



Who Owns the Beach?

The land on the ocean side of the mean high tide line is held by the State in trust for the benefit of all of the people. This is known as the Public Trust Doctrine. This concept dates back to the Roman Empire and its traditional purposes have been to protect navigation, commerce and fishing interests. In New Jersey the Public Trust Doctrine has also been interpreted to give the public the use of the dry beach areas above the high tide line for recreational uses. Therefore the New Jersey courts have in several cases restrained beachfront property owners from limiting the public's ability to use the dry upland portion of the beach even though it is privately owned.



The Public Trust Doctrine does not, however, give the public access to the beach over private property. Some beachfront communities offer few places where the public can access the beach. Beach access can also be limited by the lack of available public parking and rest rooms. In 2007 the New Jersey DEP issued regulations designed to mandate that oceanfront municipalities increase public access to their beaches. But the Borough of Avalon successfully challenged these regulations in court, particularly the requirement for providing beach access 24 hours per day. As a result new less restrictive regulations are being issued. Another way in which the State is encouraging oceanfront communities to increase public access is in the way it allocates funds for beach replenishment projects.

Enjoy your walks on the beach this summer regardless of whether they are above or below the mean high tide line.



By: William K. Stewart, Esquire

William K. Stewart is a co-founder and principal in the Real Estate, Business & Finance group. During his many years in practice, he has represented clients in an extraordinarily diverse array of businesses, in transactions as buyers, sellers, landlords, tenants, developers or investors. His personal experience as a businessman helps him provide practical insight to his clients' business problems. Mr. Stewart can be reached at 610.941.2555 or at wstewart@kaplaw.com.

As you stroll along the beach this summer, you will likely find yourself contemplating the beauty and majesty of the ocean. You may also find fascination in the array of human bodies and their activities. But if these sights do not sufficiently stimulate you, I suggest you consider the beach as a battleground for competing public and private property interests. Such thoughts may not stir the senses but they will stir up some interesting legal questions.

In New Jersey and most other states bordering the Atlantic Ocean, private ownership of beachfront property extends to the mean high tide line. But unlike other boundary lines which are fixed, high tide lines are constantly changing. If the high tide line changes gradually, the property line similarly shifts. Beach erosion would therefore cause a loss of property whereas accretion, which is the opposite of erosion, results in a gradual beach expansion and an increase in the beachfront property owner's land. On the other hand, a sudden change in the tide line due, for example, to a storm, is known as avulsion. The beachfront property line remains unaffected by such events. The New Jersey Supreme Court recently applied these principles to an eminent domain case involving oceanfront land that was the beneficiary of a replenishment project which greatly enlarged the adjoining beach. The Court held that the property's boundary remained where it had been prior to the expansion of the beach.



Attorney News

Mohammad A. Ghiasuddin, principal in the Construction Law and Commercial Litigation groups, was recently chosen by The Legal Intelligencer as a “Diverse Attorney of the Year,” an honor bestowed upon select attorneys in Pennsylvania who have achieved great success and have made positive contributions to the Pennsylvania legal community throughout the past year. Mr. Ghiasuddin is Chair of the Montgomery County Bar Association’s American Citizenship Committee. He is an active member of the South Asian Bar Association and the Council for Advancement of Muslim Professionals. Mr. Ghiasuddin’s legal practice focuses on commercial and construction litigation, including contract disputes, bond claims, products liability matters and premises liability actions. His practice also includes a focus on immigration issues.

Jeffrey L. Silberman, principal in the Real Estate, Business & Finance group, was recently a panel member at TCN Worldwide Real Estate network’s meeting in Atlantic City, NJ to discuss the current state of retail development. TCN Worldwide Real Estate offers comprehensive commercial real estate transaction, management and consulting services. In his practice, Mr. Silberman concentrates in real estate transactions, particularly commercial and retail leasing, acquisitions and dispositions of real property and financing.

William K. Stewart, co-founder and principal of Kaplin Stewart was inducted on May 4, 2011 as the President of the Board of Directors of the Pennsylvania Prison Society. Mr. Stewart has been involved with the Pennsylvania Prison Society for the past four years, in addition to supporting numerous charitable organizations. Founded in 1787, the Pennsylvania Prison Society is a social justice organization headquartered in Philadelphia. The organization promotes humane and restorative corrections by serving thousands of prisoners, ex-prisoners and their family members each year through direct services and programs, prison visitation, and public education. Mr. Stewart is the Chair of Kaplin Stewart’s Real Estate Transactions Department. He is a member of the Pennsylvania State Bar Association, and the Franchising, Corporate Real Estate and Banking committees of the Montgomery County Bar Association.

Ronald B. Glazer, principal in the Land Use, Zoning & Development and Real Estate, Business & Finance groups, has been appointed to the American Arbitration Association roster of neutrals for arbitrations. Mr. Glazer has years of experience in all phases of real estate representing regional real estate investment and development companies. Mr. Glazer has again this year been ranked in Chambers and Partners, USA in the field of Real Estate.

Michael P. Coughlin, co-founder and principal in the Commercial Litigation group, taught a Pennsylvania Bar Institute seminar on April 5, 2011 entitled “Litigating the Failed Real Estate Deal.” Mr. Coughlin’s litigation practice concentrates on representing title agents, title underwriters and their insureds in title insurance claims litigation. He also represents employers, businesses, lending institutions and real estate developers in a wide range of commercial disputes, with substantial experience in mediation and alternative dispute resolution mechanisms, including arbitration.

Neil A. Stein, co-founder and principal in the Land Use, Zoning & Development group, was elected to serve as one of the two trustees of the Political Action Committee of the National Association of Home Builders. In addition to being active in the National Association of Home Builders and their local chapters in Bucks/Montgomery and Chester/Delaware, Mr. Stein is a member of the Pennsylvania Builders Association and has served on various task forces focused upon issues of concern in the homebuilding industry. Mr. Stein has more than 25 years of experience representing real estate owners, developers, lenders and builders in complex land use, zoning, environmental and corporate matters, as well as design professionals in contracting and business structuring.



Meet our Real Estate, Business & Finance Professionals

This month, Kaplin Stewart shines the spotlight on Marc A. Snyder, an associate in the Real Estate, Business and Finance Transactions group. Marc grew up in Abington, Pennsylvania and is the younger brother of two sisters. As the youngest of three children, his parents were a little more lenient with him than they were with his siblings. This is either because they were worn in from his older sisters or Marc wore them out! As a little boy, you could describe him as curious, ambitious and inquisitive; characteristics that have stuck with him through adulthood. Growing up, he asked question after question, always yearning to learn more about the world. His parents say that Marc would often ask, "Is it a rule or a law?" This is how Marc decided if what his parents told him to do was really something he had to do or if it was something that he could negotiate. More often than not, there was room for negotiation. His parents quickly learned that Marc was destined to be a lawyer.

Marc followed his oldest sister to college at the University of Wisconsin, majoring in

Chemistry and Political Science. He then went on to law school and business school at Rutgers University where he earned both his J.D. and M.B.A. While in graduate school,



MARC A. SNYDER

Marc worked at a title company during the day and attended classes at night. It was there that Marc developed a passion for real estate. He believes that bricks and mortar help to define the fabric of a city. After graduating, Marc continued to fill his appetite for the real estate industry, joining Kaplin Stewart's Real Estate group. Today, Marc has expanded his practice from representing not only

also closely held businesses and startup companies in their day-to-day business operations.

Marc is an avid fan of all four Philadelphia professional sports teams. He also enjoys playing basketball and golf. Marc currently resides in Lower Gwynedd, Pennsylvania with his wife Allison and their new pride and joy, Simone. If Simone is anything like her father was as a child, Marc may have finally met his match.

Do You Know...

that the new law in Pennsylvania requiring all new single or two-family homes to have fire sprinkler systems installed when constructed is already repealed? Pennsylvania instituted the requirement when it passed the Uniform Construction Code and was the first state in the country to adopt such a law for residential construction. The prediction by some that the new law would add between \$5,000



and \$7,500 to the cost of a new home and add cumbersome requirements to the permitting process resulted in the Pennsylvania legislature sending a new law to Governor Corbett, repealing the statute less than five months after the law went into effect. Governor Corbett signed the repeal into law in April.

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Legal Perspectives

Executing a Proper Affidavit or Verification

The issue of “robo-signing” affidavits and other legal documents has been a hot-button legal issue in the news. In a number of cases, particularly in debt collection or mortgage foreclosure actions, so-called “robo-signers” have executed affidavits without reviewing any documents or having any connection to the matter, and as a result, certain companies are in hot water. A recent “60 Minutes” story profiled one individual who, with absolutely no experience in banking or in legal documents, was paid to simply churn out at least 350 signatures an hour and approximately 4,000 signatures a day.

While the prior examples are extreme cases, a basic understanding of the legal effects and requirements of affidavits and verifications can go a long way in complying with the law.

The Pennsylvania Rules of Civil Procedure define an affidavit in two ways. First, an affidavit may be a signed statement in



Parker V. Sherry

writing of facts by a person that “is sworn to or affirmed” before an officer authorized by law to administer oaths, such as a notary. Second, an affidavit may be an unsworn statement in writing of facts by a person that contains language that the statement is being made subject to the penalties of a Pennsylvania statute, 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

In many instances, a verification may be used in lieu of an affidavit provided that the verification is sworn to or affirmed before a notary or made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Particularly in the litigation context, a filing should be verified that contains allegations of facts that do not appear of record. In those cases, the verification can be made by a person who has sufficient knowledge, information and belief on the matter. We encourage you to contact us when you need to have an affidavit or verification executed properly.

By: Parker V. Sherry

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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. **Your comments or suggestions are welcome...** Phone: 610.260.6000 • Fax: 610.260.1240 • www.kaplaw.com

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