

## LAKEFRONT MYTHS AND OTHER LORE

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It is amazing how many myths and other false impressions have arisen over the years regarding lakefront properties in Michigan. As with any other falsehoods, it is important to debunk such myths. This article addresses some of those myths.

**Public versus Private Lakes.** People often refer to a lake as being “public or “private.” However, under Michigan law, there is no universal definition of what constitutes a “private lake” versus a “public lake.” There are a few statutes that include such definitions, but the application of those definitions is limited to the purposes of those specific statutes only (for example, MCL 324.30901 *et seq.*, the statutory lake improvement board act and MCL 41.418, use of township funds for weed control). Apparently, the distinction that most people try to make regarding “public” versus “private” lakes is whether there is a public access on the lake.

**Put the Children on the Deed.** Some people believe that the best way that they can pass on their lakefront property on to their children is to put them on the deed or title themselves. In almost all cases, that is wrong! Using the services of a skilled estate planning attorney is particularly important for a riparian landowner who desires to pass a lakefront property onto his or her children. “Do it yourself” by simply slapping the names of children or others on a deed can lead to disastrous results. The bad consequences could include uncapping of the property tax limitations on the property, not being able to sell or mortgage the property in an emergency if all children will not agree, potentially losing a share (and control) of the land during the divorce of one of your children, gift tax issues, and similar calamities.

**Walking the Beach.** Many people believe that the public can walk on the shoreline of any inland lake without the riparian landowner's consent. This is a myth that arises fairly frequently. In most cases, the person making that assertion is confusing the law regarding inland lakes versus the Great Lakes. It is true that on the Great Lakes, due to the public trust doctrine, members of the public can walk lakeward of the ordinary high water mark up and down the shores of any of the Great Lakes in Michigan without the permission of the adjoining riparian landowner. However, that is not the case with most inland lakes. Unless an inland lake has a road right-of-way, walk or similar easement or dedicated area along the shore of the lake, members of the public cannot walk along the shoreline or beach of an inland lake without the permission of the riparian landowner.

**Waterfront property can never lose its value.** Until the recent recession, that was pretty much the conventional wisdom. Even during past recessions, lakefront properties normally held their values. However, given the economic stagnation in the recent past, it was sadly demonstrated that even lakefront properties can drop in value. The new conventional wisdom is that the value of lakefront properties does not drop as much during recessions as other properties and will be the first to rebound after a recession.

**As a riparian owner, my ownership of the bottomlands radiates to the center of the lake at the same angle as my side lot lines on dry land.** This is a common misperception. While it is true that the owner of a riparian property on an inland lake typically owns a share of the bottomlands to the center of the lake, the bottomlands boundary lines almost never radiate to the center of the lake at the same angles as the side lot lines on dry land. If that were the case, the ownership of bottomlands would severely overlap, with the owners of different riparian parcels owning the same bottomlands.

**I can anchor my boat anywhere I want on an inland lake overnight or all summer long without anyone's permission.** False! Except for temporarily anchoring while fishing or during a storm while the owner of the boat is present in the boat, boaters normally cannot anchor or moor their boat on the bottomlands of another person overnight or seasonally without the permission of the owner of the underlying bottomlands.

**A local government's jurisdiction ends at the water's edge.** While a local municipality's jurisdiction beyond the water's edge is questionable on the Great Lakes, a municipality can have full zoning and other ordinance jurisdiction over all parts of an inland lake. Of course, if the inland lake straddles two or more municipalities, a particular municipality's jurisdiction ends at the portion of the lake where the other municipality's geographical boundary begins.

**I do not have to worry too much about the purchase/sales agreement that I will be signing regarding the purchase of a piece of property in Michigan, since many of the details can be worked out later even if not expressly mentioned in the agreement.** Wrong! In almost all cases, a signed purchase/sales agreement for real estate in Michigan is a fully binding contract that cannot be varied or supplemented without the express written consent of all parties to the contract.

**Every lake in Michigan has a public access site. Or, another variation of this myth is that every lake in the state of Michigan has a public road end (often called a "section line road") that affords public access to the lake, even if it is not known or is well-hidden.** That is false. While it is true that many lakes in Michigan have public access sites, including public roads which terminate at the lake and accord limited public access, not every lake in Michigan

has such public access points nor is there any requirement that every lake have a public access point or site. It is amazing how often I hear people assert this myth. To date, however, no person reciting this myth has ever been able to show me a statute or any court case which supports this myth.

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For more myth debunking, please see the August and November, 2006, editions of the *Michigan Riparian Magazine*.