

A Family Affair

Preserving and passing on summer homes • by Nell Porter Brown



going to happen to all those memories of childhood if that house is gone? ‘What will happen to our family if we don’t gather there anymore?’ ‘Will the family split apart?’ These houses are a sort of repository for these very tangible feelings and memories from childhood” that trail us into adulthood.

“In my experience, the family compounds or summer homes are meaningful to the next generation because they hold the family stories. They are often the positive glue that

Left: Attorney Matthew Berlin takes in a Vermont home and landscape preserved for generations to come.

holds a family together,” says Charles W. Collier, senior philanthropic advisor at Harvard and the

author of *Wealth in Families*, which explores family relationships and money. “For

many children, including mine in regard to our place in New Hampshire, the summer house is where the roots are, because they’ve been going there since they were young children.”

Matthew A. Berlin ’89, a partner in the trusts and estates department of Rubin and Rudman in Boston, advises families on succession planning. “What deepens the complexity around inherited property are the relationships among family members,” he allows. “Shared administrative responsibilities can often become a forum for airing other issues whose provenance lies deep within the family history.” That can include an uncomfortable revisiting of sibling rivalries. “Was one sibling more dominant than the oth-

Although I have spent only a month or two here each year for four decades, I have always thought of it as home, if home is the one place that will be in your bones forever.

SO WRITES George Howe Colt ’76 in his evocative book, *The Big House: A Century in the Life of an American Summer Home*. For five generations, his extended family gathered at the 11-bedroom, fairy-tale home on a Cape Cod peninsula, a witness to the unfolding of multiple lives. “The house watched over five weddings, four divorces, three deaths, several nervous breakdowns, an untold number of conceptions, and countless birthday parties, anniversaries, and love affairs.” When his

father called him a few years ago to say he had some “bad news,” Colt assumed there’d been a death in the family. “And it did turn out to be a sort of death,” he explained in a recent interview. “My parents had decided to sell the house.”

Summer dwellings—from romantic seaside Victorians and lakeside camps to mountain cabins or bungalows in the woods—can hold a sacred place in the heart of a family through generations. Since his book was published in 2003, Colt has been contacted by hundreds of readers, many of whom talk about the pain of losing long-held homes. “In almost all the cases, the feelings come from having spent their childhoods going there,” he says. “They worry about ‘What is

ers? Is what the siblings want from the house different? Are there differing views on how a property should be used?" Berlin asks. Moreover, if transfer of the property occurs while the elder generation is still alive, its members are, in essence, relinquishing their roles as hosts, caretakers, and authorities over the summer home to their children, causing a shifting of roles and relationships that poses its own emotional—and financial—risks. (Berlin advises clients who are weighing options to reread *King Lear*.)

The presence of such resonating psychological factors makes it easier to understand why succession planning is complicated—even before the attorneys are called in to hammer out trust agreements, tax plans, endowments, and the other nitty-gritty legalities of intergenerational real-estate ownership.

Collier suggests that a family ready to grapple with passing on a home should first schedule a family meeting (one chapter of his book is devoted to the idea).

"My point is that families ought to explore the ownership and governance of these properties *before* the parents transfer it and the children are left without a plan to work together," he says. "It takes courage. Families need to have these conversations *before* they do the estate planning—and the owners ought to try to incorporate what the children want.

"To undertake effective succession planning, you should define a family vision and mission, create a structure for decision making appropriate to your family, foster open communication, and encourage the growth and development of all your family members," he writes. A family may want to ask: What is our vision for the future of this property? What challenges do the children face in working together? How do we plan to keep up the property? What are possible components of a plan that will respect family members' financial and geographic differences? Who in the next generation can provide leadership?

If a family sets the groundwork for fairness regarding the property, Berlin says, the next decisions revolve around the extent to which a family wants to codify arrangements for ownership, use, financial requirements, maintenance, and future contingencies. "Families can choose to have simple shared ownership and make ad hoc arrangements along the way," he says, "Or they can draft a constitution that outlines who gets to use the house and under what circumstances and that includes enforcement mechanisms to ensure compliance." Then, he explains, if a rogue family member refuses to cooperate with the established rules—doesn't contribute toward maintenance and taxes, or becomes a "downright bad citizen and trashes the place and locks the other family members out—he or she can be excluded from use of the property because the family has invested the authority, or control, over the property in some legal entity, such as a trust."

Planning is an intricate process; obvi-

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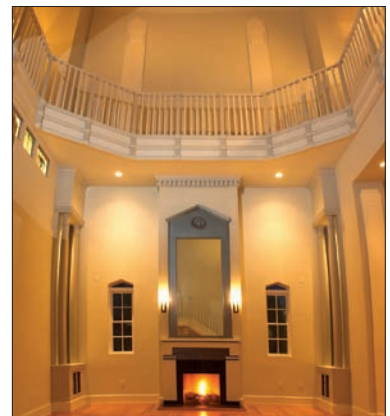
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ously there is no one scenario suitable to every family or every property. Legally and financially, numerous vehicles are used to preserve and pass on real estate: joint tenancy and tenancy-in-common scenarios, associations and general partnerships, limited partnerships/limited liability companies, family corporations, and trusts of various kinds. For her book *Passing It On: The Inheritance and Use of Summer Houses*, the late sociologist Judith Huggins Balfe conducted a study on how families share governance of summer homes. (She herself shared inherited property on Nantucket with siblings.) Any arrangement, she wrote, must be easy to implement and use, perpetuate equitable use of property, identify administrative procedures, and, perhaps most important, be flexible enough to anticipate and provide for contingency and change.

For many years, Stephen K. Barker '71, Ed.M. '75, his brother, James Sherman Barker Jr. '65, and their sister (now deceased) informally and amicably used the

house they inherited from their parents. The elegant Victorian is one of only 24 homes on Inner Heron Island in Maine; growing up, the siblings spent all summer there and they have rarely missed a season since. "Many of the homes are owned by the kids we grew up with, so there are friendships that go way back. Generational ties are strong," says Stephen Barker. "The standard joke is that we sit and watch the tide come in and watch the tide go out. And that's true," he says, with a laugh. "It's a relaxed place, low-tech—there's no electricity. We read a lot. And in the evenings people often get together and play games."

Right: The Barker brothers share this Victorian summer place on Inner Heron Island, Maine.



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About five years ago, the Barkers decided to formalize the summer arrangements because the next generation were grown adults, some with small children of their own. They found *Passing It On* (which was making the rounds among islanders confronting similar dilemmas) immensely helpful and opted to create a family corporation. Their goal was to devise an even set of responsibilities among the three families and to keep logistics "organized, fair, and friendly." They used a Maine attorney, because local and state laws affect estate planning, and divided the property into 300 shares of stock held at the attorney's office for future transfers. Corporation by-laws spell out rules for occupancy, officer responsibilities, financial obligations, and other procedures meant to address even "the worst-case scenarios,"

Right: The "Big House" on Cape Cod that George Howe Colt's family shared for five generations



COURTESY OF GEORGE HOWE COLT

Barker says, "so that if we do get to the point where there are disputes, we will have a way to settle them." At annual meetings (last year accomplished through a conference call on Thanksgiving), the brothers and, now, their sister's son re-

view and set the property budget (which includes fees to an island association and taxes), maintenance projects, and the occupancy schedule. (Each family, for example, has the option to rent out the house during its reserved weeks, as long as others are notified.)

So far, so good, says Barker. Some members of the next generation participated in the recent annual meeting for the first time, as official, non-voting guests. How they will be incorporated has yet to be worked out, as do questions about funding an endowment for the property. "It becomes a philosophical issue, about whether they want to start to take ownership of the house," he says of his children. "We might still handle the financial part, but they would begin to take on other responsibilities and work their way into the system. We're thinking about how to do that."

SOMETIMES the personal issues surrounding a property are the toughest for a family. "Who gets access on July Fourth? Who will fix the leaking roof? Who will own the property in the grandchildren's generation?" Collier asserts. "These issues are often more complicated because the children have different financial situations and often live far apart. Other considerations, such as those brought about by divorce and blended families, often increase anxiety about what to do with a summer home."

In some cases, a family may divide over



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how a property should be used. One scion of a prominent New England family is among nearly 100 descendants of the original owners of two properties: an island in Maine and a 36,000-acre ranch in Colorado. Only a small fraction of the family uses the Maine property, much of which has been placed under conservation easements. A larger group frequents the ranch. Mediators have twice been hired to help with deep disputes over how to reconcile the rights of the conservation-minded "sanctuarians" in the family with those who want to hunt and snowmobile on the ranch (the majority of which is also under conservation restrictions). So far the solution has been to create hunting and snowmobiling zones, but the issue seems perennial, with neither side completely satisfied.

Berlin explains that there are various ways to build technical succession details into the framework of a trust: committees can advise the trust on appointing successors, for example, or each trustee may have the power to pick a replacement. "In order to give the younger generation experience in the actual mechanics of administering the property, bring them in and involve them over time so that they can acquire more skills," he says. Some family elders are uncomfortable with discussing too many details about what happens in the future and want to leave succession issues to fate: "They shrug their shoulders and say, 'I can't impose my control from beyond the grave; the children will have to work it out,'" he reports. "Other families are quite detailed in arranging for various branches of the family to have representation in governing the property."

BUILDING ELASTICITY into succession plans is extremely important, but must be balanced with the needs and aims of current owners and users. A few years ago Berlin consulted to an alumni family on handling 2,000 acres (including two summer homes) near Woodstock, Vermont, that had been theirs for 128 years. The goal was to preserve the property—a lush, diverse landscape of woodlands, streams, hilly pastures, and a lake—by donating development rights on most of it to the Vermont Land Trust, as well as



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retaining some controlled building opportunities. Five building envelopes were carved out of the restricted area for use by current and future generations. "They are retaining the land within the family," he says, "and the value of the envelopes, given that they are in the middle of what is, in effect, a vast private park, is certainly going to be significant and will have to be dealt with as part of the estate planning. However, the market value of

**The wish is that
the place "enhance
family cohesion..."**

the parcel overall is greatly diminished," which reduces the burden of current property taxes, future estate taxes, and upkeep.

Land conservation was also considered, Berlin says, in the case of a Harvard professor and his wife who own a unique piece of property on Martha's Vineyard. The notion was rejected because of concerns that a conservation easement would limit the resale value without sufficiently reducing the estate-tax liability, thereby creating the potential for a financial catastrophe. Instead, Berlin's clients, who have nine beneficiaries, adopted a combined approach to gifting that borrows partly from techniques normally used with insurance-trust planning.

"We created an irrevocable trust to take title to the property, and structured it in such a way that the clients could make yearly in-kind transfers of the available annual exclusion (currently \$12,000 per person) along with the maximum amount that can be transferred in a lifetime (currently \$1 million)," Berlin explains. This was done in tandem with certain discounts applied to those transfers. In effect, Berlin structured for the couple's children and spouses, and their grandchildren, a current beneficial interest in the property and arranged the trust so that any gift made to it would be estate-tax free. During the last seven years, about \$2.8 million of a property valued at upwards of \$10 million has been gifted, he says. "We were able to accelerate the gift-

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ing in a fashion that would not be available were my clients simply writing an annual check."

One key factor that made the arrangement attractive to both the elder generation and their children is that when the trust distributes the property, the real estate goes only to the children of the couple—not to spouses or grandchildren. Berlin simply "borrowed their bodies" for the sake of the trust, but by holding the gifted interests in trust until the death of the current owners, he has built in safeguards against divorce, third-party seizure, and other unforeseen threats to the preservation of the family compound.

Such is the unsentimental job of attorneys. Their estate work carries an inherent acknowledgement that family life throughout generations is not static: children grow up and move away, parents become ill, marriages break apart, priorities shift.

Yet, somehow, the underlying desire of those attached to the family's summer home is that it, at least, stays intact, immutable to the "ravages of time." In *Passing It On*, Balfe posited that, in the eyes of a summer-home's founder, the wish is that the place "be enjoyed by successive generations to enhance family cohesion through a shared cultural experience, regardless of age or interest."

Perhaps, in the end, that is too much to ask of a bloodless structure. George Colt found that, once selling the Big House had been broached, his feelings about the place altered over time. Beyond the initial stomach-turning sadness, "I began to also feel a tiny bit excited," he says. "We could go somewhere else. We could see more of the world, other parts of the country. The Big House was such a rock and to have that rock removed was threatening, but at the same time, slightly liberating." In the book he quotes Albert Camus: "Once we accept the fact of loss, we understand that the loved one obstructed a whole corner of the possible, pure now as a sky washed by rain." For Colt sees that his book, about the passing on of a summer home, is "also about change, the resistance to it, and, ultimately, the acceptance of it." ▢

Nell Porter Brown is the assistant editor of this magazine.

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