
Will the New Expanded Uncapping Exemption Keep Your Family Cottage in the Family? It's a Step in the Right Direction...

By Geoffrey N. Taylor, Esq.

Among the things I love about living in Michigan are the experiences my family and I have had enjoying family cottages, like the experiences of my friend, Dave, which I described in a [prior article](#). In addition to how “up north” can describe vacation residences located all around the state, I’m fond of descriptions of a five acre, 12,000 square foot residence on the shores of Lake Michigan as a “family cottage.” Family cottages range from that type of compound to a small cabin in the middle of nowhere. Often, these cottages were purchased or built many generations ago and their owners have enjoyed the benefits of the cap on annual increases in value for property tax purposes.

As many of you are aware, effective December 31, 2014, Michigan expanded the scope of conveyances that are exempt from the uncapping of real property taxes (if you are not aware, read my [article on the subject here](#)). Under the new law, conveyances of residential properties to certain family members are generally exempt. Because uncapping can make continued ownership of a family cottage financially unsustainable, careful planning under the new expanded uncapping exemption is critical.

However, property taxes are only one consideration in cottage planning. Rather than letting the (property) tax tail wag the dog, owners often focus on having the cottage stay in the family to provide enjoyment for many generations and avoiding claims of creditors, including a family member’s spouse in the event of divorce. Are there ways to achieve these goals? Yes. Are there ways to prevent family quarrels? No, but you can provide mechanisms to help resolve quarrels and avoid a conveyance of the cottage to non-family members.

One option is a tenants in common agreement, which can govern issues such as use of the cottage by the family, and their spouses and friends, payment of mortgages, taxes, insurance, and expenses, restrictions on transfers, and dispute resolution. Two significant drawbacks are these agreements generally bind only

the current owners of the property and they cannot prevent an involuntary conveyance of an owner's interest. If an owner divorces or is sued, the former spouse and the creditor could step into the shoes of the owner and, for example, possibly force a sale of the cottage.

Another option is conveying the cottage to a limited liability company (LLC) and having the members enter into an operating agreement, which would govern the same issues as the tenants in common agreement. One advantage the operating agreement has over the tenants in common agreement relates to the former spouse/creditor issue described above. With an LLC, the former spouse/creditor generally would only be entitled to a proportionate share of whatever, if any, distributions are made from the LLC and would not be able to force a sale or otherwise have any say in the use or management of the cottage. One drawback to the LLC is Michigan law is unclear whether a conveyance to a wholly-owned LLC uncaps the property's taxable value (for a more detailed discussion of this issue, [read my article here](#)). Another disadvantage is if the cottage is subject to a mortgage the conveyance to the LLC likely will constitute a default under the loan agreement, allowing the lender to declare the unpaid balance immediately due and payable.

A third approach is placing the cottage in trust for the benefit of the family. Again, the trust agreement can govern use and management of the cottage, but it might not be as effective as the tenants in common or operating agreement because the trust beneficiaries are not parties to the trust agreement and therefore have no obligation to share in the payment of debts and expenses (i.e., they are trust obligations, not obligations of the trust beneficiaries). One solution is to place sufficient assets in the trust for use in making those payments. However, it is likely the funds will be exhausted eventually and some owners simply do not have sufficient funds to maintain the cottage for a substantial period of time.

Is the new expanded uncapping exemption a step in the right direction for family cottage planning? Yes. Do we now have a blueprint for all situations? No. Like snowflakes, all individuals, families, and properties are unique and require individualized and thoughtful consideration. Maddin Hauser attorneys frequently advise clients on strategies for family cottages, including maintaining control, avoiding uncapping, and reducing the potential for family conflict. If you own or intend to acquire a cottage and want to avoid some of the attendant problems, [call me](#).

