

## **B. VACATION HOMES OR INVESTMENT REAL ESTATE INTEREST**

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A vacation home may become a major issue in a divorce, especially when the vacation home has been in a party's family for generations. A prenuptial agreement is a recommended way to avoid a battle over the premarital second home. Parties may enter a post nuptial agreement to set the terms for ownership and use of the vacation home in the event of a divorce. The party who will not own the vacation home may want to have the right to use such home for specific times or periods. The parties should anticipate remarriage if usage rights are granted and the period of time should be set and be specific.

If the vacation home is sold for a profit, the parties will owe capital gains taxes. Tax planning may save the parties money. For example rather than selling it, one party agrees to keep it in the property settlement and lives in it for at least two years as his or her main residence after the divorce. Then, after selling it the party can claim a \$250,000 gain exclusion if such party has not already taken advantage of the gain exclusion privilege within the previous two years. If the party remarries and such party and the new spouse live in it for two years, \$500,000 can be excluded from capital gains.