Maintaining family property requires plan

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Benjamin Franklin is credited with the oft-repeated saying, "If you fail to plan, you are planning to fail." This statement is very realistic in its application to the long-term ownership and management of family properties. Many problems arise if families do not create a plan for the future ownership and management of the family property.

The result of failing to plan

What happens if you fail to plan for the future ownership and management of the family property? In any conflict involving co-owners of property, the most commonly-employed legal remedy is a partition action. Under Wisconsin Statutes, Chapter 842, a partition action involves one or more co-owners suing the remaining co-owner(s) and requesting a physical division of the property or a sale of the property. Oftentimes, physical division of the property in an equitable manner is impossible, leaving a forced sheriff's sale of the property as the only option. Either result is unwelcome and undermines the intent of maintaining the family property.

Succession planning for family property

If your clients are intent on maintaining the family property for many generations, it is imperative to engage in planning for the future of the ownership and management of the property. Clients should include in the planning process any family member in the future generations who wants to be involved in maintaining the family property, thus facilitating enrollment of these family members in the collective plan.

The most flexible tool to use for the long-term ownership and management of a family property is a limited liability company (LLC). Each family situation will dictate the terms of the LLC's operating agreement. There are several concepts that are particularly helpful for LLC's holding family properties:

• **Management.** The LLC's day-to-day management should be vested in a manager, thus streamlining the operations of the LLC. The manager should be appointed by family-unit representatives. Typically, each of the clients and their children has his or her own family unit. When children transfer interests in the LLC to their respective children, additional family units are not created; rather, the clients' grandchildren are part of their respective parent's family unit. One member of each family unit is appointed as the family-unit representative.

In addition to appointing the manager of the LLC, the family-unit representatives may be tasked with approving the annual budget, approving capital expenditures over a designated dollar amount, and scheduling the use of the property.

Family members who are not the manager or a family-unit representative do not participate in the management of the LLC, except if major decisions are necessary. Many clients choose to require a majority or supermajority vote of the members to buy or sell the family property, dissolve the LLC, and amend the operating agreement.

• **Expenses.** Depending on the family situation, clients may choose to establish a fund that will pay for all expenses associated with the family property, so long as family members own the LLC that holds the property. However, it can be difficult to calculate the amount of assets that will be sufficient to pay for future expenses associated with the property.

In the absence of a separate fund to pay for expenses associated with the family property, the operating agreement may require the manager to create an annual budget for the maintenance of the property and to assess each family unit for its share of the expenses. The budget should include all annual expenses associated with the property, such as property taxes, insurance, utilities, and maintenance expenses, as well as any necessary repairs or improvements of substantial value.

• **Transfer of interests.** Most clients desire to restrict the transfer of ownership to non-family members. The clients may define "permitted transferees" in the operating agreement, which typically include individuals within the clients' bloodlines and trusts for the benefit of such individuals. In the absence of a transfer to a permitted transferee, the operating agreement may permit transfer with a majority or supermajority vote of the members. These transfer restrictions ensure that the family property remains in the clients' bloodlines for the longest period possible.

• **Dispute resolution.** If there is a deadlock among the family-unit representatives with regard to any decision involving the LLC, the operating agreement should specify a dispute resolution process in order to avoid court involvement. Generally, the family-unit representatives will appoint a non-member to cast a tie-breaking vote on any disputed matter.

When clients engage their families in a planning process that results in the creation of an LLC to hold their family property, they are readied for success in the long-term ownership and management of the family property. A well-reasoned plan, coupled with the enrollment of future generations of family members in the plan, eliminates or minimizes the risks associated with the common ownership of property.

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