

Pacific Coast Congress of Harbormasters and Port Managers Meeting

PRESENTED BY

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October 12-14,
2022

Anacortes WA



Schiwa
WILLIAMSON & V

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Industry Focused - Transportation, Ports and Maritime

- Maritime and Admiralty Practice
- Public Ports
- Environmental, Land Use and Permitting
- Construction and Real Property
- Indian Law
- Employment Law

- Delinquent vessels



- Derelict problems



- Problematic evictions



CAVEATS AND LAWYER TALK:

- This information does not constitute or create an attorney-client relationship.
- These slides are not legal advice, are not intended to cover all laws or circumstances, and should not be relied upon as legal advice.
- Applicable laws vary among different jurisdictions, and most legal situations are “fact driven” anyway.
- You should seek the advice of a licensed attorney for particular legal issues.
- Keep hypotheticals hypothetical.

PCC MEMBER PRE-MEETING COMMENTS

A private harbor across from us in Sausalito due to the regional demand is charging the berth rate as the live aboard fee, or berth rate x 2. I do agree with this rate fee, demand and regulatory restrictions of 20% LAB of the berth number is to maximum and is regionally enforced.

PCC MEMBER PRE-MEETING COMMENTS

In reading Oak Harbor Marina's rule, I loved that they limited it to min size boat of 32 feet with a working head and the boat to be in Bristol condition. From past learned LAB lessons, not only the 32 foot minimum length, but also the amount on board. As the economy drives a potential recession again, the past lesson was seeing a small sailboat with a family of 4+ on board as LAB. The boater spaces for laundry and more became "play areas" for the kids.

PCC MEMBER PRE-MEETING COMMENTS

With COVID, LAB would have been classified as “residences” and for here in SF, payment could have been withheld. Being as we did not have LAB, terminations for boaters not paying had no legal standing to fight the berthing termination. Yet in a normal residence such as an apartment, home or similar you cannot start the engine and move to another marina.

BASIC QUESTION - LIVE ABOARD OR NOT?

- Tenancy rules differ
- Application of landlord tenant laws and rules
- *Eviction rules differ*



LIVE ABOARDS AND SNEAK-ABOARDS

Hawaii Boating Assoc. v. Water Transportation Facilities

- Right of access to mooring facilities at a recreational boat marina is not a "fundamental" right under the U.S. Constitution.
- Permitting a percentage of liveaboards does not alter the "recreational" character of boat harbors. The live aboard use is incidental to the recreational aspect.
- It is clear that harbors are not operated to provide cheap alternative housing. The limited live aboard use does not convert the recreational character of the boat harbor into a "basic necessity of life", i.e., shelter.
- So long as marina acts within its contractual rights in requesting boat owners to vacate an assigned space there is no liability.

LIVEABOARDS AND SNEAK-ABOARDS

But if Liveaboard is permitted:

- Federal and state housing rules may apply
- *Ramsum v. Woldridge* (OR) – live aboard FED
 - Boats? Or floating homes?
 - 30 day FED notice or 180 day floating home notice?

CLEAR LIVE ABOARD RULES!!



- Define LAB – 15/30; 10/30; 3/10.
- Clear policy and requirements:
 - Boat size, seaworthiness, hookups, heads, pump out rules
 - # of people – *caution*
 - Specific LAB rules
 - Specific LAB contract and fee schedule

DELINQUENT VESSELS - TERMINATING THE MOORAGE LEASE

- Rule # 1 – your moorage contract is king!!
 - Insurance (required in WA, **RCW [88.26.030](#)**)
 - Just leasing space, not a bailee
 - Rules of occupancy, subleasing, assignment, boat sale
 - No live aboards (except per policy)
 - Liability disclaimers
- Post your Rules and Regulations, including transient rules
- Use your website - post moorage contract and Rules and Regulations (e.g., “Use of Marina is acceptance of all marina rules and terms of use, see www.marinawebsite.com”)

DELINQUENT VESSELS - TERMINATING THE MOORAGE LEASE

- Detailed termination and eviction procedures.
- Most marinas state non-judicial foreclosure procedures consistent with state chattel lien statutes
- Lease *must state* that marina may chain/remove delinquent boats
- ORS 87.152 - .214 – notices of seizure, foreclosure and sale
- *Higgins v. Port of Newport*, 9th Circuit, 1997 – following chattel lien pre-seizure and post-seizure notices satisfied due process.

DELINQUENT VESSELS - TERMINATING THE MOORAGE LEASE

- RCW 60.36 – possessory chattel lien foreclosure procedures.
- Most marinas state non-judicial foreclosure procedures consistent with state chattel lien statutes
- Lease *must state* that marina may chain/remove delinquent boats



“THE LIFE OF A DERELICT STARTS OFF AS THE DREAM OF LIVING ON THE WATER.” (SECTION LEADER, FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION)



DELINQUENT VESSELS = DERELICT VESSELS

- Option to use derelict vessel statutes to seize and sell.
- Oregon - limited to public enforcement agencies, such as public port
- Pre-seizure and post seizure notices
- "Seized under authority of ORS 830.911 as a derelict and abandoned vessel due to being left at the XXX Marina without authorization and no payment for the slip"



DELINQUENT VESSELS = DERELICT VESSELS

- Option to use derelict vessel statutes to seize and sell.
- Washington – private marinas under RCW 88.26.020
- Washington – Public entities under RCW Chapter 79.100
- “Abandoned vessel” left without consent, or contrary to the rules of [marina owner] for more than 30 days and the vessel's owner is unwilling to take control of the vessel.
- “Derelict vessel” - vessel has been left for a period of seven consecutive days, and:
 - (i) is sunk or in danger of sinking;
 - (ii) is obstructing a waterway; or
 - (iii) is endangering life or property.

RCW 53.08.320 (PUBLIC) AND RCW 88.26.020 (PRIVATE)

State rules provide procedures for foreclosing on vessels for unpaid moorage and failure to insure.



PUBLIC V. PRIVATE FACILITIES

- For public facilities, only applies to vessels 200ft and under in length—no similar restriction for private facilities
- Public facility operator must incorporate and adopt procedures into its own rules or tariff—not automatically available.
- For both, rules spell out the procedures and notice requirements in detail

SUMMARY OF FORECLOSURE PROCEDURES

- Written notice of charges and owner's rights to contest charges (unless transient vessel w/o address for owner).
- Reasonable measures to obtain possession and to secure the vessel within the facility (chains, ropes, locks, removal from water)
- Attach written notice to vessel at time of securing giving 90 days to pay
- Further reasonable efforts to notify owner
- If no payment or bond within 90 days, vessel presumed abandoned.
- Legislative authority (board) may pass resolution authorizing public sale to highest bidder.
- Owner given 20 days notice of sale and notice published 10 -20 days before sale
- Proceeds to facility operator with balance to owner, or in absence of owner, to the state derelict vessel fund.

DERELICT VESSEL TOOLS

- Applies to abandoned and derelict vessels not to exceed 200 feet
- Derelict Vessel Removal Program—authorized public entities can but do not have to remove vessels
- Private moorage facilities can contract with government to participate in removal program (RCW 79.100.130)
- DNR Vessel Turn In Program allows boat owners to turn them in for responsible disposal

DELINQUENT VESSELS = DERELICT VESSELS

- California - 2015 Marine Debris Statute.
 - Expedited process and legal authority to state, county and public agencies to identify & remove Marine debris including abandoned boats
- Calif. Surrendered Vessel Program - vessel turned in program
- Abandon watercraft abatement fund
- St. Lands Comm. Abandoned Vessel Removal Program - focuses on commercial vessels



PROBLEMATIC EVICTIONS

- Liveboards
 - Sneak aboards, squatters and trespassers
 - Liability exposure for seized vessels
- E.g. If someone “rents” their boat to someone to stay on like its an apartment, and marina management did not give any permission to do this, and then the person refuses to leave the boat claiming they now live there, can we trespass them off the property?

TAKE PISTOL, AIM AT FOOT, FIRE.

Butler v. Clarendon Insurance Co.

- Boat owner late on payments. Owner disputes charges.
- Marina pulls boat from water for unpaid rent.
- Owner pays the rent, Marina launches boat back into marina.
- Owner's check written on closed account, bounces.
- Marina chains boat at dock, notifies Owner of lien claim.
- Owner cuts chains, moves boat to different marina 1.5 miles away.
- Marina locates boat, tows it back to Marina.
- Marina hauls boat from water, files small claims action to foreclose the lien.

Query: What's wrong with this picture so far?

QUESTIONS?
HYPOTHETICALS?
CRAZY SCENARIOS?
GOOD OF THE ORDER?



REPRESENTED BY
Schwabe

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