

Dirt Law at Ground Level:



**THE ESSENCE OF MUSKRAT LOVE**  
**By W. Christopher Barrier**  
**Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.**

Matt Russell and his extended family had for many years enjoyed slipping away to Muskrat Lake, to swim, fish or just to relax in one of the little cabins surrounding the Lake. Record title was actually in the names of several families, although the 46 users of the Lake and cabins treated them as being jointly owned.

Then the death of one user, the bankruptcy of another and the divorce of a third brought them up short. The estate of the deceased user was concerned about continued use by the heirs, even though they were not record owners. The bankruptcy trustee couldn't figure out what to claim. And the divorcing couple agreed between themselves as to who got whatever the rights were.

**Not even duck logic...**

But, the Russell siblings realized that not only did the record title not reflect everyone's understanding as to ownership and use, there were liability issues should a guest go under in the Lake and not come up, there were no clear rules about maintenance, no provisions as to who paid for what, insurance, who got keys to the entrance gate, and on and on. Even an average duck club was better organized.

So, after many long meetings and lots of soul searching, all of the families agreed that each of the 46 would quitclaim their rights to a limited liability company and receive back LLC memberships., each identified as to the cabin and adjacent ground for each, somewhat like a cooperative. A management group was elected. The operating agreement called for dues to cover maintenance, liens for non-payment, and other procedural matters.

**What am I bid...**

And for rights and conditions to transfer LLC memberships, as to which they decided not to make it impossible, but not easy either---anyone wishing to sell their LLC interest could contract for such a sale, but with notice to the other members, a right of first refusal in the other members, and, after that expired, a sixty day period to get the approval of three-fourths of the other LLC owners.

Sure enough, Muskrat Suzy and Muskrat Sam were guests at the annual Muskrat Ramble at the Lake and fell in love with the whole scene. They signed a contract and made a large nonrefundable deposit on the next membership to come up for sale. The contract described the approval process and the deadline, to which Suzy and Sam agreed. The contract also contained a common phrase: "Time is of the essence as to every provision hereof."

### *A steep hill to climb...*

They and their seller waited out the first refusal right, and then got busy seeking the approvals. As it happened, virtually none of the members lived in their cabins and some lived at some distance. It was not a good time of year to find them at the Lake at all. The sixty day period ran and only 50% of the members had signed.

The sellers declared the contract to have expired and the deposit to have been forfeited---no jitterbugging in Muskrat Land for Suzy and Sam. They asserted (in court) that it was just not possible to meet the deadline under the circumstances, that they should get an extension or get their deposit back. Judge Muskrat Myron (no relation) was not unsympathetic---he told them that many people entering into contracts either did not notice the provision or did not understand what it meant, or counted on being cut some slack..

Nonetheless, what it meant was that missing a deadline in a contract containing the provision could result in a forfeiture, no excuses. "If you don't mean it, don't say it," was the judge's advice, "particularly if you've got a lot of skin in the game!"

*CHRIS BARRIER practices real estate and business law with Mitchell Williams in Little Rock. He has tried baked muskrat one time. He does not recommend it.*