

What Do We Do About the Cottage?

By Thomas E. Junkin

Leisurely swims, happy hikes, puzzles by the fire and favourite fishing holes are all cottage traditions. For many families, so too are conversations about how to pass on the cottage. Someone raises the topic. Another person cites technical concerns such as taxes, maintenance and ownership structures. Opinions fill the air and then slowly fade away, replaced by easier things to talk about. So the question remains: How can you best keep the cottage in the family?

We believe effective succession planning involves both the softer and technical sides of the equation. In fact, concerns involving family harmony often drive technical solutions. That's why we raise both issues for you to consider in the context of your family, your property and your wishes. In doing so, you can open the door to a successful transition and finally resolve concerns about "what to do about the cottage."

Your Family Cottage, Your Family Relationships

A common stumbling block to succession planning stems from relationship issues arising from unresolved conflicts. Childhood resentments or anger among siblings can make conversations difficult. Regardless, decisions about the cottage must be made and we believe making them with family input is invaluable.

Consider seeking outside support from a mediator to help bring family members together if a succession planning impasse exists or develops. Your wealth management advisor may be qualified to provide this assistance, or may refer you to another professional skilled in conflict resolution. Outside perspective and expertise may help you find an answer that reduces stress for everyone and begins to create a legacy of future harmonious relationships.

Who Owns the Cottage Now?

You can't gift what you don't own, but we often see attempts to do just that. This typically arises over confusion about legal ownership. For instance, did your siblings and you inherit the cottage years ago, and if so, did you update the land title? Siblings will often register the land title in joint names with right of survivorship because, at the time, it seems like a convenient solution. Consider this: Based on the joint title, if you die first the cottage automatically passes to your sibling by right of survivorship, to the exclusion of your spouse and children. Your estate could face extra expenses, delays and possibly litigation to recover title to the property. If old verbal agreements can't be substantiated and proof of payment is uncertain, your intended beneficiaries may not inherit the cottage, despite your wishes.

Alternatively, perhaps a second cottage was built on the same property and by virtue of usage "belongs" to certain family members. Yet the land is not theirs if title remains registered in the name of a late grandparent or still living parent. Lack of attention to such details can be a source of distress for family members who may be unaware of the situation or have a different understanding of the circumstances. Remember, legal title counts. Tie up loose ends now to avoid future turmoil.

Who Wants the Cottage?

Talk to family members about who wants the cottage. Don't assume your children or grandchildren see things your way. Be realistic. Who has the time and interest to benefit from the cottage? Will they get along with others sharing the property? How far do you extend the family circle? For example, if your daughter predeceases her husband, should he automatically inherit her "rights" to the cottage?

If the cottage is valuable and some of your immediate family members are not going to reap its benefits, consider making additional or alternate gifts to them in order to keep things fair and

equitable for the sake of future harmony. You may decide the best option is to sell the cottage to interested family members or sell it outright and divide the proceeds. Should you choose the former, ensure you're clear about the differences between a gift and a sale, and relevant tax issues.

How Will the Cottage be Maintained?

Your input on a maintenance agreement can be invaluable for setting out how responsibilities for operating and maintaining the cottage will be handled. While it's impossible to address every contingency, routine matters such as opening and closing the cottage, time-sharing and time exclusivity arrangements can be dealt with in advance. A negotiated financial agreement among family members can specify how costs are to be attributed; perhaps those earning more contribute more, or contributions reflect usage, including the number of members in each family. A mechanism for the purchase/sale of a family member's share should also be addressed.

What Does the Cottage of the Future Look Like?

It's important to articulate a vision for the cottage and the accompanying land. If it's an older structure with lots of rustic charm, is it to remain that way? Or, is there an agreed upon view about modernizing and enlarging it? Future disagreements about such key points may trigger a family crisis and ultimately the cottage's sale. If you own a large parcel of land, how would you like it to be used? Do you want to donate part of your land to a conservancy and keep the balance for the cottage and the kids? Broach the subject now, so family members can decide whether they share the same vision or would prefer to have their own cottage and traditions.



Will the Next Generation be Able to Afford It?

Items such as escalating cottage property taxes and maintenance costs make this a real concern. If you have sufficient assets, consider creating a cottage account, which could be funded with insurance proceeds, or from assets freed up in your estate. For larger sums, the funds could be placed in a trust created during your lifetime, or after your death. An estate and trust advisor can help tailor a solution—within the context of your overall estate plan—that may help make the cottage more affordable for the next generations.

When Should You Pass the Cottage On?

Should the transfer of the cottage occur during your lifetime or as part of the estate? Consider whether a lifetime gift is affordable, given your age and future needs. The good news is people are living longer, but this can be demanding on retirement income, especially if a chronic illness occurs.

Taxes are a consideration when making this decision. Give the gift during your

lifetime and you avoid probate tax. You also put the issue of future gains due to rising property values in the hands of the beneficiaries. Recognize, however, that under current tax legislation gifting the cottage to someone other than a spouse crystallizes capital gains for tax purposes, unless an alter ego trust¹ or the principal residence exemption is available. Tax on the capital gain is usually payable in the year of the gift. Also investigate what other expenses are triggered by transferring the property (i.e., land transfer tax). We recommend consulting with a qualified advisor before deciding on a lifetime gifting strategy. Keep in mind that if the cottage passes through your estate, there may be other assets available to cover associated costs.

Beneficiary Ownership Structure

Several ownership options are available to help fulfil your succession plans, including co-tenancy as tenants in common, or joint tenancy with right of survivorship. Cottage property can be transferred to a trust, either created during your lifetime or

upon your death by the terms of your will. We believe a generous cottage fund should always be included as part of a trust structure. Some families choose to have the cottage title held in a nominee corporation or in a family-held non-profit corporation. These strategies all require specialized advice.

Worth the Time and Effort Now

There are many details to consider as part of a succession plan for the cottage. To find answers that will work well for your family and you, seek the guidance of qualified professionals who can help you achieve an effective succession plan and prepare the legal documents necessary to pass on ownership of the cottage. Take time now to deal with sensitive family issues and you can help ensure the best next steps for your family and that very special place ... the cottage.

1. Alter Ego trusts are restricted to those aged 65+ and other mandatory requirements apply when establishing this type of trust. "Types of trusts," Government of Canada, <https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/types-trusts.html>.