Attorney Writes

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KEEPING IT IN THE FAMILY

More than with most real estate, the owners of riparian properties tend to have sentimental attachments to the land and often desire to keep the property in the family. If a riparian desires to keep property in the family (or alternately, to sell the riparian property and still protect the family's retained real estate interests), there are a wide variety of options available which should be carefully examined and considered.

Selling Riparian Property

If it is determined that riparian property will not be kept in the family and shall be sold, there are many things which should be kept in mind. Never enter into a purchase agreement (whether you are selling or purchasing property) without first having your attorney thoroughly review the document. Contrary to popular myth, a signed purchase agreement regarding land is a binding document. For some reason, many people view a purchase agreement for land as simply being a letter of intent, which they can walk away from later or unilaterally change. Unfortunately, in most instances, that is not the case. Accordingly, to be fully comfortable with a purchase agreement, all matters should be fully negotiated before you sign any agreement.

Many people ask why they need to utilize an attorney for a real estate matter, particularly if the property is only worth $50,000 or $100,000. For most waterfront real estate transactions, a competent real estate attorney can assist you for between $300 and $700—remember, this is only an estimate and actual legal fees could go higher or lower. Real estate transactions involving riparian properties tend to be more complicated than those involving non-water related properties. Accordingly, more things can go wrong. I have seen countless situations where a property owner has attempted to save several hundred dollars on attorney fees on a real estate transaction, only to spend tens of thousands of dollars in attorney fees and court costs later when something goes wrong. Many problems could have been avoided had a real estate attorney been involved from the beginning.

I am constantly amazed at how few sellers of property utilize deed restrictions. Deed restrictions can be particularly useful if you are selling only a portion of your property and you will be retaining adjoining or other property in the area. By utilizing deed restrictions, you (and potentially the future owners of your retained property) can keep a certain amount of control over the property sold. For example, at the time of sale, you can place a deed restriction on the property being sold preventing the property from being further divided, precluding the land from being used to "funnel" other properties onto the lake, prohibiting mobile homes, etc. Again, this must be dealt with prior to entering into a sales agreement and such deed restrictions should be drafted by your attorney.

If you intend to sell property, it is also extremely important to insert the appropriate language in the purchase agreement stating that the purchaser is taking "as is" and that you are not making any guarantees or representations other than title. Conversely, if you are purchaser, it is important to insert contingencies into the purchase agreement which will allow you to check various matters out (and to get out of the deal if necessary) prior to closing.

Saving it for the Family

If you desire to keep a riparian property in your family either by means of a gift or through your will or a trust, there are a variety of techniques which can be used. Again, it is extremely important that you have your estate planning done with the assistance of competent legal counsel. Setting up devices which pass on your riparian property by means of a gift, trust or will can have potentially negative unintended consequences if not done properly, including significant tax problems. The day when a property owner can safely simply add his or her children to a property title by deed as co-owners or keep an unrecorded deed in the safe to be recorded at his or her death are long gone. In

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fact, such techniques can often cause severe legal problems.

If you desire to keep a riparian property in the family, that is normally best done by either a trust or limited liability company ("LLC"). A trust or LLC can contain virtually any provision desired by the property owner and can control use of the property for many years into the future. The best trusts and LLCs contain provisions regarding who will get to use the property in the future, payment of taxes and other expenses, procedures for deciding issues, restrictions on the use of the property, and disposition of the property if future owners no longer desire to keep the property.

In summary, any riparian contemplating selling a property or setting up legal devices to keep it in the family should keep two general propositions in mind. First, never do anything without utilizing competent legal counsel. Second, in consultation with your legal counsel, think matters out regarding the future very carefully. Once you have sold the property, it is gone and you can rarely get it back. If you decide to permanently pass the property onto your children or other relatives or friends, be careful how matters are set up. If not done properly, it can lead to unintended consequences, such as fighting or becoming a burden to future owners.

RECENT ANTI-FUNNELING CASE

For years, both The Riparian Magazine and ML&SA have preached that anti-funneling ordinances must be carefully drafted and should be as precise and uncomplicated as possible. If not, they can be subject to court challenge. A recent Michigan Court of Appeals decision confirms the wisdom of that warning. In Evans v Gabriel (dated December 28, 1999 — Case No. 212759), the Michigan Court of Appeals in an unpublished decision held that a township anti-funneling ordinance provision was too vague to apply to a newly-created access easement. Since the ordinance only governed "a development which shares a common family dwelling", the Court held that it only applied to common areas such as private parks and jointly-held properties, rather than access easements.

The moral of the story is that anti-funneling ordinances should be carefully drafted or they may not withstand court scrutiny.

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Great Lakes (Part II cont'd)

workable controls can be placed into effect on a regional basis to protect the Great Lakes. Capital improvements in public facilities for pollution control, fish production, and boating made within the last 20 years need to be maintained and updated as investments that will pay continued dividends. Finally, cooperation must continue to improve among management agencies and organizations with a stake in the Great Lakes fishery.

By learning from the past and investing in the future of the Great Lakes fishery, we reject the notion that our role is simply to pass on to our children what we have inherited. Our obligation to them, and to the resource, demands much more from us. □