“Cottage” is a word that applies to many different types of vacation properties – classic cottages, Adirondack “camps” on a lake, the famous Newport “cottages” of the Astors and the Vanderbilts, mountain ski chalets, beach houses, and tiny one-room cabins buried in the woods – but the word typically connotes a very special place for families. Regardless of the physical grandeur or luxuriousness, cottages provide a kind of “psychological luxury” to families. It is the luxury of a permanent place in an ever-changing world. Cottages provide a sense of stability that is otherwise hard to find in this time of great mobility (Balfe, 1995). For most families, the “childhood home” no longer exists because families change their primary residences so frequently. Family cottages are often more stable properties than family homes. Some authors have classified these cottages as “identity properties” (Waldeck, 2011). Cottages are where people had formative experiences, and they are cherished because of what they represent about one’s self and family, as well as the sense of continuity that they give family members to their own past and to each other.

People’s emotional attachments to cottages are often strong and deep, both figuratively and literally. Some threads of this attachment actually lie deep within the brain. Attorney Dan Penning, the founder of The Cottage Law Institute in Michigan who works extensively with families with multi-generational cottages, describes cottage-owning clients who can remember distinct smells that they associate closely with their families’ cottages: the musty smell of the basement where the wood is stored or the aroma in the kitchen that forever surfaces memories of grandma’s fresh-made donuts. Those olfactory memories are stored in the oldest part of people’s brains and are capable of instantaneously recreating feelings from decades before. Penning detects a distinct difference at an emotional level between his family clients who own their own cottages and those who own their own businesses. While the latter clients often have an
emotional connection to their businesses, the former tend to have more visceral emotional connections to their cottages.

Families may take vacations at beautiful resorts, but those do not usually compare in terms of total time “in residence,” and people cannot make resorts their own like they can their cottages. Going back year after year, families tailor their cottages to reflect who they are. A cottage is often the only long-term shared physical asset: the only thing parents and their adult children can point to and say, “[w]e all love it and all share it.” What Winston Churchill once said about our houses may now be truer about our cottages: “[f]irst we create our houses and then our houses create us.”

Parents who own cottages often own them free and clear (80% of all family cottages are mortgage-free according to Hollander et al., p. 102), and the cottages often represent their largest asset, both financially and emotionally. As they begin thinking about estate planning, they face a multitude of questions: Is it better to hold or fold? Does the potential future value of the cottage to the family exceed its market value? Can this cherished property be passed to the next generation? Even if it can be passed, should it? Will the adult children be able to share the cottage together without conflict? Some, doubting their children’s ability to do so, decide to sell. Some with doubts nevertheless leave the cottage in their estate, deciding to let it be their children’s problem – not theirs – if they cannot get along. Other parents conclude, rightly or wrongly, that their offspring will be capable of handling the challenges of co-ownership, so they pass it on as a gift or for a nominal price. In any case, these decisions have serious consequences for the family, some of which only become apparent years – sometimes generations – later.

**FAMILY COTTAGES: THE INTENTIONS OF THE PARENTS VERSUS THE REALITY OF THE SIBLINGS**

The intention of preserving a happy place for children and grandchildren usually has more to do with family welfare and pleasure than either asset appreciation or property preservation. The hope is that the cottage will continue to play the same positive “identity” role in the second generation as it played in the first. But the reality for future generations often falls short of the dreams of the original owners. If parents had a more realistic picture of how challenging it is to transfer cottage ownership to multiple siblings, they might feel motivated to take certain precautionary steps that would either improve the likelihood of a successful transfer or would help them all decide that passing on the cottage to their children is not the best path for their family.

**First-Generation Cottage Owners**

For parents who build or buy a family cottage, ownership is relatively straightforward as compared to what it will become when it is owned by subsequent generations. Parents have the luxury of deciding whatever they wish for their cottage: they can change the color of the siding, remodel a bathroom, invite friends to stay over, buy a new boat, or sell a back lot. As owners of the property, they rule the roost and call all of the shots. Although some decisions may be difficult for the two parents to agree on, the decision-making process is simpler than when multiple owners are involved.

All during the first-generation phase of cottage ownership, even as young children become adults, there is a simplicity about the sibling relationships with respect to the property. Parents still handle the details, such as picking up the tab for expenses or settling a spat among the adult children. Even though sibling relationships may become complicated by spouses and another generation of offspring as children grow up, the siblings’ relationships at the family cottage are still dominated by the parents, who are given deference because it is “their cottage.” Moreover, while parents own the cottage, siblings’ access to the property is fairly easy and informal, and is more about access to the parents/grandparents than access to the cottage itself. Things tend to be organized around the family system, which means that the expectations or rules are the same as they were when the children were young kids. Everybody knows the routine; spouses and grandchildren assimilate and learn the culture through modeling the siblings, with explicit corrections when necessary.

First-generation cottage owners hope that their children will be able to maintain the idyllic, care-free aspects of the family cottage. Optimistically or naively, parents project that co-inheriting the cottage will be a positive force in their children’s relationships that will cause them to spend more time together, get to know one another better and, consequently, build strong, close relationships with one another. The parents want their children’s
ownership experience to be as straightforward and easy as it was for them. Sometimes it works that way for the children but, too often, the experience of the second generation is very different than their parents envisioned.

**Second-Generation Sibling Owners**

When parents transfer cottage ownership to their adult children, the relationships of the siblings to one another, and to the cottage, change dramatically because they are now forced to deal directly with each other about their shared responsibility. They must jointly make all sorts of decisions regarding their shared asset.

Parents often do not realize that, unlike transferring other assets, transferring co-ownership in family cottages forces changes, often difficult ones, in their adult children’s relationships. Other gifts, like family heirlooms, can generate considerable contention and spawn long-term rifts but, because they are meant to be divided or sold, they do not pose the ongoing challenges of joint ownership in a family cottage. Continually having to deal with one another on many different fronts, year after year, is what creates such a significant change in siblings’ relationships.

To appreciate the magnitude of the change in their relationships, we can contrast two siblings whose relationship is unfettered by any partner arrangement with two sibling co-owners in a cottage. Two adult children no longer living at home who are not partners are free to put more physical space or temporal distance between themselves if old baggage rears its head or a new strain develops in their relationship. As part of the natural ebb and flow in sibling relationships, one sibling might move away; another might skip a family get-together. Time and space can be healing elements in siblings’ relationships. The greater distance may be temporary or may become a permanent type of equilibrium—it may cause temporary discomfort among other family members or it may pass unnoticed. It is, in fact, what happens in families all the time, usually without great turmoil, because there are few requirements placed on adult sibling relationships. Most adult siblings can determine for themselves how much they will have to do with one another.

**Loss of Ability to Self-Regulate**

In contrast, two siblings whose parents have made them co-owners – essentially partners – in a family cottage, lose this ability to self-regulate. Though one or both of them may wish to maintain a “safe” distance, the need to work on some aspect of their shared property may force them to deal with one another before they might otherwise be ready. While shared cottage ownership forces siblings to spend more time together, it is often not the carefree time they had experienced at the cottage when their parents were still in charge. The tensions of cottage committee meetings replace the joy of sailing together and barbequing hamburgers. The siblings’ shared asset requires their ongoing financial support and continual involvement in a long list of issues such as scheduling the use of the cottage (especially during the high season); remodeling and making capital improvements; storing boats or other equipment on the property; entertaining guests; having young adult children and their friends at the cottage unsupervised; hiring a caretaker, cleaning people, or other help; and a host of other financial and family-related decisions.

This fundamental change in the siblings’ relationships is quite similar to the dramatic change that some siblings experience when parents with operating businesses decide to transfer those companies to their adult children. As soon as the parents step out of the business, the change in the dynamics among the siblings is often dramatic. Though the day-to-day demands of a family business are more intense than the week-to-week or month-to-month demands of a family cottage, the effect on the siblings’ relationships is quite similar in both “partnership” situations. Neither parents nor siblings typically anticipate the changes that will befall the siblings, which is why the author has used the term “accidental partners” for siblings who co-inherit businesses or properties (Gage, 2005; 2006). In both situations, the children have to cooperate well or the success of the asset transfer is highly unlikely.

Among cottage co-owners, sooner or later, one issue or another causes a divergence of interests and may lead to conflict. Siblings may postpone dealing with the conflict but, until they do, it hangs over their relationships. The types of issues that cause serious conflicts vary from family to family, but certain issues are highly predictable. By the time the second-generation members reach their fifties, there’s a reasonable probability that some siblings will not feel close to one another, will see each other infrequently, and will have too many children for everyone to be able to stay at the cottage at the same time. The sibling-owners usually are forced to schedule times for
the different families to use the cottage, which can prove to be contentious. Even more problematic is the situation where one or more siblings or their own children live far away from the cottage and do not choose to use the cottage as often as nearby family members. Years may go by in which one family will not use the cottage. Those far away begin feeling resentful of having to continue to pay an equal share of the expenses, which are most likely based on their share of ownership and not on usage.

Paying One’s Share of Expenses

Another very common source of conflict among second-generation owners is also related to paying one’s share of expenses. In many families, there is more than enough money in the second generation to meet the financial obligations of cottage ownership, but the problem is one of distribution: i.e., siblings with greater financial means have a tendency to want to spend more money on maintenance and capital improvements than those with less disposable income. Although problems may become apparent in various ways (e.g., aesthetics, safety, convenience), not surprisingly, beneath the surface, many revolve around finances.

Beyond the financial and other routine issues that can challenge most sibling relationships, another set of issues that frequently arise sometime during the second generation are capable of driving a wedge in the relationships of even the closest siblings. These issues pertain to ownership and the continuation of the cottage in the family—including who can become an owner, how some owners may buy-out other owners, and when and how co-owners can decide to sell the family cottage. The resolution of these issues hinges to a great degree on how the cottage is owned and, ultimately, will determine whether the cottage remains in the family beyond the second generation.

THE LEGAL FORM OF COTTAGE OWNERSHIP AND THE SIBLINGS’ RELATIONSHIPS

The laws underlying cottage ownership have a significant impact on the nature of the relationship among the co-owners. Depending on the legal structure, people may own their cottage directly, as “tenants in common” (TIC), or indirectly, as members of a corporate entity (usually a Limited Liability Corporation).

Tenants in Common

For centuries, parents have been gifting or transferring their cottages to their children as tenants in common, which has its origins in British law. Tenants in common are governed by property law. As tenants in common, no special action is required on the part of parents to transfer real property to their heirs. It passes upon death, with or without a will. A tenancy-in-common interest can easily pass to the spouse of an owner upon death. Interests can be sold or passed to virtually anyone.

Family cottages are often more stable than family homes.

As tenants in common, cottage heirs have a great deal of individual freedom in two other senses. One, there is a great deal they can do without needing the approval of the other owners. For example, if an owner wishes to put an addition on the cottage because she believes more space is needed, she is free to do so. In a second sense, there is much individual freedom because the other owners are free not to help pay for her addition. Owners – even a majority – cannot force their will on an individual owner. To use another example, the majority of the owners may believe that it makes sense to schedule different weekly time slots for the summer months so that each of the families can have the cottage to themselves. But if someone wants to be there during all of July or even the whole summer, he or she has that right.

As noted above, some owners may live far away, use the cottage much less often and, therefore, want to pay a smaller share of the expenses. There is nothing in the law of tenancy in common to help resolve this or the many other inequities and conflicts that commonly arise.

Because of the few rules and undemocratic nature of tenancy in common, many people view it as a very “messy” system for co-owning cottage properties. Most of the families who have successfully owned properties for multiple generations have voluntarily instigated rules that tidy-up the inherent messiness of tenancy in common. However, with so many issues involved in co-owning family cottages, it is easy to understand why there is often a second-generation owner who
eventually wants to be bought out or have the cottage sold. Tenancy in common gives them either option, with the right of partition.

The Right of Partition

The right of partition goes back to England in the 1500s. British judges believed that for the common good and to protect against strife, acrimony, and the resulting disputes among co-owners, people should not be held hostages as co-owners of real estate if they want to terminate their ownership, even where the other owners do not want to buy them out or do not have the means to buy them out. The right of partition provides that people can divest their interest without suffering any loss in its value. If individuals co-own real estate that is easy to divide equitably, then the property is divided and everyone receives an equitable portion (“partition by kind”). If it is not clear how the interest can be divided fairly (e.g., because of the unique nature of the property) and the co-owners are incapable, unwilling, or unable to negotiate a buyout of the interest of the person wishing to exit, then the entire property is sold and all parties receive their fair value from the proceeds (“partition by sale”). Co-owner disputes have been resolved by partition for hundreds of years.

Parents may not realize transferring ownership in family cottages forces changes in adult children’s relationships.

In an article on family cottages and the law of tenancy in common, Seton Hall University Law Professor, Sarah Waldeck (2011, p. 5) wrote, “[b]ecause the law of tenancy in common de facto favors partition by sale over partition in kind… the exercise of the right to exit through partition is akin to a nuclear option…. If the co-tenants cannot agree to the terms of partition, a court will order the property to be sold at fair market value (a partition by sale)…. The courts force the sale because cottage properties are typically unable to be divided equitably among siblings. According to Waldeck, the end result is that “any tenant who values the property because of its identity characteristics will be forced to sell,” which she believes is inherently unfair.

Understandably, keeping cottages in families has proven difficult, in part, because of this right of partition. People wanting to keep cottages in their families have had to come up with sufficient money to buy people out or the property was sold.

Corporate Ownership of Family Cottages

By the mid-1990s, when nearly every state in the U.S. had passed limited liability company laws, estate planning attorneys working with parents who owned cottages saw an alternative to the downsides of tenancy in common-style co-ownership. Many attorneys who specialized in family cottages began advising families to abandon direct personal ownership in favor of indirect corporate ownership. Under an LLC structure, it is the corporation that actually owns the property, and the family members own interests in the corporation. Making this shift moved properties from real estate law to corporate law, thus eliminating the inherent messiness of tenancy in common by imposing the order of operating agreements.

A tenants-in-common interest can be sold or passed to virtually anyone.

When cottage owners set up an LLC, they must create operating agreements that spell out in detail how the entity will be run and how decisions will be made. The operating agreements then dictate a host of items—including the frequency of meetings of the owners, what constitutes a quorum, whether a simple or super majority is required for specific decisions, the consequences if people fail to pay their share of expenses, how money will be spent, who can be an owner, how individuals will be bought out, and how all or part of the property could someday be sold and the corporation dissolved. It democratizes and regulates what is otherwise a chaotic system. It provides for majority rule and prohibits the minority from obstructing the majority’s wishes. It also limits the liabilities of the owners.

The shift from real estate law to corporate law makes ownership transitions significantly easier. Whereas real estate law is concerned with physical real estate that may be impossible to divide equitably if a co-owner no longer wishes to co-own the property, corporate law deals with a simpler matter, that is, dividing shares in the corporate entity and
not the real estate itself. In corporate law, there is no right of partition. Anyone wanting to divest his or her interest is bought out over time at a price determined by the rules set forth in the operating agreement. Some people put their cottages into an LLC just for this reason.

**“Puts” and “Calls”**

Eliminating the right of partition is the primary reason why many people decide to transfer their family cottages to corporate ownership. Once that right is eliminated, it appears that perpetual family ownership is possible. Siblings who move away and have no interest in using the cottage again can simply demand that the corporation buy their interest (a “put”). Any sibling who fails to agree with the way the LLC is running the cottage has the option to sell his or her shares and exit the corporation. Siblings who can no longer keep up their share of the owner assessments or fail to abide by any of the rules of the operating agreement can be forced to sell their shares back to the corporation (a “call”).

Typical LLC operating agreements preclude transfer to a spouse in a divorce.

The corporate operating rules governing puts and calls typically dictate that shares will be bought back over a multi-year period at a discounted price, to avoid burdening those who continue as owners. While the tenancy-in-common laws give co-owners who want out a right to their share of the full value of the property, corporate laws provide for discounting so that the continuation of the corporate entity is not threatened.

Because 100% of the cottage owners have to agree to shift from tenants in common to corporate ownership, it is easy to see why it is much easier to make the shift before the property is transferred to the second generation. Once it is in the second generation, there are likely to be siblings who have a reason to resist the shift. They may not want to abide by the will of the majority of the owners. They may not like the proposed management structure that would make operating decisions. They may not agree with the proposed amount of assessment to pay for upkeep. Alternatively, they may believe that they or their children may not wish to continue indefinitely as owners and, therefore, they do not want to surrender their right to be bought out for the full value of their share of the property.

The Michigan lawyer and author of what is considered by many to be the bible of cottage ownership (Saving the Family Cottage: A Guide to Succession Planning for Your Cottage, Cabin, Camp or Vacation Home), Stuart Hollander, wrote, “[i]t is infinitely more difficult to establish [an LLC] if the cottage is simply co-owned by siblings.” Lawyers strongly advise parents who want their cottages to stay in the family for generations to put them in LLCs before they give them to their children. Hollander explains that parents can have an LLC go into effect during the parents’ lifetime or when the second parent dies (the “Springing Cottage LLC”; Hollander et al., 2009, p. 106).

**Drawbacks of Corporate Ownership**

There are distinct drawbacks to having parents put their cottages into corporate ownership, however. If the parents establish the LLC themselves and then pass the ownership of the LLC to their children, they are essentially spelling out for their children how they will operate as partners for years to come. Many parents do this because it is what they believe they should do as parents; some do so because they don’t see any good options.

How this typically happens is the parents are working with an attorney who makes recommendations to them regarding the operating rules that they need to approve. While it may seem logical to some parents to bring adult children into the process, and some attorneys will suggest it, it is usually not convenient to do so because it would prolong the process. Sharing information could bring about discussions that would likely lead to differences of opinion. An already complicated process could become unwieldy and the cost could skyrocket.

However, if parents choose to set up the operating agreements themselves, it can lead to a number of unintended consequences. Adult children may have thoughts or information that would be important to know. For example, even though all children seem, at first blush, to wish to become co-owners of the family cottage, that may not be the case. A child may not even know what he or she thinks about co-owning without engaging in family discussions with all of the siblings present and participating. Short of having open discussions, the cottage may be gifted or sold to children who would actually rather not be co-owners.
NECESSARY CONVERSATIONS

While there are conversations that should occur in families whenever parents are considering transferring assets to adult children as joint owners, these conversations are very important when parents are making their children partners in a shared business or property. Because the goal of transferring cottages to LLCs is often to keep them in the family in perpetuity, the notion of perpetuity warrants a serious discussion that rarely occurs. The focus is narrowly on the legal and technical side, and not what perpetuity might mean for the family. The real impact of perpetual ownership is not felt by the first generation; as discussed above, it is felt by the second and succeeding generations.

Two other issues that are infrequently discussed by families shifting to corporate ownership are what cottage ownership will feel like to family members beyond the second generation of siblings, and what it will feel like to own the cottage indirectly instead of directly.

Complex Future Ownership Situations

The moment that ownership transfers from the parents to multiple siblings, the complicated finances and decision-making begin. Transfers beyond the parents’ children result in an even more complex family situation requiring discussion. While typical operating agreements preclude transfers of cottage interests to spouses in the event of a divorce, they do not prevent the transfer of interests to the third generation at the time of the death of a sibling. This introduces the complexity of nieces and nephews owning shares in the LLC along with their aunts and uncles. By the time LLC ownership is well into the third generation, many of the owners do not even know their fellow co-owners. It is highly likely that cousins grew up in different towns and states, and have only met one another on a few occasions. Some cousins, and certainly some of their spouses, will have no connection with the grandparents who left the cottage to their descendents. Many family members may have their own cottages and rarely visit the family cottage. When cousins have to deal with one another on management or other committees, they may be dealing with virtual strangers. The dream of the (now) grandparents to have their descendents remain close because of shared ownership of the family cottage is far from the reality.

When parents decide that they want to keep their cottage in their family, they are really thinking of only two or possibly three generations: themselves, their children and, perhaps, their grandchildren. Contemplating grandchildren as co-owners is not at all easy. For example, parents do not typically imagine what it will mean for their grandchildren to be grown adults working out how their various families will be scheduled into the “high season,” or how they all will pay equally for new roofs for all of the buildings. Imagining how great-grandchildren will operate together as co-owners is next to impossible.

Shift from Direct to Indirect Ownership

The second issue that begs for discussion is the shift from direct to indirect ownership. It is not clear that it is possible to maintain the romantic notion of the “identity property” when family members no longer actually own the property but, instead, it is owned by a legal entity. Most parents who envision their kids and grandkids at their cottage picture them having experiences similar to what they had, and caring for the place in the same, loving way that they did. They want their offspring to feel that part of who they are is inexplicably tied to the rooms, the walking paths, the boathouse, or the porch where everyone gathered to watch the setting sun. That depth of feeling for a property – that level of attachment – may not be possible with a property that a person visits for one or two weeks a year and shares with ten or more cousins. The place may feel more like a time-share to third-generation owners than the family cottage with which their grandparents identified so closely.

Ideally, a Mediated Process

With family cottages, as with family businesses, there are no easy answers. The safest way to proceed for parents who seriously contemplate having their children share the family cottage is to involve all of the adult children in a family conversation. Though certainly not the easiest way in the short run, it is the best way in the long run to minimize the risk of mistakes that can take years – often decades – from which to recover. Open, honest communication is needed, with time to ask questions, understand the issues, imagine various scenarios, bring in the cottage expert, and debate the pros and cons. Having family members express their intentions, hopes, and doubts is critical to making good, long-term decisions.
Ideally, this is a mediated process in which a neutral third party, with no bias for any particular outcome, speaks to every person individually as well as to the family collectively. With sensitive decisions that have considerable emotional and financial implications, it is common for one or more family members to have difficulty expressing their thoughts or feelings. Good mediators know the issues at stake, and can help families deal with them. Without one-on-one coaching, these issues might never surface. By skillfully uncovering hidden agendas, raising issues common to the co-ownership of family cottages, and navigating rough emotional waters, expert mediators keep families from wasting precious amounts of time and money. Parents need to remember throughout these family discussions that while they have given their adult children an opportunity to influence the outcome, they always maintain the right to do what they wish with their cottage. After experiencing mediation to plan their cottage’s future ownership, most families choose to build mediation into their agreement to resolve any future differences. Having discussed these big-picture questions, families may have opened the door to consultation with a lawyer on strategic questions, such as converting from tenants in common to an LLC and drafting sound operating agreements.

With a greater appreciation of the challenges relating to family cottages down the road, the more the original owners will be able to make better choices for themselves and resolve issues proactively, rather than after conflicts have surfaced.

REFERENCES


