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Did You Just Call me a Riparian?

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If you are standing anywhere in the State of Michigan, you are no more than 6 miles from a natural water source at any given time. It is one of the things that make this state so great. However, because there is still much more non-waterfront land available than waterfront land, most waterfront property is bought and sold at a premium. Those lucky enough to own waterfront land tend to be protective of the additional rights that they have paid so dearly for, and that non-waterfront owners do not enjoy.

I spend a lot of time on one particular lake "up north." I even belong to the lake association's Facebook page. And on that page a seemingly never-ending debate rages on, with one central question: WHO OWNS THE WATER?!? And more specifically, who owns the bottomlands under the water? How much do they own? What rights does the public have here, if any? The answer, when it comes to riparian rights is, like most legal topics: it depends.

The rules surrounding inland lakes are different than those governing rivers and Lake Michigan. The "bottomlands," meaning lands below the high-water mark, are owned by the adjacent property owners all the way to the center of the lake. A lakefront property owner or "riparian" owner has certain rights and privileges to the bottomlands, as long as the use of the bottomlands is "reasonable."

The public's right of navigability supersedes any riparian ownership of the bottomlands. We can fish, water ski, boat, and generally do whatever we wish as long as it is otherwise legal. The public may even temporarily anchor boats to, or temporarily wade across, the bottomlands of another. They may not, however, anchor permanently or indefinitely to the bottomlands of another, or otherwise wade or hang out indefinitely in the bottomlands without permission.

Navigable rivers on the other hand are governed by federal law. For a river to be considered navigable, it must be usable as a route by the public. Even rivers that can only support small canoes are probably considered navigable. If a river is navigable, the state owns, in public trust, the water and all of the bottomland underneath, up to the high-water mark. The land on the other side of the high-water mark is owned by the landowner whose property touches the river. The exact location of a high-water mark is also a bit of a mystery. Courts nationwide have spent years and millions of dollars litigating how to determine the exact location of the high-water mark. These countless efforts have yielded the conclusion that it's just impossible to determine the high water mark as a set rule. If you are floating down the river and wondering where you can stop legally without trespassing, a good rule of thumb is anywhere along the bank where water is flowing, has flowed, or probably will flow, absent flooding or unusual circumstances.

Lake Michigan and the other Great Lakes are governed by yet another set of rules. The bottomlands of Lake Michigan are owned by the state, and the public is free to use the water and the bottomlands for whatever non-destructive activity they wish. The adjacent landowners' property extends all the way to the high-water mark which is generally the highest point where the water makes a distinct mark, regardless of the current water level.

The ownership rights to the land between the water's edge and the high-water mark have been the topic of much discussion in Michigan for years. In 2005 the Supreme Court decided that the

public has an easement to anything lakeward of the high-water mark. The court gave the go-ahead for the public to walk anywhere they wish, as long as they remain on the lake side of the high-water mark, regardless of whether Lake Michigan is running high or low.

It is not uncommon for a riparian owner to attempt to exercise more ownership over the water than he or she is entitled to, just as it is not uncommon for non-riparian owners to test the boundaries of what rights they may have in Michigan waters. We have litigated these issues for clients for years and, as long as there is water in Michigan, will probably continue to do so.