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## **ATTORNEY WRITES**

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"Let sleeping dogs lie! Don't rock the boat. Let's just ignore the situation, and maybe no one will find out." While this philosophy may work well in some areas of life, it is probably not a prudent practice for riparians to follow regarding dormant lake access devices such as alleys, platted parks, walkways and road ends.

In practice, there are two types of lake access devices—those which are being actively used by backlot owners or the public, and those which are lying dormant. With regard to those which are being actively used, there is little that adjoining riparian property owners can do. It is highly unlikely that the courts will permit a vacation or abandonment of such devices to occur. Nevertheless, there are potentially two partial remedies available to riparians if such lake access devices are being improperly used. First, if a lake access device is being used for purposes other than those for which it was created (*i.e.* the uses are exceeding the scope of dedication or proper usage rights), in many cases the courts will order that the site be used only for permitted activities. Depending on the type of access site involved, certain activities may be prohibited such as dockage, overnight boat mooring, shore stations, sun bathing and storing of personal items overnight or unattended. Second, municipalities also have broad authority via ordinance to regulate and even prohibit activities which would otherwise be permitted under real estate law at these sites.

Thirty or forty years ago, it was often relatively easy to get a court to vacate or abandon dormant or unused lake access devices, including road ends. However, with the advent of "lake political correctness" (*i.e.* every person in the state of Michigan should be able to get onto and use every single body of water in the state of Michigan no matter how small the access site and no matter how obnoxious or dangerous the activities involved), many courts became reluctant to order the vacation or abandonment of lake access sites, including even some dormant ones. Finally, in 1996, the Michigan Legislature by statute made it virtually impossible to close roads ending at or touching lakes. That legislation only affected roads—*theoretically*, courts still have the authority to vacate other lake access devices.

Is it worth pursuing a circuit court action to abandon or vacate a lake access other than a road? In many cases, yes. If a road end is involved, the chances of success are quite low. In order to "get around the statute" prohibiting road vacations at lakes in such cases, a riparian will have to show that the road was never properly created, dedicated

or accepted (*i.e.* the dedication "lapsed"). If a nonroad lake access device is actually being used, the chances of succeeding in a vacation or abandonment lawsuit are slim, but the riparian might still be able to prevail regarding the proper scope of usage.

Although the chances of a riparian prevailing in a vacation or abandonment court proceeding go up dramatically if the access site is dormant, courts rarely abandon or vacate access sites which are perpendicular to a lake such as walkways or alleys, since public access could theoretically occur in the future. Riparians have had much better luck regarding unused access sites such as platted parks, walkways, or promenades which parallel the shoreline of lakes. In such cases, the private property adjoining such ways is normally deemed "riparian" by the courts. Courts are more likely to abandon or vacate such public ways so long as there is another access available in the area (for instance, perpendicular walkways, alleys or roadways).

A common misconception is that a formal circuit court action is not needed to vacate or abandon a road, walkway, park, or other lake access device, and that the local municipality can simply "deed" those properties to adjoining riparians. Except in certain rare circumstances, that is simply incorrect and wishful thinking. Unfortunately, there are many riparians who mistakenly believe that such public ways were long ago vacated or abandoned due to deeds from municipalities. Such transfers likely were ineffective and the public ways could be reopened by backlotterers or the general public at any time in court.

The cold reality is that circuit court vacation or abandonment procedures for access devices at lakes tend to be both expensive and time-consuming. Furthermore, even if the riparian property owner wins, the riparian will often have to do expensive follow-up surveying and replatting work as a condition of any vacation or abandonment order. Given the increased value of lakefront property and the high stakes involved, however, circuit court actions are often worth pursuing.

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