

WEALTH & ESTATE LAW GROUP

ARTICLE 48: A “TWO-BARREL” COTTAGE TRUST

Mary has the most beautiful cottage in the world. On a lakefront in British Columbia, it sits high on a hillside, jutting up out of the trees and into the breeze. The back porch is screened in from floor to ceiling on three sides and fresh air pours through. The cottage has an island kitchen with a gas stove, and three fireplaces. Her best friends own the cottage next door. It is the most beautiful cottage in the world and Mary will tell you so. So will her three kids, seven grandkids and, if they could talk yet, her two greatgrandkids.



Mary is in her 80's and wants the cottage to be kept in the family after she is gone. So do her children. She just signed a will containing the terms of a carefully considered cottage trust.

Who will make decisions? Mary's three kids will be the trustees after she is gone and will make decisions jointly, majority rules. If one of them dies, each of the three lines of the family will remain entitled to appoint one trustee. A clause in the trust allows them to appoint and remove a "cottage manager" from time to time to handle day to day decision making around maintenance and the like. They can rotate that job.

Each of her three children will start out with an equal percentage interest in the cottage of 33.3%. If they die, their percentage interest automatically passes to their children in equal shares. Thus, when her eldest boy dies, his 33.3% will pass in equal shares to his two kids, Ryan and little Emma (who bears a striking resemblance to Mary). Emma will have an interest of 16.66%. In turn, Emma's percentage interest would pass to her children at her death, or to her brother if she has none. If Emma were to pass away without children, her interest automatically goes to her siblings.

How is time at the cottage divided out? If little Emma has a 16.66% interest in the cottage, she will be entitled to use the cottage 16.66% of the time.

What if Emma moves permanently to France? The trust allows family members to sell their percentages to other family members, but only to family members. Transfers to people like boyfriends or strangers are prohibited. Only Mary's lineal descendants will be able to have an interest in the family cottage.

What if Emma wants out and can't find a buyer among the family? The trust allows her to demand an exit payment. The payment will be based on her percentage interest, but a significant discount is applied – she gets less than fair market value. Nothing is payable for a whole year, and then the discounted amount is paid out over ten years of monthly installments, and all without interest. Departure is possible, but penalized. Loyalty is rewarded.

Where does the cash come from? In addition to putting the cottage into the trust at her death, Mary's will sets up a \$500,000 maintenance fund in a second trust. It will be used to fund exit amounts, utilities, realty taxes,

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repairs and the capital gains taxes payable every 21 years in this type of trust.

Can the cottage be sold? Yes, by unanimous vote of the cottage trustees. The cash will be divided out by percentage interest: bigger percentage, bigger cut.

How long can the trust last? If in Manitoba or Saskatchewan, the trust could be structured to go on forever. The laws in British Columbia cap the duration of the trust to no more than 120 years or so – long enough.

The cottage trust goes on for pages. Mechanisms to avoid capital gains taxes? Covered. Raising additional money? Covered. Renting the cottage to the public? Covered. Creditor proofing? Covered. Probate avoidance? Covered. Resolving disputes? Covered. Scheduling? Covered.

Some of Mary’s acquaintances were nay sayers, “the kids will fight if you try that, better to sell it.” Mary understands the risk, but hopes the carefully constructed trust will minimize it. She also understands the reward. Her grandchildren know each other. They play monopoly together on the porch. The cottage is a family gathering place, a unique opportunity to keep her extended family close knit after she is gone in a world where that is becoming more and more rare. When she was a little girl, her family, with all of the aunts, uncles and cousins, gathered regularly at the family farm. The farm is long gone. The cottage is not.

No one knows what the future will hold after Mary is gone. The trust provides the real possibility that the cottage will stay in the family and bind it together for future generations.

Mary is real, but details have been changed to preserve her privacy.

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