

Keeping It Legal

Random legal topics for
marina operators.

Pacific Coast Congress of
Harbormasters and Port Managers

SCHWABE, WILLIAMSON & WYATT

Industry Focused - Transportation, Ports and Maritime

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

POSSIBLE LEGAL TOPICS (FROM YOUR T&E COMMITTEE)

- An unregistered (owner unknown) boat sinks at my dock....who is responsible for damages and removal?
- What are my “policeman” responsibilities regarding illicit activities aboard tenant boats? (drug use/dealing, questionable guests, firearms,)
- What and when should I report?
- When can I (and cannot) direct a boat to leave my marina?
- What information can I request (and not) from a boat owner when they apply to lease a slip.
- Also, if boat is sold can I simply void the lease and/or secure information from new owner before continuing lease?
- Is a bad reputation enough to deny lease?
- How liable am I as a harbormaster/marina operator for injuries and/or damages caused by flawed or deferred maintenance or the conduct of inexperienced marina staff?
- Cranes! Can I safely let boat owners/operators use marina equipment or do I remain liable for damages or injuries.
- Will a signed waiver save the day?
- What level of security must I provide to avoid liability?
- What boating activities can I prohibit (fish sales and other direct sales dealing with customers, onboard manufacturing and crafts)?
- Can I add a surcharge to water, power and other utilities?
- What are my ADA responsibilities?
- Can I board a boat or access his storage locker if I suspect owner is storing dangerous items (chemicals, explosives, excessive paints/solvents)?
- The pros and cons of a small Port being its own treasurer as opposed to a county.
- If someone “rents” their boat to someone to stay on, such as an apartment, and we, the marina management did not give any permission to do this (against our policy), and then the person refuses to leave the boat claiming they now live there, can we trespass them off the property?
- Similarly, if a boat just shows up at our marina, and refused to leave or pay, can we trespass them off the property?
- How do we get them to leave?

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.

MARINA OPERATOR DUTIES AND RESPONSIBILITIES

- How liable am I as a harbormaster/marina operator for injuries or damages caused by flawed or deferred maintenance, or by conduct of inexperienced marina staff?
- Cranes! Can I safely let boat owners/operators use marina equipment or do I remain liable for damages or injuries. Will a signed waiver save the day?
- What level of security must I provide to avoid liability?

MARINA OPERATOR DUTIES AND RESPONSIBILITIES

- A marina is liable for its torts—*i.e.*, for negligence—in the same manner as any other party.
 - damage or injury caused by a lack of care by marina employees
 - material or equipment supplied by the marina is negligently provided or provided in a defective condition
- A marina must make a reasonably diligent effort to ensure that moorings are fit and safe for their intended use.
 - the customs and practices of other similarly situated marinas in the area
 - the risk of harm as a function of the standard of care
- Slip lease vs. bailment (e.g., dry stack storage).

MARINA OPERATOR DUTIES AND RESPONSIBILITIES

Marinas have been held liable for:

- Failing to provide a watchman
- Inadequate, or absence of, fences or locks
- Lack of adequate lighting (Lighting alone is not security)

Security level may be dictated by circumstances, past practice, past problems, cost and charges to customers.

Make clear to your customers what security you will *and will not* be providing.

WILL A SIGNED WAIVER SAVE THE DAY?

- It depends. Yes! No! Maybe?
- Enforceability of exculpatory clauses or damage limitation clauses varies state-by-state
- Private marina vs. Public entity (freedom of contract vs. public policy)
- General maritime law rule: if a signed contract clearly states agreement of the parties to waive liability for marina's negligence, the contract may be enforced.
- Butenforceability is always subject to challenge.

WAIVER CLAUSE CASES

- The *Ruby Tuesday* – owner launched unseaworthy boat from dry storage, blames Port for “making” owner launch the boat – liability disclaimer upheld.
- The *Island Girl* – both License Agreement and marina Rules and Regulations placed all risk of loss on boat owner, disclaimed liability for storm related damage – disclaimer upheld.
- The *Sarah Vida* - liveaboard tenant sexually assaulted in Marina parking lot. Marina gate was broken and open, lights broken. Lease agreement did not assume security duties, but Marina could still be liable for negligence. No negligence found.
- The *Fiasco* – liveaboard tenant failed to sign moorage agreement or provide evidence of insurance. Boat owner's repeated failure to sign shows intent not to agree to liability waiver clauses. Marina liable for boat damaged in storm breakaway.

WAIVER CLAUSE CASES

Lessons:

- Absent contrary state law, exculpatory clauses may be enforced.
- Moorage contract must be clear, and *must be signed*.
- Administer your contracts and records of boat owner insurance.
- Post your Rules and Regulations containing disclaimer clauses.
- 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”).
- *What about the Crane use?*

AN UNREGISTERED (OWNER UNKNOWN) BOAT SINKS AT MY DOCK....WHO IS RESPONSIBLE FOR DAMAGES AND REMOVAL?





www.alamy.com - DDFH88









- What information can I request (and not) from a boat owner when they apply to lease a slip?
 - Background check, credit check, insurance (required in WA)
- If a boat is sold can I simply void the lease or secure information from new owner before continuing lease?
- Is a bad reputation enough to deny lease?
- What boating activities can I prohibit (fish sales and other direct sales dealing with customers, onboard manufacturing and crafts)?

LIVEBOARDS AND SNEAK-ABOARDS

- If someone “rents” their boat to someone to stay on, such as an apartment, and we, the marina management did not give any permission to do this (against our policy), and then the person refuses to leave the boat claiming they now live there, can we trespass them off the property?
- When are you the marina and when are you the landlord?

LIVEBOARDS 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 liveboards does not alter the "recreational" character of boat harbors. The liveboard use is incidental to the recreational aspect.
- It is clear that harbors are not operated to provide cheap alternative housing. The limited liveboard 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.

LIVEBOARDS AND SNEAK-ABOARDS

But if Liveaboard is permitted:

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

People vs. McCarty

IF A BOAT JUST SHOWS UP AT OUR MARINA, AND REFUSES TO LEAVE OR PAY, CAN WE TRESPASS THEM OFF THE PROPERTY?
HOW DO WE GET THEM TO LEAVE?



AMERICANS WITH DISABILITIES ACT

What are my ADA responsibilities?

- "Safe harbor" for old marina elements against 1991 Standards.
- New construction, alterations, rebuilding and refurbishments must comply with 2010 ADA Standards
- <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/background/regulatory-assessment/chapter-5-boating-facilities>
- <https://marinaassociation.org/sites/default/files/2010%20ADA%20Standards%20for%20Accessible%20Design-boating%20facilities.pdf>
- Stephanie Berntsen - Schawbe 206-622-1711

ODDS AND ENDS

- Can I add a surcharge to water, power and other utilities?
 - RCW 53.08.370 – public port cannot charge more than the going rate in the city/locale.
 - But a facilities charge?
- The pros and cons of a small Port being its own treasurer as opposed to a county.
 - RCW 53.36.010 County Treasurer is the port treasurer (unless port authorizes its own treasurer).
 - RCW 53.36.050 County charges the port for treasurer services.
 - Lisa Lowe – Schwabe 360-694-7551
- What are my “policeman” responsibilities regarding illicit activities aboard tenant boats? (drug use/dealing, questionable guests, firearms,)

MAN BITES DOG



BOAT OWNER LIABILITY

- The *Burned Out Again* - Flammable material left on yacht ignites, destroying yacht and spreading to other Marina property and boats.
 - Boat owner files for limitation of liability to defend the *tort claims* from Marina and other boat owners/insurers
- The *Sea Wy's* - Headsail unfurled in windstorm causing boat breakaway, damaging pilings and finger piers.
 - Marina lease prohibited boat owner damaging facility.
 - Boat owner's failure to adequately secure headsail was negligence *and* breach of moorage agreement, resulting in *contractual damages* (including attorney's fees).

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?

BUTLER V CLARENDON INSURANCE CO.

- Boat owner sues for wrongful taking, conversion, loss of “principal place of abode”, general damages, emotional distress, blah, blah, blah, blah, blah.
- Marina tendered to its liability insurer, seeking defense and indemnity.
- Insurer denied coverage, refused to pay for lawsuit defense.
- The insurance covered *accidents* - insurer showed that none of the claims were based on an ‘accident’ triggering coverage.

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





THANK YOU!

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