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ESSAY: PASSING IT ON: THE INHERITANCE, OWNERSHIP AND USE OF SUMMER HOUSES

Ken Huggins*

“Just once I’d like to be able to use our family summer home over the July 4th weekend. But that blankety-blank brother of mine claims that his work demands and his kids’ summer schedules mean that he has to have the first part of July. And our mother, who does the scheduling, has always favored him and gives it to him. It just fries me!”

“Once again, my niece brought that mangy mutt of hers to our summer place when she was there with my sister. I don’t know what that dog gets into, but whenever we follow them with our dog, the house has fleas and we have to treat it. My niece claims that they don’t come from her dog but hers is the only other one in the family.”

“Our living room furniture and furnishings are so old and worn out that it’s just pathetic. But whenever I suggest something like replacing the couch, my siblings and their kids cry, “But Mom (or Grandma) got that couch when they built the place. I love that old couch!” What can you do?”

“We’re not going to use our week this summer and I would like to offer it to the highest bidder at our church fund-raising auction. But my siblings say, ‘Absolutely not! No one but family uses our cottage!’ I don’t know why I can’t do this. It’s my time and it’s not like I’m making money off it. And the people who would use it are responsible and trustworthy, I’m sure.”

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So, what's going on here? These plaintive cries are just a few examples of the myriad problems that can occur when an extended family owns a summer house. The issues involved are not easily resolved. In this article, I am going to look at these issues and discuss how a family can develop an agreement that deals with them successfully and maximizes the family's enjoyment of their treasured summer home. In doing this, my focus is on the type of issues involved in the quotes above. I am not looking at legal and financial arrangements that can be made to retain ownership and reduce tax burdens. There are books that can help you with this, two good ones being *PRESERVING FAMILY LANDS, I AND II* (1992; 1997), by attorney Stephen J. Small, and published by the Landowner Planning Center in Boston.

What I will discuss and recommend comes from a study done by my late sister Judy. She wrote up her findings in *PASSING IT ON: THE INHERITANCE AND USE OF SUMMER HOUSES*, and with her I wrote an accompanying workbook, *HOW TO PASS IT ON: THE OWNERSHIP AND USE OF SUMMER HOUSES*. We published the books under the name of Pocomo Press and they are available from our website, www.passingiton.com or www.amazon.com.

ORIGIN OF THE STUDY

I am fortunate enough to have vacationed on Nantucket Island for over fifty years. My father bought land when it was cheap and built two houses, one for him and my mother to use, the other to be shared by my older brother, two sisters and me, and our families.

Splitting up the summer wasn't always easy and there were some tiffs, but we managed. Then, when Dad developed incurable cancer, he developed a plan with my older brother whereby once Mom had died, Bob would buy my sisters and me out of one place and we would buy him out of the other, providing us with an endowment to manage our place. Dad and Bob, who was the firstborn, never discussed this with us.

Not surprisingly, this created one or two teeny-tiny problems and some voices were raised to a near screech level. It wasn't that it was such a bad plan; Bob could afford it and we would need funds to run our place. It was that we were never consulted about it. And these problems were added to existing tensions and some latent and not-so-latent sibling rivalries. Mom only added to the problems when she said that the places and decisions about them were ours to manage, and then

was unable to let go of these things she had always controlled.

I discussed the problems a lot with Judy, who was a sociologist and one time she wondered what the sociological research said about ownership of summer houses. To her surprise, she discovered that there was no such research. Ah ha! An opportunity presented itself for an enterprising sociologist who was intimately acquainted with the issues to do a study. And we both knew such a scholar.

Judy designed a study including an extensive survey and then solicited families to participate. She began with families in New England, and then added ones in the Mid-Atlantic States, Midwest, and Far West, eventually totaling 125 families in 18 states.

Some of these families were into their fourth and fifth generation of summer home ownership. One family had over 100 households involved. Obviously, such families have discovered ways to make such ownership work.

What Judy learned was sometimes what we expected and sometimes quite a surprise. She discovered, among other things, that there were regional differences, the Puritan Ethic of work-before-play being far more operative in New England than elsewhere. She wrote up her findings in *PASSING IT ON*, and being such an academic that she could only write “academese,” she asked me to help make it more accessible to a general audience by writing the workbook, *HOW TO PASS IT ON*.

WHY SUMMER HOUSES ARE SO IMPORTANT

If you are reading this article, you can probably answer this question, but being a pedant, I’ll tell you anyway. Going to a summer home each year may be the most treasured of childhood memories. If you were fortunate enough to have done this when you were young, you may have stronger, clearer and fonder memories of your times at your summer house than from your year-round house. And as you married and had kids of your own, you may have wanted to give them the opportunity for the memorable and treasured times you had. So you kept the house in the family, and maybe even maintained it just the way you remembered it.

Keeping the summer home in the family guaranteed that your kids were able to spend that ever-popular “quality time” with you, Grandpa and Grandma. Maybe they saw their cousins and enjoyed hiking, swimming, fishing, swatting mosquitoes, skinny-dipping and staying awake past normal bedtimes. The joys are not, of course, restricted to children and parents. Many families, including mine, schedule

overlapping days so that siblings and cousins can be together in a more relaxed venue than the typical Christmas or Thanksgiving, or major family event like a wedding. My younger sister Janet lives in Bellingham, Washington, and I am in Rochester, NY, so if we didn't see each other on Nantucket, it would be hard to see each other at all.

All of these special times invest the summer house with such significance that families, including ours, go to great lengths, emotionally, financially and otherwise, to hold on to it. When anything threatens our enjoyment of the place, we may be quick to get our back up and we are willing to fight tooth and nail to hold on to what we treasure so dearly. Unfortunately, sometimes the wishes of our siblings and cousins are the threat.

HOW AND WHY PROBLEMS ARISE

Let's take a typical scenario. Fred and Marge Jacoby buy some land and build a small cottage on the Allegheny River in western Pennsylvania. Their kids, Jamie, Jim and Natalie are 7, 6, and 4 when they first go to their cottage and the kids grow up looking forward to spending three or four weeks, sometimes even more, at their favorite place in all the world. Jamie, Jim and Natalie grow up and get married. They continue to visit their parents "on the river" and eventually bring along a total of seven grandchildren with them. The cottage gets pretty crowded but with sleeping bags and tents, they make it work.

Unfortunately, Natalie's marriage fails and a few years later, she marries Mark, who has two kids from his first marriage. Natalie and Mark have a child of their own, so now we have step-grandchildren and half-siblings complicating the picture.

As the grandchildren grow up, they begin to wonder when they will be able to use the place themselves, without parents and grandparents present. However, Fred and Marge run things pretty much their own way, which often grates on their son and daughters. Then Marge starts showing signs of Alzheimer's disease and Fred is left alone to manage everything. Slowly he allows his children, especially his son Jim, to get involved in the management.

Early in their ownership, Fred established a trust fund to cover expenses, but real estate values have recently skyrocketed and the income from the trust no longer covers their taxes. It also doesn't spell out how it's decided who gets the Fourth of July weekend, or how they will pay for a much-needed expansion of the cottage.

You can see that the potential for a great number of problems concerning the rights and responsibilities of each member of the family

is implicit in this scenario. The problems are not due to shortsightedness on Fred and Marge's part; they just grew naturally as the family grew. Judy found that the people who originally bought or built the summer house, which she calls the "founders," are rarely able to anticipate and plan for the issues that will arise when their grandchildren and great-grandchildren start using the place.

If you are a founder, recognize in this scenario some problems your family has been encountering. You should not feel guilty, for few are able to foresee them. Usually the procedures and patterns that the founders establish work well when the family consists of just them and their children. They may be able to negotiate the issues, and "listen with love in their hearts," as Marge always told their children.

It is when the third and fourth generations come along that the original informal working agreement is no longer adequate. Cousins and second cousins may not know each other as well as the siblings did, and they may not have the same bond and dedication to working things out. They may be scattered geographically, with different cultural values, and may have a great diversity of lifestyles. Divorce, remarriage and blending families may add greater complications.

And as the cousins mature, they start wishing for a summer slot of their own, and this may mean that instead of three or four households bidding for a slot, there may be six to eight or even more. One of the thornier questions that families deal with is deciding when someone reaches the point where he or she deserves a slot of their own. There is no easy answer to his or her question; neither age nor position in life such as marriage and parenthood can serve as a foolproof resolution.

THE KINDS OF PROBLEMS THAT MAY ARISE

The question above is just one of many that can lead to problems. Who gets which slot and how this is determined raise a number of issues to be dealt with. In addition to the question of age or life situation, the status of in-laws, step-siblings, widows and widowers may be a tough nut to crack. In the section below regarding a formal working agreement, I will identify more specifically some of the questions that, if not answered adequately, can lead to problems.

Among the areas where problems may arise are finances. Summer houses can be expensive to own and maintain, especially as they age and as the area in which they are located becomes more desirable, raising real estate values and taxes. Deciding who will be responsible for writing checks and collecting usage fees may involve a lot of discussion once the founders themselves are no longer in charge.

Decisions about décor, appliances, repairs, expansions, replacement of worn out furnishings, etc. become more complex as the founders no longer make them alone and without input from offspring. Determining the ideal decision-making process in a large extended family may require a good deal of sweat and "listening with love in your heart."

In addition, it needs to be determined whether equipment that goes with the house, such as boats, bikes, fishing tackle and so forth belongs to the house or to the family which bought and brought it up there. Normal year-round upkeep and maintenance must be arranged. Who will open and close the house can be a tough question to answer, and then there are issues like cutting the grass, weeding, small repairs, etc. that must be resolved. If the house is not occupied for the whole summer, questions as to giving away or renting certain weeks are raised. And if rental is the choice, who serves as landlord? The environment around the summer house may bring up other questions. It may be fragile and easily polluted, and the community may have ordinances regarding disposal of trash and garbage. Who inherits shares of the house as older generations die off is another matter that must be spelled out.

These are some of the problem areas and you probably recognize a few as the source of some prickly discussions and blasphemous mutterings that you might like to forget. And you may be able to add to the areas I've identified from your own experience.

HOW SUCCESSFUL FAMILIES MAKE IT WORK

As mentioned, most of the families Judy talked to were extended beyond the founders and second-generation stage. Such families usually had some sort of formal agreement regarding all aspects of use and maintenance. Such agreements may be hard to develop, as I will discuss below, but if there is anything that is essential to successful family ownership, it is this.

In developing such agreements, successful families usually involve multiple generations. The impetus for development often comes from the second or third generation, because they are the ones most acutely feeling the problems. It is rare for an agreement to be rendered "top-down" from the founders themselves. If you are a founder yourself, you may want to talk about the problem with one of your children and encourage him or her to initiate the process. An agreement is more likely to work if those to whom it will apply for the longest period of time have developed it.

Whoever initiates the development, families who make it work take pains to involve younger members. Even children can be informed and included in discussions, and it is important that they are. They will one day be living by the agreement and will be more likely to work cooperatively within it if they know that they were part of its development. In addition to listening to young people, families who make it work often expect some sort of work or "sweat equity" contributions from them. The kids may grumble and complain about having to weed a garden, help paint a fence, or scrub the dock, but in doing this, they gain a greater feeling of ownership and contribution to the family.

All families develop rituals and traditions, but something founders might consider is consciously starting such traditions and initiating their children into them. These can be as elaborate as a large family reunion over the Fourth of July or as simple as setting out birdseed every morning. After my parents built the first of their cottages, we developed the routine every morning of putting on a record of the Mormon Tabernacle Choir singing Haydn's "The Heavens Are Telling," a glorious piece of music that perfectly fit our mood and the beauty of the moors and ocean upon which we gazed.

Often families will keep some sort of log in which each family that uses the house records what it has done during its stay to contribute to its well-being. One of Judy's correspondents called this the family "boast book" and said that it promoted healthy competition, each family trying to do more to make the place run smoothly.

As young people grow up and get married, sisters and brothers-in-law become part of the family. Successful families find ways to make them feel part of the ownership, to value the summer house, and contribute to its upkeep and maintenance.

How they do this varies, but Judy found that daughters-in-law are particularly important in successful ownership, more so than sons-in-law. It may be that they can find more ways to contribute or are better at the human relations skills that ease decision-making, but far be it from me to make such sexist assumptions. It is interesting that when daughters buy out their brothers' interest in the place, it has usually been because the brothers' wives were antagonistic toward using it.

Large extended families have often developed formal operating structures, with certain individuals in charge of various aspects of ownership. They may have the equivalent of CEO's or CFO's and committees overseeing such areas as finance, maintenance, scheduling and so on. The various leadership roles and membership on committees may rotate on a three or five year schedule. If this makes it

sound as if the family is a business, that's not so bad. It has been said that if your family owns a summer house, then you have a family business.

In such governance, it is helpful if members of more than one generation serve in the various roles. If the second generation does all the governing and decision-making, antagonism in the third generation and an "us versus them" mentality may be provoked.

Younger members can be appointed as assistants to older ones, learning the operation and then taking over that part when it's time to rotate. In my extended family, we happen to have two members of the third generation who are lawyers, and this has certainly been helpful.

In keeping with the business theme, families may have annual meetings for as many members as can attend. If the extended family is very large, this might involve just "officers" and committee members, at least one from every branch so that he or she can report what transpired back to the others. Such meetings may be held at a founder's or older family member's home, if large enough, but if no home is big enough, it can be worth it to rent a meeting room at a local hotel. At the meeting, current issues may be raised, decisions made on a consensual basis, summer schedules sketched in, and so on. Of course it is sensible to plan for some socializing as well.

Renting a room raises the question of finances. Families handle it in various ways, but large extended families often have some sort of "user fee," the amount varying depending on what is needed and what members are able to pay. Even if there are adequate funds to cover all operating expenses, a nominal fee may be wise, since it reminds everyone, but especially younger folk, that there is no such thing as "free lunch" at a summer house.

QUESTIONS TO BE ADDRESSED IN A FORMAL OPERATING AGREEMENT

Below I list questions involved in executing a formal operating agreement. After some of them, I will include in parentheses what Judy found to be the norm, or what we recommend.

- 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?
- Are slots in the prime summer months of July and August "worth more" than those in the early or late season? If I get a prime time slot this year do I have to give up

something the next year?

- How will slots be allocated and who is in charge of the schedule?
- If there are more households than summer slots, how will the rotation be handled? (Systematic rotation seems to be a regular feature in large extended family. One of the families Judy surveyed is so large that households only get one week every five years.)
- If a household takes a very early or late season slot when no one else can use it, do they have to give up the right to a prime time slot?
- If a household is unable to use a slot, or chooses not to, do they get first choice the next year or “lose their place” in line?
- Who opens and closes the house at the beginning and end of the season? If someone is hired to do this, who pays them? And if family members perform the task, what will be their compensation?
- What will be the compensation for family members who perform large time-consuming tasks, such as painting the house or building a deck?
- At what point do members of the next generation qualify for a slot instead of sharing their parents’ time?
- Will there be a user fee per slot or will all members be assessed some sort of “dues” even if they are not eligible for a lot?
- What happens if one household, due to loss of job, severe illness, etc., is unable to pay their yearly dues?
- If a direct lineage member of the family dies, does the widow or widower retain the right to a slot or does it pass to surviving offspring?
- If one member of the family no longer wants to use the place and asks to be bought out of his/her share, can this be required of the rest of the family?
- If a buy-out is permitted, should one or two members who are better able to afford it do this, or should all of the family contribute to the best of their ability? (It is better if this is a total family undertaking so that some members don’t become “first among equals”.)
- If the family forms an association or corporation with multiple shares, something we recommend, is a partial buy-out possible? (This is difficult because of the “shares-

to-use" problem)

- What sort of "shares-to-use" equation will be developed?
- How many shares could be sold and what would this mean in terms of use of the place?
- Will a sell-out to non-family be permitted? (Judy found no family that would permit this.)
- Who oversees maintenance and takes responsibility to see that repairs are completed?
- How will an expensive repair, such as a new roof, be paid for?
- If a major appliance suddenly gives up the ghost, something that often happens under heavy summer use, and must be replaced immediately, who decides what to get and how this will be paid for?
- If it is necessary or seems advisable to remodel or expand the summer house, how will decisions be made about this, not just major ones like how many rooms, but smaller ones dealing with décor? How will this be paid for? (Even if one or two members are able and willing to afford this, it is better again if it be a total family undertaking. If one member pays for the improvements that may give him/her implicit or explicit precedence in all decisions regarding use, and everyone will know this.)
- What plans 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?
- When furniture and furnishings wear out, who decides on their replacement?
- Who should fill the "officer" and committee positions, and will there be any sort of compensation for them in terms of time at the summer house?
- How will rotation of these positions be determined?
- Should unused slots be rented to outsiders to help defray taxes and maintenance costs? If so, who should act as landlord?
- Can individual households rent or give away their slot? To whom? If rented, who gets the rental fee? (While many families rent their place for part of the summer, sometimes out of necessity, few permit individual households such latitude as renting or giving away their slot.)

- If elderly family members can no longer use their slots alone, with whom will they stay if they come? Will those hosts be compensated in some way?
- Will any property, such as a sailboat, be reserved for one household and off-limits for the others?
- What rules should there be regarding pets? (Some families require that members who bring dogs “flea bomb” their house as they depart.)
- Will sensible environmental practices such as recycling be required? What about more extreme measures such as not using pesticides or using only long-life (but dim) light bulbs?
- What will be the formal status of in-laws and step-siblings as to decision-making and summer use? (Most families do not give in-laws and step-siblings the same rights and privileges as direct lineage members. However, the extended family of a friend and colleague of mine who died suddenly this past summer is giving his widow, who happens to be his second wife, a “life-right” to use their house in Maine.)
- At what point may a member of the oldest generation “retire” and be absolved from normal responsibilities?
- How can by-laws of the formal agreement dealing with the above questions be amended when conditions warrant this?

These are most of the questions that formal agreements address. I hope you are not overwhelmed by the complexity of such an agreement, but if you’ve read this far, you probably already know that owning a summer house is a complicated proposition. In fact, you may be able to think of other questions that are pertinent to your family’s situation.

HOW TO DEVELOP A FORMAL AGREEMENT

Naturally, I think that a good first step would be to buy our books. Seriously, I do know of many families where one person has bought Judy’s text and then given copies of our workbook to other family members. Whether you use our books or not, recognize that this process is going to take a long time, longer than you would hope. It may get frustrating, but “patience” will be one of your watchwords in developing an agreement. As I indicated above, work to include all family members of any degree of maturity. This should not be a

process that includes only adults, or only those with families of their own.

Something everyone, including kids, can do as a first step is to write a "Mission Statement," like various institutions and corporations. One of Judy's consultants, professional mediator Louis R. Matlack, with offices in Camden, New Jersey, recommends that this statement should, "express an ideal concept of maximum family benefit from shared use of the place, in terms of the collective interest, without regard to the sense of comparative power or rights that individuals have."

Questions that could help individuals draft their version of the "Mission Statement" include:

- What is most important to you about our summer house?
- What do you value most about our family and how we use the place?
- How would you like to see the ownership of the house affect the ways we interact as family members?

Whether the final formal agreement includes a Mission Statement or not, the process can be worthwhile in getting the family to start thinking consciously about the summer house.

The actual drafting of the agreement will probably need two or three "honchos" or "honzesses" to coordinate the process and encourage individuals to get their contributions in, if necessary, applying gentle torque to various arms. If there are representatives from different generations involved, so much the better. If it is possible to hold a family meeting, this is a good preliminary step. However, those calling for the meeting should probably not preside over it, nor should the founders. They may be seen as having the most vested interest in the house. Ideally, the presider should be someone seen and respected by all as neutral, perhaps a cousin or even an in-law. Recognize that while in-laws are not generally considered "voting members," they are "silent partners" and may not be so silent in the bedroom of their spouse.

Be sure to keep gender bias out of the process. Men, particularly those in business, may tend to assume leadership roles, but they may also get competitive with each other. Sister Sue, Daughter Dora and Niece Nancy need to be equal in all phases of the process, and if they are married, their husbands are in-laws and have only bedroom influence, even if they are partners in a Wall Street law firm. Actually, especially if they are Wall Street lawyers.

Recognize that some members of the family may be antagonistic to this whole process. They may feel that it is too formal or unnecessary, akin to writing a pre-nuptial agreement. If Nephew Tom says he doesn't want to be involved, don't preclude his later involvement. And if Cousin Sylvia says that the drafting an agreement is fine but she doesn't care what goes into it, try to encourage greater involvement by asking about points that you think may be very important to her.

In all of this, it is absolutely crucial that you model the kind of behavior that will facilitate the process. Stay calm, bite your tongue, "listen with love in your heart," explain the same point over and over, acknowledge hurts, complaints or prior grievances, but keep the focus on what is best for the family. If it would help, invoke the spirit of St. Francis of Assisi, Mohandas Ghandi, Eleanor Roosevelt, Martin Luther King, or whoever else may be your patron saint of serenity and understanding. The scars on your tongue will be your badge of honor.

Once you have the ball rolling, try to determine the nature of your informal working agreement. All families have such informal agreements, the ways that they have always done things. Ask individuals to contribute what they think the normal procedures actually *are*. What they *should be* will come next. If this can be done at a family meeting, so much the better, but this is not always possible. If it isn't, phone calls, e-mail and faxes can be used to facilitate the process.

Once you have drafted the "informal working agreement," you can begin on the "formal agreement." Policies and procedures that have worked well may be spelled out in detail. For those that haven't, ask members what they would like to see become operative. Here is where things may become sticky and conflict may arise. Propose compromises and contingencies, continually circulating revised drafts of various by-laws. As you do, work toward consensus rather than simple majority rule. This will encourage greater cooperation when the agreement goes into operation. If there are areas where you have not had a policy, such as rental or buy-out, ask for ideas as to what the policy should be. This may require some information dissemination on your part, along with options for family members to consider. When you are done, you might consider this your Family Constitution.

As you work on this process, you may want to consider changes in the legal ownership of the property, especially if it is still in the name of the founders. Forming a partnership, association or corporation can make everyone an owner, fostering greater cooperation, and will make inheritance easier and a lot cheaper.

In the *PASSING IT ON* books, we recommend incorporating. Having just gone through the grueling process of selling the family corporation owning our Nantucket house, I would now recommend that you NOT incorporate. Depending on the type of corporation and length of ownership, you may get hit with a double tax if the house must be sold. In addition, selling a corporation owning a house is a LOT more complicated than selling a house. Increased lawyer fees are only a part of what you will pay; the stress involved is worse.

Associations therefore may have the advantage, but again, check the laws in your state and talk with your family attorney.

Once you have your formal agreement agreed upon, and have decided on any change in legal ownership, you can make everything official and legal. You might consider using a lawyer in the community where your summer house is located, even if he or she is just a "small town lawyer." Small town lawyers may be a lot more knowledgeable about the legalities and nuances of ownership in this area than a "big city" type. They may be a good deal less expensive as well.

CONCLUSION

Yes, it is a daunting task, but if you have read this far, you probably already knew that. At the least, you already know that dealing with the problems of extended family ownership of a summer house is a daunting task itself, and it will only get worse as time passes. The work you put into developing a formal agreement will pay off in the long run.

As for me, I have been asked what sort of agreement my family has. That is a rather sad question. Judy and I started working on a book when we realized that owning our summer house on Nantucket had gone beyond our financial means. Nantucket is now a more upscale resort than the Hamptons, with the most expensive housing in the country, and we can no longer afford to maintain our house.

Knowing this and recognizing that Judy was going to lose her battle with breast cancer, that our kids are scattered from New Jersey to Florida to Washington, and that they have varying commitments to Nantucket, we put our house on the market.

While it sold for a great deal of money, this does not begin to touch the sadness I feel at losing a place that has been a major piece of my heart for more than fifty years. If I can help other people hold onto their summer homes that will be of greater solace than any financial gain.