

## **RIPARIAN RIGHTS IN FLORIDA**

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Ownership of waterfront property is very desirable in Florida and often involves unique real property considerations. When it comes to private waterfront property ownership, it can be difficult to distinguish where the private land rights cease and the sovereign land ownership begins. As a result, a subset of real property law has emerged to address what is called “riparian rights.” Riparian rights include the rights of ingress, egress, boating, bathing, fishing and even the right to an unobstructed view of the water. Examples of situations that riparian rights address include: (1) the general use of water adjacent to property, (2) wharfing out to navigability in the channel, (3) actual access to navigable waters; and, (4) the right to accretions. Shore Village Property Owners' Ass'n, Inc. v. State Dept. of Environmental Protection, 824 So.2d 208 (Fla. 4<sup>th</sup> DCA 2002). Such rights inure to the owner of the upland; however, the actual land covered by the water is not owned by the upland owner.

After the United States acquired Florida from Spain in the early 1800's, the lands under the navigable waters, including the shores, were held by the United States for the benefit of the people. That land would eventually go to the future state for the use of its citizens. Ex parte Powell, 70 So. 392 (1915). The State of Florida, in its sovereign capacity, holds title to the beds of navigable waters, including the shore and the space between high and low water marks, in trust for the people of the state who have rights of navigation, commerce, fishing, boating and other public uses. Brickell v. Trammell, 544, 82 So. 221 (1919). Subject to these public rights, the State of Florida's legislature has control over such sovereign trust lands, and the state may sell tracts of the submerged sovereign lands to private owners as long as the public and private rights are not impaired. State ex rel Ellis v. Gerbing, 47 So. 353 (1908).

The various types of submerged sovereign lands involved in riparian rights legislation was succinctly explained by R. Lynn Lovejoy in Florida Real Property Complex Transaction, Chapter 8 “*Waterfront Property*”, (2011):

The shore has since been defined as the space between the high and low water lines, and is held by the state in trust for the public. State ex rel. Ellis v. Gerbing, 56 Fla. 603, 47 So. 353 (1908). “Shore” has also been defined statutorily to mean the land bordering sovereign waters from the mean high water line seaward. F.S. 379.101(2). Today, according to F.S. 161.54(3), “shore” is synonymous with “beach” and “beach” is defined as that land extending landward from the mean low-water line to the line of permanent vegetation. The “bed” of a waterbody includes the shores. Apalachicola Land & Development Co. v. McRae, 98 So. 505 (1923). “Tideland,” which can also be interpreted as a shore, is that land covered and uncovered daily by water affected by the ordinary ebb and flow of the normal tides.

An instance of the state transferring submerged sovereign land occurred when Florida deeded a swath of land to the railroad. If that land included a river, lake or swamp, the submerged land owned by the state transferred to the private land owner from that point forward. The state

effectively deeded away any jurisdiction over that submerged land and had no jurisdiction, thereafter. As time went on, however, this presented another crucial point of contention—how do the natural changes to earth’s surface affect private shoreline property rights?

Similar to shifting sands due to flood, tides and drought, water boundaries and property lines can change. This can also lead to disputes between private landowners and the state as to the ownership of that newly created land. However, the owners of uplands bordering navigable water usually have riparian rights, which include the right to an increase of their lands by accretion and reliction. Accretion is the extension of land area due to a gradual and natural build-up of additional land by the accumulation of loose deposit material. Reliction is a similar increase of land area due to the lowering of the water level by natural causes. Under the doctrine of accretion and reliction, the added land belongs to the riparian owner and not the state. Mexico Beach Corp. v. St. Joe Paper Co., 97 So.2d 708 (Fla. 1st DCA 1957).

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As people began developing their waterfront property, docking rights became another area of dispute. Riparian rights address this area of property ownership as well. For example, the construction of a dock does not vest the waterfront property owner with title in the submerged lands underneath the dock. Williams v. Guthrie, 137 So. 682 (1931). Docking is a near-shore consideration and is limited by the line of deep water (line of navigability). The line of navigability is defined as that location off shore where the depth of water is sufficient for navigation.

Along a straight river without a marked channel, the most common method for determining this location is to draw dividing lines perpendicular to the line of deep water. Those lines are drawn from the channel to the shoreline, thus outlining the area for the upland property owner’s riparian rights. Along a river or other waterbody with a nearby marked navigation channel, the perpendiculars are constructed using the nearest limit of the channel rather than using the line of deep water. When the shoreline is irregular in the form of a cove or projection into an ocean, ocean bay, lake, or river, the apportionment of land is typically aimed at dividing dock rights equally, rather than using any perpendicular method. Where there is a cove and a curving shoreline, the allocation of riparian rights is made by picking a point within the navigable channel or offshore and (much like a pie shape) drawing lines from the upland boundary lines to the selected point offshore or in the channel.

In conclusion, with the subset of property law known as riparian rights, Florida law recognizes that waterfront property ownership often results in disputes and litigation among neighboring landowners and the state concerning the use of the shorelines and waterways. Riparian rights ensure that the rights of such property owners are weighed fairly and equitably in regards to their ownership of waterfront property. Ultimately, the goal of riparian rights is to promote a policy of “reasonable use” of the shared shorelines and waterways among private property owners.