# Estate Planning for a Vacation Home

## If you are lucky enough to own a vacation home, then you need to figure out what will happen to it after you are gone. Many parents hope to keep vacation homes in the family, but guaranteeing that can be tricky.

While meant to be fun and relaxing places to get away from everyday life, vacation houses can cause problems between siblings after their parents pass away. Some siblings may want to use the house, while others may need cash and want to sell. There may be disputes over who pays maintenance costs or when different families can use the house.

One option for passing on a vacation home is to leave it to your children in your will. The problem with this is that if the children own the house equally as joint tenants or tenants in common and one sibling wants to sell, that sibling can demand to be bought out. If the other siblings can't come up with the money to buy out the sibling, the sibling who wants out can force the sale of the house.

Before you decide to leave your vacation house to your children outright, you should have a family meeting to find out whether all the children actually want the house. If they do, you should discuss who will be responsible for maintenance and property taxes, and who has the right to use the property, among other issues. Putting a plan in writing can help prevent or resolve disputes down the road. The plan can also include a buyout option if any heirs decide they do not want to own the property. The buyout price can be less than if the property is sold to a third party and payment terms can extend over several years.

Rather than giving the property to your children outright, you can also put it in a trust or a Limited Liability Company (LLC). LLCs have become a popular estate planning tool for vacation homes. Using an LLC allows parents to transfer interest in the LLC to their children while still retaining control. Parents can use the annual gift tax exclusion to slowly gift their children additional interest in the LLC each year. The LLC agreement can designate a property manager, provide instructions on maintenance costs and property taxes, and include buyout options. Property in an LLC is also protected from creditors. (Unfortunately, in many states – including Maryland and D.C. – there will be a significant transfer tax to accomplish the transfer – ideally, the vacation property should be titled in an LLC upon purchase.)

Another option is to put property into a qualified personal residence trust (QPRT). A QPRT allows the parents to live in the home for a certain number of years and at the end of the term, the children own the home. The main purpose of a QPRT is to reduce taxes on property, but QPRTs are tricky and must be set up just right or there will be no tax savings. For more information about QPRTs, give us a call.

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# Six Things to Consider Before Making Gifts to Grandchildren

Grandparents often are particularly generous to grandchildren as they see their family's legacy continuing on to a new generation. In many cases, grandparents feel they have ample resources and their children or grandchildren may be struggling financially. Assistance with summer camp fees, college tuition, wedding costs or the downpayment on a first home, can relieve pressure on the next generation and permit grandchildren to take advantage of opportunities that otherwise would be out of reach. Some grandparents also don't feel it's right that children and grandchildren should need to wait for an inheritance, when they have more than they need.

Helping out family members is to be encouraged, but can raise a number of legal issues involving taxes and eligibility for public benefits, as well as questions of fairness among family members. Here are six issues grandparents should consider before making gifts to family members:

- **Is it really a gift?** Does the grandparent expect anything in return, for example that the funds be repaid or that the money is an advance on the grandchild's eventual inheritance? In most cases, the answer is "no."  But if it's "yes," this should be made clear, preferably in writing, whether in a letter that goes with the check or, in the case of a loan, a formal promissory note.
- **Is everyone being treated equally?** Not all grandchildren have the same financial needs, and grandparents don't feel equally close to all of their grandchildren. While it's the grandparent's money and she can do what she wants with it, if she's not treating all of her grandchildren equally, she might want to consider whether unequal generosity will create resentment within

the family. Many elder law clients say that what they do with their money during their lives is their business. They may help out some children and grandchildren more than others based on need, with the expectation that this will be kept private. But they treat all of their children equally in their estate plan.

- **Beware taxable gifts.** While this is academic for most people under today's tax law, since there's no gift tax for the first $5.25 million each of us gives away, any gift to an individual in excess of $14,000 per year must be reported on a gift tax return. Two grandparents together can give up to $28,000 per recipient per year with no reporting requirement. And there's no limit or reporting requirement for payments made directly to medical and educational institutions for health care expenses and tuition for others.
- **529 plans.** Many grandparents want to help pay higher education tuition for grandchildren, especially given the incredibly high cost of college and graduate school today. But not all grandchildren are the same age, making it difficult to make sure that they all receive the same grandparental assistance. Some grandchildren may still be in diapers while others are getting their doctorates. A great solution is to fund 529 accounts for each grandchild. These are special accounts that grow tax deferred, the income and growth never taxed as long as the funds are used for higher education expenses. Click here to read more about 529 accounts.
- **Don't be too generous.** Grandparents need to make sure that they keep enough money to pay for their own needs. While small gifts probably won't make any difference one way or another, too many large gifts can quickly deplete a lifetime of scrimping and saving. It won't do the family much good if a grandparent is just scraping by because he's done too much to support his children or grandchildren.
- **Beware the need for long-term care.** In terms of making

> certain that they have kept enough of their own savings, grandparents need to consider the possibility of needing care, whether at home, in assisted living or in a nursing home, all of which can be quite expensive. In addition, those seniors who can’t afford to pay for such care from their own funds need to be aware that any gift can make them ineligible for Medicaid benefits for the following five years. For details, click here.

There are even more issues to consider that may involve specific family situations. Some grandchildren shouldn’t receive gifts because they will use them for drugs, or the gifts may undermine the parents’ plans for the grandchild or their authority. In some instances, grandparents may want to consider “incentive” trusts, which provide that the funds will be distributed when grandchildren reach certain milestones, such as graduation from college or holding down a job for a period of time. Communication with the middle generation can be key to making certain that gifts achieve the best results for all concerned.

Talk to your attorney about devising the best plan for yourself and for your grandchildren.

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# Three Reasons Why Joint

# Accounts May Be a Poor Estate Plan

Many people, especially seniors, see joint ownership of investment and bank accounts as a cheap and easy way to avoid probate since joint property passes automatically to the joint owner at death. Joint ownership can also be an easy way to plan for incapacity since the joint owner of accounts can pay bills and manage investments if the primary owner falls ill or suffers from dementia. These are all true benefits of joint ownership, but three potential drawbacks exist as well:

1. **Risk.** Joint owners of accounts have complete access and the ability to use the funds for their own purposes. Many elder law attorneys have seen children who are caring for their parents take money in payment without first making sure the amount is accepted by all the children. In addition, the funds are available to the creditors of all joint owners and could be considered as belonging to all joint owners should they apply for public benefits or financial aid.
2. **Inequity.** If a senior has one or more children on certain accounts, but not all children, at her death some children may end up inheriting more than the others. While the senior may expect that all of the children will share equally, and often they do in such circumstances, there's no guarantee. People with several children can maintain accounts with each, but they will have to constantly work to make sure the accounts are all at the same level, and there are no guarantees that this constant attention will work, especially if funds need to be drawn down to pay for care.
3. **The Unexpected.** A system based on joint accounts can really fail if a child passes away before the parent. Then it may be necessary to seek conservatorship to

> manage the funds or they may ultimately pass to the surviving siblings with nothing or only a small portion going to the deceased child’s family. For example, a mother put her house in joint ownership with her son to avoid probate and Medicaid’s estate recovery claim. When the son died unexpectedly, the daughter-in-law was left high and dry despite having devoted the prior six years to caring for her husband’s mother.

Joint accounts do work well in two situations. First, when a senior has just one child and wants everything to go to him or her, joint accounts can be a simple way to provide for succession and asset management. It has some of the risks described above, but for many clients the risks are outweighed by the convenience of joint accounts.

Second, it can be useful to put one or more children on one’s checking account to pay customary bills and to have access to funds in the event of incapacity or death. Since these working accounts usually do not consist of the bulk of a client’s estate, the risks listed above are relatively minor.

For the rest of a senior’s assets, wills, trusts and durable powers of attorney are much better planning tools. They do not put the senior’s assets at risk. They provide that the estate will be distributed as the senior wishes without constantly rejiggering account values or in the event of a child’s incapacity or death. And they provide for asset management in the event of the senior’s incapacity.

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# How to Protect an IRA From Heirs’ Creditors

When a person declares bankruptcy, an individual retirement account (IRA) is one of the assets that is beyond the reach of creditors, but what about an IRA that has been inherited? Resolving a conflict between lower courts, the U.S. Supreme Court recently (and unanimously) ruled that funds held in an inherited IRA are *not* exempt from creditors in a bankruptcy proceeding because they are not really retirement funds. *Clark v. Rameker* (U.S., No. 13-299, June 13, 2014).

This ruling has significant estate planning implications for those who intend to leave their IRAs to their children. If the child inherits the IRA and then declares bankruptcy sometime in the future, as a result of the Supreme Court ruling the child’s creditors could take the IRA funds.

Fortunately, there is a way to still protect the IRA funds from a child’s potential creditors. The way to do this is to leave the IRA not to the child but to a “spendthrift” trust for the child, under which an independent trustee makes decisions as to how the trust funds may be spent for the benefit of the beneficiary. However, the trust cannot be a traditional revocable living trust; it must be a properly drafted IRA trust set up by an attorney who is familiar with the issues specific to inherited IRAs.

The impact of the Supreme Court’s ruling may be different in some states, such as Florida, that specifically exempt inherited IRAs from creditor claims. As Florida attorney Joseph S. Karp explains in a recent blog post, Florida’s rule protecting inherited IRAs will bump up against federal bankruptcy law, and no one knows yet which set of rules will prevail. While a debtor who lives in Florida could keep a creditor from attaching her inherited IRA, it is unknown whether that debtor would succeed in having her debts discharged in bankruptcy while still retaining an inherited IRA. We will have to wait for the courts to rule on this issue. In the meantime, no matter what state you are in, the safest course if you want to protect a child's IRA from creditors is to leave it to a properly drafted trust.

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# 5 Questions To Ask Before Making Gifts for Tax Planning or Medicaid

Many seniors consider transferring assets for estate and long-term care planning purposes, or just to help out children and grandchildren. Gifts and transfers to a trust often make a lot of sense. They can save money in taxes and long-term care expenditures, and they can help out family members in need and serve as expressions of love and caring.

But some gifts can cause problems, for both the generous donor and the recipient. Following are a few questions to ask yourself before writing the check:

1. **Why are you making the gift?** Is it simply an expression of love on a birthday or big event, such as a graduation or wedding? Or is it for tax planning or long-term care planning purposes? If the latter, make sure that there's really a benefit to the transfer. If the value of your assets totals less than the estate tax threshold in your state, your estate will pay no tax in any case. For

federal purposes the threshold is $5.34 million (in 2014). Gifts can also cause up to five years of ineligibility for Medicaid, which you may need to help pay long-term care costs.

2. **Are you keeping enough money?** If you're making small gifts, you might not need to worry about this question. But before making any large gifts, it makes sense to do some budgeting to make sure that you will not run short of funds for your basic needs, activities you enjoy – whether that's traveling, taking courses or going out to eat – and emergencies such as the need for care for yourself or to assist someone in financial trouble.
3. **Is it really a gift (part one)?** Are you expecting the money to be paid back or for the recipient to perform some task for you? In either case, make sure that the beneficiary of your generosity is on the same page as you. The best way to do this is in writing, with a promissory note in the case of a loan or an agreement if you have an expectation that certain tasks will be performed.
4. **Is it really a gift (part two)?** Another way a gift may not really be a gift is if you expect the recipient to hold the funds for you (or for someone else, such as a disabled child) or to let you live in or use a house that you have transferred. These are gifts with strings attached, at least in theory. But if you don't use a trust or, in the case of real estate, a life estate, legally there are no strings attached. Your expectations may not pan out if the recipient doesn't do what you want or runs into circumstances – bankruptcy, a lawsuit, divorce, illness – that no one anticipated. If the idea is to make the gifts with strings attached, it's best to attach those strings legally through a trust or life estate.
5. **Is the gift good for the recipient?** If the recipient has special needs, the funds could make her ineligible for various public benefits, such as Medicaid, Supplemental

Security Income or subsidized housing. If you make many gifts to the same person, you may help create a dependency that interferes with the recipient learning to stand on his own two feet. If the recipient has issues with drugs or alcohol, he may use the gifted funds to further the habit. You may need to permit the individual to hit bottom in order to learn to live on his own (i.e., don’t be an “enabler”).

If after you’ve answered all of these questions, you still want to make a gift, please go ahead. But unless the gift is for a nominal amount, it is advisable to check with your attorney to make sure you are aware of the Medicaid, tax and other possible implications of your generosity.

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