Waterfront Titles in Washington

WLTA Education Seminar

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Disclaimer:
When in comes to water and title insurance - the operative term is:

“CYA”
“Control your assumptions”
WATER

- What is it?
- Who owns it?
- Who controls it?
- Who owns the land under it or next to it?
- Do title insurers care about any of these things?
WATER

- Is *not* owned by the land owner or other individuals
- Is a natural resource owned/managed by State
Water is a physical substance that can be next to, on or under land. However, in Washington it is not part of the “land” as defined in a title insurance policy.
That is why title insurers have a general ("standard") exception in Schedule B in policies =

"Water rights, claims or title to water"

We don't insure title to water
NOTE:
The general exception in Schedule B in policies does not mean it is an issue of standard coverage vs. extended coverage.
Water not insured, but it does affect:

- **Title** to the land
- **Boundaries** of the land
- **Use** of the land

These are title insurance issues
Title insurance deals with *land* that is affected by water.

Three kinds:

- **Uplands** - Not under water - but maybe abutting water
- **Submerged land** - Under water all or part of the time
- **Wetlands** - affected by water
SUBMERGED LANDS

Four categories in Washington:
1 - Tidelands

Beds of *navigable* waters: applies to Puget Sound, ocean

State owns since 1/11/1889
Tidelands

Puget Sound, ocean and certain rivers - subject to ebb and flow of tides

- Some conveyed to private owners. If so:
  - Separate chain of title from adjoining uplands
  - But included in the legal description

If not conveyed by State, still in State Ownership

Boundary is line of ordinary high tide
TIDELANDS

Tide Lines in Washington State

( Denotes boundary lines of title ownership)
There are two *high tides* and two *low tides* each day

Diagram No. 4
2 - Shorelands

Beds of *navigable* waters: applies to lakes, rivers, streams

State owns since 1/11/1889
Shorelands

Lakes, rivers, streams - *not* subject to tidal flow - but *navigable*

- Some conveyed to private owners. If so:
  - Separate chain of title from adjoining uplands
  - But *must be* included in the legal description

Unless conveyed by State, still in State Ownership

Boundary is Line of *ordinary high water*
FIRST CLASS TIDELANDS & SHORELANDS

Navigable body of water

Dock

Second class tide or shorelands

Inner harbor line

Harbor area

Second class tide or shorelands

Line of navigability or extreme low tide - but, can be platted differently

First class tide or shorelands

Line of ordinary high tide or ordinary high water

Incorporated City

2 Miles

1 Mile

Bed of Navigable River

Second class shorelands

First class shorelands

Outer harbor line

1 Mile

2 Miles

Diagram No. 3
3 - Bed of *non-navigable* bodies of water

- Applies to small lakes & streams
- Title *not* in State
- Title included in uplands description *without mentioning it*
4 - Land beyond the outer limits of tidelands or shorelands (line of navigability)

- cannot be in private fee ownership
- portions (harbor areas) can be leased from the State
These exceptions apply across the state - Not just limited to the "wet" side of the mountains
The nature of the land determines what exceptions we show in our commitments and policies.

And - the description might not mention water.
TITLE EXCEPTIONS

- Some deal with **TITLE** to submerged land
- Others deal with **BOUNDARY** questions
- Others deal with **USE** questions
TITLE EXCEPTIONS

They are shown because:

❖ We don’t know

and

❖ We don’t care
1 Public and Private Riparian Rights

Any prohibition or limitation on the use, occupancy, or improvements of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

*USE* of submerged (or formerly submerged) land

Includes “Public Trust” Doctrine
1 Public and Private Riparian Rights

Covers, among other things

- rights of downstream owners to water that crosses upstream *riparian* land
- Rights of *other owners* to use the surface of the water (Bitter Lake)
- Rights of the *public* to use the surface (Lake Chelan)
- rights of the state to regulate uses of *tidelands*, *shorelands* and adjoining *uplands* under the *Shoreline Management Act* ("public trust")
- Shown whether *standard coverage or extended coverage*
1 Public and Private Riparian Rights

- tidelands
- shorelands
- land between high tide and seaward meander line if patent before statehood
- current or former lake beds, navigable or not
- current or former beds of rivers, streams or sloughs, navigable or not
- harbor areas
- uplands abutting such lands
- oyster lands

When to show
PUBLIC TRUST DOCTRINE

Government authority to

- protect the public interest, and
- regulate development, commerce, navigation and environmental protection
- essentially, zoning
  - tidelands & shorelands
  - wetlands
  - uplands within 200 feet of these lands
PRIVATE RIPARIAN RIGHTS

- Abutting upland owner is a *riparian* owner
  - In *addition* to any title to the bed
- Riparian owner has right, along with all riparian owners
  - to reasonable use of the surface of a lake
- Riparian rights of abutters are owned in common
  - Thus: each upland owner can use entire surface of lake
    - not just the area over the bed owned by the riparian abutter
RIGHTS OF THE PUBLIC

- General public has rights to use the surface of water for recreational purposes.

- Title insurers take exception to such rights, whether navigable or non-navigable.
Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of the [insert the name of the body of water], if it is navigable.

**TITLE** exception - affects riparian or littoral land abutting or under navigable water
2 State of Washington ownership

TITLE exception - riparian land

- Navigable water flows through, covers, or adjoins the insured property
- Can delete if water adjudicated non-navigable
- Applies even if stream is “boundary”
- Applies to current, former or future bed
STATE OWNERSHIP
3 River or Stream Boundary

Any question that may arise due to shifting or change in the course of the [insert the name of the body of water] or due to the [insert the name of the same body of water] having shifted or changed its course.

BOUNDARY (survey) exception - applies to riparian land
3 River or Stream Boundary

BOUNDARY exception

- Similar to the *general survey exception* in *standard coverage policies*
  - But *never deleted* even in *extended coverage title policy*
- Applies when description ties to either the thread or the bank of a river, stream, brook, creek, etc.
- *All water* – Navigable or non-navigable
3 River or Stream Boundary

Doesn’t make any difference whether the boundary is the center of the river or stream, or the high water mark.
3 River or Stream Boundary

- If change in river is
  - natural but *avulsive* (sudden), and/or
  - man-made - then:

- Original (not current) location of river may be property boundary
- Land might no longer touch the water, or
- The water could be
  - farther away from the property, or
  - entirely within the property lines
3 River or Stream Boundary

- If change in river is gradual
- Boundaries of parcels on either side of the river may *shift* with the movement of the river
- Insurer will not insure
  - exact location of the water, nor
  - whether it has moved or might move in the future, nor
  - the nature of any past movement
CHANGES IN WATER BOUNDARIES
CHANGES IN WATER BOUNDARIES

Diagram No. 5

Location of “Z” Creek in 1979 - boundary line shifted with gradual movement over long period

Location of “Z” Creek in 1959 - original boundary line before gradual movement began

Locations of boundary over time as it moves gradually
CHANGES IN WATER BOUNDARIES

Diagram No. 6

Location of creek on Nov. 20, 1959 – boundary line does NOT shift when water moves suddenly.

Location of creek on Nov. 19, 1959 – the boundary line between A and B before sudden (avulsive) movement – this line REMAINS the boundary.
New Location (gradual)

GL 1 - or NW/NW?
GL 1? Or GL 2? or NW/NW? or w/adjointing?

GL 1

GL 2 - gone?
Forever??

NW/NW

New Location (gradual)
GL 1? GL2? NW/NW?

GL 1 - Gone? Forever? Or way east?

GL 2 - gone? Forever? Or way east?

NW/NW - gone? Forever?? Or way east?

New Location (gradual)
You can't go back again...or can you?

GL 1?
Or
GL 2?
Or
NW/NW?
Are these recreated??

Newer - new many years later - location (gradual)
4 Lake, Sound, Bay or Ocean Boundary

Any questions that may arise due to shifting or change of the line of high water of the [insert the name of the body of water] or due to the [insert the name of the same body of water] having shifted or changed its line of high water.

BOUNDARY (survey) exception - applies to riparian or littoral land
4 Lake, Sound, Bay or Ocean Boundary

**BOUNDARY** (survey) exception

- Not removed for *extended coverage title policies*
- Similar to Exception 2 (rivers) but usually because of *reliction* and maybe *accretion*
- Shown if land bounded by lake or similar body water
4 Lake, Sound, Bay or Ocean Boundary

- Applies to
  - uplands only, or
  - uplands with submerged lands (shorelands), or
  - submerged lands (shorelands) only

- Whether or not the description mentions body of water
Any question that may arise as to the location of the lateral boundaries of the [tidelands] [shorelands] described herein.

BOUNDARY (survey) exception - applies to tidelands or shorelands that are included in the legal description.
**BOUNDARY** (survey) exception

- Added as special exception if *tidelands* or *shorelands* are in description

- Example:
  - “…together with the tidelands of the second class adjoining.”
5 Lateral Boundaries of Submerged Lands

- Assessor’s maps or surveys not reliable
- Exception can be deleted if
  - adjoining owners mutually establish boundary, or
  - submerged lands platted if plattor owned all
- State platted *tidelands* or *shorelands*.
- Caution with older plats
LATERAL LINES

- No title insurance on location of lateral lines unless
  - court decree establishes lines
    - presumably confirming the title of each owner on either side of the lines, or
  - a plat created by a common owner, or
  - an agreement between adjoining owners establishes lateral boundaries
    - including mutual conveyance between the owners confirming title according to agreed upon boundaries
LATERAL LINE BOUNDARIES ON LAKES
NON-NAVIGABLE LAKES

REMEMBER - All water assumed navigable unless court determines otherwise

- Even if
  - the body of water is not shown on the Government Survey, and/or
  - no meander lines were shown on that survey, and/or
  - the adjoining uplands are not described as government lots

- So title insurance will presume the State owns the bed
NON-NAVIGABLE LAKES

- As to the beds of *known* non-navigable lakes:
  - they are submerged lands
  - but are not shorelands, and
  - State has no interest (title) in them
- Such beds owned by the adjoining property owners
NON-NAVIGABLE LAKES

- If all land surrounding a small, non-navigable lake owned by one person
  - that person also owns the bed of the lake
- If multiple owners around the lake
  - the rules for *lateral lines* are not clearly drawn by court decisions
  - as they have been for tidelands and shorelands
NON-NAVIGABLE LAKES

Property owners may

- agree to each own an undivided interest in the entire lake, or
- divide the bed of *round* lakes by making pie-shaped connections to the center of the lake
  - Each with title to abutting pie-shaped parcel of the bed
- See Diagram No. 10
- BUT AGAIN: No title insurance as to the location of *lateral lines*
LATERAL LINES - Round Lake

Diagram No. 10

Small non-navigable lake
NON-NAVIGABLE LAKES

Property owners may

- Divide the bed of non-round lakes in common sense allocation of beds
  - using center lines along the long lengths of the lake
- Example: See Diagram No. 11
- BUT AGAIN: No title insurance as to the location of lateral lines
Diagram No. 11

LATERAL LINES - Odd-Shaped Lake

Small non-navigable lake
LATERAL LINES

- How do property lines extend out into owned shorelands?
  - These boundaries commonly called *lateral lines*
  - may have no relationship to the boundaries of the upland parcel
  - Owner cannot unilaterally project the upland boundaries out into the shorelands
LATERAL LINES

- No statutes defining the direction of lateral lines through shorelands
- No helpful language in the original deeds from State
  - State deeds simply convey all shorelands

Example:

“...all shorelands of the second class lying in front of and abutting Government Lot 3, Section [ ], Township [ ] North, Range [ ] East, W.M.”
What rules might apply?

- Decisions by State Supreme Court interpreting word "abutting"

  The basic rule

- beach is a relatively straight line
  
  - Lateral lines are projected into the water at right angles to the line of ordinary high water

- See Diagram No. 7
Diagram No. 7

Wrong – extension of upland title line

Correct – extend at right angle to the shore

LATERAL LINES
Different rule

"Right angle" rule is not equitable division

Example:

Connect property line at shore line to proportionate lengths of frontage at line of navigability

See Diagram No. 8
LATERAL LINES - COVE

Correct - Lines proportionate to shore

Wrong - Lines arbitrary or perpendicular to shore

Diagram No. 8

Line of navigability or extreme low tide line
LATERAL LINES - PLAT

- Owner of submerged land can subdivide and delineate specific locations of the interior lateral lines in any manner.
- Example in Diagram No. 9
- BUT exterior boundary lines (either end of entire submerged parcel) cannot be fixed without agreement and conveyance.
  - agreement and
  - conveyance

Involving adjoining submerged land owners.
BOUNDARIES ON STREAMS
NON-NAVIGABLE STREAMS

REMEMBER - All water assumed navigable unless court determines otherwise

❖ Even if
  ❖ the body of water is not shown on the Government Survey, and/or
  ❖ no meander lines were shown on that survey, and/or
  ❖ the adjoining uplands not described as government lots

❖ So title insurance will presume State owns the bed
NON-NAVIGABLE STREAMS

- Boundary line between two properties divided by non-navigable stream
  - unless the descriptions clearly recite otherwise!
- is the thread of that stream
- Bed owned by the abutting uplands owners
  - whether or not it also constitutes a boundary between separate ownerships
- Not vested in the State of Washington
ISLANDS

- Present special problems - especially in rivers and sloughs
- Might be shown on the original Government Survey as government lots
  - Elusive boundaries
- Or might have been created after Government Survey
- Title presumed in State (bed of river navigable)
  - May not be possible to describe
    - Constant accretion and reliction action
Section Line

Clover Island
Government Survey No. 2
Section Line
ISLANDS

- Additional problems
- Dam built downstream
- Land condemned (*fee or easement*) for raising the river

How is the “land” described?
Water Level Lowers

GL 1

Which Gov Lot is the island in? 1 or 2?

GL 2
Which Gov Lot is the island in? 1 or 2?

River moves
Other exceptions:

6. Navigation Rights

7. Reservations and Reversions

8. Water and Water Rights

9. Certificates of Water Rights
NAVIGABILITY
NAVIGABILITY

Navigability determined on Statehood
November 11, 1889

THUS:

- Current appearance of a stream or lake (even dried up) does not determine status

- If navigable at the date of statehood, the bed (or former bed) was and is owned by the State

Definition?

- Common misconceptions
NAVIGABILITY

Title insurers presume:

- navigability of all water, and
- the bed therefore owned by the State
- unless a court determines otherwise
NAVIGABILITY

1. Meander line = navigable
   NOT SO!
   - Meander lines laid out solely to comply with the requirements of the US Rectangular Survey Act
   - A lake of more than 25 acres, or
   - A stream of over 198 feet in width
     - WHETHER OR NOT NAVIGABLE!
NAVIGABILITY

2. State has issued deeds for shorelands on a particular lake = navigable

NOT SO!

- DNR takes position:
  - Supreme Court determination needed
  - Has issued deeds for shorelands on small lakes and rivers before court determination
NAVIGABILITY

3. A stream floats logs = navigable
   NOT SO!
   • A case does provide that stream which floats logs is navigable for that purpose
   BUT
   • it does not follow that stream is capable of commercial navigation
   • the bed of such a stream does not necessarily belong to the State
ACCRETION AND RELICITION

- **Accretion**
  - build-up of soil deposited on one bank forces the water to move, or shift, its location

- **Reliction**
  - gradual movement of water
    - erosion of land on one bank
  - exposes formerly submerged land on the other bank
ACCRETION AND RELICITION

- Gradual shift changes location boundary between two parcels
- River or stream (navigable or non-navigable) could
  - shift its location
  - have already shifted its location
- So: title can't be insured without an exception
- See Diagram No. 5.
ACCRETION AND RELICITION

Same natural processes apply to

- tidelands on
  - the Ocean
  - Puget Sound or
  - rivers emptying into them
- shorelands on a river or lake
ACCRETION AND RELICTION

General rule

- Accretion or reliction shifts the boundary between the upland parcel and the submerged land
  - Thus, newly added or exposed land becomes part of upland parcel
- BUT - accretions, even abutting previously sold submerged lands, are still claimed by the State (willing to sell to the abutting private owner)
ACCRETION AND RELICION

- No title insurance as to
  - boundaries between uplands and submerged lands, nor
  - Title to exposed land, nor
  - \textit{whether movement was avulsive or gradual}

- Even newly permanently created or exposed lands are claimed by State

- Theory: Title of the underlying submerged land was vested in the State, so accretion or reliction does not divest that title
AVULSION

- Stream changes or shifts location *suddenly*
  - natural event (earthquake, landslide, etc.) or
  - man-made activity
    - construction of dam, or
    - re-channeling of river
- the property lines normally do not shift
- Each owner continues to own to the original location of their property boundaries
- See Diagram No. 6.
AVULSION

EXAMPLE

- Dam construction covers land with water
  - Land must be conveyed by the owner
    - fee or easement
  - or taken by condemnation.
AVULSION

- No title insurance as to
  - boundaries between uplands and submerged lands, nor
- Title to exposed land, nor
- whether movement avulsive or gradual
- This is the same as with accretion or reliction