

Sharing Family Cottages, Lodges and Resorts: Part Two

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In Part One of “Sharing Family Cottages, Lodges and Resorts,” we delineated the basic steps families utilize when sharing resorts, cottages and lodges. Since then, we have observed the vexing situations confronted by owners of shared vacation property and the solutions they employed. Here we will share some of the complex issues and their possible resolutions.

One issue concerns scheduling especially when the family grows too big for the number of rooms in the house. Invariably, the senior generation property owner processes all requests for room space. For those blessed with many offspring, family growth quickly outpaces the scheduler’s ability to work things out intuitively and informally. We see a predictable pattern whereby attempts are made to continue this informal scheduling, and the scheduler, usually mom or grandma, feels resented and unappreciated and eventually becomes stressed and resentful herself. Changes in attitudes and more patience are not sufficient to resolve the resulting problems.

What is needed is a formal policy structure to manage the numbers. Most often we see a scheduler, not always from the senior generation, who establishes specific rules for how many people can be at the house at one time, how rooms will be assigned, and how the actual schedule will be established. Some require that all

requests for the next year be made by a certain date. Requests are then processed according to some basic rules, including:

- Reservations accommodated on a first-come, first-served (which rewards early birds, but often leads to unproductive competitiveness).
 - An annual random drawing for an order-of-week choice (randomness promotes a sense of fairness, but those who draw last option two years in a row may become bitter).
 - A rotating preference schedule in which the first year becomes the base year and subsequent years’ preference is rotated so that this year’s first place becomes next year’s last place, second choice moves up to first, and so forth (many variations of this method).
 - Agreements on days that are not available, such as days when Grandma and Granddad wish to be alone, and so forth.
 - A system for trading weeks when both parties agree.
 - The length of stay that the scheduler must consider (e.g., whether this stay includes full weeks or weekends only).
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Responsibilities of Visiting Owners

In addition to the right to have the opportunity to stay at the vacation property, families who successfully navigate joint ownership emphasize the responsibilities of owners and others who stay at the property. A brief set of user expectations is highly encouraged. Such expectations might include the following:

- Gas up the vehicles before you leave.
- Put new sheets on all the beds.
- Damaged property must be reported to the property manager and paid for by the person who did the damage.
- Sweep the kitchen floor, vacuum carpeted areas, clean out the refrigerator, take out the trash, etc.

Focusing on responsibilities helps draw people into a sense of common responsibility for this valued asset. Start with a statement about what the property means to the family, the philosophy of care the family wishes to articulate, and then list the specific tasks that need to be completed before leaving.

What if Care Is Violated? The Case of Abuse or Neglect

The family's inability to deal directly with property abuse or misuse will generally lead to resentment and mistrust among family members. The family property leader (often the scheduler or another elected family leader) must be made aware of the abuse and be able to address the parties permitting or committing the abuse. The leader should be able to identify the problem, specify the cost to repair any damage or the impact of the neglect, and issue a warning, referring to the family's usage policy (see rules above). Most important, the leader must be willing to take on this responsibility.

Some families will disallow property use for some time after an infraction, while others will simply ask the abusers to pay for the damage and, upon payment, be given a second chance. What is important here is that the issue be dealt with directly. There are multiple solutions to this problem, but the issue should be dealt with quickly and not allowed to fester. Luckily, when families emphasize responsibility and care for the asset, reports of abuse or neglect are quite infrequent.

Who Can Use the Lodge?

A more common conundrum that families encounter involves the movement of a property from a first-generation property to a third-generation property in a very short period of time.

At some point, those young toddlers turn into teenagers, and before you know it, they are young adults, independent, living on their own and working full-time jobs. We see families struggle to articulate the age at which young adults have the right to use the facility without their parents present. Family philosophies and culture often will lead to guidance on this issue, but we most often see property use tied to a specific age (e.g., 21, 25). What is most important is that this age be clearly communicated before family members reach the specified age, so that the new policy does not appear to be directed against any individual. Although young people may want to use the place by themselves, over time, a sense of fairness will develop as the same rule applies to successive children. We encounter families that, for liability reasons, do not allow minors to use the facility without the parents present. Liability concerns should be clearly communicated to young family members so that they will not take the issue personally, but will recognize the policy as protecting the entire family and its assets.

Regardless of the generation, use by friends presents an additional issue. We hear repeatedly of certain family members who, because of their social nature, enjoy coming to the cottage with large groups of friends. Increased usage leads to wear and tear on the location and the watercraft or vehicles that are often present. Refusing to allow any friends use of the property often creates a sense of over-control by the family. But if size limitations imply a limit, boundaries on number are commonly accepted. Some families limit the number of guests even during the daytime to avoid the possibility of the property becoming a "party house."

Even more vexing is the extremely common matter of boyfriends, girlfriends and partners. Families may strongly believe that junior generation members age 21 and up should be allowed to use the facility, but they may be uncomfortable allowing unmarried girlfriends/boyfriends. These issues are very predictable, and even if you do not face them in the immediate future,

they should be addressed sooner rather than later. If the parents are present, it may be easy to enforce a rule that unmarried couples need to sleep in separate quarters. But if the parents are not present, they may worry. If limits are to be placed on this behavior, the family also should consider long-term and committed relationships. Changing social mores has led to an increased number of adults living in long-term, unmarried relationships. Families will need to wrestle with whether there is a point at which a relationship is considered to be acceptable for the couple to be together at the property alone and unsupervised. Each family's overall sense of common values ought to guide this decision.

Toys

We also see an issue arising over young people using motorized craft such as snowmobiles or jet skis, depending on the season. While states are increasingly regulating the legal age at which individuals can use these vehicles, families should especially address the issue and emphasize that state laws must always be followed.

Funding Expenses

The initial owner typically pays all operating and improvement costs. The next generation often chooses to pay costs proportional to their ownership interests unless there is a wide variation in extent of usage, interest and/or ability to pay. In those cases, as well as in many third and later generations, families often change their approaches to funding costs. Some families institute arrangements similar to country clubs, requiring a combination of monthly or annual maintenance fees combined with per-use fees.

Failure to pay required fees results in restrictions on use and, possibly, financial penalties. Of course, even one owner's failure to contribute funds presumably requires the other owners to cover the resulting shortfall. Cumulative failure to pay required fees could result in forfeiture of ownership, with those who provided the extra funds receiving the forfeited interest.

Transitions of Ownership

The passage of time inevitably leads to ownership transitions and increasing complexities of taxation, cost funding and owners' ability and willingness to agree on

management matters. Outright ownership by multiple family members becomes unwieldy because even one dissenting co-owner can stall or even block the will of the majority.

A formal management agreement specifying each owner's rights and obligations might suffice in the sibling generation, but larger families and more valuable properties often require more substantive planning and organizational structures.

A partnership or limited liability company structure, in which the entity owns the property, offers significant advantages. Property ownership and management are centralized under the terms of the governing instrument, which identifies the person(s) with the authority to act. The agreement can specify that major decisions (and which ones) require the vote of a majority, but not necessarily of all the owners, thereby preventing a small number of dissenters from blocking the action. It also can provide personal liability protection, restrictions on and terms of transfer of ownership interests, consequences of an owner's failure to contribute toward property costs, events that can require sale of the property and much more. Detailed property usage policies and any associated fees often are encompassed in a separate document.

Unfortunately, each generation of owners must contend with the estate tax consequences of passing their entity interest. And, much as can be the case with respect to the family's operating business, the new generation of owners may have varying levels of enthusiasm about ownership and the resulting obligations.

So you might consider the initially complex step of placing the property in a long-term irrevocable trust. Some families even go so far as to endow the trust with cash and/or securities intended to cover operating costs over a long time period. The initial complexity involves the gift and generation skipping tax consequences of the contribution to the trust. Thoughtful consideration also must be given to the terms of a trust instrument that cannot be amended over its existence, which potentially could be decades or longer.

Depending upon the value of the property and endowment contributed to the trust, it may be possible to avoid gift, estate and generation skipping taxes for

many generations. Centralizing management in the hands of one or more trustees mitigates ownership and management disagreements. The trustee(s), presumably in cooperation with family members, create and enforce property usage policies and any associated fees.

Unwilling Owners

Inevitably, some family members will have no interest in the property, will desire to extract their share of the capital value for other purposes and/or will not want or be able to cover their shares of the annual operating costs. Forcing continued ownership can be detrimental to family relationships, just as forced ownership of the family's business can be problematic.

In anticipation of this possibility, you should consider ways to allow family members to sell their interests. Of course, unlike the family's operating business, the property is unlikely to generate cash, even over time, to finance buyouts. By agreement, you can prearrange

the terms by which some may sell and others may buy. Cash down payments and notes payable over a reasonable time period are common.

Of course, forcing one or more owners to buy can be problematic. So, you should consider a provision that requires the sale of the entire property if those who desire to retain ownership are unwilling or unable to buy out those who want to sell.

You should get professional advice concerning the income, gift, estate and generation skipping tax considerations of the ownership and funding approaches that appeal to your family.

For those who own a joint property in the first or second generations, this level of planning may seem overly complex. However, the value of planning contributes to the effectiveness of predicting what issues are likely to surface before they arise and addressing them in advance. By developing policies and procedures before they are needed, undue family conflict can be avoided.



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