

What Do Family Farms and Family Cottages Have in Common?

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Michiganders (or Michigianians if you prefer) are fortunate to be surrounded by two splendors of nature—lots of lakes and lots of farms. Michigan has over 11,000 inland lakes, and agriculture is the second leading industry in the state. The result is an abundance of cottages and miles upon miles of farms. So what do these cottages and farms have in common? Several things.

Cottages and farms tend to be owned by families. This means that a small group of closely related individuals, related by blood, marriage, and children, will be responsible for the success or failure of the farm or the use and enjoyment of the cottage. Families may be very close-knit, but they often don't make good business partners. Add to this the fact that the owners don't get to choose their business partners. When conflicts do arise, the issues tend to cause deep emotional reactions because of the underlying family dynamics, and the inability to completely separate business decisions and emotions. If the cottage owners or farmers can find a way to work together in the current generation, the next challenge is to determine the best way to transfer the cottage or farm to the next generation while keeping ownership intact, avoiding the triggering of any more taxable events than necessary, and being able to preserve family harmony, even though there will be more owners (typically) in the next generation.

Both cottages and farms contain real estate as their primary asset, which means that the value of the asset may be highly appreciated since the last transfer, and the value will typically continue to appreciate. This can cause both Federal estate tax concerns as well as transfer tax and property tax uncapping concerns.

While farm owners and cottage owners may look at these issues as being roadblocks, we as estate planners look at these issues as opportunities for problem solving. While no single plan will work for every situation, there are many ways to make management and transfer as effective and efficient as possible.

For some situations, plans may be as simple as using deeds with joint tenancies or life estates coupled with an ownership agreement that sets forth the parameters of each owner's rights and responsibilities.

In slightly more complicated situations with multiple generations of owners, a cottage trust or family trust with provisions for maintenance, use, transfers, and management maybe an appropriate solution.

Perhaps the most sophisticated solution would include the use of a business entity, most likely a Limited Liability Company (LLC). By using an LLC, you can address almost all

issues that the family will be facing over the long run of owning, using, managing, and transferring the cottage or farm.

Some of the issues that should be addressed when using an LLC, or alternatively an ownership agreement, include who should (or should not) be an owner, and how owners may enter and exit the ownership group. Establishing the selling price, identifying allowable as well as prohibited owners, and the mechanics of a transfer of ownership can all be addressed in the LLC operating agreement. Scheduling each owner's use must also be set forth in either an ownership agreement or the operating agreement of the LLC.

One difference between the farm and the cottage is the fact that the farm is used for business use and the cottage is used for personal use. However, if the cottage is rented out, that will add other issues such as zoning approval, personal use time, maintenance and repairs, income taxes, liability, etc., causing the cottage to more resemble the family farm in its form.

With less focus in estate planning on Federal estate tax planning and more emphasis on uncapping, transfers, and general succession planning, more details for everyday use and management can be addressed and more options in titling and transfers are available. So whether it's a family farm or family cottage that needs to be preserved and protected, new and interesting planning techniques should be considered and discussed with a qualified planner.