



## TOP TEN COTTAGE CONUNDRUMS

### 10. **Natural Fish Habitat**

Healthy lake fish populations are integral to healthy lakes. The Ministry of Natural Resources and local municipalities have identified fish spawning areas that need protection. Unfortunately, these areas sometimes are in front of cottage properties. This may limit any future development of the waterfront including the installation of docks or boathouses.

**Best Practice:** Careful consideration of your intended future use of the property is required where a natural fish habitat is present. Before signing any offers, ask your realtor or lawyer to consult with the relevant municipality to determine whether there are any fish habitat restrictions in place for the property and how these restrictions may affect your intended use for the property.

### 9. **Access**

Whether by car, boat or off-road vehicle, determining the access to your cottage is important. A buyer should enquire if, how and when access can be used. If the property is water-access only, is there a secured area available for boat and car parking? If access is by road, is it a municipally maintained and owned road, a private road, an easement, or a trail over Crown Land? Any easements or rights-of-way providing access to the property should be registered on title. Road agreements should be put in place setting out the maintenance details (seasonal or year round maintenance) along with all costs. Is your property used as access by a neighbouring property owner? In the worst case scenario, there may be no registered access at all.

**Best Practice:** Have the real estate agent or lawyer confirm access to the property and where any easements or right-of-ways may be located.

### 8. **Septic System**

Why raise a stink if the septic system appears to be working fine? Consider that the cost to replace a septic system could range between \$10,000 and \$30,000 for a basic system. Minimize concerns by obtaining all applicable permits from the time of installation, having a septic system inspection and reviewing the age of the system. Depending on usage, septic systems can operate for 25 years or more. If a septic system needs to be replaced, updated rules and regulations may require a different location on the property, perhaps at added expense. You should also ensure that the septic is the right size for the number of bedrooms and facilities (such as bunkies and boathouses) now using the system – renovations and additions are often done over time, without the necessary upgrades to the septic system.

**Best Practice:** Inspections and review of documents should reveal any issues with the septic system so they can be corrected before you buy. Educate yourself on the proper use and maintenance of a septic system to extend its life span.

## **7. Water Source**

The majority of cottages are not connected to a municipal water supply. Usual sources for drinking water include drilled and dug wells or water drawn directly from the lake or river. Pumps, water lines and filtration systems all form part of the water system. Regular testing and analysis of the water source will confirm its safety as drinking water. Mortgage lenders will usually require proof of a reliable, potable water source before advancing funds. Find out what your lender requires and ensure that the water is safe before waiving conditions on a purchase agreement.

**Best Practice:** Your real estate agent should be able to provide you with confirmation of the water source and system. Include a requirement for a satisfactory water analysis in the Agreement of Purchase and Sale to avoid any post purchase surprises.

## **6. Wood Burning Appliances**

Some cottages will have a fireplace or woodstove as their main heating source. Do not let faulty installation or worn out equipment reduce your cottage dreams to ash. Fireplaces, wood stoves and other wood burning appliances should be inspected by a Wood Energy Technical Transfer (WETT) specialist and any deficiencies corrected to ensure they do not become a fire hazard. Most mortgage and insurance companies will require a WETT certification.

**Best Practice:** To protect your investment and for you and your family's safety, all wood-burning appliances should pass a WETT inspection.

## 5. Legal Non-Conforming

Are you looking to demolish an old rundown shack by the water and replace it with a new cottage? Changes or additions to the rundown shack need to comply with the current zoning by-law including setbacks from the waterfront, maximum heights or lot coverages. If the use of an improvement on the property existed before the passing of the local by-law, such use would have been legal, but may not conform to the current by-law.

**Best Practice:** A review of current zoning by-laws is the starting point for any rebuild or renovation. Discuss with your lawyer or a municipal building official the extent of your plans in advance to determine if they may be carried out. Minor variances or other planning applications can add delay and expense to your project and it is never safe to assume that such applications will be successful.

## 4. Tax Consequences

One cost item that often is overlooked by a seller is the income tax they may have to pay when they sell a property. This tax is called the "Capital Gains Tax". A capital gain is the "profit" a person makes when they sell a real property. The profit is determined by subtracting the cost base from the selling price. The selling price is the price the seller has agreed to accept for the transfer of the property. The cost base is made up of many different items which include what the seller paid for the property plus the costs incurred to make major improvements to the property, etc.

There are some properties that are not subject to capital gains tax when they are sold. These include a principal residence and, in some cases, properties used in farming activities. Second homes, commercial properties and vacant land are just some types of properties that when sold could create a tax bill in the form of a capital gain.

**Best Practice:** Keep good records of not only what you paid for your property, but also copies of the bills and receipts for the costs you have incurred to make major improvements to your property. Before selling, and most definitely before you spend the proceeds, make sure you determine whether the sale will attract capital gains and, if so, how much capital gains tax you will need to pay.

### 3. **Shore Road Allowance**

The shore road allowance includes a 66 foot strip around most Ontario lakes reserved to the local municipality for the creation of a road system. Always confirm who owns the shore road allowance and whether it may be purchased from the local municipality if it is not owned by the vendor of the cottage. Every municipality has its own rules and regulations about the use of the shore road allowance and the consequences if the cottage, dock or boathouse is located on it including annual fees.

Best Practice: Confirm with your real estate agent or lawyer whether the cottage property includes ownership of the original shore road allowance or whether it can be purchased.

### 2. **Recreational Property Insurance**

Not all properties will be insurable. If no insurance is obtained, it may not be possible to secure financing. It may prove difficult to obtain insurance where there are no fire- fighting services or where the property has limited access only. Insurance providers may also require inspections of the property, current WETT Certificates for wood burning appliances and TSSA Certificates for fuel burning appliances.

Best Practice: Speak with your insurance agent about your property and any improvements you may wish to make. Failure to obtain insurance may unnecessarily put your property at risk or prevent you from obtaining financing.

### 1. **Bunkies, Boathouses and Docks**

Additional sleeping quarters or extended docks may be part of your vision for your cottage. An array of provincial and federal regulations may affect your plans from natural resources to navigable waterways. Additionally, municipal regulations on sleeping quarters above boathouses, the size and number of bunkies and the total square footage of docks differ greatly.

Best Practice: Ensure that your vision will comply with the regulations to avoid any disappointments or expenses. Review all rules and regulations during the planning stages of any project.

The foregoing is meant to provide information only and does not constitute legal advice. You should always consult with a lawyer prior to signing any contract.