



New Law Expands Property Tax “Uncapping” Exemptions for Family Cottage Transfers

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The cottage - it's a place where memories are made, special events are hosted, and traditions are sustained for many Michigan families. One of the challenges families often face, however, is keeping the family cottage in the family, as it is not always feasible to do so from a financial standpoint.

Michigan has recently taken action to make cottage succession planning a bit easier, and less expensive. Public Act 310 of 2014 was signed into law by Governor Snyder on October 9, 2014. The bill expands current law (Public Act 497 of 2012), which prevents the uncapping of property taxes on certain transfers of residential property between family members.

The new law features a few important changes. The first relates to the definition of which family members can participate. The prior law - which remains in effect for transfers made before December 31, 2014 - exempted transfers between individuals related by “blood or affinity to the first degree.” One of the new law's major changes (and improvements) is clarifying what that ambiguous phrase means.

The new law - for transfers taking place on or after December 31, 2014 - defines an eligible transferee as a person related to the owner or the owner's spouse's mother, father, sister, brother, daughter, adopted daughter, son, adopted son, or grandchild.

The definition of transferor has also been expanded in the new law to include properties transferred by a trust or will. This will allow property to transfer upon the death of the current owner without uncapping the property taxes. The following types of transfers will not result in uncapping:

- A transfer of property into a trust by the trust settlor or the settlor's spouse, as long as the only present beneficiary or beneficiaries are eligible relative transferees as identified above (i.e., mother, father, daughter, son, etc.).

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- A distribution of property from a trust, as long as the recipients of the property are all eligible relatives.
- A change in the sole present beneficiary of a trust that owns property, as long as the new beneficiaries are eligible relatives.
- A distribution of property pursuant to a will or by intestate succession to an eligible relative.

Finally, while transfers as described above will prevent the uncapping of property taxes, the exemption only applies if the property is not used for any commercial uses following the transfer. A question that arises, however, is what constitutes "commercial use"? The statute does not define the term. Some activity - opening a bed and breakfast, for example - is almost certainly commercial. Less clear is whether renting will be considered commercial. It's impossible to know at this point, but it may depend on the extent of rental activity. If the cottage is being used primarily as a rental and substantial income is being generated, then that may be considered commercial, whereas occasional rental activity may not be.

There's a verification mechanism in the new law that will help the Michigan Department of Treasury enforce the rules regarding commercial use. A local assessor can request verification of compliance with the non-commercial use requirements, and failure to comply with such a request within 30 days will result in a \$200 fine.

There is some ambiguity in the law, and more questions will certainly arise, but by and large this law is good news for cottage owners in Michigan. If you have questions about the law, or need help with cottage succession planning, please contact a Foster Swift real estate attorney.