

What to do with the family cottage?



Closing Thoughts

By **JIM YOUNG**

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When I was young an uncle of mine had a cottage on a lake in southern Maine, what many call a “camp” though I never heard my family refer to the cottage as such. My uncle was a college professor and when spring term classes ended in those long ago days, he packed up his family and headed to the cottage in the woods and didn’t return home until the end of summer, shortly before the fall term began. My uncle bought the cottage shortly after returning from World War II after spending some years in a prisoner-of-war camp after being shot down over Germany.

My mother had six sisters and three brothers and they grew up in the Depression. They loved one another and enjoyed spending time together. During the summer my uncle’s cottage was a gathering place where the relatives would come and stay for a few days or perhaps a week, sometimes leaving their children for longer stays when they went home. The aunts and uncles and their wives and husbands would drink, smoke, and play cards into the evening. The children were left to their own devices, and by some miracle we all survived. I remember two rules: make no noise before 9 a.m., and do not let the screen doors slam. There was a TV but only the grownups watched it and very infrequently at that. I remember watching President Nixon give his resignation speech on that little black and white TV set.

Over the years, my uncle’s children grew to adulthood and the time when they would spend summers at the lake disappeared with their childhood. Too, the landscape was changing in academia and I understand it was getting more difficult for my uncle to spend an entire summer away from the university.

So the cottage was sold, for a relatively

small amount of money, and with it went some of the magic from our lives. I sometimes wonder if there was not some way the cottage could have been kept in the family.

I think the number of people who have the good fortune to enjoy summer in the way my uncle did has dwindled, but here in eastern Connecticut and New England generally there are many family cottages and homes which may, in many ways, serve the same purpose as did my uncle’s cottage, even if not as full summer getaways. That is, as a gathering place and refuge where good times are had, memories created, and bonds strengthened.

If you have such a cottage or home, or know someone who does, I recommend to you a book titled “Saving the Family Cottage” which is available from NOLO Press. NOLO maintains a website where the book can be purchased.

I do not mean to suggest that this is a do-it-yourself kind of project. Far from it. But I do think if you or a family member owns a cottage, and wish to consider ways to keep the cottage in the family as time goes by, you would do well to read this book and then make an appointment with an attorney to discuss your thoughts. We try to keep a couple of copies of the book in the office, and from time to time loan them out to clients who have an interest in this type of planning. If you want to pursue such a goal, expect the process of clarifying your intent—and how your intentions mesh with the realities of your children’s interests, abilities and goals—to be time-consuming and challenging.

The book discusses the issues that should be considered, and suggests different legal structures that might be used to best support the goal of keeping the property in the family. The book gives extensive treatment to how simply leaving the cottage outright to your children in a form of joint ownership (“it will be theirs, let them figure it out”) can lead to problems which might be avoided or minimized if a more thoughtful form of ownership were used when leaving the property to the children. Some of the problems are as follows:

- One of the children wants to cash out their interest and the others do not want to or cannot buy the child out, and the child brings a lawsuit of partition to force a sale of the property through the courts.
- The children cannot agree on the use and management and maintenance of the cottage, including how the costs are shared,



responsibilities are managed, usage is shared, whether guests are allowed, and whether rental by a child of their time is allowed, among other things.

- What is to be done when a child fails to shoulder his or her share of expenses or other obligations?
- The share left to a child passes to that child’s spouse after the death of the child, or possibly in a divorce.
- A child has financial problems and their interest is attached by a creditor or comes under the jurisdiction of a bankruptcy trustee.
- A child simply sells his or her interest in the cottage to a stranger, who then takes over the rights of the child in the property.

The tension and discord that can arise under any of the aforementioned problems (there are more) can rip a family apart. The laudable goals of encouraging continued family enjoyment of a property filled with loving memories, and strengthening family connection and ties, can be undermined by leaving the property in joint ownership. Instead of being a wellspring of good will and enjoyment, the property can become the cause of anguish, controversy, legal battles and lifelong estrangement.

In our experience, some parents desire to leave a property in joint ownership to their children, but fail to communicate with their children sufficiently to understand that the children do not share the parents’ vision regarding the property. A parent needs to understand what their children want regard-

ing such a property. What are the financial circumstances of the children? In their eyes, can they afford to see this portion of an inheritance tied up in a cabin on a lake? Can the child afford the costs of sharing ownership of the property? Where do the children live, and will they all be able to enjoy the property? Many factors can come into play.

The financial drain of having an interest in a family cottage can be overcome if the parents are able to leave a fund to pay for the operating costs of the property, if not forever then perhaps for a given period of years, after which the children will have had some experience in co-owning the property, and will have had some time to try to figure out how to handle the financial aspects of the property. Or perhaps a parent might buy a life insurance policy, and direct the benefits of the policy to a trust or other legal structure, where the funds can be used to pay the costs of the property for some period of time.

If you have a property filled with family history and memories, this can be a wonderful legacy to hand down to the next generation. However, if not done thoughtfully, the gift may have the opposite result from what you intend.

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