

## "LEGAL ISSUES - an ATTORNEY WRITES"

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### What to do About Unreasonably Long Docks, Dangerous Rafts, Permanent Ski Jumps and Other Such Items Which Impede Navigability

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There is one in every crowd! Although most riparian property owners exercise their lake rights reasonably and responsibly, a handful of misfits insists upon doing things which impede both navigability and the enjoyment of lake usage by others. Examples of such thoughtlessness occur when a property owner installs an unreasonably long dock, a large raft far from shore or insists upon anchoring ski jumps or slalom course floats offshore for long periods of time. What can innocent riparians do about such nuisances? There are essentially two solutions one public and one private.

The public solution involves contacting the Michigan Department of Natural Resources ("DNR") and asking that agency to investigate whether or not the offending item is a threat to navigability or safety. MCLA 324.80163 states as follows:

Whenever, in the opinion of the department, an anchored raft presents a hazard to navigation, the department may order its relocation or removal.

Although the above statute mentions only "rafts," it is highly likely that the DNR also has the authority to require the moving or removal of docks, floating platforms, ski jumps and similar items which impede navigability or safety. Unfortunately, the DNR does not always take action. Sometimes, the DNR refuses to take action notwithstanding a violation of the statute, although under certain circumstances it has no jurisdiction. A few local municipalities have ordinances governing docks, rafts or floating platforms, but such ordinances are rare.

The alternative is private civil litigation. A riparian property owner can bring a civil lawsuit in the local county circuit court against the offending party based upon several legal theories. First, it can be alleged in some cases that the offending structure is a nuisance or that it interferes with navigability. Second, the plaintiff can sometimes assert a violation of the riparian rights doctrine that is, the placement and use of the offending structure unreasonably interferes with the riparian rights of other property owners. Pierce v Riley, 81 Mich App 39 (1978); Opal Lake Ass'n v Michaywe, 47 Mich App 354 (1973); Thompson v Enz, 379 Mich 667 (1967). Finally, if the offending structure is placed, anchored or moored on or to the lake bottomlands of someone other than the owner of the structure without permission, that would constitute a trespass. For most inland lakes in the state of Michigan, the riparian property owners of the shoreline own a wedged-shaped parcel of the bottomlands to the center of the lake. See Hall v Wantz, 336 Mich 112 (1953). Although persons other than the owner of a particular bottomlands can temporarily anchor to the bottomlands for short periods of time for fishing and similar activities, that can be done only periodically and for limited periods of time. Otherwise, permanent mooring or anchoring is a trespass against the owner of the bottomlands. This was vividly demonstrated in Hall, above. In Hall, the Michigan Supreme Court confirmed that a huge raft which was anchored near the center of White Lake violated the rights of the nonconsenting riparian owner who owned the bottomlands, despite the fact that the waters at that point were both navigable and very deep.

Sadly, civil litigation tends to be expensive and time consuming. Furthermore, under the American system of attorney fees, each side normally pays its own attorney fees, win, lose or draw. Accordingly, to the extent that the parties can settle the matter without the need for litigation or by prompting the DNR to take action, so much the better.

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