

ATTORNEY WRITES

By Clifford H. Bloom, Esq.
Law, Weathers & Richardson, P.C.
800 Bridgewater Place
333 Bridge Street, N.W.
Grand Rapids, Michigan 49504-5320

Riparians and Estate Planning

What do the following property situations potentially have in common? The modest cottage on Bass Lake. The year-round home on Houghton Lake. The multi-million-dollar cottage at Bay Harbor. The hunting cabin on Trout Creek with 40 acres. The vacant buildable lot on the Kalamazoo River. All five situations could involve properties which the current owners want to “keep in the family” after their deaths. Successful generation-to-generation transfers of riparian, hunting, and vacation properties do not just happen—it requires thoughtful estate planning, with the assistance of a skilled attorney who specializes in that area. Although I briefly touched on the importance of estate planning for such properties in my column in the May 2000 issue of *The Riparian*, this is a topic that should be dealt with in more detail.

Unfortunately, many property owners who want to see their lakefront home, vacation cottage, pristine acreage parcel, or riparian property stay in the family (by passing it on to children, siblings, nieces and nephews, or other family members or friends) attempt to do estate planning “on the cheap.” Oftentimes, they will draft their own wills or simply put family members on the deed to the property so that those family members will automatically own the property after the death of the current owner. Other landowners hire an attorney who is not an expert in the area of estate planning as it relates to riparian, vacation, or similar properties. The results of poor estate planning (or no estate planning at all) can be disastrous. For example, where a property owner simply adds other family members to the deed (particularly without a formal side agreement governing how the property will be maintained, managed, etc.), it can later split families apart, result in property interests going to a former spouse who has divorced an inheriting family member, or lead to unpredictable results. Poor estate planning can also lead to significant tax consequences.

Where proper estate planning does not occur, it is fairly common for members of the next generation to inherit a riparian, vacation, or hunting property as “tenants in common” or under a similar arrangement. Absent the proper restraining documents executed by the now-deceased former property owner, any inheriting co-owner has the right to “partition.” That is, in Michigan, a co-owner has the right to force either a sale of the overall property (and division of the proceeds) or physical division of the property against the wishes of the other co-owner(s).

Other potential pitfalls involved with poor estate planning regarding such properties can include the following:

- The inability or refusal of one of the new co-owners to pay his/her fair share of taxes, maintenance costs, upkeep, etc.
- Unending disputes regarding who can use the property (and when), whether an addition should be added to the cottage, how the building should be decorated, etc.

- Problems caused when one of the co-owners wants to be bought out (such problems can be compounded by disagreements over price, terms, how quickly the purchase must occur, etc.).
- What to do when one of the co-owners goes bankrupt or his/her creditors attempt to seize that person's interest in the property.

Two of the most common techniques which are used by skilled estate planning attorneys to keep these types of properties in the family without causing undue future problems include setting up a trust or a limited liability company. There are, of course, "pros" and "cons" to each approach. The limited liability company (or "LLC") is becoming an increasingly favored approach.

Some of the issues which must be dealt with in a well-crafted succession plan for a prized family property include the following:

- Co-owner buyout provisions.
- Dealing with divorce, bankruptcy, and creditor situations.
- Property usage rules.
- Voting provisions among co-owners.
- Allocating usage times among co-owners.
- How to handle building maintenance, additions, improvements, etc.
- Tax consequences.
- Provisions for eventual termination of the arrangement.
- Possible endowment fund.
- Conflict resolution techniques.

If you want to keep your beloved cottage, vacation, hunting, or similar property in the family, act now, hire a skilled estate planning attorney, and effectuate a good estate plan soon.