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Avoid a feud: Treat cottage like a business

Joint ownership holds potential for family friction

Have rules for use, charge fees, ask for reservations

Just in time for the traditional start of cottage season this Victoria Day weekend, Self-Counsel Press has published a new soft cover book called *The Cottage Rules: An Owner's Guide to the Rights & Responsibilities of Sharing Recreational Property* (\$14.95).

Written by Nikki Koski, a licensed real estate agent in Sudbury, the book provides a timely reminder that joint ownership of cottages usually with other family members can quickly turn into a nightmare unless treated as a business transaction by everyone involved.

According to an Ipsos-Reid study for Royal LePage in 2002, 97 per cent of cottage owners say that they currently share their cottage with other family members, and a surprising 11 per cent say that this has already caused a rift in the family. The poll also revealed that 81 per cent of cottage owners intended to bequeath the property to family members, but 22 per cent of them predict family feuding if, and when, that happens.

Given the potential for problems, *The Cottage Rules* suggests a comprehensive system to avoid disputes and enjoy the property:

- Run the cottage like a business
- Charge user fees for each night's stay
- Make reservations mandatory
- Elect a treasurer to take care of the finances
- Create separate bank accounts requiring two signatures
- Schedule work weekends to take care of the dirty work
- Track the cottage finances with a ledger
- Create to-do lists to stay organized
- Keep a logbook to record the cottage history and significant events or moments
- Develop a plan for succession

Failure to follow rules like these can result in disastrous consequences for family members. That's what happened in a recorded court case (not included in the book) involving the Peters family. Three brothers were given a valuable cottage on Lake of the Woods by their parents in 1986.

Unfortunately, difficulties arose among the three around the scheduling of times when each could use the cottage, the payment of bills, and the need for maintenance, upkeep and capital improvements.

Communications broke down completely, and two of the brothers brought the third to court to apply for an order to force the sale of the property and divide the proceeds.

When the case came to trial in April 2000, the court ruled that joint ownership was no longer feasible given their inability to agree on virtually anything during the previous years. Justice Terrence Platana ordered that the property be sold and the proceeds divided among the brothers.

This is exactly the type of dispute that might have been avoided had the parties all sat down in advance and followed the advice clearly set out in *The Cottage Rules*. The book comes with a CD-ROM containing a sample meeting agenda, pantry checklist, checking out checklist, guidelines to preparing a budget, opening and closing checklists, ledger and most important of all, a sample partnership agreement tailored to cottage ownership. The documents are also printed out in the book itself.

As good as the book is, it is not a substitute for proper legal advice with respect to joint ownership of cottages. The sample partnership agreement in the book is silent on issues such as succession planning for the next generation, resolution of disputes, dealing with arrears of contributions, right-of-first refusal and the ability to trigger a sale although some of these topics are briefly mentioned in the text.

The book does suggest that a lawyer be consulted to consider the preparation of a cottage trust to pass ownership to heirs without having to apply for probate and pay probate fees.

Another problem on which legal or tax advice should be sought is the payment of capital gains tax on the death of an owner. Given the rapid escalation of cottage values in recent years capital gains tax is an issue that cannot be ignored.

With the right plans in place, disputes over shared cottage ownership can be avoided. A good place to start is *The Cottage Rules*.

But before signing anything more complicated than the book's first aid kit checklist, it is advisable to consult a lawyer on the partnership agreement, and an accountant or tax lawyer on the tax issues.

Another interesting book which has just been published, is *Next Time I'll Call A Lawyer*, by Roseanne McNeill, published by General Store Publishing House (\$19.95). The author and her husband made the classic mistake of buying a second house before they had sold their first one.

They were confident they could sell their existing house and at the urging of their agent, signed an unconditional offer to purchase without, of course, consulting their lawyer. The McNeill story is the ultimate real estate cliffhanger, about everything that could, and did, go wrong. For anyone looking to move up (or down) to another home, the book contains a lesson not to be missed.

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