

Is There a Road Through Your Cottage Property?

Around many lakes in cottage country, there are 66 ft. shore road allowances reserved by the Crown and which are laid out along the shores of navigable lakes and rivers in Ontario. At law, they are considered public highways and today are usually owned by the local municipality.

In most cases, these shore road allowances have never been opened as public highways and are often occupied and enjoyed by the owner of the cottage lots that abut these lands. For all practical purposes, they appear to be part of the cottage owners land holdings. In fact, it is not unusual to find property owners have constructed all or part of their cottages boathouses on these shore road allowances.

When purchasing a cottage property that is subject to such a shore road allowance, a purchaser should be aware of the following:

1. You will not get title to the lands that actually abut or front on the waters edge. The 66' strip of land lying between your lot and the waters edge will remain owned by the municipality or the Crown. When considering making a purchase subject to a 66' road allowance, you should consider the effect that it will have on the ability of you to sell the property in the future.
1. Technically, since the shore road allowance is a public roadway, it can be used by the public for the purpose of traveling through and back along the shore line.
1. Even if the shore road allowance has never actually been open for public use, the municipality could open the road allowance in the future.
1. Any buildings or structures that have been located on the shore road allowance are encroaching on a public road and one should seek a licence or letter of tolerance from the Municipality permitting the encroachment. The ultimate solution to shore road allowance problems is to make an application to the local Municipality to close and transfer the shore road allowance to you as the abutting property owner. There may be costs involved such as having a survey done of the land and Municipalities may charge you a fee to cover their administrative and other costs.

There is a great misconception that if you possess a shore road allowance that you can ultimately dispossess the municipality or the Crown of it's ownership. Adverse possession is not available against any road allowance or public highway. The only exception to this rule would seldom apply in that it requires the adverse possession to have commenced in the last century.

While many people purchase cottages subject to shore road allowances, and have never been negatively affected by their existence, one should be aware of the legal realities of such a road allowance and the cost of obtaining title to it in the future.

The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.