

# The Client Advisor



## The Family Cottage *Planning Ahead*

By Philip Aldrich



Many Ontarians have fond memories of weekends and holidays at summer cottages. For those fortunate enough to own their own cottages there is often a desire to see succeeding generations use and enjoy the family cottage by sharing both ownership and management responsibilities. While we do not always see turmoil arise from shared ownership of cottages, the legal right to use the cottage after the transfer to the next generation is no longer solely at the largesse of the parents. Instead, all owners must cooperate in how the cottage is used, when it is used, and how the cottage is managed and not everyone always agrees. A useful tool that some families find solace in is the “Cottage Agreement”.

While, as you read this, you may be of the view that your family presently gets along (and will always do so) and that you do not need a Cottage Agreement, the simple fact is that Cottage Agreements are meant to codify the various understandings of family members with respect to the use and management of

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the cottage. It is not that we wish family disputes to arise but it may be easier to decide now, when things are fine, as to how you wish to deal with each other in the future when unexpected circumstances arise and things are not quite so amicable. As a parent you may even wish to make it a condition of transferring an ownership interest in the cottage to your children that everyone enters into a Cottage Agreement.

In contemplating the terms of a Cottage Agreement, some of the more common issues you may wish to consider are as follows:

1) Who gets use of the cottage and when? If the cottage just remained in the names of the parents then they are the only ones who decide who gets to use the cottage and when. If, however, other family members become co-owners then the rules as to who gets to use the cottage and when should be clearly set out. You may, for example, wish to do a lottery for the available weeks at the start of the year, or you may wish to assign the same weeks to family members year after year. The solutions will vary from family to family.

2) Who looks after the general maintenance of the cottage? Do parents and siblings take turns

doing this? Does everyone contribute money to hiring someone to look after the ongoing maintenance? What if a sibling can not afford to hire an outside person to maintain the cottage? Again, every family will have differing circumstances that will necessitate varying answers.

3) How will capital improvements handled (i.e. putting in decks, additions, hot tubs, and other major expenditures)?

What mechanism will you use to decide if your family will make such expenditures? What if a parent or sibling does not agree with the expenditure?

More importantly, what if a parent or sibling can not afford to contribute to a capital expenditure but the other co-owners decided to proceed with it anyways?

4) Lastly, you would be wise to consider what will happen if a co-owner wishes to sell their interest in the cottage. Who can it be sold to? How is the value of the ownership interest to be determined? Will payment be made right away to the selling party or will payments be made over time?

I know you are likely thinking that your family won't need a Cottage Agreement. As lawyers, however, we see the issues when they arise and it is usually much more time consuming and expensive to deal with them at that time. All situations where multiple persons have interests in the same property can result in differences of opinion that are not always easily resolved. Family members arguing over cottages is no exception. While Cottage Agreements, like shareholder agreements and partnership agreements, are meant to be used as a last resort, it can be easier to put them in place now when relatives can agree on issues as opposed to when they can't!

