



Sharing the family cottage

By Peter Lillico*

Looking to enjoy some fun at the family cottage this summer? Relaxing lakeside in cottage country can be the quintessential Canadian experience. But for many families, the cottage property was purchased years – and in some cases, decades – ago, and the family structure may have evolved significantly since then.

Ensuring you have a current understanding across generations on ownership and usage will help make family time at the cottage more enjoyable, and a Cottage Sharing Agreement may be the secret to harmonious cottage life – both today, and in the future.

When it comes to how the cottage will be used and managed, generally the parents make the final decisions and the children go along. Cottage life proceeds peacefully. But when the parents are no longer involved, or start to take a backseat in decision making, differences of opinion may escalate to disputes and even deadlock. What made sense for a family with Mom, Dad and two small children, may no longer be appropriate for middle-aged offspring, their spouses, children and aging parents. And if all children are equal owners, no one individual can outvote their siblings. An unplanned consequence is that a disgruntled child may decide to sell his or her interest to a third party, or even force a sale through court action, which is

hardly a recipe for harmonious weekends with family and friends.

Creating a Cottage Sharing Agreement

So what's a solution that could work for many families? A Cottage Sharing Agreement negotiated and implemented while parents are actively involved may be the answer to enable future generations to enjoy the cottage.

The Cottage Sharing Agreement fulfils two important purposes:

1. Transition vehicle to ensure:
 - < Cottage ownership and control is safely passed from one generation to the next
 - < Children become stewards for the next generation
2. Structure for children when the parents are no longer involved
 - < Ensures financial responsibilities, use sharing issues, division of labour and a fair method of dispute resolution, are all in place

Sharing the joy

With shared usage comes the need to address some significant questions, such as:

- < Can all children use the cottage all the time, or will each child have a period of exclusive use?
- < If there are exclusive use periods, who decides when and for how long?
- < Can children bring guests, or will it be family members only?
- < Can a child rent out the cottage during their turn, if he or she can't personally use the cottage?

Constructing the Cottage Sharing Agreement brings these topics to light, permits discussion, and formalizes the terms that can be a natural consequence of shared usage and overlapping interests.

Sharing the burden

To avoid potential disagreements, a number of issues related to the operation and costs associated with the cottage should be considered:

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- < If a seasonal property, who will open and close the cottage?
- < Who is responsible for making sure the utility bills, municipal taxes and insurance premiums are fully paid in a timely fashion?
- < Should the ongoing costs of the cottage be shared equally, or in proportion to usage, and/or affordability?
- < What is the decision process for changes, improvements or additions?

The Cottage Sharing Agreement process is designed to pro-actively deal with these issues, with a view to avoiding possible future resentment and friction.

Sharing the costs

The reality that all adult children may not be in the same financial situation can lead to problems. For example, should the septic system fail, it must be repaired or replaced immediately at a cost in the thousands of dollars. If one sibling is able to pay their share, but another is too strapped to contribute an uncomfortable dynamic arises:

- < Does the cottage go unused until the struggling sibling saves up enough money?
- < Does the strapped sibling have to take out a loan to contribute?
- < Does the better off sibling pay for both?

Any of these approaches can lead to dissension, resentment, guilt and hard feelings. Again, the Cottage Sharing Agreement provides a structure to deal with these issues in a fair, predictable and business-like way, preserving family harmony. In this example, a discretionary reserve built into the ongoing cottage

budget would enable prompt repair of the septic system and relieve economic strain.

Keeping it in the family

When it's time to pass on legal ownership to the next generation, a Cottage Sharing Agreement can help to clarify the process. Without an agreement, any owner can apply to the Court to have the property sold and his or her share paid out. With a Cottage Sharing Agreement, for their mutual protection and benefit, the owners agree to give up this legal right to force a sale.

One approach is to prohibit the sale entirely, but that may be too arbitrary. A preferable approach is to create an exit strategy such as allowing for a right of first refusal by the other owners, with a reasonable payout mechanism.

No one lives forever, so the Cottage Sharing Agreement should provide for a safe inheritance path when the owner dies:

- < Does the share go to the surviving spouse, who may later remarry?
- < Does the share pass on to the deceased owner's children?
- < Should the surviving parent have a life interest, ensuring his or her continued right to use and enjoy the cottage?

The Cottage Sharing Agreement can effectively address the inevitable issues of inheritance, with a view to achieving the goal of retaining the cottage for future generations.

Avoiding adversity

No matter how co-operative the children may be, it is inevitable that some issues will arise that result in different opinions. A prime purpose of the Cottage Sharing Agreement is to provide ways to prevent a difference of opinion from developing into a full-blown family dispute.

When there are choices on how to proceed, and differences of opinion among the owners, some matters may be best dealt with by a simple majority. This tends to work well for non-critical decisions such as redecoration or usage. Larger and more complicated issues, such as additions to the cottage or a sale to non-family members, may require unanimous approval.

The Cottage Sharing Agreement will clearly identify those issues which will be resolved by simple majority, and those that require unanimous agreement. It may also provide for amicable approaches such as mediation in certain circumstances.

It's unrealistic to pretend that differences of opinions will never arise, or that such differences will always be defused by family goodwill. Because the Cottage Sharing Agreement provides structure and dispute resolution provisions, most issues can be resolved long before they become problems. Although every child may not be equally happy with the outcome, he or she will at least accept the result as fair, because all children agreed beforehand on how disputes would be resolved.

Minor matters can be effectively managed with rules and regulations that clarify expectations and prevent inadvertent and unnecessary irritations.

Family council

Many Cottage Sharing Agreements provide for a Family Council meeting, a routine time or date for the family members/owners to get together to discuss and decide upon cottage matters. These are generally annual meetings held in the winter and include discussions regarding setting a budget for operating expenses and agreed-upon repairs and improvements. Each family member/owner knows how much they must contribute to the coffers to keep the cottage running smoothly, and can adjust their finances accordingly.

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If the Cottage Sharing Agreement provides for periods of exclusive usage, then the Family Council is the most appropriate time and place to figure out who gets which block of time. Considering significant matters such as when to schedule repairs or decide on improvements can be covered during the Family Council, including how to budget appropriately.

The Council can also decide how to allocate the responsibilities for the upcoming year, including bill payments, opening and closing, sharing chores, etc. As a welcome bonus, the Family Council provides a regular opportunity for busy children and their families to work together and reinforce family ties.

Getting started

Parents are stewards, maintaining the cottage for today and nurturing the next generation to take over. Of critical importance is sorting out cottage capital gains tax and other financial aspects, but it's equally important to try to ensure that the cottage succession doesn't clear the financial hurdles only to stumble over family issues. Taking the lead on creating a Cottage Sharing Agreement can be a critical part of the parents' legacy.

The parents may initiate the Cottage Sharing Agreement process, but consultation and involvement with the children is crucial to success. Imposing the parents' well-intentioned vision of how the cottage should operate when they're no longer involved will rarely lead to a successful transition.

What's your next step? Cottage succession planning may involve several experts, including financial advisers, appraisers and other professionals to get the job done well. The Cottage Sharing Agreement is a legal contract, so starting the process with a lawyer who can identify the issues, provide recommendations and a draft Cottage Sharing Agreement to discuss with your family will save time and avoid trouble.

Home free

One unexpected benefit of the Cottage Sharing Agreement is that families have discovered that the process itself can be a reliable indicator of the likelihood of success of ownership by the next generation. The Cottage Sharing Agreement will add value while the parents are alive and participating, but its critical function is to keep the cottage on track when the parents are no longer involved.

For the agreement to be successful, the children must accept the process, because they will live with the results. Sometimes, despite everyone's best efforts, one or more children can't or won't agree with the provisions acceptable to their siblings. If that is the case, it's much better to learn that at an early stage.

Every family wants to believe that they all see the cottage in the same light, and undoubtedly, all want what's best for their siblings, children and parents. Nevertheless, there may be unvoiced concerns, and by discussing them in a calm fashion while creating the Cottage Sharing Agreement, potentially contentious issues can be dealt with in a civil fashion. Once the cottage succession plan is sorted out and the Cottage Sharing Agreement is signed in the healthy spirit of co-operation and compromise, all family members can be confident that their cherished cottage will remain a family treasure for generations to come.

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