcels subject to the conservation easement. Both methods may be useful in the development of the family’s master plan. Robert J. Petix, Jr., *Postmortem Conservation Easements: Substantial Estate Tax Savings*, 30 Estate Planning 273, 276 (2003).

As a general rule, the value of an easement or other perpetual conservation restriction is equal to the difference between the fair market value of the property the restriction encumbers “before and after” the contribution. Treas. Reg. §1.170A-14(h)(3)(i). If there is a substantial record of sales of comparable easements, however, the fair market value of the donated easement must be based on the sales prices of the comparable easements. Treas. Reg. §1.170A-14(h)(3)(i). Because sales of conservation easements are not common, perpetual conservation restrictions are usually valued pursuant to the “before and after” method.

The Treasury Regulations provide special rules for valuing a qualified conservation contribution that take into account any economic benefit that may accrue to the donor or related parties as a consequence of the gift of the easement. For a gift of a perpetual conservation restriction covering a portion of contiguous property owned by the “donor” or a “member of his family” as defined in I.R.C. §267(c)(4), the value of the contribution is the difference between the fair market value of the entire contiguous parcel before and after granting the restriction. Treas. Reg. §1.170A-14(h)(3)(i).

If the gift of an easement has the effect of increasing the value of any other property owned by the donor or a related person (as defined in Section 267(b)) of the Internal Revenue Code, the

value of the contribution is reduced by the amount of the increase in value of the other property, whether or not the property is contiguous. Treas. Reg. §1.170A-14(h)(3)(i).

Conservation easements may also be taken into account by local jurisdictions when assessing the land value for real property tax purposes.

Even if a decedent did not specifically provide for a gift of a conservation easement, an executor or inheriting “family member” can grant a conservation easement on estate property. I.R.C. §2031(c). See Robert J. Petix, Jr., *Postmortem Conservation Easements: Substantial Estate Tax Savings*, 30 Estate Planning 273 (2003) for an in depth discussion of postmortem granting of conservation easements. The family member may be any of the following: the decedent’s ancestor, spouse, or lineal descendant; the spouse of a lineal descendant; or a lineal descendant of the descendant’s spouse or parent. I.R.C. §2031(c)(8) and §2032A(e)(2).

b. Direct Gifts to Charity.

In some cases, it may make sense for the family to directly contribute land that is environmentally sensitive to a charity that will hold and protect it. A direct gift eliminates the cost and complication of establishing a conservation easement. It will also entitle the donor or donors to either an income and gift tax deduction for an inter vivos gift or an estate tax deduction at death.

Many parts of the country have local land trusts or land banks, which are nonprofit organizations established to protect and preserve valuable open space and environmentally sensitive land. A land trust or land bank can either take title in fee simple or hold a conservation easement over property.

Where property is contiguous with public land, it may also be possible to donate the property to a government agency. However, there are limitations. For example, Congress determines the boundaries of national parks, and donations of real property are only permissible within those boundaries. Thus, even where land is contiguous with public land for National Park purposes, a land bank may be a more feasible donee.

c. Gifts to a Charitable Entity.

Another method of making a charitable gift is through the use of a private foundation or a supporting organization. A charitable contribution gift and income tax deduction is permitted for the value of an inter vivos charitable gift. I.R.C. §170(h) and §2055. If the contribution is made at death, an estate tax deduction is allowed for the value of the contribution. I.R.C. §2522.

i. Private Foundations.

A private foundation is a charitable entity that may be controlled by the family members, and is exempt from income tax under I.R.C. §501(c)(3). The foundation would need to be established and operated to use the property exclusively for charitable or educational purposes that will confer a benefit upon the public and *not the donors or their family members*. Public uses include hiking and riding trails, and open spaces that can be viewed by the public.

Private foundations are subject to strict regulation and scrutiny by the IRS, and are generally limited to passive grant making to public charities, which are to receive distributions of income from the foundation. Among the many compliance limitations that apply to private foundations and their donors, the donor family will not be able to use or have access to the donated property in any manner that is more advantageous than the public's access to the property.

The tax benefits of a private foundation are somewhat restricted. However, in spite of the many technical compliance requirements, in the appropriate situation the private foundation can provide a family with considerable flexibility in its charitable giving. The family of a private foundation donor may control the management of the foundation. Specifically, the foundation could use the funds to perpetuate the preservation of environmentally sensitive or pristine land.

ii. Supporting Organizations.

A "supporting organization" is another form of family foundation, which is described under Section 509 of the Internal Revenue Code. Generally, the tax benefits of a supporting organization are more generous than those of a private foundation, but the donor does not retain as much management or control over the use of the funds.

The advantage of the supporting organization is that, generally, the tax benefits are more generous than those of a private foundation. This comes at the expense of the donor's management or control over the use of the donated property. In return for the greater tax benefits of a supporting organization, the family of a supporting organization donor *may participate in but not control* the supporting organization.

A supporting organization must identify the charitable organizations or purposes it will support and must affiliate with an established public charity or charities. I.R.C. §509(a)(3)(A) and Treas. Reg. §1.509(a)-4(c)(1). While more costly to establish, a supporting organization offers significantly greater freedom from technical compliance requirements and is often the preferred charitable vehicle.

A supporting organization, which is affiliated with or controlled by a governmental unit or a publicly supported charitable organization, could also be the recipient of a contribution of real property. I.R.C. §509(a)(2) and §509(a)(3).

A supporting organization could be funded, in part, with a portion of the family's real property intended to be set aside for conservation purposes. The supporting organization could then support another charity, such as a state or local public park agency, land trust, historical society or conservation organization, by donating the land to a supported charity and/or providing funds for the supported charity to conduct conservation programs on the land.

V. TRANSFERRING THE CABIN FROM THE SENIOR GENERATION TO THE JUNIOR GENERATION

Once the portions to be set aside for preservation and development (if any) have been identified, the linchpin of the master plan is transferring the cabin to succeeding generations. As indicated above, there are a number of techniques for transferring the cabin to the next generation, some of which are discussed below.

a. Outright Gifts.

An outright gift to the younger generation (or to a trust for their benefit) will transfer the value of the property and all future appreciation, thereby reducing the taxable estate value of the senior generation. Mark B. Edwards, *Protecting the Castle: A Manual for Defenders of the Keep*, 32nd Annual Philip E. Heckerling Institute on Estate Planning, University of Miami Law Center at 12 (1998). If the gift is given as undivided interests in real property, it may also be possible to apply minority and other discounts to further reduce the value of the gift for gift tax purposes.

i. Gift Tax Consequences.

Under current law, the annual exclusion from gift tax allows an individual to transfer up to \$11,000 per year, per donee, without incurring any gift tax consequences. I.R.C. §2503(b). Accordingly a married couple may transfer up to \$22,000 to each of their children (or other third parties) annually, free of gift tax. In addition, a married couple may “split” gifts made to third parties. I.R.C. §2513. In other words, one spouse may make a gift of separate property to a third party, and the other spouse may consent to be treated, for gift tax purposes, as having made one-half of the gift. Thus, a \$22,000 gift by one spouse would be treated as if it were made one-half by each spouse and therefore would not exceed the \$11,000 gift tax annual exclusion amount.

ii. Estate Tax Consequences.

In addition to the annual exclusion, an applicable credit of \$345,800 allows each taxpayer to transfer \$1,000,000 free of federal gift tax, during life or (to the extent not used during life) the credit may be used at death. Since January 1, 2004, the applicable credit at death is equal to \$555,800, which allows each taxpayer to transfer \$1,500,000 at death. Thus, a taxpayer who transferred \$1 million using his unified credit during life may transfer an additional \$500,000 at death, free of estate tax.¹

¹ The exclusion is scheduled to increase in phases (for estate tax, but not gift tax purposes) to \$3.5 million by year 2009, and expire in 2010. I.R.C. §2010 and I.R.C. §2505. Gifts qualifying for the annual exclusion do not use up any portion of the donor’s remaining applicable credit. Once a taxpayer has used up his or her applicable credit, gifts are subject to federal tax pursuant to a graduated and cumulative rate of gift tax. I.R.C. §2501. Assets transferred at death, in the excess of the taxpayer’s remaining applicable credit, are subject to estate tax at the same graduated rates applicable to gifts. I.R.C. §2502 and I.R.C. §2001(c). In some states, including Washington, there may also be a state estate tax over and above the amount owed at the federal level. EGTRRA (Economic Growth and Tax Relief Reconciliation Act of 2001 Pub.L. No. 107-16) phases out the I.R.C. §2011 credit for state death taxes. The unified credit allowable through the year 2011 under I.R.C. §2010 is set forth below:

iii. Tax Inclusive Versus Tax Exclusive Gifts and Other Considerations.

Inter vivos gifts, which are tax exclusive, are preferable to gifts at death, which are tax inclusive. In other words, at death, estate tax is assessed on both the value of a gift and the funds actually used to pay the tax. But during one's life, gift tax is paid with funds not otherwise subject to gift tax. Against this benefit though, it is necessary to take into consideration that gifts at death are entitled to a full stepped-up tax basis to date-of-death fair market value. I.R.C. §1014(a). Inter vivos gifts, on the other hand, only retain a carry-over basis equal to the basis in the hands of the donor, plus the amount of gift tax paid on the appreciation. I.R.C. §1015. Thus, in a nontaxable estate, it may be best to hold onto property until death, in order to take advantage of the stepped-up basis.

b. Qualified Personal Residence Trusts.

i. Background.

One estate planning technique that can be effective for transferring real estate between family members is the qualified personal residence trust or "QPRT." See Edwards, *supra* at 15-21 and Kevin M. Flatley, *Estate Planning Strategies for Real Estate*, 27 Estate Planning 222, 223 (2000). A QPRT permits a homeowner to make a gift of his or her personal residence (i.e., a primary residence and/or a vacation home, along with a reasonable amount of surrounding property) to a trust for the benefit of children or other beneficiaries at a reduced gift tax cost. I.R.C. §2702. The "grantor" (i.e., the homeowner who transfers the residence to the QPRT) is permitted to reserve the right to live in the house for a number of years (referred to as a "reserved term of years"). The number of years is selected by the grantor. During the trust term, the grantor may use of the residence, rent-free. Upon expiration of the trust term, the residence is distributed to the remainder beneficiary or beneficiaries (usually the grantor's children), or held in further trust for their benefit.

The value of the gift is the fair market value of the residence at the time of transfer to the QPRT, decreased by the value of the reserved term of years (determined according to IRS tables).

Year(s)	Federal Exclusion	Federal Unified Credit
2004 – 2005	\$1,500,000	\$555,800
2006 – 2008	\$2,000,000	\$780,800
2009	\$3,500,000	\$1,455,800
2010	Repeal	Repeal
2011	\$1,000,000	\$345,800

Some states define their state estate tax as an amount equal to the maximum federal credit for state death taxes paid. In those states, no additional state estate tax would be due. Others have defined the state tax by reference to a federal credit based on a specific amount of federal tax exemption. In these states, additional estate tax may be due if the federal credit amount exceeds the state credit amount. See David Keene and Marcia K. Fujimoto, *EGTRRA's Changes to the State Death Tax Credit: Good News for Some Estates, Bad News for Some States*, 81 Taxes 23, 25 (Nov. 2003).

Treas. Reg. §25.2702-5. Generally, a longer reserved term produces a correspondingly lower value of the gift for gift tax purposes. The grantor consumes a portion of his or her applicable credit when the transfer is made to the QPRT (or, if the applicable credit has been exhausted, the transfer is subject to gift taxes that year). At the end of the trust term, the residence passes to or for the benefit of the children with no further gift or estate tax consequences. As a result, all appreciation that occurs during the trust term is “shifted” to the children free of gift or estate tax.

For example, assume that a husband, 55, and wife, 50, wish to create a QPRT for 15 years using their cabin valued at \$500,000, which is community property and is not subject to any debt. Because of the QPRT, their combined gifts to their children for tax purposes would be valued at approximately \$262,085. And, upon expiration of the trust term, the cabin (plus any appreciation occurring during the trust term) would be transferred to or for the benefit of the children without further estate or gift tax consequences. (Note: The amounts estimated in this example are based upon interest tables, which change monthly.)

When creating a QPRT, the gift to the trust is irrevocable, and assuming the grantor survives for the reserved term of years, the residence will not be included in the grantor’s estate for federal estate tax purposes. The QPRT enables the grantor to remove the value of the residence, plus any appreciation, from the (taxable) estate for a lower transfer tax cost than would be imposed if the residence were a part of the estate.

ii. Disadvantages of the QPRT.

There are three main drawbacks to the QPRT:

- (1) The residence passes to the children (or other beneficiaries) outright or in further trust, upon the expiration of the reserved term of years. If the grantor wishes to continue to occupy the residence at the end of the reserved term, the grantor must pay rent to the beneficiaries. If a home has appreciated considerably over the term of the QPRT, fair market rent may pose a financial burden. The rental payments would represent taxable income to the children. However, the amount of rent paid by the grantor would be removed from the (taxable) estate; because the estate tax rate generally exceeds the income tax rate, for those parents interested in reducing potential estate tax liability, this represents further overall tax savings.
- (2) The tax advantages of a QPRT also depend on the grantor surviving the trust term. If the grantor fails to survive the term of years, the entire value of the trust’s interest in the residence at the grantor’s death will be included in the grantor’s estate for estate tax purposes. Therefore, the estate and gift tax advantages will be lost, but the effect will generally be the same as if the QPRT had not been established.

- (3) If a residence were transferred using a QPRT, it would not be entitled to the step-up in basis that would otherwise be available at the time of the transferor's death, because the stepped-up basis is available only if the property is included in a decedent's estate. I.R.C. §1014(a). Therefore, in some circumstances, it may be advantageous to transfer the residence at death (e.g., where the parent's estate is not expected to be taxable even if the residence is included or when the property is expected to be sold by the younger generation upon the death of the senior generation).

- iii. Additional Considerations.

When determining if a QPRT is appropriate for any client, one must balance the likely estate tax savings (i.e., the highest marginal estate tax rate applicable to the dollars in question, multiplied by the value of the residence that is being removed from the taxable estate) against the capital gains tax rate (generally, 15% under current law) that will be applied if the property is sold. Note that when determining if a QPRT is appropriate for any client, capital gains tax applies to the difference between fair market value and basis (i.e., acquisition cost) of the property, and is paid at the time of sale of the property (when cash is available). In contrast, estate taxes are imposed on the entire fair market value of the property and are due nine months after death, regardless of whether the property has been sold by that time. These factors, plus the fact that the capital gains tax rate usually is lower than the estate tax rate, can make the QPRT an attractive estate planning technique.

In some cases it may be necessary to subdivide the property to carve out the cabin, associated outbuildings and an appropriate amount of surrounding real property to be transferred via the QPRT. Treas. Reg. §25.2702-5(c)(2)(ii). *See, e.g.*, private letter rulings 9328040, 9442019 and 9503025, 199918049 and 200126026. There are a number of private letter rulings that give guidance as to what the IRS considers a reasonable amount of property to be transferred. Other sources of guidance would be the minimum lot size under local zoning regulations, and the parcel sizes of comparable residences in the area.

- c. Other Types of Trusts.

- i. Irrevocable Trusts.

An irrevocable trust (other than a QPRT) owning real estate, which removes the house from the grantor's estate, can be a vehicle for gift giving to younger generations during the senior generations' lifetime. The trust can name beneficiaries and grant others the power to expand the number of beneficiaries. The parents can give their children and grandchildren (or others) annual exclusion gifts of \$22,000 interests in the trust owning the real estate. Similarly, parents can also give their children larger lifetime gifts that consume a portion of their applicable exclusion amount.

Where a house is placed in an irrevocable trust by a parent, if the parent then chooses to remain in the home, he or she must pay fair market rent for that right, or the value of the house will be included in his or her estate at death. I.R.C. §2036.

The advantage of a trust is that for some families it is a familiar arrangement already, because of other aspects of their estate planning.

For most families, however, a trust is not the preferred arrangement. Duration may be limited by the applicable rule against perpetuities. Where a house is intended to be held in trust for future generations, the trust is often established with an endowment to cover future expenses. This arrangement is often found to be inadequate for future generations. As the value of the property increases (which it often does in desirable vacation spots), the endowment may prove to be insufficient to cover expenses. Furthermore, trust terms are more difficult to amend - to adjust to unanticipated changes of circumstance or desires, as situations may warrant - than a tenancy in common or LLC agreement. Similarly, ownership interests cannot be adjusted over time to account for unequal contributions of money or labor. Also, it is difficult to add new owners who are not lineal descendants of the trust founder.

Trusts also raise fiduciary duty issues. Typically, one generation would be the lifetime beneficiaries of the trust. They may also serve as trustees and make certain decisions that would benefit them individually over the interests of the remainder beneficiaries, violating the fiduciary duty of loyalty. These issues may be avoided by using other types of entities, discussed below.

ii. Revocable Trusts.

The senior generation may consider using a revocable trust to transfer ownership of the cabin at a later date. A revocable trust offers the senior generation an opportunity to plan for the management of the cabin, without making those plans final, because the grantor or grantors retain the right to revoke the trust.

Along with the power to revoke the trust, the grantors may retain the power to amend the terms of the trust. Typically, the parents would serve as the initial trustees and they would name their successors, should they become unable to serve, or simply choose to resign. Upon the death of the grantor (or of both grantors in the case of a married couple), the trust would become irrevocable and either could continue as an irrevocable trust for the next generation, or it could distribute its assets to named beneficiaries pursuant to its terms, and terminate.

For a senior generation starting to plan on transferring the cabin but not be willing to make those plans irrevocable, the revocable trust is an excellent first step.

d. Family Limited Liability Companies.

Formation of a family LLC may provide a useful vehicle for transferring a cabin to younger generations. (Similarly, a family limited partnership may also be used.) Sligar at 55. The business purpose of the LLC would be the ownership and management of valuable real estate.

i. Management of the LLC.

Management of an LLC may be by all of the members, voting by percentage interests. Alternatively, one or more managers may govern an LLC. Usually, a manager also is a member/owner. In a manager form of LLC, non-manager/members have no voice in

management, and they vote only on specified matters. The managers have complete control over normal operations.

If a manager form of LLC is used, decision making can be concentrated in fewer than all owners. This permits the transfer of ownership interests to other family members while maintaining control in one or only a few. Thus, Mom and Dad could name themselves as managers but transfer significant ownership interests to their children. By being managers, Mom and Dad retain the right to decide the use of the home, make repairs and improvements, and, in general, run the home as they always have done. At the same time, they may give significant portions of the value of the home to the next generation.

ii. Transfer of LLC Interests.

After formation of the LLC, the lifetime transfer of a membership interest to a child must occur within the framework of the federal gift tax law. The gifts can be structured, however, to give very favorable tax results. Mom and Dad each may give up to \$11,000 per year to each other family member (\$22,000 in total, even if only one makes a gift of separate property but the other spouse consents to split gifts). Thus, if the gift is to come within this annual gift tax exclusion, it is likely that in each year only a small percentage interest can be given to each recipient. The small annual gifts become significant ownership percentages, however, if repeated over a number of years. As an alternative, the senior generation may gift an amount in excess of the gift tax annual exclusion. The excess can apply against and use part of the lifetime gift tax exemption amount (currently \$1,000,000 per donor). *See supra* note 1 and accompanying text.

iii. Valuation of LLC Interests.

Because of the discounts normally available for minority interests and lack of marketability associated with an LLC, such an entity can permit the transfer of assets at a lower gift tax cost than is generally available with respect to direct transfers. In other words, the LLC permits gift and estate tax savings because the LLC interests are valued at less than a pro rata portion of the underlying assets. Gift taxes are generally lower because of the discounted value of the gifted LLC interests, and the LLC interests held at the death of the older generation often are discounted as well, assuming the older generation has retained less than a majority interest.

The value of a percentage interest gift is established in a two-step process. The first step is to value the company property, i.e., the vacation home (and a bank account or other assets owned in the LLC). This is done by obtaining an appraisal from a competent real estate appraiser. The second step is to value the fractional membership interest that constitutes the gift. This requires a second appraisal by a person qualified to value fractional interests in business entities. The second appraisal takes into account the facts that the asset is a minority interest, it lacks control, and little, if any, market exists for such an interest. The result of the second appraisal is likely to be a discounted value of 20% or more from the proportionate share of the total value. Thus, the membership interests typically can be transferred on a very favorable gift tax basis.

iv. Advantages of LLCs.

Use of the LLC can protect the underlying assets of the LLC from the claims of creditors in the event of a lawsuit, the bankruptcy of a member, court judgment, tax lien, or from claims of a

non-family member spouse in the event of divorce. The LLC agreement may contain transfer restrictions to prevent the sale to an outside party without unanimous consent of the members.

The limited liability company offers the added advantage (over a partnership, although not a limited liability partnership) of limited liability for its members, as in the case of a corporation, even if all of the members are involved in management.

In addition to the gift or estate tax benefits afforded by use of the LLC, by making gifts of LLC interests gradually over time, the gradual and orderly transfer of responsibility and management can take place. At the same time, it is possible for the senior family members to retain significant control over management if they so choose, by naming themselves as managers of the LLC.

Unlike trusts, LLCs can have perpetual existence. The controlling documents are much easier to amend than a trust agreement. The ability to alter LLC ownership is also possible, whereas it is not usually an option with trusts.

v. Disadvantages of LLCs.

The main disadvantage of the LLC is that if the senior generation had held on to the cabin and not transferred it to the LLC, and it was later sold, it *might* have been possible to treat it as a principal residence and exclude the capital gain on sale under Section 121 of the Internal Revenue Code.² This exclusion is not available if the cabin is sold as an asset of an entity such as an LLC.

In addition, in order to establish an LLC, there are legal fees that some families may not want to incur, and there will be ongoing legal and accounting fees to maintain the entity.

vi. LLCs Versus Trusts.

As circumstances change, the LLC operating agreement is easier to amend than an irrevocable trust. If all of the members agree, the LLC operating agreement may be amended or even terminated. At the same time, this may provide less long-term certainty than the senior generation would prefer.

vii. Using LLCs to Accomplish an Estate Freeze.

Finally, LLCs can be used to “freeze” the value of the property interests retained by the senior generation. Sligar, *supra* at 54. Chapter 14 of the Internal Revenue Code and the regulations thereunder impose detailed restrictions on how LLC interests may be structured so as to insure that the appropriate value is attributed to the senior family members when they have transferred LLC interests to younger family members. Treas. Reg. §25.2701. This type of transaction

² The Taxpayer Relief Act of 1997, Pub.L. No. 105-34, amended I.R.C. §121 (formerly providing a one-time exclusion of gain from sale of a principal residence by an individual who has attained age 55) permits exclusion of up to \$250,000 of gain by an individual or \$500,000 by a married couple on the sale or exchange of a principal residence, if the property was a principal residence for 2 of the last 5 years.

transfers property that is *not likely* to appreciate to the senior generation, while transferring an interest in the same property that is *likely* to appreciate to descendants, either simultaneously or shortly after the first transfer. A discussion of estate freezes is beyond the scope of this paper, but it is a useful planning tool to consider in connection with structuring an LLC.

e. Sales to Family Members.

In addition to the transfer techniques discussed above, property can be sold by the senior generation to members of the next generation. Sligar, *supra* at 55. Such a sale should eliminate from the estate of the senior family member any appreciation in value of the property. However, the selling/senior generation will receive the sales proceeds, which will be subject to capital gains tax. Eventually, the proceeds and its further appreciation will also be subject to estate tax, if not spent or given away prior to death.

Sales can be structured in any of the following ways:

- i. An outright sale for cash.
- ii. An installment sale.

I.R.C. §7872 imputes interest for loans with an interest rate less than the applicable federal rate (“AFR”). There is a risk that IRS may assert that the difference between the AFR and the stated rate on the promissory note generates both income and gift tax consequences for the seller. The IRS will impute taxable income to the seller and impute a taxable gift received from the seller by the purchaser in the amount of this difference. *See* Benjamin N. Feder, *The Promissory Note Problem*, 142 *Trusts & Estates* 10, 11 (January 2003).

- iii. An installment sale with a self-canceling installment note that will cancel on the death of the senior family member.

The self-canceling installment sale employs the use of a promissory note that, by its express terms, expires upon the death of the payee. As a result, the unpaid balance of the note is reduced to zero at the death of the payee prior to payment in full. Given the uncertainty of collecting all of the payments, the purchase price should reflect “full and adequate consideration,” which includes a built in risk premium to pay for the risk of not collecting the entire sum. While the IRS has accepted the use of self-canceling installment notes, there is minimal guidance on setting the amount of risk premium. *Estate of Moss v. Commissioner*, 74 T.C. 1239 (1980) *acq. in result*, 1981-1 C.B. 2 and Gen. Couns. Mem. 39,503 (May 7, 1986). Because the seller’s life expectancy should exceed the payment period, the premium need not be excessively large. However, if the seller’s actual life expectancy is reduced for known reasons, the risk premium should be increased accordingly. Failure to do so may result in the IRS asserting that the sale is a disguised gift.

iv. An exchange for a private annuity.

A private annuity is a contract that provides for specified payments to the named annuitant during the annuitant's lifetime. Typically, one party agrees to transfer property to an individual in return for the right to an annuity payment for life in return. Stephan R. Leimberg and Albert E. Gibbons, *Annuities and Estate Planning*, 29 Estate Planning 360, 363 (2002). A private annuity is similar to the self-canceling installment note, but under a private annuity, the payments never cease so long as the annuitant is alive, even if the annuitant outlives his or her life expectancy. The primary advantage of the private annuity is that the annuity amount can be determined from IRS valuation tables, eliminating the speculation as to the amount of the periodic payments to be made. Because a private annuity is essentially a sale in return for a promise to pay - unlike promissory notes used with installment sales - private annuities cannot be secured, putting the annuitant at risk that the buyer may default.

VI. VACATION HOMES ON PUBLIC LAND

Cabins on national forest land have existed since the late 1800's, when national forests were reserves and were administered by the General Land Office in the U.S. Department of the Interior. The first lots for private cabins were authorized by the Forest Management Act of June 4, 1897, also known as the "Organic Act," to encourage public recreation. In the early years, thousands of permits were issued on national forests near large cities, such as the Angeles, the Oregon (Mount Hood), and the Pike-San Isabel National Forests. The program continued to grow until permits numbered around 20,000 at mid-19th century.

Often National Forest leases have been referred to as "99-year leases." However, there has never actually been a 99-year Forest Service lease. In the early 1900s, some portions of private land were leased for summer homes and subdivisions for 99 years, and some of those leases still exist. Because they were located adjacent to National Forest land in the foothills and mountains, National Forest Recreation residence tracts became associated with this type of lease. The Forest Service issues recreation residence permits for a maximum of 20 years.

Most of the recreation residence permits involved high-value recreation land. In 1968, in recognition of other recreation needs, the Forest Service decided against establishing any additional new tracts. In 1976, this moratorium was expanded to include no development of new lots within existing tracts. Transfer of permits takes place now only by sale, gift, or inheritance.

A permit holder and prospective buyer or transferee must meet with the local Forest Service Special Use Administrator to discuss the transfer process. If a term permit is issued, the cabin owner will be permitted the remaining number of years on the current term. This allows for a common expiration date for all recreation residences located in the National Forest.

There is no guarantee that a new Term Special-Use Permit will be reissued at the end of the stated term. If a permit is not going to be renewed, the Forest Service will give 10 years notice, and the permit holder will be required to remove all improvements from the lot and restore it to the original conditions at his or her expense.

Recreation residences are for recreation use only and may not be used as a primary residence. In addition, a cabin must be used at least 15 days per year by the permit holder to ensure that the privilege granted by the permit is exercised and the continued use of public land is justified. Owners may only rent their cabin for a maximum of 14 days per year, with written authorization from the special use administrator.

The special use permit does not provide exclusive use of National Forest lands to homeowners, but allows for use of the lot. The public is allowed free access for all lawful and proper purposes to the National Forest lands. Within tracts, the general public may access National Forest lands by walking across lots or parking in areas not under permit. The public does not have the right to use the lands within the permitted "lot boundary" for activities such as picnicking, camping, vehicle travel, or parking.

Further information on Forest Service leases can be found at <http://www.fs.fed.us/r5/eldorado/recreation/recres.html>. See also 16 U.S.C. ch. 81, User Fees Under Forest System Recreation Residence Program. In addition, some states regulate cottage leases on state forestland. See, e.g., Idaho Code §58-304, Leases, and IDAPA 20.03.13, Rules for Administration of Cottage Site Leases on State Lands. Washington does not have such a program. However, under certain circumstances, Washington does provide for the lease of state lands for residential use. RCW ch. 79.13.

VII. VACATION HOMES IN BRITISH COLUMBIA

British Columbia levies a tax on real estate transactions recorded in the Land Title Office. This tax is known as the Property Transfer Tax ("PTT"). RSBC 1996 ch. 378 (the "Act"). The rate is 1% on the first \$200,000 in value and 2% on any value over \$200,000. Sec. 3 of the Act. "Real estate" is defined in the legislation to capture and tax transactions involving interests in land, including leases, life estates, and fee simple interests. Sec. 1 of the Act.

There are many exemptions to the PTT, including a transfer to a surviving joint tenant; transfers between related individuals of principal residences, family farms, or recreational residences (sometimes the exemption only applies to land having a value not exceeding \$275,000, which can limit their use); transfers incident to divorce; and some transfers involving estates.

Registration of a transfer document in the Land Title Office triggers application of the tax. However, some transfers do not require filing with the Land Title Office. Methods of transfer that do not require filing with the Land Title Office are discussed below.

Land may be held in a corporation as nominee for the actual owner. Because the corporation will not carry on a business, it will not be required to file income tax returns. PTT will apply at the time the property is acquired. However, subsequent transfers of shares of the corporation, rather than transfers of the underlying real property, will not be registered in the Land Title Office, and thus not subject to PTT.

It is also possible to hold real property in British Columbia in trust. Again, the property will be subject to PTT at the time the property is transferred into the trust, but once in the trust the beneficial ownership of the land can be changed without limit and without triggering PTT.

More information on the PTT and links to the applicable legislation may be found on the web site of the Income Taxation Branch of the Ministry of Provincial Revenue for British Columbia at <http://www.rev.gov.bc.ca/itb/> (last visited Jan. 26, 2004).

VIII. ONGOING MANAGEMENT OF THE CABIN

a. Written Agreements.

Once the property has been transferred to the next generation using any of the methods described above, the family will need to put into place a mechanism to manage the property, resolve conflicts, and facilitate maintenance of the property. See Louis H. Hamel, *Keeping a Vacation Home in the Family for Younger Generations*, 23 Estate Planning 123 (March/April 1996) for an analysis of the managerial issues and suggested planning techniques. This agreement may be in the form of, for example, a joint venture agreement, LLC operating agreement, trust agreement, contract, tenancy in common agreement, or bylaws. For most families, an agreement where all members have consented to the terms tends to be more successful than an agreement imposed upon them by the senior generation, whether under a trust or other form of binding contract.

Many of the issues are similar to those dealt with in a family-owned business. By using a format they are already familiar with, families that already have partnership or shareholder agreements in place often achieve great success in the context of planning for the family cabin.

b. Issues to be Addressed.

In order to assure the smooth operation of the vacation home for the extended family, the agreement needs to facilitate ongoing use and resolve issues that may arise. The following is an outline of only some of the issues that need to be addressed in the agreement. See Ken Huggins & Judith Huggins Balfe, *How to Pass It On: The Ownership and Use of Summer Houses* (1999) at ch. 5.

- i. A schedule for use of the cabin.
- ii. Determine whether outsiders should be allowed to use the cabin, on what basis (*e.g.*, will outsiders only be allowed to use the cabin when accompanied by a family member/owner), and whether they will be charged rent.
- iii. Establish rules applicable during the time that the cabin is in use.
- iv. Determine how maintenance and repairs are to be handled.
- v. Establish annual membership dues or rent (normally equal in amount per member).
- vi. Levy special assessments (generally proportionate to percentage ownership interests) if annual membership dues are insufficient.

- vii. Establish usage fees (to reflect actual use of the property by members). The use of membership dues, special assessments, and usage fees allows the managers to spread the financial burden among members in a manner that reflects differing amounts of use and differing percentage ownership interests. This promotes fairness between those who frequently use the property and those who are unable to enjoy it regularly.
 - viii. If there are to be a manager or managers, who should serve in that role? Should a successor manager be identified? If multiple families own the property, should there always be a manager from each family?
 - ix. Determine whether outsiders can become owners.
 - x. Determine whether family members should be allowed to withdraw. If they are allowed to withdraw, what value will they receive? (A withdrawal may place a definite financial burden on the remaining members.)
 - xi. Determine how to handle the periodic replacement of improvements such as a dock or a deck.
 - xii. Determine how ownership rights may be transferred and how to deal with the financial crisis of an owner (bankruptcy, judgment, tax lien, marital dissolution) resulting in a lien against the property.
 - xiii. Establish a procedure to resolve future disputes.
- c. Suggested Terms.

The following is a collection of terms that have worked for other families in the ongoing management of their cabins.

- i. A family manager shall be appointed to do the following:
 - (1) Maintain the property in its current condition (capital improvements to be made only with authorization unless urgent or to protect the property);
 - (2) Maintain insurance with specified coverage and limits;
 - (3) Pay taxes and other specified charges;
 - (4) Lease the property, with specific authorization, to tenants;
 - (5) Keep records and render accountings at specified times; and
 - (6) Take reasonable compensation and reimbursement of reasonable expenses.

- ii. The beneficiaries have a duty to reimburse promptly all proper expenses assessed by the manager, with appropriate conditions relating to various classes and amounts of capital expenditures.
- iii. The beneficiaries have rights of contribution among themselves.
- iv. The right of use and occupancy is allocated by a procedure, which could include any of the following:
 - (1) Drawing of straws;
 - (2) Rotation;
 - (3) Authority of the manager;
 - (4) Bid; or
 - (5) Some other mechanism (e.g., length of travel, age, lottery).
- v. Transfer of beneficial interests to anyone who is not a descendant (or, in some cases, a spouse of a descendant) is prohibited, except:
 - (1) Under a right of first refusal;
 - (2) By gift or bequest to a descendant of a certain common ancestor;
or
 - (3) By transfer to anyone else, but subject to a condition subsequent by which the family can buy the interest from the transferee.
- vi. Withdrawals may be permitted, but to discourage a withdrawal that is motivated primarily by the desire to cash in on inflated real estate values, the payout might be at a reduced value (e.g., 80% of market value) and be extended over several years (e.g., over 10 years at a below market interest rate).
- vii. The members may be given the right to purchase an interest that goes outside the family as the result of a divorce or bankruptcy.
- viii. Owners may be given the right to vote on unusual events such as obtaining a mortgage for the property, leasing the property to a nonmember selling the property, and amending the rules or operating agreement, in the case of a cabin held in an LLC.
- ix. To provide a check against arbitrary management, the owners should be given the right to call a meeting to review the decisions of the manager.

Attached as Exhibit A is an additional list of issues and suggested provisions.

d. Family Homeowners Associations.

If several residences have been built on the family property, or there is a possibility that several could be built, the family ought to consider the formation of a homeowners association to facilitate the ongoing management of the family property. A homeowners association is a formal legal entity created to maintain common areas and facilities, and enforce common covenants and restrictions. A homeowners association is especially useful where the family intends to create or retain common facilities such as a dock or swimming pool. Generally, the procedure to create a homeowners association is to subdivide the property, and cause each lot to be subjected to a set of common restrictions and covenants.

The purposes of the covenants could:

- i. Identify common open space and common use facilities;
- ii. Restrict or limit development of the affected parcels;
- iii. Provide guidelines for, or a mechanism to review, construction and development;
- iv. Establish aesthetic and design standards;
- v. Establish use restrictions;
- vi. Establish penalties to encourage compliance; and
- vii. Restrict transfers or create rights of first refusal if an owner wishes to sell, or if their interest is subject to a bankruptcy or other type of lien.

A homeowners association can be formed as a partnership, LLC, or a not-for-profit association. Typically, each lot owner is required to be a member. *See* <http://www.oxfordconsulting.net/terminology.htm> for a discussion of the structure and terminology used in connection with the formation and governance of homeowners associations (last visited January 26, 2004).

A homeowners association is funded by dues or assessments from the owners. If organized as a not for profit entity, it can qualify for an income tax exemption for revenue received from its members under I.R.C. §528.

The rules and regulations of the homeowners association could be established by the senior generation before transferring the property to the junior generation. Or, the junior generation could jointly develop its own association rules.

IX. LIFE INSURANCE AND IRREVOCABLE LIFE INSURANCE TRUSTS

In situations where it is available, life insurance can provide an effective means of creating a fund to support maintenance and other expenses associated with cabin ownership. For a comprehensive analysis of life insurance trusts and their uses, *see* Howard M. Zaritsky &

Stephan R. Leimberg, *Tax Planning With Life Insurance: Analysis With Forms* (2002) and Sebastian V. Grassi, Jr., *Income, Gift and Estate Tax Aspects of Crummey Powers After the 2001 Tax Act, Part 1*, 18 *Probate & Property* 37 (Jan./Feb. 2004).

The taxation of life insurance proceeds can be avoided under present law if a trust, instead of the insured, owns the policy. I.R.C. §101(a). A trust holding life insurance is commonly referred to as an Irrevocable Life Insurance Trust or “ILIT.” Generally, the mechanics of an ILIT are as follows: The potential insured/grantor will transfer cash into the irrevocable trust. The ILIT agreement allows the beneficiaries of the trust (usually the children) a “Crummey” right of withdrawal so the gift into trust qualifies for the annual exclusion from gift tax. *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968); Rev. Rul. 73-405, 1973-2 C.B. 321 (1973); Treas. Reg. §25.2503-3(b).

The trustee uses the cash to purchase life insurance on the life of the grantor. Each year, the insured transfers to the trust an amount slightly greater than the amount sufficient to cover the annual premium on the policy. The beneficiaries are given withdrawal rights each year so that each transfer qualifies for the annual exclusion. I.R.C. §2503(b).

There are also several technical requirements that must be observed in order for the proceeds to be excluded from estate taxation.

A potential insured can allocate a portion of his or generation-skipping transfer tax exemption (or “GST” exemption) (currently \$1,500,000) to the trust each year when the gifts are made, and by these allocations, the entire trust corpus (including the insurance proceeds payable upon the insured’s death) can be sheltered from the GST tax. ³Generally, the allocations of the GST exemption are made with respect to a trust that is structured to remain in existence for the benefit of multiple generations of the donor’s descendants. Because the GST exemption is allocated only to the cash transferred to the trust to pay the premiums - and the insurance proceeds usually exceed the total premiums by a substantial amount - the life insurance trust offers an opportunity to “leverage” all or a portion of the GST exemption.

The insurance trust, if established as part of a master plan to transfer ownership of a cabin, can provide that the policy proceeds will continue to be held in the trust and used to maintain the cabin and to cover related expenses.

³ Beginning in 2004, the GST exemption amount is equal to the estate tax applicable exclusion amount under I.R.C. §2010(c) for the year in which the generation-skipping transfer is made (\$1.5 million in 2004, \$2 million in 2006, and \$3.5 million in 2009), and for year 2010, the GST tax will be repealed in its entirety (and thus there will be no GST exemption amount). I.R.C. §2641. In 2011, the GST exemption is scheduled to revert back to \$1,100,000 (plus post-2002 inflation adjustments). I.R.C. §2664.

X. PLANNING AHEAD

Finally, for the client who is still in the planning stages of purchasing a second home, there is an excellent article outlining important considerations in connection with this purchase. Liz Pulliam Weston, “*10 Tips for happy second-home ownership: Many families dream of a cabin in the woods or a house at the beach. But the costs and aggravation can be more than you expect,*” <http://moneycentral.msn.com/content/Banking/Homebuyingguide/P61924.asp> (last visited Jan. 26, 2004).

XI. CONCLUSION

The family cabin is an asset that often serves as a symbol of a family’s history, emotions and values, a focus of all that is good in the family. It is important to recognize that the cabin also embodies negative emotions for some family members. While some cabins are likely to be retained by succeeding generations, others are likely to be sold because the younger generation has no emotional attachments to it, can’t agree on how to retain it, or simply can’t afford it. Understanding the attitudes toward the cabin held by various family members and building consensus is critical in order to assist the family in developing a master plan to transfer and to continue to happily own the cabin, if that is the goal.

EXHIBIT A

ISSUES TO BE ADDRESSED IN A MANAGEMENT AGREEMENT:

1. How many slots per summer will there be and how long is each slot? Will slots overlap, or run contiguously, i.e. Sunday morning to Saturday night? How is the allocation of slots decided, and by whom? Are certain slots more valuable than others (e.g., July 4th and Labor Day weekends)? Are more valuable slots awarded on a rotating basis?
2. If there are more families than slots, how are slots to be assigned or rotated? How is family unit defined (e.g., a single person and friends, the traditional nuclear family, or a senior heir with children and grandchildren)
3. What about early and late season slots? If one family unit can take one and no one else can (perhaps because they don't have school-age children), can they also be eligible for a prime slot? Are late season slots more advantageous (warmer water, fewer flies) than early, and how should this be compensated? If someone can't or chooses not to take a slot when eligible, do they get priority the following year?
4. Who opens and closes the house at the beginning and end of the season? How is this paid for if someone is hired? If family members perform the task, will their compensation be a longer slot, or a slot at a more desirable time?
5. As the next generation comes along, at what point, e.g. marriage, death of parents, do they get to have their own slot as opposed to sharing with their parents? At what point will members of the older generation hand over their responsibilities to the next generation?
6. Will there be a users' fee per slot to cover the taxes and maintenance? If not, how will each family be assessed their share? Who will serve as financial manager? Should this position be rotated?
7. What happens if one family unit, due to loss of job, severe illness, etc., is unable to pay their yearly share?
8. If there is to be a buy-out, will the rest of the family do this, or just one or two members? If this is to be an association or corporation with multiple shares, is a partial buy-out possible? How many shares could be bought? What would this mean in terms of use?
9. What plans could/should be made to make the house more accessible for a family member who is disabled, either through accident or disease, or through the debility of old age? This is particularly important given the small size of many houses, and the problem is more common than you might think.
10. How will an expensive repair, such as a new roof, be paid for? Is it possible to remodel, expand, and add to the house? At what point might this be desirable? How, when, where will these decisions be made? Who decides when appliances should be replaced and who picks them?

11. How and by whom is it to be decided when furnishings and furniture must be replaced and with what? (This can be among the stickiest of question. People develop strong attachments to their favorite chair, couch, etc.) If one person decides to make some decorating decision does the rest of the family have to live with it?
12. Who handles legal matters such as any changes in deeds, assessments, and taxes, particularly during the off-season? How should those handling these responsibilities be compensated with slot time, if at all? Should these positions be rotated? If so, how?
13. What is “sweat equity” worth and when does it go beyond normal duties? It is unlikely that any formula can be devised for normal duties. Will major jobs (e.g., house painting or re-roofing) be compensated? Will a log be kept of normal tasks and jobs each family unit has done?
14. May certain slots be rented by the whole family to outsiders so as to provide funds for taxes and maintenance? How will this happen? Who will serve as landlord? Can individual family units rent their slot? To whom? Who gets the rental fee? Can individual family units let non-family members use their slot or part of it as a gift? (This is sometimes done as a wedding present or donation to a charity auction.)
15. If elderly family members can no longer use their slots alone, with whom will they stay when they come? How will those members be compensated?
16. Will any property, e.g. a sailboat, be reserved for one family and off limits for others?
17. What rules will there be regarding pets? What if certain members have animal allergies? What of the use of pesticides or other means of destroying vermin, to which some have ethical or other objections?
18. Will sensible environmental practices be required, such as recycling? What about more extreme measures, such as the use of only biodegradable cleaning products and long-life (but dim) light bulbs? What about more expensive measures, such as replacing an imperfectly functioning septic system? Many cabins are located in environments that can be easily damaged by even minor amounts of pollutants, but cabin residents may be unaware of this. In this regard, when should use of the composting toilet or the outhouse be required? Any special dispensations on grounds of sex, age, or fear of bugs?
19. What will be the formal status of in-laws, stepbrothers and sisters? In the event of the death of one of the natural heirs, can the surviving spouse assume his/her role, or will it pass to the offspring? If to the offspring, how old would they have to be?
20. How can the bylaws be amended when conditions warrant?

Adapted from Ken Huggins and Judith Huggins Balfe, *How to Pass It On: The Ownership and Use of Summer Houses* pp. 44-55 (1999) (used with the permission of the estate of Judith Huggins Balfe).