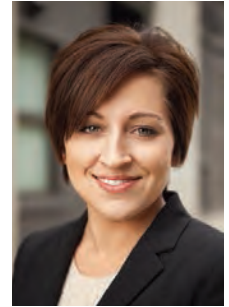




# Keeping the Family Cottage

## New Tax Benefit for Transfers Between Parents and Children

By: Crystal Morgan,  
Shareholder  
Bloom Sluggett Morgan, PC  
Grand Rapids, Michigan



As a result of Proposal A, which was adopted by Michigan voters in 1994, the taxable value of a property (the amount on which a property owner pays property taxes) cannot increase from one year to the next by more than the rate of inflation or five percent—whichever is less—until there is a transfer of ownership. When there is a “transfer of ownership” to a new owner (including a family member), the taxable value of the property generally “pops up” or is “uncapped” to the state equalized value, which is supposed to represent 50 percent of the property’s fair market value. Thus, uncapping the taxable value after a sale or transfer can result in the new owners paying significantly more in property taxes than longtime previous owners of the same property.

Under Michigan’s General Property Tax Act, a transfer of property from one spouse to another, or from a decedent to a surviving spouse, is exempted from the definition of a transfer of ownership. Therefore, such conveyances do not constitute a transfer of ownership for purposes of uncapping the taxable value of the property.

A new law now extends this same protection to transfers between close relatives. Under Public Act 497 of 2012, signed into law in December 2012, the exemption will also apply (beginning December 31, 2013) to a transfer of real property to a person related by blood or affinity to the first degree. Persons related by blood to the first degree include a person’s parents and children (including legally adopted children). Persons related to the first degree by affinity include a person’s spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather. The exemption applies only to property that is classified as residential real property, and only as long as the use of the property does not change following the transfer. MCL 211.27a(7)(s).

This new exception to uncapping in the case of transfers between parents and children is especially important in the case of elderly parents who have owned their home for many years, and whose taxable value has not been uncapped since the cap was first enacted under Proposal A in 1994.

Overall, Proposal A has been beneficial to riparian property owners throughout Michigan who have held onto their land for long periods of time, as waterfront properties have tended to increase in value over the last decade and a half much more rapidly than non-waterfront properties. Waterfront property owners who have owned their riparian property for long periods of time have seen their taxable values (and, hence, their property taxes) grow much more slowly over time than the owners of riparian properties that change ownership frequently. The downside, however, is that senior generation owners may wish to transfer waterfront property to their children, but the uncapping of the taxable value would result in an increased tax bill that the children cannot afford. Unfortunately, this can lead to forced sales of properties that have been in the same family for generations.

While the scope of the new law is narrow, the new law is not limited to homesteads. Thus, it allows parents to transfer cottages and vacation homes that have been under the same ownership for a number of years or decades to close relatives, allowing the property to remain in the family without the fear of an insurmountable tax burden.

It is not yet clear how the Michigan State Tax Commission or local taxing authorities will interpret or apply the new law in certain situations, such as where the property is owned by the parents’ trust, a living trust or by a limited liability company owned by the parents. Further, it is important to remember that this new law does not become effective until December 31, 2013. Thus, it does not have any effect on a property’s 2013 taxes.

However, once in effect, this new law will allow parents for the first time to transfer (i.e., by deed or will) residential real property to their children and step-children without “uncapping” the taxable value. This will result in helping to keep cottage and waterfront home ownership affordable, and allowing Michigan families to retain and enjoy property that has been part of their family’s history for generations.

