

ATTORNEY WRITES

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Miscellaneous Matters Regarding Docks and Swim Rafts

I am frequently asked whether docks and swim rafts on private properties on inland lakes are subject to government or other regulations. In fact, docks, swim rafts, boat hoists, and similar items are potentially subject to regulation by both the State of Michigan and local municipalities (that is, a township, city or village). Theoretically, for any given inland lake, there are five levels of regulations that could be applicable to a dock or raft as follows:

- State of Michigan
- Local government police power ordinances
- Zoning regulations
- Deed restrictions/restrictive covenants
- The Riparian Rights Doctrine

For docks and rafts used for single-family purposes only, there are generally two provisions of state law that apply. First, docks, piers, and rafts that are utilized only for single-family purposes and are not permanent (i.e., they are removed from the water during the off-season) generally do not require a state permit under what used to be called the Michigan Inland Lakes and Streams Act (now a part of the Michigan Natural Resources and Environmental Protection Act). *See* MCL 324.30103. However, where any of those items remain in the water year-round or are utilized by more than one family or for commercial or business purposes, a state permit is usually required. *See* MCL 324.30101 *et seq.*

Second, a portion of what used to be called the Marine Safety Act was also recently amended to address navigability hazards. MCL 324.80163(1) provides that if an anchored raft, dock, pier or similar item presents a safety problem or hazard to navigation, the Michigan Department of Natural Resources may relocate or remove the item or order its relocation or removal. If such item is not relocated or removed as required, the State can act and collect the actual and reasonable costs of such relocation or removal from the riparian landowner involved, which can become a lien against the waterfront property. *See* MCL 324.80163(2).

While many municipalities with lakes inside their jurisdictional limits do have local regulations regarding docks, piers and rafts, that is not always the case. In general, there are two types of ordinances under which local municipalities can regulate docks and rafts – zoning ordinances and general police power ordinances. Pursuant to a zoning ordinance, docks and rafts can be regulated indirectly by side yard setback and use regulations, although zoning regulations sometimes expressly regulate docks and rafts for size, location, etc. Some municipalities have lake access or anti-funneling zoning regulations that also regulate docks and rafts. Certain local municipalities have a separate police power ordinance that regulates docks and rafts either in lieu of or in addition to the zoning regulations. In some instances, county zoning regulations apply in townships that have no zoning ordinance.

Some properties (but not most) are subject to what is commonly referred to as a plat restriction, deed restriction, restrictive covenant or the equivalent. On occasion, such restrictions can regulate docks and rafts.

Finally, Michigan has a common law doctrine sometimes referred to as the “reasonable use” or “riparian rights” doctrine. Pursuant to that doctrine, a riparian property owner can only use his/her/its waterfront in such a way that it does not unreasonably interfere with the riparian

uses of adjoining or nearby property owners. Accordingly, even if a particular dock or raft complies with all applicable governmental regulations and deed restrictions, the dock or raft could still run afoul of the riparian rights doctrine if, due to the use or placement of the raft or dock, it unreasonably interferes with use by adjoining nearby property owners of their riparian rights. See *Thompson v Enz*, 379 Mich 667; 154 NW2d 473 (1967); *Three Lakes Assn v Kessler*, 91 Mich App 371; 285 NW2d 300 (1979); *Pierce v Riley*, 81 Mich App 39; 264 NW2d 110 (1978); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505; 534 NW2d 212 (1995), and *Square Lake Hills Condo Assn v Bloomfield Twp*, 437 Mich 310; 471 NW2d 321 (1991).

In addition to the above regulations, if a lake is directly tied into one of the Great Lakes by a canal, inlet or other connection, both the Michigan Department of Environmental Quality and the U.S. Army Corps of Engineers have joint jurisdiction over all docks and piers. The permitting requirements for docks or piers in those situations are too detailed to cover in this article.

When it comes to docks and swim rafts on inland lakes, do not assume that a riparian property owner can do anything that he or she desires to do!