

Estate Planning Overview and Checklist

Before Speaking with an attorney, you and your family should ask yourselves the following questions:

Do I have clear title on the land?

Have I spoken with my family members that may have an interest in the land about decisions that need to be made on the land?

Remember the Uniform Partition of Heirs Property Act:

- The Uniform Partition of Heirs Property Act utilizes a court appointed disinterested real estate appraiser to assess the fair market value of the property, unless all the cotenants agree on the value of the property, or the court determines that the cost of the appraisal will outweigh its evidentiary value.
- Upon determination of the value of the property, the Act provides all of the cotenants who did not request partition by sale, with a right to buy all of the interests of those who have done so, at a price equal to the court-determined value of the property, multiplied by the fractional interest of the cotenant that is bought out.
- The applicability of the law applies when an action to partition real property, the court shall determine whether the property is heirs' property. Upon determination by the court that said property is heirs' property, the property must be partitioned under this subchapter (partition in kind) unless the court finds "partition in kind" will result in great prejudice to the cotenants as a group.

The new Act provides important additions to the existing state law with protections against unexpected and often devastating predatory speculation. The determination of the courts whether or not the property is heirs' is a mitigating factor waiting for an answer.

Things to bring/know when meeting with someone regarding your estate planning:

- A rough draft of your family tree, beginning with the person on the last deed for the property. This should show all of the names of the heirs and their spouses, how they are related and if they are living or deceased.
- Copies of any deeds for the property
- Copies of wills or probate documents for the original owner and deceased heirs
- Copies of written agreements among family members or with third parties regarding the property.
- Copies of any legal notices relating to the property such as tax sale, foreclosure, pending or threatened lawsuits, and code violation notices
- Copies of recent tax bills and other tax records for the property

Sample Estate Planning Family Agreement

**ASSIGNMENT AND ASSUMPTION
OF PROPERTY ADMINISTRATOR DUTIES**

THIS ASSIGNMENT AND ASSUMPTION OF PROPERTY ADMINISTRATOR INTERESTS (this “Assignment”) is dated as of February 20, 2018, by and among [ASSIGNORS] (“Assignor”) and ADMINISTRATOR, who will have power of attorney and all rights attendant with respect to the property (the “Assignee”), recites and provides as follows:

RECITALS:

WHEREAS, the Assignors are the owners of an aggregate fifty percent (50%) Interest in x parcel of land (the “Land”)

WHEREAS, the Assignor proposes to assign and transfer control to Assignee Interest in the land (the “Assigned Interest”) by the execution and delivery of this Assignment and Assumption Agreement. The Assignor now wishes to assign and transfer to the Assignee all of the Assignor’s right, title and interest in and to the Assigned Interest.

ASSIGNMENT AND ASSUMPTION AGREEMENT:

For and in consideration of the sum of X Dollars (\$X), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. The Assignor hereby sells, conveys, assigns and transfers to the Assignee all of the Assignor’s rights, title and interests in and to the Assigned Interest subject to the terms and conditions of that certain Amended and Restated Operating Agreement of the Company of even date herewith (the “Operating Agreement”).
2. Acceptance, Assumption and Indemnity by Assignee. The Assignee (a) accepts the assignment of all of the Assignor’s rights, titles and interests in and to the Assigned Interest, (b) agrees to be bound by all of the terms, covenants and conditions of the Operating Agreement, and (c) assume the obligations and liabilities of the Assignor under the Operating Agreement from and after the date hereof with respect to the Assigned Interests. From and after the date hereof, the Assignor shall not have any obligations or liabilities with respect to (i) the Assigned Interest

3.

Release and Termination. The Assignee hereby releases the Assignor from all obligations related to the Assigned Interest or as otherwise incurred by Assignor under the terms of the Operating Agreement with respect to the Assigned Interest.

4.

Further Assurances. The Assignor, at no cost to Assignor, and Assignee hereby covenant and agree to execute and deliver, or cause to be executed and delivered, and to do or make, or cause to be done or made, any and all instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required for the purpose of effecting the assignment described herein.

5.

Completeness and Modification. This Assignment constitutes the entire agreement between the parties hereto as to the subject matter hereof and, in addition to that Memorandum of Understanding of even date herewith between the parties hereto, supersede all prior discussions, understandings or agreements between the parties hereto.

6.

Counterparts. To facilitate execution, this Assignment may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof, and it shall be sufficient that the signature on behalf of each party hereto appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. This Assignment (or counterpart thereof) signed by one or more of the parties and delivered by facsimile shall be effective as an original.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed by their duly authorized representatives as of the date of this Assignment.

ASSIGNOR:

[ASSIGNOR]

ASSIGNEE:

By: _____

Name: _____

Title: _____

The undersigned execute this Assignment to evidence their consent to the assignment of Assigned Interest from [ASSIGNOR] to [ASSIGNEE]