



A well respected Winter Park attorney. Frank Pohl practices in the area of real estate law.

His column covers a wide range of topics that can help you better understand and avoid potential legal issues related to buying, selling, and owning a home.

If you have topics or questions pertaining to the legal aspects of residential real estate that you would like to see addressed in this column, send them to Frank c/o:

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WATER, WATER EVERYWHERE—Is any of it mine?

The Florida peninsula is bordered on the East by the Atlantic and on the West and South by the Gulf. Together with its rivers, and approximately 30,000 lakes, Florida truly is a land where there is “water, water everywhere.” People frequently ask me who owns these different bodies of water, whether the general public has an unlimited right to use them for recreational purposes, how to access them, and the rights of the landowners abutting them.

While dry land can be bought and sold, bodies of water and the land beneath them are treated differently. When Florida became a state in 1845, it acquired ownership of all land lying beneath non-tidally influenced (i.e. fresh) *navigable* water bodies. Fresh water lakes were presumed to have been navigable if the original government survey for the state depicted (“meandered”) the shorelines of these lakes. Unfortunately, although many of the lakes in Florida are navigable, only 190 of the approximately 30,000 lakes were meandered. In addition, no list has been compiled to define additional navigable vs. non-navigable bodies of water. This has created considerable difficulty in determining the ownership of land lying beneath the water’s surface in Florida’s fresh water bodies.

Unless the State of Florida has conveyed the underlying land to the private property owner, title companies generally will not insure any portion of the submerged land. This is true even when the lake has dried up or the property has been platted by a developer. This analysis also applies to rivers, which are treated as navigable and subject to the same considerations as lakes.

Consider the rights of a private landowner who I’ll refer to as Joe Johnson. Joe and his wife recently purchased a house on Lake Maitland, which is a non-meandered lake. Every weekend, a couple of fishermen anchor their boat about twenty yards from Joe’s shoreline and spend much of the day fishing. Joe finds them annoying and doesn’t want people anchored and fishing near his property. A survey of Joe’s property was done in conjunction with his purchase of the property and he was given a copy. The survey depicts his lot as extending more than 20 yards into the lake from the shoreline. So, he gave me a call seeking advice on whether he could legally force fishermen to move their floating weekend retreat to somewhere beyond his property lines.

I reminded Joe of our prior discussions regarding the language exceptions in the title policy. Title insurance policies generally will NOT insure the land below the ordinary high water line of lakes and rivers - even if the property has been deeded by the State of Florida - because of the overriding rights of the public to use the water above the land. These rights - to swim, boat, and fish in the waters of the lake - are called “riparian and littoral rights.” I also reminded Joe that there were two specific exceptions in his title policy that address both of these issues, and which exceptions are automatically contained in all title insurance policies for land situated on navigable water bodies. The first - “This policy does not insure beyond the ordinary high water line of Lake Maitland” - means that the title insurance company will not protect or enforce any of Joe’s ownership rights to use any portion of the land extending into the waterway. The second is that “riparian or littoral rights are not insured.” This means that the title policy does not guarantee Joe’s individual rights to fish, swim or boat in the lake’s waters - even though he and his

REAL ESTATE LAW

family, as well as other members of the general public, enjoy these recreational activities. It also is an acknowledgment that other members of the public may have the right to use these same waters adjacent to Joe's property. In other words, as long as the fishermen are not harassing Joe, or intentionally blocking his way, there isn't much he can do.

Although the results may not seem fair to Joe, it is the "public welfare" character of these waterways that controls. Furthermore, the rights to use these waters extend beyond other lot owners adjacent to the waterway to include the general public. As long as members of the general public use a public access route to reach the body of water, are entitled to enjoy these same waters at their leisure.

Public access routes may vary, but are typically provided through public parks maintained by a city or county government. The public is required to abide by the rules and regulations imposed by the governmental authority (e.g. speed limits, opening and closing times), and generally must respect the private character of the properties along the waterways. Access rights may also be through private grants of easement (usually given to present and all future owners of the benefited parcel).

Subdivisions abutting waterways typically contain language on the plat granting all lot owners access to the waterway. Specific access locations are also normally depicted on the plat.

Many lakefront properties have boat docks that extend beyond the ordinary high water line and into the lake's waters. For the reasons recited above, title insurance policies typically will not insure these dock areas. Permits must be granted by local governmental authorities to build or repair the boat docks (or to remove weeds, high grass, etc.). Failure to obtain these permits may result in fines and court orders to remove the improvements at considerable cost to the property owner.

Most of the land lying beneath the lakes and rivers throughout Florida is vested in the State of Florida, for the benefit of the general public. Even if the state has conveyed the land lying beneath the water to private individuals, the general public legally accessing those navigable waters will usually have the same rights to the use of the waters.

I advised Joe that, although he has every right to the exclusive use of the land lying above the ordinary high water line of his property, his usage of the waterway is not exclusive. It is shared by other members of the public who have obtained legal access to those waters. ▲