

The Importance of Riparian Rights

What do you need to know when dealing with properties that have water access?

These property rights are also known as riparian rights, basically the rights that you have when your real property abuts a body of water. It is important to understand this when dealing with transactions involving these properties so that you can educate your clients and help them ask the important questions before proceeding with a transaction.

For example, if you have ocean-front property – what property do you actually own? In Virginia, waterfront property owners have title to property that extends to the mean low water mark.

The mean low water mark is the average of low water mark – where the low water meets the land – a close approximation would be a low tide mark.

The Fourth Circuit and the Virginia Supreme Court have held that the surface of navigable waters may be used by the public. In general, the public has a right to float in navigable waters, whether the “land” under the water is owned privately or not. This is something that your clients should understand as it may impact whether they want to be on property that is closer to a public beach or landing, or whether they’d rather be farther away from areas with easy public access.

The idea being that it is difficult to limit public access to the navigable waters – but your clients can pick the location of the house they are interested in based on the water traffic the area is likely to see. Encourage them to visit the area at high volume times – like a weekend in the summer – rather than a weekday in January.

Further, your clients need to consider the implications of living on the water. There is the potential for being in a special flood hazard area, and they should consider inspections to determine whether the property has mold issues from the increased humidity of the water.

As always, you want to be the source of the source with regards to flood insurance and special flood hazard areas. Direct your clients to the FEMA’s website or the Virginia Department of Conservation and Recreation’s Flood Risk Information system. Make sure they talk to a qualified insurance agent who can walk them through the process.

You can also talk to them about the potential for mold and make sure they have an inspection to evaluate the property. Make sure that you and your client carefully read the contract they are making an offer with. Many contracts call for a wood destroying insect, or WDI, inspection, which covers termites, carpenter bees, and the like. In waterfront properties, your client may want to also have a wood destroying organism inspection as this inspection will cover mold and fungi. A regular mold inspection could be covered in the home inspection contingency, depending on how it’s worded, but you want to make sure your client has the right to do the inspections they want.

Finally, make sure your clients are educated on and aware of the legal protections placed on waterways. For example, the Chesapeake Bay Preservation Act is one of the most prominent in

the Virginia area. This program was adopted in the 1980s as a way to preserve buffer areas around local streams and rivers. It means that if the house is in a Chesapeake Bay Preservation area, there may be certain limitations on what the owner can do with the property and how it can be developed – land use ordinances, building permit requirements, and certain protections that have to be incorporated. It is important that your clients understand what the limits of the properties may be.

When working with a client who is seeking to purchase waterfront property, there are some actions you can take to help limit your risk and make sure your client is educated about their purchase:

1. Make sure your clients are doing their due diligence when purchasing waterfront properties. Not only with regards to their purchasing rights, but they should also consider who may be trespassing on their land and what remedies they have available at law.
2. With waterfront property, there are some more risks of flooding. Make sure they are verifying flood hazard zone and are evaluating whether they want or need flood insurance. Even if they aren't required to purchase flood insurance, it may be a good idea for a number of reasons.

These are some topics you want to raise with them as they consider these beautiful properties – and certainly want to make sure you continue to refer them to the appropriate sources who can guide them through these decisions.