

## **DOC WARS**

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As a lakefront property owner, what do you do when your neighbor places his or her dock so close to the property line that the neighbor's dock, boats or both violate the boundary line? This is a problem faced by many riparian property owners throughout the state of Michigan.

Obviously, the best way of resolving the problem is to talk to your neighbor and see if the neighbor will simply move the dock more towards the interior of his or her lot. If that does not work, the innocent property owner has potentially two remedies - self-help and legal action.

The self-help remedy is quite simple. Prior to your neighbor putting in his or her dock, beat them to the punch and place the edge of your dock on the property line. This will prevent your neighbor from putting his or her dock over the property line and will also prevent the neighbor's boats from being moored over the line. This option is not always practical, however. First, you would in effect be lowering yourself to your neighbor's level. This remedy can smack of "tit for tat." Second, this technique can, on occasion, spark further conflict. Finally, you might have to wait until the next spring to effectuate this remedy prior to your neighbor putting in his or her dock.

In a few municipalities, the municipal zoning ordinance or other ordinance regulates the placement of docks. For instance, some ordinances state that docks must meet zoning side yard setbacks from the property line. Others regulate dock placement outright rather than relying upon zoning setback requirements. Unfortunately, only a minority of municipalities so regulate the placement of docks.

In many cases, the innocent property owner will have to file a civil lawsuit in the local county circuit court. For most inland lakes in Michigan, a riparian property owner owns the bottomlands adjacent to his or her property in a pie-shaped or wedge fashion to the center of the lake. See *Hall v Wantz*, 336 Mich 112 (1953). While fisherpersons and boaters can anchor on someone else's bottomlands for short periods of time for temporary activities, they cannot permanently anchor or moor on the bottomlands of another without the permission of the property owner. Furthermore, docks, shore stations, floating rafts, water-ski jumps, markers and similar items normally cannot be installed, placed or anchored on the bottomlands of another without permission. Determining the exact boundary lines of submerged lands is often a difficult task since property lines for bottomlands normally radiate from the shore to the center of the lake, the property line angles for bottomlands often differ from the direction of property lines on dry land. Ultimately, the circuit courts often have to determine the exact location of underwater boundaries.

If your neighbor has placed his or her dock, shore station, floating raft or similar structure over the property line and onto your bottomlands, that constitutes a civil trespass and it should be

fairly easy to get the local circuit court to order the structure's removal. Unfortunately, the police will normally not become involved in such trespass cases, such that a civil lawsuit will be necessary. The more difficult scenario is where your neighbor's dock is close to the boundary line, but the neighbor nevertheless moors his or her boats on the far side of the dock such that they float for long periods of time over your bottomlands. Some would call boats floating over another's bottomlands for long periods of time a "trespass" even though a boat is not directly anchored to the innocent party's bottomlands. Others would say that such condition does not constitute a technical trespass (since the bottomlands is not being touched), but would still constitute an improper and unreasonable interference with your riparian rights. Still others would argue that it constitutes both a trespass and an unreasonable interference with your riparian rights. Whichever legal theory is applicable, a circuit court would probably issue an injunction and order your neighbor to remove the floating boat to his or her side of the property line if you prove your case.

Absent a negotiated resolution or municipal regulations which specify dock placement, the only remedy is to file a lawsuit in circuit court against the offending party. Unfortunately, even if you prevail in such a lawsuit, each party normally pays their own attorney fees. Nevertheless, if a court order is issued prohibiting the neighbor from locating a dock or mooring boats in a certain place and the neighbor violates the court order thereafter, most courts will eventually impose severe sanctions for contempt of court.

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