

Vacation and Recreational Properties - Hull on Estate and Succession Planning Podcast #72

Posted on August 7th, 2007 by [Hull & Hull LLP](#)

Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #72 of our podcast on Tuesday, August 7th, 2007.

Welcome to Hull on Estate and Succession Planning, a series of podcasts hosted by Ian Hull and Suzana Popovic-Montag, that will provide information and insights into estate planning in Canada, from the offices of Hull Estate Mediation in Toronto, Ontario, Canada. Here are Ian and Suzana.

Suzana Popovic-Montag: Hi there Ian.

Ian Hull: Hi Suzana.

Suzana Popovic-Montag: How are you today?

Ian Hull: I'm just great thanks.

Suzana Popovic-Montag: That's good.

Ian Hull: Well, why don't we talk about, on this hot summer that we're having here in Toronto, a little bit about the vacation properties. Not just cottages, but recreational properties generally. And I thought it might be fun to do...might take a couple of podcasts to do this but let's work through this important issue in the context of estate planning.

Suzana Popovic-Montag: I know certainly in our last podcast, Ian, you gave some great examples about these situations where they arise in real life where people are fighting over these exact kinds of properties. And I just mention in passing that I noticed, certainly in my own practice, that these kinds of fights are becoming more and more common than even, you know, I would have imagined.

Ian Hull: So while a vacation property such as a cottage, for example, can certainly provide years of fun and pleasure for your family and during a lifetime. And it really is a goal of many owners to ensure that younger generations continue to enjoy these properties and so on. This transition to the next generation...well first of all, being able to own recreational property is a real luxury in that sense. But the transition is also sort of an important part of the process.

Suzana Popovic-Montag: And why do you say that, Ian?

Ian Hull: Well, keeping a vacation property in the family has really become both an emotional and a legal issue. Because you, just by virtue of its unique characteristic, you

create interesting emotions to the property itself. It's not just like the house. Certainly in our experience, when we see people fighting over property, over estates, almost always the sale of the family home goes without a hitch. But where the tension can arise is the sale of the cottage. And that's because often the younger generation has grown up in the environment and they've created fond memories and so forth, so that really at the end of the day, this isn't just a piece of real estate, this isn't just a GIC, this is part of their past and can attract a very different emotions.

Suzana Popovic-Montag: I think just to add to that there's also the fact that recently there's been such an escalation in property values. And when you've got a piece of property in a very good area, that might mean that suddenly there's much more than just an emotional attachment. But there might also be a financial consequence to this property as well.

Ian Hull: And for sure. We've seen lots of files where the estate is, a substantial portion of the estate is actually the recreational property.

Suzana Popovic-Montag: And what this will result in is potentially having a very onerous tax liability that can arise for your children or your family. And, you know, it's something that is just a reality and we've got to be able to plan for it and see what we can do to protect against being, you know, surprised at the end of the day.

Ian Hull: Well that's right. This whole high cost of buying out a family member who doesn't want to own the property or, or (...) and allow it to be passed to another generation. We talked about in previous podcasts the use of interesting estate planning tools like insurance products and things like that. But it is a really live issue. So that overall, the costs of the buyout can in fact result in or unfortunately can leave for the sale of the property. And that in and of itself may not be what you ever intended to happen in the estate plan.

Suzana Popovic-Montag: I think, Ian, it might be helpful to sort of discuss some of the strategies that we can think of or suggest to people for preserving the actual vacation property, the cottage property for the next generation, and some of the choices that might be available to individuals who are dealing with these kinds of assets.

Ian Hull: Okay, well then let's talk about things like discussion with your...we've used...we've certainly talked about the theme of discussions with your heirs. That's one part of it.

Suzana Popovic-Montag: And I think we should maybe address specifically what, you know, the capital gains taxes can arise in these situations, and how we might have some strategies for considering how to maximize the use of products to minimize the insurance hit...or sorry, not the insurance...the tax hit at the end of the day.

Ian Hull: And certainly that managing of the taxes is so fundamental. And then talk about transfers on death by way of, you know, joint tenancy, or a gift in a Will is another

option or transfers prior to death by way of what we call *inter vivos* or pre-death transfers to one of the children who actually want the property and can afford to buy it out. I use that example because I had lunch the other day with a good friend of mine who's got five kids in his family. And sure enough, one of the kids bought out the grandmother's property. And adjacent to that was their family cottage where they grew up, his mother, the sister, obviously the daughter of the mother. And I asked him, I said, you know, does it bother that you're brother just bought your grandmother's cottage? And she said no, you know, it doesn't bother me because she said ultimately I think I'll probably try to buy my mother's cottage. And I don't know that my other siblings want that cottage either because they all have their own cottages now, so it may not even be an issue. But I sort of had to test the waters and see if she was upset by that. And I was pleased to see that that transition is working very well.

Suzana Popovic-Montag: You'd be surprised how these things can work out with a little bit of advance planning and obviously, you know, the frank discussion amongst the individuals who are affected by it.

Ian Hull: So finally, what we want to talk about is how to create an agreement that works for everyone. And you can't just create these things with paper. You have to have done your homework. You have to have had your discussions. You have to have done your work managing, looking at managing the taxes, managing the emotional issues on the transfer and so forth. And talk about the different legal options you have pre-death, post-death, to transfer the cottage.

Suzana Popovic-Montag: If we turn, Ian, to, you know, the first step that we talked about, you know, the discussion with the family members. When you want to deal with these property transfers, it really is key to really talk to the individuals who are going to be affected by it. Because you might have all these preconceived perceptions of what you think someone's going to think or feel, but that may not actually be the case.

Ian Hull: Because there's a chance that they may not even want the vacation property, for instance.

Suzana Popovic-Montag: And so your adult children may actually just enjoy using it now but not really have an intention or an expectation at the end of the day that that property is there for them.

Ian Hull: And another option is too that some...your children may not be actually interested in sharing the cottage, in going through sort of a co-ownership arrangement. And you won't know this unless you're asked. And certainly the co-ownership arrangements are much more fragile once you're gone, I can tell you that. Because often the parents, who have held the cottage originally, are the glue that hold those co-ownership agreements, even with adult siblings, together.

Suzana Popovic-Montag: And so as an alternative to that co-ownership arrangement, you might just want to look to leave an equal share of the value of the vacation property to each of your children.

Ian Hull: But if someone wants to keep it and some want to sell it, then the ones that want to keep it may not have the cash of the others. But you can start to do the math on this and really see if there are creative solutions that the children can come up with after you've passed away. As long as you've divided it equally and given everybody sort of enough economic strength to consider their options.

Suzana Popovic-Montag: And that's really important because you wanna protect against the possibility that, notwithstanding all of the planning you've done, your wishes might still be overturned and the property may still have to get sold in any event.

Ian Hull: So, if the plan is that a number of family members will share the vacation property, a mediator is also a useful resource in coming up with the sharing agreement. With the help of a good solicitor as well, these are sort of tools that you can consider in developing this shared ownership arrangement.

Suzana Popovic-Montag: And I know one of the things that we've done, Ian, recently in one of our past experiences is we've actually used an anonymous process by which we've canvassed people in terms of what they would like to happen with the vacation property. And that's been good in terms of allowing everyone to honestly say what they do or don't want to happen, and yet not have anyone, you know, stigmatized with that view being attributed directly to them.

Ian Hull: So let's think about the mechanics of that. How, and I know we've done this before, but let's explain just briefly what...how we've sought out that anonymous sort of input. And one of the ways we've done it, quite frankly, is through the family meeting process, where we know it's an issue and we allow in a caucus and not in an open session, discussion about how each one of the individual players wants to deal with the property and not then come back in, and then come back and sort of somehow dovetail to all the various positions and all the various wishes.

Suzana Popovic-Montag: And that's made it more easy for individuals to be honest and to get, you know, their positions out there without having someone, you know, staring them across the table and attributing, you know, different thoughts to that desire. And it makes it more easy for people to be comfortable and honest with what they really want to happen.

Ian Hull: And so...alright, we talked early about, you know, briefly about what you need to know about capital gains. And this is, you know, it's a Canadian issue. Certainly in the US, they deal with the tax situation much differently. But across Canada, the capital gains tax on recreational properties can be, as we've said earlier, an overwhelming issue. So why don't we, for our next podcast, begin to sort of analyze in some more detail what we need to know about the capital gains taxes and work through some of this process.

Suzana Popovic-Montag: That's a great suggestion, Ian, particularly given that, you know, apart from the actual family dynamics of who's going to get the cottage at the end of the day; this, I would say, is the most...second most important issue that people want to consider.

Ian Hull: Alright, well that's great. Thanks so much Suzana.

Suzana Popovic-Montag: Thanks to you Ian.

You've been listening to Hull on Estate and Succession Planning with Ian Hull and Suzana Popovic-Montag. The podcast you have been listening to has been provided as an information service. It is a summary of current legal issues in estates and estate planning. It is not legal advice and you are reminded to always talk with a legal professional regarding your specific circumstances.

To listen to other Hull On podcasts, or to leave a question or comment, please visit our website at www.hullestatemediation.com.

Our theme music is UpTempo14 by Gary and is courtesy of the Podsafte Music Network.

/mem