

# No asset in your estate can be as emotionally charged as the family cottage

Here's how to defuse the powder keg



Family cottages can be bones of contention on many levels. *Brent Foster/National Post*

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Cherished tradition is deeply steeped in every aspect of our family cottage, largely because my children are the fifth generation making the annual trek north.

Up to this point, both our island and the original family cottage (now owned by cousins) have remained in the hands of descendants. But in many instances, rising ownership costs, geographic inconvenience, and general practicality mean not every family member can or wants to own property generation after generation.

Anyone who currently owns a cottage has undoubtedly given careful consideration to if, when and how to pass it on to the next generation. Ideally, conversations should begin early and be held frequently with both family members and professional advisors. But if you haven't started yet, here are some considerations to help with future conversations.

## **MANAGING FAMILY RELATIONSHIPS**

Cottages are often one of the most emotionally charged assets in any estate. While affordability can become a major point of stress, normal family dynamics and grievances can also become a factor in co-owner conflicts. In instances where all members of the next generation want to continue as owners, governance should be put in place to ensure a common agreement around things like allocation of expenses, shared versus exclusive use, and avoiding sale of an interest to someone outside of the family.

Several structures can be used to establish governance with co-ownership agreements, trusts and corporations being the most common. But even with best efforts to ensure equality and governance around ownership, things can go awry. I recently heard a story about a fifth-generation group of family cottage owners who had thoughtfully structured a corporate entity with share ownership, a board of directors that met regularly, and carefully defined share ownership rights. Even with all of the vigilant planning and careful consideration, family conflicts ended

with them cross-examining each other in court and the legacy land being put up for sale.

## **ENSURING AFFORDABILITY**

If you've considered passing your cottage on, then you've likely thought not only of who wants it, but also of who can afford it. The truth is that property values continue to skyrocket, impacting carrying and tax/capital gains costs for you and your spouse, and for your estate after you pass away. Future expenses, such as major capital repairs (a new roof or dock, for example) and escalating property taxes and utility bills, make cottage ownership a financial stretch for many.

One way to help ease this burden is to establish an estate-funded maintenance trust, or other fund, from your estate, assuming it is sufficiently large for this purpose. There may also be planning opportunities, such as use of the Principle Residence Exemption, setting up a structure that gifts any future growth in the value of the property to the next generation or changing the ownership of the cottage generally. But, note, there are complex rules associated with this kind of tax and probate planning that require the knowledge and advice of a competent legal and tax professional.

## **THE CONSEQUENCES OF DOING NOTHING**

If you do absolutely nothing with respect to your cottage in your estate planning, then it falls into the general assets of your estate and may leave your executor with more discretion to deal with it than you intend. It may become the executor's job to have the conversations about which beneficiaries want or can afford to keep the cottage, or to make the decision to sell – which may place your executor in an awkward position.

You should also think about your future plans should you lose mental capacity (due to age-related dementia, as an example). Without proper planning, your named power of attorney (or court-appointed decision maker) may be in a position of having to sell your family's beloved cottage in order to fund your long-term care needs. These considerations should also be part of your broader planning conversations with your professionals.

No matter your circumstances, as a cottage owner, open dialogue with your next generation is critical, otherwise, it may be a recipe for conflict for those you leave behind. As a colleague recently advised me, despite the best of intentions, "be careful because you may end up having to choose between the cottage and your family relationships."

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