

PADDLE TRAILS

Legal Considerations

WARNING

- The Real Estate Law that is applicable to the building of river trails is of ancient origin and has been modified through the years by various means in response to the economic reality and social mores of the times

- For example:
- **Magna Carta 1215**

PREAMBLE

- John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of his holy Church and for the rectifying of our realm, we have granted as underwritten by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of Master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerold, Peter Fitz Herbert, Hubert De Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.
-

Obstructions to navigation

- - (33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.
 - In other words, no obstructions to navigation on the rivers shall be allowed

Right of passage

- (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.



Right of access

- (47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

Real Estate Law

- Because of this long and tortured history, real estate law is sometimes very complicated and incomprehensible to the layman. As a result, a lot of myths have grown up around real estate law, and a lot of people know as a fact things about real estate law that simply are not so.

So What?

- Why do I boor you with all of this lawyertalk?
 - To urge you to get a lawyer on your team
 - Do this sooner rather than later
 - Do not be bashful about asking him or her to help pro bono publico
 - Get a lawyer who knows something about real estate law.
 - Most country lawyers know enough real estate law to serve your purposes

Plan B

- If for some reason you can not find a lawyer, a licensed real estate agent or broker has also had some training in real estate law and probably at least knows what he or she doesn't know.

Legal Planning

- Address the legal issues on the front end in the early planning stages. Otherwise they will rise up and bite you at just the wrong time

Issues

- So what are the real estate issues are pertinent to your water trail
 - Access to your put-in and take out points
 - Sufficient control over the put-ins and take-outs to build what you want to build and operate the sites as you wish to operate them
 - The rights that boaters have and do not have on the river

Access

- Getting from public property to the river without trespassing
 - This usually means by car for most of the way
 - The carrying the boat part should be as short and over terrain that is as easy to traverse as possible
 - Launches from public parks that have car access right up to the launch or takeout point and adequate parking

- Getting control over a launch site that is on private land or otherwise not under the legal control of a governmental entity or an organization sponsoring the trail

Public Access

- Public Parks
- Other land owned by the declaring authority
- Road or Highway right of way

Private Land

- Rule one – this must be in writing
 - The writing must give you the rights you need;
 - The writing must be signed with required formality; and
 - The writing should be recorded in the courthouse

Fee Simple

- Fee simple – gives you all rights to the property subject only to
 - governmental regulations,
 - environmental regulations and
 - not creating a nuisance

Easement

- Easement – gives you whatever rights are granted in the easement document – typically a right to travel over the property of another, often with various restriction and/or various additional rights

Non-ownership rights

- Lease – Gives you whatever rights are specified in the lease
 - Usually for a period of time
- A License – an agreement in which you get no property rights, but you do get a right to do something on someone else's property.

How to obtain

- Any of these types of rights can be obtained
 - By gift
 - By purchase
 - By condemnation or eminent domain

Rights of boaters once they get on the river

- The folklore that has arisen in the extreme property rights community is that it is trespassing to float down a river that is not navigable where both sides of the river have the same owner. **THIS IS NOT THE LAW**