

What To Do About A fREELoAdER

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Many voluntary lake associations collect dues for services such as aquatic weed treatments, 4th of July events, boat safety courses and similar matters, but typically not all property owners on the lake will join the lake association or pay dues. Along many private roads in Michigan, some of the property owners contribute moneys for the snowplowing, upkeep and maintenance of the private road, but others do not. In such cases, the paying land owners subsidize those who do not contribute, yet those who do not contribute funds still receive the benefits of those who do. Some might call the non-paying parties “freeloaders.” In such cases, what are the lake association members or land owners along a private road who do contribute funds to do?

Typically, property owners who refuse to join a lake association or to pay private road maintenance costs have a million excuses. For example, they claim that the lake association wastes money or does not spend money the way the non-contributing property owner desires. Or they claim that the snowplow driver for the private road has not done a good job of snow removal in the past. Or, the property owner is philosophically opposed to chemical treatments for aquatic weeds in the lake involved. Sometimes there is a perception by some property owners that they were somehow slighted by the lake association or the other lot owners along the private road in the past.

The refusal by some property owners to pay lake association dues, aquatic weed treatment costs or private road maintenance expenses is particularly perplexing given that their lake or other properties are often worth hundreds of thousands of dollars or more. Typically, annual lake association dues, aquatic weed treatment payments or annual private road maintenance and snowplowing costs per property are a pittance. Furthermore, funds utilized for such purposes usually enhance the value of all properties involved.

In general, in Michigan, absent deed restrictions or restrictive covenants, a lake property owner cannot be forced to join a lake association or pay dues for that purpose. And, in most cases, the greatest monetary expenditure for lake associations is aquatic weed treatment costs. If the majority of lake property owners wish to force non-participating property owners to pay their fair share of aquatic weed treatment costs for the lake, there are three general options available. However, not all of them are always practical.

First, Michigan has several ancient statutes whereby a group of property owners can force all land owners within a certain area to become members of a summer resort association or the equivalent. These include the Summer Resort and Assembly Associations Act of 1897 (Public Act No. 230 of 1897) MCLA 455.1 et seq., the Summer Resort and Assembly Associations Act of 1889 (Public Act No. 39 of 1889) MCLA 455.51 et seq., and the Suburban Homestead, Village Park, and Summer Resort Association Act (Public Act No. 69 of 1887) MCLA 455.101 et seq. However, the most commonly utilized statute is the Summer Resort Owners Act of 1929 (Public Act No. 130 of 1929), MCLA 455.201 et seq. A Michigan summer resort association (or the equivalent) under statute has broad powers and could, in most cases, force all members to pay aquatic weed treatment costs. Nevertheless, this option is rarely pursued due to the legal expenses incurred in setting up such an association, their unwieldy governing procedures and the fact that the Michigan courts could eventually hold such associations to be unconstitutional and void given that they are accorded city-like powers. Please see my other article in this issue of the magazine regarding a recent court decision involving a summer resort association.

A second option is for members of a lake association to pursue a special assessment district for the lake for aquatic

weed treatment purposes through the local township, city or village that has jurisdiction over the lake. Given that most lakes are located in townships, Public Act No. 188 of 1954 (MCL 41.721 et seq.) can be utilized. An aquatic weed treatment special assessment district can be set up pursuant to that statute, and in that case, if the entire lake is within the district, all property owners within the district must pay the assessments on their property tax bills. For more information about such special assessment districts, please see my article entitled, “Weed Whacker” in the Winter 2009 issue of the Michigan Riparian Magazine.

The third and final option is to establish a Michigan statutory lake improvement board pursuant to MCL 324.30901 et seq. All such lake improvement boards constitute a semi-independent local governmental agency and have the authority to establish special assessment districts.

For private roads where no recorded private road maintenance agreement exists, there are also at least two alternatives available for forcing everyone with property fronting on a private road to pay their fair share of the snowplowing, maintenance and upgrade costs of the road. First, a special assessment district can also be created by the local municipality for that purpose. Second, unlike voluntary lake associations, all property owners along a private road have a common law duty to contribute to the maintenance and snowplowing costs of that private road. Unfortunately, that common law duty can only be vindicated by a lawsuit. In such cases, one or more property owners along the private road who contribute to the snowplowing and maintenance costs would have to sue those other property owners along the private road who refuse to pay such costs.

In all of these situations, it would, of course, be easier if everyone involved would simply pay their own fair share. ●●●