

## **Protecting and Preserving Vacation Properties**

by Gary Villnow

### **The Importance of Planning To Protect and Preserve Vacation Properties**

It is important to many persons who own vacation properties to pass those properties on to their family members in a way that will allow for the continued use enjoyment and maintenance of that property.

Because vacation properties are generally considered non-exempt assets for Medicaid purposes, the ownership of these types of properties may cause a person's ineligibility for long term care benefits. Planning to preserve and protect vacation properties may provide for future eligibility for long term care programs and prevent the sale of that property should the owners require long term care.

The goal of many families is to keep the family vacation property in the family for the use and enjoyment of future generations. Planning for the passage of vacation properties to future generations can provide the rules and guidelines that will eliminate many of the problems that can arise when several persons own real estate together.

There are various options in transferring vacation properties to future generations in a way that will allow for the protection and management of those assets going forward.

### **Use of Limited Liability Companies and Family Partnerships**

Transfer of a property to a Limited Liability Company or a Family Partnership is an effective method for preserving and protecting vacation properties.

In many instances the parents and children will be members of the Limited Liability Company or Family Partnership. The parents may retain control over the management of the vacation property or that management or control may be delegated to the children. The documents governing a Limited Liability Company or a Family Partnership can provide for the use of the property and the management of the organization including the process in which decisions will be made on particular issues. The governing documents can also contain guidelines which will provide for the process to be undertaken if any of the members of the organization die, desire to sell their respective interest, or if any of the members simply desire to withdraw from the organization.

The documents that govern a Limited Liability Company or a Family Partnership can also be drafted to include provisions that would allow for the vacation property to be considered an exempt asset which would allow for eligibility for long term care benefits thus eliminating the need to liquidate the asset to pay for long term care services.

One of the principal differences between a Limited Liability Company and a Family Partnership is liability protection. Generally a Limited Liability Company will insulate the vacation property from actions or debts from the individual owners of the Limited Liability Company and it will insulate the individual owners for damage and injury which is caused by the Limited Liability Company. This is an advantage that is not available in the Family Partnership.

### **Use of Trusts**

The use of trusts as a method in preserving and protecting vacation properties is also effective. The use of certain types of trusts can insure that vacation properties will be considered exempt assets for long term care benefit purposes. Trusts can also provide for the passage of vacation properties to future generations. Through the use of a trust parents can maintain control over the vacation property, but when compared to a Limited Liability Company or a Family Partnership, it is more difficult inside of a trust to provide formal structure regarding the management and use of the vacation property going forward. The advantage to using a trust to preserve and protect vacation properties would lie in its simplicity to establish and its flexibility.

### **Gift or Sale**

A gift or a sale of vacation properties to children is another method utilized in preserving vacation properties. This method is simple and straight forward, but it may involve the payment of capital gains taxes attributable to the sale. This method may also require the filing of a gift tax return. Additionally, a gift or a sale without any formal rules relating to decisions by the owners or sales of the owners' interests may result in future disputes requiring the sale of the property to resolve these disputes.

*Gary Villnow is an attorney in Amherst and a member of the National Academy of Elder Law Attorneys. He received his Doctor of Jurisprudence degree from Drake University Law School in Des Moines, Iowa.*

*Copyright 2009, Gary R. Villnow, III. All Rights Reserved Worldwide in all Media. Please contact the author regarding reprint permission at PO Box 187, Amherst, WI 54406; (715) 824-3311; gary@villnowlaw.com.*

*November 1, 2009*