

ATTORNEY WRITES

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Yours, Mine, or Theirs?

The land located under a lake in Michigan is generally referred to as “bottomlands.” Bottomlands can be truly submerged under water at all times, or, can be called “exposed bottomlands” when lake waters have receded and left exposed dry land. Michigan law regarding who owns which particular bottomlands (and can control the same) is confusing at best.

Bottomlands ownership and control is different for the Great Lakes versus inland lakes in Michigan. With regard to the Great Lakes, bottomlands covered by water at a particular point in time are owned and controlled by the state of Michigan. But what about exposed Great Lakes bottomlands that are not covered by water at the moment? Michigan case law is somewhat contradictory regarding the issue. Many Michigan appellate cases have held that riparians on the Great Lakes generally own a “movable freehold,” which means that they own the land up to the edge of the water, wherever the water’s edge may be at any given time. See *Glass v Goeckel*, 473 Mich 667 (2005), *Hilt v Weber*, 252 Mich 198 (1930), and *Mumaugh v McCarley*, 219 Mich App 641 (1996). That is an interesting concept, as the water’s edge for the Great Lakes can literally change overnight, depending upon the wind and weather. Other Michigan legal sources seem to imply that Great Lakes riparians own only to the ordinary high water mark, with the state owning everything lakeward thereof (whether covered by water at a given point in time or not). Even if such legal authorities are correct, they still recognize that the adjoining Great Lakes riparian property owner does have control or “dominion” over the exposed bottomlands located

lakeward of the ordinary high water mark. See also the Great Lakes Submerged Lands Act, MCL 324.32501 *et seq.* and Michigan Attorney General Opinion No. 5327 (July 6, 1978). Some of the confusion seems to arise from the fact that some appellate cases speak in terms of Great Lakes “beds” and “bottomlands” without differentiating between exposed (dry) versus water covered lands.

Regardless of where the limits of riparian land ownership are for a given stretch of Great Lakes shoreline, all property located lakeward of the ordinary high water mark is subject to an invisible easement (not created in any recorded or other document) that benefits the public. It is an easement of “navigability” and, at the very least, allows members of the public to walk along the Great Lakes on any exposed bottomlands, lakeward of the ordinary high water mark, without the permission of the adjoining riparian landowner. See *Glass v Goeckel*. That invisible navigability easement is also sometimes referred to as a right of the “public trust.”

Since adjoining riparian landowners do not own the water covered bottomlands of the Great Lakes (or potentially even dry land located lakeward of the ordinary high water mark), they generally cannot install a dock or pier without the permission of the Michigan Department of Natural Resources and Environment, the United States Army Corps of Engineers, or both, depending upon where in Michigan the property is located. Furthermore, items such as stairways, decks, seawalls, and similar structures generally also cannot be installed lakeward of the face dune or near the waterfront of the Great Lakes without the appropriate government permits.

The law regarding bottomland ownership and control for inland lakes in Michigan is much different than the law that is applicable to the Great Lakes. With the overwhelming majority of inland lakes in Michigan, a riparian property owner’s ownership does not stop at the

water's edge. Instead, most riparian landowners on Michigan inland lakes own the bottomlands adjacent to their lakefront property to the center of the lake even though the bottomlands are not expressly mentioned or described in their deeds. See *Hall v Wantz*, 336 Mich 112 (1953); *Gregory v LaFaive*, 172 Mich App 354 (1988). With lakes that are nearly round, riparians own pie-shaped bottomlands areas to the center of the lake. With irregularly-shaped lakes (which are most of the inland lakes in Michigan), the courts have had to resort to various proportionality formulas to determine bottomlands ownership. See *Heeringa v Petroelje*, 279 Mich App 444 (2008) and *Cutliff v Densmore*, 354 Mich 586 (1958). Almost never do the riparian boundary lines for bottomlands radiate out into the center of the lake at the same angle as the side lot lines of the property involved on dry land.

On an inland lake, only the riparian landowner can install and utilize a dock or pier, a swim raft, or a boat cradle on his/her bottomlands. The same is true with regard to permanent boat moorings. See *Hall v Wantz*; *Patterson v Dust*, 190 Mich 679 (1916); and *Hilt v Weber*. The common misperception that anyone (even nonriparians) can permanently moor or anchor a boat, maintain a swim raft, or engage in other similar activities anywhere they want on a lake is simply false. Members of the public do have the right to temporarily anchor their boat as an incident of fishing or navigability. See *Hall v Wantz*; *Patterson v Dust*; and *Swartz v Sherston*, 299 Mich 423 (1941). However, that right of anchorage without the permission of the bottomlands owner does not extend to overnight boat mooring or while the owner of the boat is not physically present.

Another common myth is that members of the public have the right to walk on the shoreline of a Michigan inland lake riparian without permission. Except for those cases where a public road right-of-way, easement, or walkway exists along the shore of a lake, members of the

public have no such right. It is possible that many laypeople are confusing the rules for inland lake usage with the public trust doctrine easement applicable to the Great Lakes. That easement does not exist with regard to inland lakes in Michigan.

Can someone who is swimming from a boat walk or stand on your bottomlands on an inland lake without your permission? Unfortunately, Michigan case law is not clear regarding that issue.

Given that many lakefront lots are small, that most riparians want a significant dock and boat mooring at their waterfront, and the popularity of scarce water frontage, disputes over bottomlands have only increased over the past few decades.