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Cottage purchases deserve due diligence

Too casual an attitude can create expensive problems later

When it comes to city properties, homeowners are usually very careful about protecting their driveways, fences and boundaries. But the same people who are so particular about property rights in the city are frequently very casual about those rights in cottage country. The results can often be disastrous.

In one Ontario court case last year, the property relationships among three neighbouring cottagers were so messy that the judge was forced to create what effectively is a condominium out of a three-slip boathouse.

The story begins in 1962, when three families built three identical cottages on adjacent lots they had purchased on Lake Muskoka near Gravenhurst. Ida Finkelstein owned the west cottage, Bella Naiberg owned the east cottage, and Bella Bojman owned the one in the middle.

Everybody treated everyone else's land as a family compound, and no attention was paid to boundaries. Although each family parked cars in their own designated space, everyone had the run of all the properties.

A walkway was constructed parallel to the shore in front of all three cottages, and everyone used it.

Between 1968 and 1970, the three families shared in the cost of building a three-slip boathouse with a flat roof directly in front of the Finkelstein cottage.

Each family had the exclusive use of one slip in the boathouse, and all three used the roof as a communal gathering place. Maintenance costs were shared equally.

No written agreement was ever created to set out the use and ownership of the boat-house, its location, or the rights to the pathways across the three lots and another pathway leading to the water. No survey was ever made to establish the location of the boathouse and no one ever thought of the legal consequences of what they were doing.

In fact, no one ever knew for certain where the boundaries were located between the three lots, and there were numerous encroachments of cottages, fences, parking areas, decks and steps. It was a surveyor's nightmare.

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In 1983, Gail Gnat purchased the Finkelstein cottage, and in 1992 Peter and Georgina Trezzi bought the Naiberg property.

Everybody continued to share the boathouse and walkways just like the original owners did.

In 1999, Gail Gnat sold her cottage to Richard Block after disclosing to him that the boathouse was shared. Ultimately, disputes arose over the boathouse slips, the roof deck, walkways, boundaries and parking areas.

The case went to trial last October. It took Justice Robert Weekes four days to hear the evidence and sort out the mess. He decided that the rights acquired by the parties over the years had crystallized in law, and it could not be altered.

With the wisdom of Solomon, Justice Weekes divided the boathouse vertically into three separate parts, allowing each family the perpetual right to use its respective slip. He ruled that the Trezzis and Bojmans had the right to use the walkways and docks to access their boat slips. He also divided the boathouse horizontally, allowing each family the continued shared use of the entire boathouse roof deck, and access to get to it.

This case seems to be the first Ontario decision where a building was divided into pieces, horizontal and vertical, using the doctrine of adverse possession, or squatter's rights. Effectively, the boathouse is now a four-unit condominium, consisting of three slips and a common-elements roof deck.

An important lesson for cottage owners comes out of this case. It seems common practice when buying and selling cottages to waive the requirement for a survey because "it's only a cottage," and property boundaries are not quite as important in cottage country as they are in the city.

In fact, the opposite is true. If you're buying a cottage, always get a survey even if you don't have to. And if you're sharing a roadway, parking, boathouse, well, dock, or deck, put the agreement in writing. It will save a great deal of trouble and expense down the road.