



From the Estate Planning & Settlement Group

PERSONAL PLANNING

Your Guide to Estate Planning, Wills, Trusts, and Probate

Editors: Thomas A. Doyle and Tara L. Velting
Featuring: Michael J. Swogger

IN THIS EDITION:

- Meet Michael J. Swogger from our Traverse City Office
- Cottage Planning Considerations
- Should you make your home joint with a child?

Enjoy your edition of our Spring Personal Planning Newsletter. We strive to be a continuing source of education for our clients and remain at the forefront of any new developments in the law.

Meet Michael J. Swogger:



Michael J. Swogger, a shareholder and managing partner of the Traverse City office of Garan Lucow Miller, received his B.A. (cum laude) from Western Michigan University, in 1986, and his J.D. (cum laude) from the Detroit College of Law in 1989. He is admitted to practice in the U.S. District Court for the Eastern and

Western Districts of Michigan. He began his legal career as law clerk to the Honorable Sharon Tevis Finch, Wayne County Circuit Court. Mr. Swogger's professional memberships include the State Bar of Michigan and the Grand Traverse-Leelanau-Antrim County Bar Association. His areas of practice include estate planning, wills and trusts, probate, premises liability, and general insurance defense. Within his insurance defense practice, Mr. Swogger is an experienced litigator, having participated in over 50 jury trials.

Mr. Swogger, a Traverse City native, has been married to his wife Sharon for 17 years, and they have a 14-year-old son, Hunter, and 12-year-old daughter, Bailey. Outside of work, he enjoys spending time with his family and friends, and volunteering for school activities, including Odyssey of the Mind. His hobbies include playing the guitar, golfing, boating, watching football and movies, and talking politics.

You can reach Mr. Swogger at 231-941-1611 or by email mswogger@garanlucow.com.

COTTAGE PLANNING CONSIDERATIONS

By Michael J. Swogger

If you own a cottage or family vacation home and desire to keep that home in your family through generations, proper cottage succession planning will significantly increase the likelihood of that goal. Many cottage owners have no formal plan for the transfer of their cottage to heirs, while others choose to leave the cottage equally to their children in the standard way, as tenants in common. The lack of planning and/or poor planning may result in the forced sale of a cottage at any time. Careful and proper cottage succession planning can eliminate or significantly reduce the threat of a forced sale of a cottage outside of the family blood line.

A carefully thought out cottage succession plan will both strengthen the likelihood that the cottage stays in the family for generations, and increase the chances for family harmony. There are several options a cottage owner may choose to employ to achieve these goals.

Chief among the concerns of cottage owners is the ability of their heirs to afford to keep the cottage. Many parents have concerns about whether their children actually can afford the gift of a cottage. Other owners face the problem that one child can afford the cottage, yet the other children cannot. Another common concern is disputes among the heirs who co-own the cottage regarding its operation, maintenance, and use schedules. A carefully thought out cottage succession plan, especially one that revolves around the use of a limited liability company, can effectively address and manage these issues and potential disputes.

It is important to note that tenancy in common is the most common form of ownership of a cottage. In fact, a tenancy in common is the usual way children

receive title to the cottage when they inherit it from their parents. If you do not have a current cottage plan, it is probable that the tenancy in common rules will govern your cottage. For example, if you have three children and they inherit the cottage via the tenancy in common rules, it is important to note that any one of the children, owning an interest as a tenant in common, has a right of partition.

As a tenant in common, each child owns an "undivided interest" in the cottage. That means that each child has the simultaneous right to use the cottage whenever they want. The rights possessed by a tenant in common, such as the right to transfer his interest to any person at any time, and the right to rent out the cottage without the consent of the others, in the absence of a requirement that a tenant in common compensate other tenants for services associated with management of the cottage, leads to significant and unharmonious issues amongst siblings with respect to the ownership, operation, use and maintenance of the family cottage.

Another form of cottage ownership is known as "joint tenancy." Most of the concerns regarding tenancy in common also apply to joint tenants. The difference is that in joint tenancy, the person with an ownership interest who outlives all other owners becomes the sole owner of the property. Obviously, this can result in unwanted and unintended consequences by the original owners of the cottage in terms of the succession plan.

A cottage succession plan that is tailored to the needs and desires of you and your family with respect to the ownership, maintenance, operation, use, and inheritance of your cottage requires careful consideration and analysis of your particular cottage, your particular wishes and desires, and the problems that you may be faced with in terms of passing the cottage down your family lines. With the use of such ownership-arrangement options as using life estates, written ownership agreements, the use of trusts and general partnerships, and the use of a limited liability company, many of the advantages of multiple ownership of a cottage can be realized with a corresponding decrease in potential disadvantages and disputes that may and do arise when the owners of the cottage pass away, with the cottage to be distributed to heirs.

If you are interested in sitting down to discuss your legal options and alternatives with respect to preparing a cottage succession plan that will meet your goals and desires in terms of succession planning and in terms of assuring that your children, grandchildren and other descendants will always have a cottage to call home, please contact the probate attorneys of Garan Lucow Miller.

Should you make your home jointly owned with your child?

Are you considering making your home jointly owned with a child in order to avoid probate? Before you do, have you considered the 45% gift tax that you might be liable for? How about the capital gains tax problem you might be giving to your child? Are you willing to risk losing your home to your child's creditors? Did you know that your son's wife might become a part owner as well? Finally, are you certain that your child will allow you to sell your home if you ever want to?

Before you make your home jointly owned with your child, please consider the consequences carefully. There are likely better alternatives that will avoid probate while not having the potential negative consequences of joint ownership. The attorneys of our Estate Planning & Settlement Group will be happy to discuss all of your options.

Estate Planning & Settlement Group

Ann Arbor

1-800-878-5600
Suzy Fanning

Marquette

1-888-841-7772
Sean Fosmire

Detroit

1-800-875-1530
John McSorley

Port Huron

1-800-875-4400
Robert Goldenbogen

Grand Blanc

1-800-875-3700
Bennett Bush

Traverse City

1-888-923-1611
Peter Worden
Michael Swogger
Heather Bruce

Grand Rapids

1-800-494-6312
Tara L. Velting

Troy

1-800-875-7600
Thomas Doyle

Lansing

1-888-910-0300
Thomas Doyle