

# LILICO BAZUK KENT GALLOWAY

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## SHARING THE FAMILY COTTAGE

### COTTAGE AGREEMENTS

- *Passing the torch*
- *Protecting the parents*
- *Providing for children*
- *Preserving the cottage*

While the parents are alive and involved, they usually provide the leadership and guidance for the family. If there are competing wishes for usage periods or different ideas for improvements, the parents will normally make the final decision. From habit and respect, the children generally go along. Cottage life proceeds peacefully.

When the parents are no longer involved, then differences of opinion may escalate to disputes and result in deadlocks. If all kids are equal owners, then no one can outvote the other. A disgruntled child may decide to sell his or her interest to a third party to be rid of the problem, or even force the sale through court action.

A Cottage Agreement negotiated and implemented while the parents are active can make all the difference between a short and unhappy period of sibling ownership, and a stable and continuing structure for future generations to enjoy the cottage.

The Cottage Agreement fulfils two important purposes:

- 1 It is a transition vehicle, safely passing the cottage ownership and control from one generation to the next, retaining the rights and pleasures of the parents while ensuring that the children will be the stewards for the next generation.
- 2 It is a structure for the children when the parents are no longer involved in the cottage, ensuring that the financial responsibilities, sharing usage issues, division of labour and a fair, mutually agreeable method of dispute resolution is in place to steer clear of the inevitable rough waters.

## SHARE THE JOY

### *Usage*

- *Free for all or taking turns?*
- *Exclusive period allocation*
- *To rent, or not to rent?*

A pleasure of the family cottage is that it perpetuates and nurtures family relationships. It is a focal point for family interaction and enjoyment. But with shared usage comes the need to address some significant questions, such as:

- Can all children use the cottage all the time, or will there be periods of exclusive usage for each child?
- If there are exclusive periods, how or by whom are those periods allocated?
- Can children bring friends as guests, or will it be family members only?
- Can a child rent the cottage during his or her turn, if he or she cannot use the cottage personally?

The Cottage Agreement process brings such topics to light, permits discussion among the family members, and formalizes the terms that all agree can be accommodated and accepted as a natural consequence of shared usage and overlapping interests.

## SHARE THE LOAD

- *Cottage obligations*
- *Division of labour*
- *Sharing expenses*
  - *Equally*
  - *In proportion to usage*
  - *As affordable*

Maybe your children always agree on everything, but many families risk running into serious difficulties among themselves sooner or later. Some of the issues will be mundane, others will be major. All these considerations have the potential to create friction:

- Who will open and close the cottage?
- Who is responsible for making sure the utility bills, municipal taxes and insurance premiums are paid on time?
- Should the ongoing costs of the cottage be shared in proportion to usage or adjusted for affordability, or simply split evenly?
- How are collective decisions made for changes, improvements or additions?

The Cottage Agreement process will sort out the tasks, fairly distribute the burdens, ease constructive decision making and reduce possible resentments.

## SHARE THE COSTS

- *Owner contributions*
- *Discretionary reserve*
- *Expenditure priorities*
  - *Routine*
  - *Mandatory*
  - *Elective*
  - *Personal*

Children are not all the same, and children's pockets are not all equally deep.

This reality can lead to real problems. For example, if the septic system packs it in there's no choice but to repair or replace it. The cost may be many thousands of dollars. A brother may be able to pay his share out of petty cash, while his sister may be too strapped to contribute. An uncomfortable dynamic arises:

- Does the cottage go unused until the struggling one saves up enough money?
- Does the strapped one 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 Agreement provides a structure to deal with these issues in a fair, predictable and business-like way, preserving family harmony.

A discretionary reserve built into the ongoing cottage budget can relieve the strain when an unexpected expense hits home.

## KEEP IT IN THE FAMILY

- *Restrictions on transfer*
  - *Prohibition/forfeiture*
  - *Exit strategy*
    - *Right of first refusal*
    - *Discounted price*
    - *Staged purchase*
- *Inheritance*

Passing on legal ownership isn't the point of the cottage succession process, only a milestone along the way. It's just as important to make sure it stays in the family afterwards. Should a disgruntled or financially strapped child be able to sell his or her share to non-family without involving the other siblings?

Without a Cottage Agreement, any owner can apply to Court to have the property sold and his or her share paid out. With a Cottage Agreement the owners agree to give up this legal right to force a sale for their mutual protection and benefit, and accept other provisions to withdraw.

One approach is to prohibit the sale entirely, but that may be too arbitrary. A child/owner may have a legitimate need to be released from cottage ownership. A preferable approach is to create

a responsible exit strategy like providing for a right of first refusal by the other owners, and a reasonable payout mechanism.

No one lives forever, so the Cottage Agreement should provide for a safe inheritance path upon the death of an owner:

- Does the share go to the surviving spouse, who may later remarry?
- Or is it preferred that the share passes 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?

A critical goal is to retain the cottage for future generations. The Cottage Agreement can effectively address the inevitable issues of inheritance.

### **AVOID ADVERSITY**

- *Unanimous/Majority/Veto*
- *Dispute resolution procedures*
- *Rules and regulations*

No matter how co-operative the children are, it is inevitable that some issues will arise that result in different opinions. A prime purpose of the Cottage Agreement is to provide ways to prevent a difference of opinion developing into sibling friction or escalating into a deadlock or 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 would work well for non-critical decisions such as redecoration or usage.

Larger and more complicated issues may require unanimous approval, such as additions to the cottage or a sale to non-family members.

The Cottage Agreement will clearly identify those issues which will be resolved by simple majority, and which ones need 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. With a Cottage Agreement providing 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 the method of resolution.

Minor matters, like not leaving perishable food in the frig or empty gas tanks for the next sibling's turn can be avoided with Rules and Regulations that clarify expectations and prevent inadvertent and unnecessary irritations.

## **FAMILY COUNCIL**

*Annual meeting to:*

- *Establish budget*
- *Divvy up usage*
- *Set repair/improvement priorities*
- *Delegate responsibilities*

Many Cottage Agreements provide for a Family Council, a routine time or date for the family members/owners to get together to discuss and decide upon cottage matters.

Often these are annual meetings, usually in the winter off-season. Important business items include setting a budget for payment of the operating expenses and agreed upon necessary or desirable repairs and improvements. Each family member/owner will know how much must be contributed to the cottage coffers to keep everything ticking along for the rest of the year, and can adjust his or her own finances accordingly.

If the Cottage 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 like the need to repair cottage problems or the wish to improve cottage facilities can be covered during the Family Council, with the budget taking these into account.

And the Council can decide how to allocate the responsibilities for the upcoming year, as to the payment of bills, opening and closing, organization of chores etc.

As a welcome bonus, the Family Council provides a regular opportunity for busy children and their families to get together to co-operate positively – and reinforcing family ties and spirit is always a good thing!

## **GETTING STARTED**

- *Role of parents*
- *Involve the kids*
- *Timelines to keep on track*
- *Get good help*
- *Don't delay!*

Parents are stewards, maintaining the cottage for their generation and nurturing the next one to take over in turn. It's important to have the cottage capital gains tax and financial aspects sorted out of course. It's equally important to take all available steps to ensure that the cottage succession doesn't clear the financial hurdles only to take a tumble over family issues. Taking the lead on getting a Cottage Agreement with the kids is a critical part of the parents' legacy.

It's often essential for parents to initiate the Cottage Agreement process, but consultation and involvement with the children is a crucial component. Imposing the parents' well intentioned vision of how the cottage should operate when they're no longer involved seldom leads to real "buy-in" by the children which is necessary to make a lasting success of the cottage succession. Achieving a Cottage Agreement may seem like a complex and daunting task, but the process can be broken down into bite-sized pieces. Setting a realistic timeline to check off the stages helps

keep the Cottage Agreement process moving along in the right direction and to a successful conclusion.

Expert legal assistance to start the process and keep it heading in the right direction saves time, trouble and increases the chance of success.

And there's no better time to start than today!

### **HOME FREE!**

- *Cottage Agreement process*  
= *early warning system*
- *Avoid the ostrich syndrome*
- *Put the "success" in cottage succession!*

The Cottage Agreement process provides another crucial family benefit, as a reliable indicator of the likelihood of success of the ownership by the next generation.

The Cottage Agreement will add value while the parents are alive and participating, but it's critical function is to keep the cottage on track when the parents are no longer involved. The children must accept the approaches, since it's the children who will live with the results.

If despite everyone's best efforts to obtain the Cottage Agreement one or more of the children can't or won't agree with the provisions acceptable to the other owners, it's much better to learn that at an early stage.

Instead of lighting the fuse on a time bomb that now can clearly be predicted to eventually blow up in the face of the owners, the parents with this early warning can rethink and adapt the cottage succession plan to prevent a potential meltdown over the inevitable cottage issues.

But once the cottage succession plan is sorted out and the Cottage Agreement is signed up in the healthy spirit of co-operation and compromise, then all family members can be confident that their cherished cottage will remain a family treasure for generations to come.

Peter Lillico is an estate planning lawyer in Peterborough, with expertise in family cottage planning. You can get more valuable cottage information at his website [www.lbkglaw.com](http://www.lbkglaw.com).