



Plan ahead: Keep your vacation property in the family

by Suzana Popovic-Montag

While a vacation property such as a cottage can provide years of pleasure during your lifetime, a goal of many owners is to ensure that the younger generation continues to enjoy it after they're gone. But increases in the value of such properties over the years can lead to a potentially onerous capital gains tax liability for your children or other family members, or a high cost of "buying out" a family member who doesn't want to own the property.

Capital gains issue explained

When a vacation property is sold, or transferred at death, capital gains taxes on any increased value become payable. The key exception is when you leave the property to your spouse upon death, as the taxes are deferred until your spouse dies (this is known as the "spousal rollover").

Aside from this exception, if your vacation property has appreciated in value, your estate may face a significant tax bill. A property you purchased for \$50,000 in 1972 that is now worth \$600,000 could generate a capital gains tax bill of well over \$100,000 upon your death.

Would your estate have the cash to cover this tax liability without selling the vacation property? If not, your heirs could lose a cherished asset that you never intended to sell.

The good news is that with some advance planning you can arrange to cover the anticipated tax liability and preserve your property for your heirs to enjoy.

Tax strategy #1: Use of life insurance

One of the most straightforward methods of covering your vacation property tax liability when you die is by purchasing life insurance. Your estate will receive the death benefit tax-free, and can use the proceeds to pay the capital gains tax liability and any other administrative fees and expenses associated with the settlement of your estate.

You'll have the comfort of knowing that your family won't have to sell your vacation property, and your heirs will receive a larger estate.

Tax strategy #2: Transfer during your lifetime

Another way of managing the tax issues associated with your vacation property is by transferring the property to your children during your lifetime.

There are several ways to do so – gifting or selling the property to them, making one or more of them joint owners of the property with you, or by transferring the property to a trust, with your children as beneficiaries.

All three options will trigger an immediate capital gain in your name. But any future capital gains on the property will accrue to the next generation and won't become payable during their lifetime, as long as they continue to hold the property.

continued on back



Plan ahead: Keep your vacation property in the family (continued from front)

Six essentials for a co-ownership agreement

If you are transferring your property to more than one owner or beneficiary, a co-ownership agreement that clearly sets out key terms is essential for avoiding disputes.

Here are some important elements you or your heirs will want to include in the terms of a co-ownership agreement or trust structure.

1. Establish a fund or other structure to pay for maintenance, repairs and improvements
2. Establish a mechanism for making decisions regarding the property
3. Assign responsibilities for day-to-day tasks (e.g. paying bills, taxes)

4. Set a schedule for use of the property
5. Outline what happens if one owner/beneficiary defaults on his/her obligations
6. Establish what happens when an owner/beneficiary dies or becomes incapacitated

Talk with your heirs – before you put a strategy in place

Before you execute any plan, make sure you've talked over the property transfer issue with all of your heirs. You'll need to find out who is interested in keeping the property, and who isn't. If one or more children are not interested in maintaining the property, you'll need to plan your strategy around this issue.

Breakfast Series

The Hull & Hull LLP Estate, Trust and Capacity Law Breakfast Series provides members of the bar with presentations by one of Canada's leading Estate firms on topics of importance to estate practitioners.

The next Breakfast Series meeting, June 4, 2009, will feature a presentation of "*The Tricky Business of Administration Bonds*" by Natalia R. Angelini, "*The Estate Trustee During Litigation*" by Paul Trudelle and "*Recent Case Law Developments*" by Ian M. Hull.

The Breakfast Series meeting is being held at the Ontario Bar Association, 2nd Floor, 20 Toronto Street, Salon 2 & 3, Toronto, Ontario. Breakfast begins at 8:15 a.m. with the Presentation to follow at 8:30 a.m. A fee of \$30.00 (28.57 + 1.43 GST) is payable to Hull & Hull LLP upon registration by cheque, VISA or MasterCard. Materials included. **This series is now be offered via Webcast.**

A Compact Disc recording of the Breakfast Series will be available at a fee of \$20.00 (\$19.05 + \$0.95 GST).

To Register, please contact Diane Labao at (416) 369-1140 (press 0) or by e-mail to dlabao@hullandhull.com



HULL & HULL LLP
Barristers and Solicitors

141 Adelaide St. W, Suite 1700, Toronto, Ontario M5H 3L5
TEL: (416) 369-1140 FAX: (416) 369-1517
EMAIL: ihull@hullandhull.com
WEBSITE: www.hullandhull.com



The Probater is a quarterly newsletter provided as an information service. It is a summary of current legal issues of concern to estate law practitioners. The comments and articles are not meant as legal opinions and readers are cautioned not to act on information provided without seeking specific advice with respect to the particular situation.

Please note that all back issues of The Probater are available in full text on our website: www.hullandhull.com