

Accessing Navigable Water: Allocation of Riparian Rights Among Landowners

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Accessing Navigable Water: Allocation of Riparian Rights Among Landowners

Written by *Caroline R. Nichols, Esq.* – 6/15/18

Owners of waterfront property have “riparian rights” to access the navigable water and the right to a waterfront view in addition to their rights to use their upland property. Docking rights often are an area of dispute, not only for waterfront property owners seeking dock permits from the government, but also between neighbors who may disagree on the appropriate allocation of riparian rights among the waterfront property owners.

Florida Common Law Regarding Riparian Rights In Navigable Water

Riparian rights exist only in “navigable waters.” Navigable waters of the United States include tidal waters that have been, or may be, used to transport interstate or foreign commerce. 33 C.F.R. 329.4 (2017). Navigable waters typically include streams, rivers, gulfs, and bays. Some jurisdictions consider a waterway “navigable” if it is used, or susceptible of being used, for other public purposes such as swimming, canoeing, boating, tourism, and similar recreational uses (<https://www.alta.org/media/pdf/CH09.pdf>)

Title to submerged lands is not vested in the State and may be owned by private individuals in landlocked lakes, ponds and waters not deemed “navigable.” In Florida, fresh water lakes are presumed “navigable” if the original government survey for the state depicted a meandering shoreline of the lake, or if a landlocked lake has a “meandered” boundary. *Odom v. Deltona Corp.*, 341 So. 2d 977, 988-89 (Fla. 1976).

Riparian Rights and the Public Trust Doctrine

In Florida, the State acquired ownership of all land lying beneath non-tidal waterways, including meandered lakes, when Florida became a state in 1845. *Broward v. Mabry*, 50 So. 826, 830 (Fla. 1909). These State-owned submerged lands under navigable waters generally are not subject to private ownership. *Coast Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339 (Fla. 1986). Instead, the State holds all sovereign submerged lands in trust for the benefit of the public under the public trust doctrine. Fla. Const. Art. X (11); *Hayes v. Bowman*, 91 So. 2d 795, 800 (Fla. 1957).

Because sovereign submerged lands are held in trust for the benefit of the public, members of the public have rights to navigate, fish, and boat in navigable waters. *Id.* Owners of upland property that is contiguous with navigable waters also have riparian rights, including ingress and egress to the waterway, docking, boating, and fishing rights, and a right to an unobstructed view of the water. *Walton Cnty. v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102, 111 (Fla. 2008), *aff'd*, *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702 (2010); *Shore Village Property Owners' Ass'n, Inc. v. State Dept. of Env'tl. Prot.*, 824 So. 2d 208 (Fla. 4th DCA 2002).

Although these riparian rights inure to the benefit of the owner of the adjoining upland property, these rights do not give the upland owner any ownership rights to the submerged lands, or any right to exclude the public from the navigable waters.

Right To Wharf Out To Navigable Water

As part of the adjoining upland owner's riparian rights, Florida law specifically recognizes a right to access the water from the riparian land

and the right to wharf out to navigable water. *Shore Village Property Owners' Ass'n, Inc. v. State Dept. of Env'tl. Prot.*, 824 So. 2d 208, 211 (Fla. 4th DCA 2002). Docks may not impede navigation, and generally are not permitted to extend beyond the line of navigation, which is the point at which the water depth is sufficient for navigation.

Subject to the riparian rights of the public and other applicable regulations, upland property owners have a privilege to construct docks and "wharf out" from their lands onto the submerged land to this line of navigation, but not beyond the low water line. *Freed v. Miami Beach Peer Corp.*, 112 So. 841 (Fla. 1927); *5F, LLC v. Dresing*, 142 So. 3d 936, 943 (Fla. 2d DCA 2014) citing *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957).

Apportionment of Riparian Rights

All riparian owners have the right to access navigable waters, so riparian rights are to be apportioned in a manner that fairly allocates access to the water among all upland landowners. Because apportionment of riparian rights must be equitable, locating riparian lines is subjective in nature. The Florida Supreme Court has held:

Riparian lines do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shore line . . . in any given case the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such equitable distribution, the Court necessarily must give due consideration to the lay of the upland shoreline, the direction of the Channel and the co-relative rights of adjoining upland owners.

Hayes, 91 So. 2d at 802.

Determining Riparian Lines

Where an upland lot abuts a lake or waterway, the lot's riparian line may be determined by (a) the meander line; (b) the high-water mark; (c) the low-water mark; (d) the centerline of the water at the time the boundary was first established; (e) the centerline of the main current of a flowing stream; or (f) not at all in the case of non-tidal unnavigable waters. (<https://www.alta.org/media/pdf/CH09.pdf>).

Whichever method of determining riparian lines is used, the determination must be fair and equitable, and must provide each upland lot owner a "fair and reasonable opportunity of access to the channel." *Lake Conway Shores Homeowners Ass'n v. Driscoll*, 476 So. 2d 1306, 1308-09 (Fla. 5th DCA 1985) quoting *Johnson v. McCowen*, 348 So. 2d 357, 360 (Fla. 1st DCA 1977).

When the shoreline is relatively straight, riparian lines typically can be drawn by extending the property boundary lines to the navigable water line. However, when the shoreline curves or bends, riparian lines should be determined so that each upland landowner has a fair share of the land and convenient access to the water from his land, and in a manner that does not block any landowner's access to navigable water. *Lake Conway Shores Homeowners Ass'n*, 476 So. 2d at 1309; see also Florida Bureau of Survey and Mapping Guidelines for Allocation of Riparian Rights.

Remedies

Property owners who are concerned that riparian lines have not been fairly drawn, or whose access to the water has been blocked, have the right to bring an equitable action for an injunction. See Fla. Stat. § 253.14(2017). Suits to enforce riparian rights also may include declaratory judgments seeking a judicial determination of a fair riparian

line, suits to quiet title, ejectment, and damages. See *Haynes v. Carbonell*, 532 So. 2d 746, 748 (Fla. 3d DCA 1988); *Ford v. Turner*, 142 So. 2d 335, 342 (Fla. 2d DCA 1962).

Conclusion

If you own property abutting navigable water, you have right under Florida's common law to construct a dock on your property providing access to navigable water. Allocation of riparian rights among upland property owners must be fair and equitable so that all owners have the ability to access navigable water. To the extent that another land owner takes action to block construction of docks providing access to navigable water from your property, or otherwise infringes you're your riparian rights, you may seek an injunction against or seek declaratory relief from the court establishing riparian lines in a fair and equitable manner.

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