# Don’t split heirs! How to avoid family fights when leaving behind a second home

*Ownership, management and use of the holiday home: That’s the trifecta estate planners and financial advisors need to reckon with if they want to keep the peace.*

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- By Gregg Greenberg

Forget location, location, location. Parents leaving a treasured holiday home to kids and grandkids have three more important things to worry about if they hope to avoid years of family in-fighting and legal battles.

Ownership, management and use of the holiday home: That’s the trifecta estate planners and financial advisors need to reckon with if they want to keep the peace.

When it comes to ownership, the big questions that must be answered include: Who actually owns the property? Is it the parents or grandparents, and do the children get to use it? Is it a trust for the benefit of multiple family beneficiaries, potentially lasting over multiple generations?

As for management, the property owners need to know who will pay the bills, maintain the property and deal with repairs, insurance, property taxes and the like?

And when it comes to use, who gets to enjoy the property and when?

“I’ve had situations where the grandparents bought the property decades ago, and they are long gone, but now there are 20 grandchildren who all want to use the property,” said attorney Asher Rubinstein, partner at Gallet Dreyer & Berkey. “What are the rules, and who makes the rules, about allocating usage among multiple family members? What happens if there is a conflict? Ideally, the rules are set forth in a document that is binding on all the family members who use the property, such as an operating agreement or a trust document.”

Rubenstein said one strategy that has proven to be successful in many cases is a family limited partnership, or FLP, which includes all of the various roles — ownership, management and use of the home. The FLP owns the home, which provides asset protection and estate tax benefits. The general partners are the ones who manage the property. Multiple family members can be limited partners who may have some rights to use the home, or may get distributions if the home is eventually sold, but they do not manage the property. Partnership interests can be handed down from parent to child over many generations.

“This gives an ownership and management structure, sets the rules for using the property and provides succession planning and keeping the asset within the family,” Rubinstein said**.**

One thing worth noting, however, is that in Florida, Texas and other homestead states, holding the property in an FLP will disqualify it from the homestead exemption. In those particular states, a trust containing specific homestead language would be the better alternative.

## DON’T SPLIT HEIRS

One surefire way to start squabbles between family members is to burden them with taxes, debts or repair bills from the great beyond. That’s why it’s ideal to eliminate debt before bequeathing a property. An even better idea is to leave behind a bequest or trust fund to pay expenses on the home.

Brian Hartmann, partner at Granite Bridge Wealth Management, part of Osaic, says on many occasions he brings in an attorney to create a trust that will be funded with enough money to maintain the home even after the parents pass away.

“If a vacation home is valued at $1 million and has $50,000 of annual expenses, a family may decide to fund a trust with enough money to pay the $50,000 annually so that the children do not have to pay for those costs upon their parents’ death,” Hartman said. “This allows the property to continue to be enjoyed by the family without any financial obligations that may cause tension between siblings.”

In terms of taxes, if a family home is owned by an FLP, the parents can gift or bequeath limited partnership interests in the FLP to their children, taking advantage of a discounted value that is recognized by the IRS, Rubinstein said. This way, the parents can give all of the limited interests to the children, getting the value out of the parents’ taxable estate, while retaining the parents’ voting interests and thus continuing to control the property.

Moreover, if the children inherit the home upon the death of the parents, then the children will enjoy a step-up in the tax basis of the home, equal to the current market value of the home when the parents pass away.

“The fair market value at the death of the parents is usually higher than the original cost of the home when the parents bought it, years ago. That higher basis will translate into lower taxes down the road if the home is sold,” Rubinstein said.

## MAKE IT A FAMILY AFFAIR

Every family and second home is different. But certain problems do tend to recur in one form or another. For example, if the brother and his family want to use the lake house every weekend, but the sister and her family want to rent it out as an AirBnb or the like, then there is a family split and potential for an impasse and conflict.

“The family has to be united in the same vision for the home. Or that vision has to be set by those who own and control the asset and make it binding on the other family members,” Rubinstein advised.

Brandon Dixon-James, president of Resilient Wealth Management Inc., part of Osaic, also emphasizes upfront communication as an important way to avoid — or at least minimize — family and legal battles when passing down a vacation home.

“Open communication with the family members and beneficiaries allows everyone to be in the know even if they don’t agree.

“It doesn’t hurt to even ask the beneficiaries what they want either,” Dixon-James said, adding that providing a personal letter often eases the process, as opposed to letting a lawyer deliver the news in an emotionless tone.

And what about classic cars or boats that may come with a second home?

They may provide weekend fun, but they are also major sources of liability and should also be placed in the tax-beneficial FLP.

“I once had a client who owned around 50 collectible cars, as well as boats,” Rubinstein said. “We put the cars and boats in an FLP for asset protection. As the client aged, he transferred limited partnership interests to his children, thus lowering his taxable estate, while he retained the controlling interest in the FLP.”

## SPLIT THE BABY IN HALF — OR THIRDS

It’s also worth remembering that families often find that one or more of their children don’t even want to own a vacation home. A family like this will likely still want to ensure that each child receives equal share of the parents’ assets but not equal share of every asset.

“If a family owns a $1 million vacation home, has $3 million of investible assets and a $1 million life insurance policy with two children, they may decide to dedicate specific assets to each child instead of equal ownership in everything. If one child shares that they would like to own the home and the other sibling does not, perhaps the life insurance policy of equal value to the home is given fully to the child who is not interested in the property and the property is given fully to the other sibling,” Hartmann said.

This type of arrangement allows the family to provide equal value to their beneficiary children but not equal ownership — and most importantly, maintain family harmony.

At least until the next generation arrives.