

ATTORNEY WRITES

By Clifford H. Bloom, Esq.
Law, Weathers & Richardson, P.C.
800 Bridgewater Place
333 Bridge Street, N.W.
Grand Rapids, Michigan 49504-5320

“Docks”

When they put their dock in the water during the spring, most riparians do not think of all the legal implications regarding the dock and its location. Interestingly, there actually are many factors regarding a dock which could land its owner in court, although that rarely happens.

First of all, a dock can normally rest only on the bottomlands of the person who owns the dock. In other words, a person cannot place their dock on the bottomlands of another without permission. In Michigan, a riparian property owner on an inland lake normally owns the bottomlands adjacent to his/her lakefront property. Those bottomlands typically radiate to the center of the lake, although it is often difficult to determine what constitutes the center of the lake with irregularly-shaped lakes.

Rarely do riparian or bottomlands boundary lines radiate to the center of the lake at the same angle as the side lot lines exist on dry land. Determining where riparian/bottomlands boundaries are located under the water for purposes of dock placement can often be a difficult task, particularly where relatively small lakefront properties are involved and property owners try to “crowd” the outer edge of their bottomlands with dockage.

Some municipalities (cities, villages, and townships) have ordinances which regulate docks, although that is not always the case. Some local ordinances govern dock

placement, size, length, and width. Some municipal ordinances require that docks be located a certain number of feet away from the side lot line as extended perpendicular out into the lake (even if that is not the true bottomlands boundary). Anti-keyhole or anti-funneling regulations often regulate docks, particularly with regard to common areas, easements, road ends, or private parks. Dock regulations can be found in municipal zoning ordinances or even in standalone police power ordinances. Violation of such an ordinance can constitute either a criminal misdemeanor or a municipal civil infraction offense, depending upon the penalties provision of the ordinance involved.

The use of a dock by more than one family will typically trigger both state and local regulations. At the state level, the Michigan Department of Environmental Quality has taken the position that any dock utilized by more than one family can constitute a “marina” for which a state permit must be obtained from the DEQ. At the local level, use of a dock by more than one family is generally considered a multi-family use which is only allowed in certain zoning districts.

The presence of a dock raises potential issues of liability. People can get hurt diving off of a dock, running into docks with boats, or having some other dock-related calamity occur. Accordingly, it is very important for the riparian property owner to carry adequate liability insurance for the lakefront property which expressly includes coverage for the dock (as well as any other structures such as shorestations and floating rafts, and also boats). Furthermore, given the litigious society we live in today, liability limits of \$300,000 or even \$500,000 could very well prove inadequate.

Although not common, some lakefront properties have deed restrictions/restrictive covenants which place limits or regulations on dockage.

What if there is no local ordinance in your jurisdiction which limits dock length and the DNR chooses not to act regarding the length of a particular dock? Can a riparian install a dock as far out into the lake as he/she wishes, so long as it is located entirely on that person's bottomlands? Assuming that no state or local enforcement action occurs, an unreasonably long dock could still violate the common law doctrine of riparian rights (also called the doctrine of reasonable use). Pursuant to that doctrine, a neighbor or nearby riparian can sue another lakefront property owner if the offending party does anything on or at the water (including installing a very long dock) which unreasonably interferes with the reasonable lake usage rights of the nearby or neighboring riparian.

Permanent docks cannot be installed without a permit from the DEQ. Furthermore, some local ordinances regulate or even prohibit permanent docks.

Some of the above-mentioned regulations and laws regarding docks involve government enforcement or prosecution where violations occur.

Some of the other matters discussed above are common law property rules, where no governmental unit becomes involved and a riparian property owner who believes that he/she is being wronged must sue civilly in a county circuit court.