

2025 Title Tenets Webinar Series

A River Runs Through It: Navigating Riparian Rights and Water

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Riparian and Littoral Rights

- “Riparian” refers to property bordering a flowing watercourse such as a river, creek or stream.
- “Littoral” refers to property bordering a stationary body of water such as a lake, pond or the ocean.
- In modern usage the distinction between “Riparian” and “Littoral” has mostly disappeared. “Riparian” is now used interchangeably to refer to both.

Riparian Rights

Riparian Rights only apply to the property which directly abuts the watercourse.

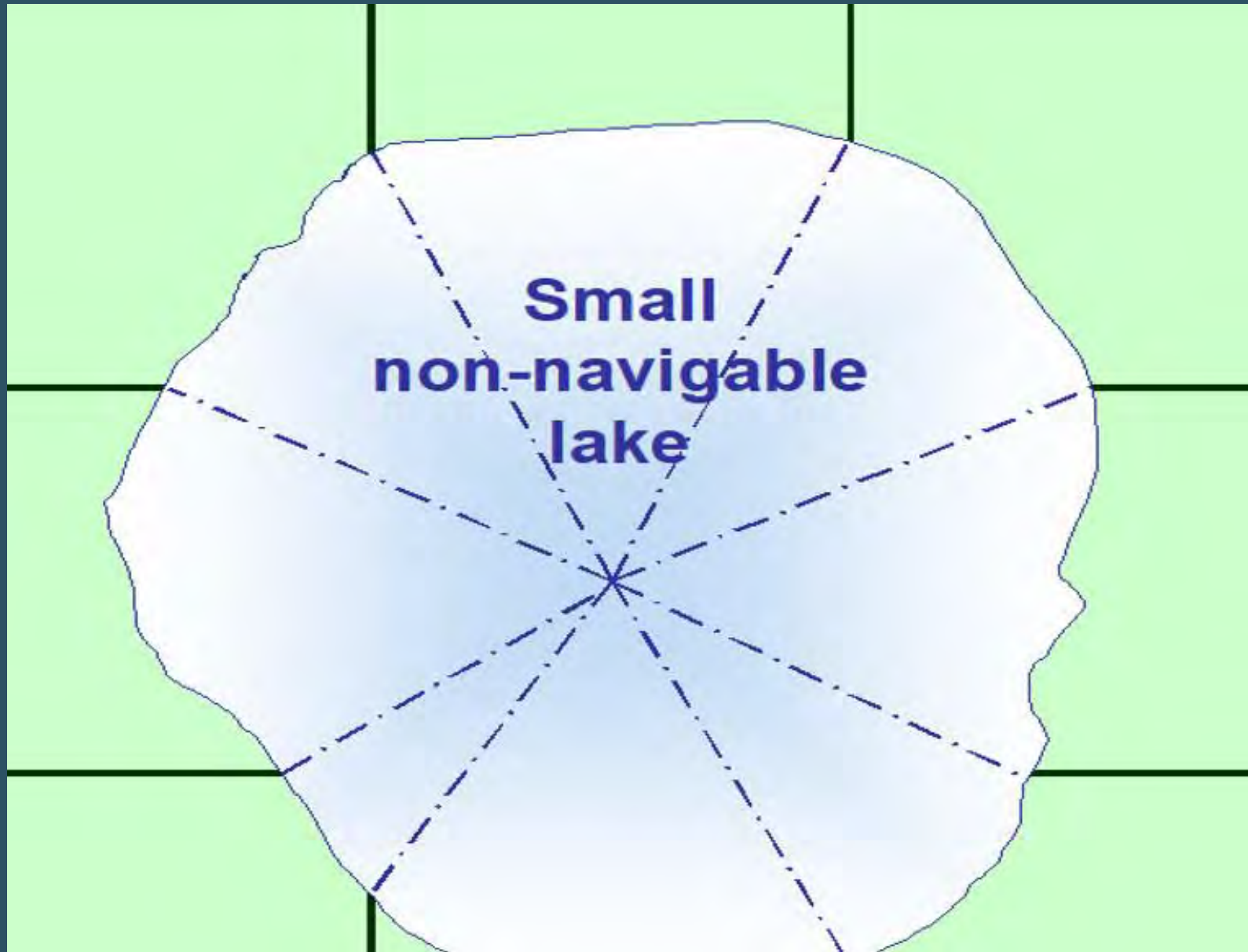
Rights include access to and reasonable enjoyment of the water. Also includes the right to exclude adjoining owners from accessing the waters.

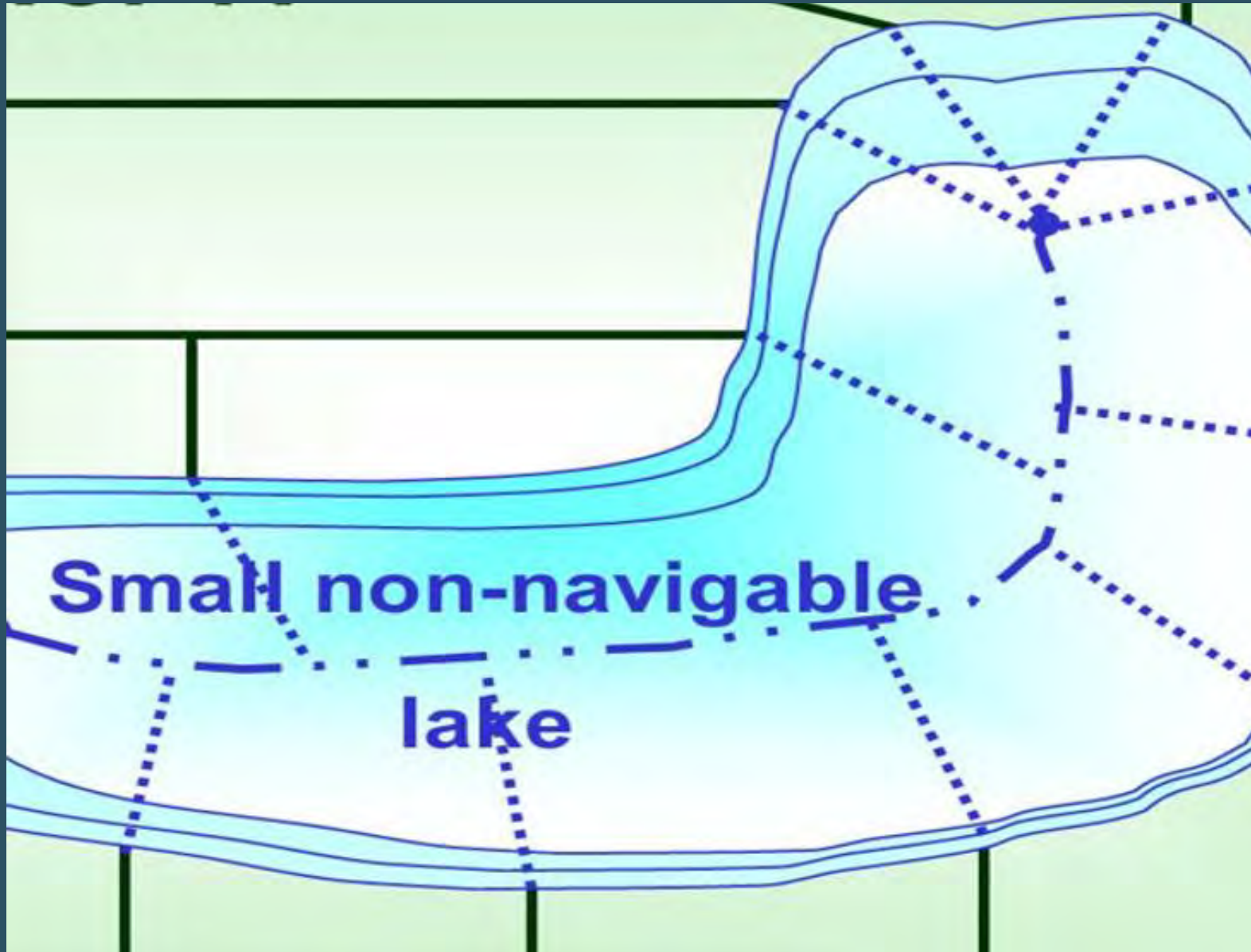
Boundary lines may call to the centerline, or thread of the water and includes ownership of the bed.



Littoral Rights

- Littoral Owners may use the shore directly abutting their property to access the water.
- All Littoral Owners have a common right to reasonable use of the surface. Includes the right to build a dock or pier that does not interfere with the reasonable use of the other owners.
- Boundary lines include the submerged land under the water as determined by “lateral lines”.





Navigable Waters

- Exact definitions vary by jurisdiction, but the general rule is that waters are considered “Navigable” if they are used or are capable of being used in commerce.
- Waters that are navigable in fact are considered navigable in law.
- Assumption is waters are navigable unless a Court determines otherwise.

Navigable Waters

- Public Trust Doctrine holds that certain natural resources, including navigable waters, are held in trust by the government for the benefit of the public.
- Title to the bed of navigable waters is owned by the State or the Federal Government.
- Boundary lines for Riparian or Littoral Owners normally end at the ordinary high-water mark.

Navigable Waters

- Government ownership of the bed means that the public has a right of use of the navigable waters.
- Government may also issue regulations related to development, commerce and navigation, including limitations on construction of docks or piers.
- Access to navigable waters surrounded by privately owned land often leads to disputes.

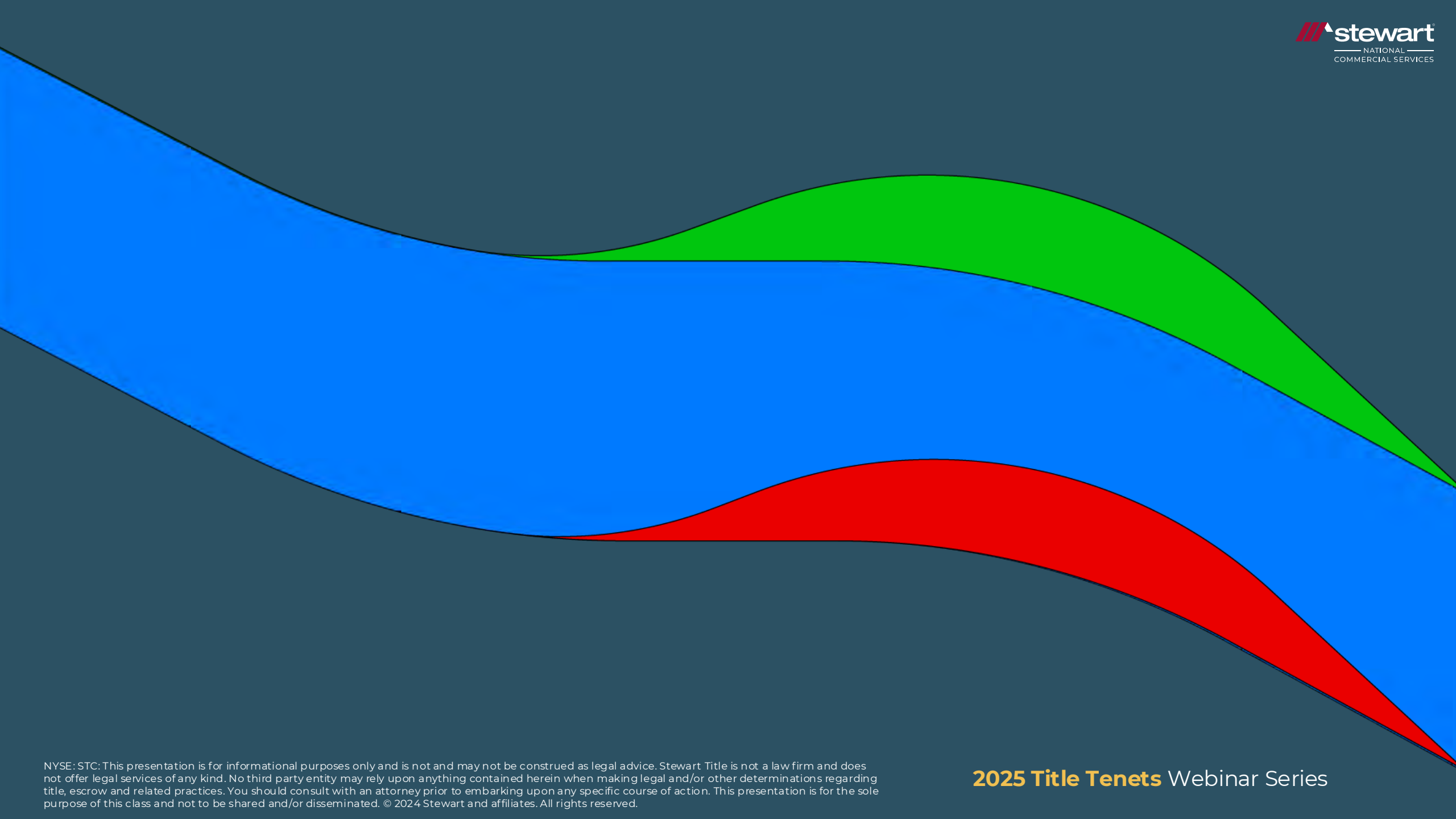
Changes in Boundary Lines

- Accretion: Gradual build-up of land through the deposit of soil or silt by natural water action.
- Reliction: Gradual recession of water exposing new land.
- Erosion: Gradual wearing away of dry land by water action.
- Avulsion: Sudden change in the course of water caused by flooding or an earthquake.



Changes in Boundary Lines

- Land created through accretion or reliction of a non-navigable waterway becomes part of the adjoining land.
- Land created through accretion or reliction of a navigable waterway is owned by the State or the Federal Government.
- Land lost to erosion is permanently lost.
- Avulsion does not change pre-existing boundary lines.



Doctrines Governing Water Rights

Riparian Doctrine:

- Landowners abutting a watercourse may make reasonable use of the water, provided that the use does not unreasonably interfere with other riparian owners
- Diversions are allowed, but cannot harm adjacent or downstream owners
- Riparian Rights are inherent to the land and cannot be sold separately

Doctrines Governing Water Rights

Prior Appropriation Doctrine:

- Allocates water rights based on priority. Priority given based on the first to divert water for beneficial use.
- Requires continuous beneficial use to maintain the right. Non-use can lead to forfeiture.
- Recognized beneficial uses now include, commercial, domestic, dust suppression, fire protection, fish and wildlife culture, flood control, industrial, irrigation, municipal, power generation, recreation snowmaking, stock watering.



Doctrines Governing Water Rights

Prior appropriation doctrine:

- Rights may also include storage rights and conveyance rights.
- First-in-time rights are guaranteed a specific amount of water in times of shortage.
- Rights are independent of land ownership and can be sold, transferred or leased.



Discussing Water Rights, A Western Pastime

Groundwater Rights

Surface Water:

- Includes rivers, creeks, streams, lakes, ponds, etc.

Groundwater:

- Includes water located below the surface, often contained in aquifers
- Legal treatments depends on the location and governing doctrines

Groundwater Rights

- Tributary Groundwater
- Groundwater with a hydrologic connection to the surface water such that it is regulated along with the surface water.
- Requests for well permits are usually regulated at the State level (e.g., State Engineer's Office) and must determine that unappropriated water is available.
- States may establish Groundwater Basins to regulate use.

Groundwater Rights

- Non-Tributary Groundwater
- Groundwater not subject to regulation under the Prior Appropriate Doctrine.
- Right to use is incident to ownership of the overlying land.
- Right to use may be regulated by state statute (e.g., limits on yearly withdrawals to preserve aquifer life).

Title Insurance Considerations

From 2021 Owner's Policy Form:

“Land”: The land described in Item 4 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term “Land” does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.



Title Insurance Considerations

- Title Companies generally do not insure ownership of water rights.
- Standard Water Rights Exception: “[Riparian] Water rights, claims, or title to water [whether or not shown by the Public Records].
- Questions about status or ownership of water rights should be referred to an experienced Water Law Attorney.

Title Insurance Considerations

- Title Companies will take Exception to rights of other Riparian or Littoral Owners and to rights of the Public on navigable waters.
- Affirmative insurance for ownership of submerged, non-navigable littoral lands requires a final, non-appealable Court Order establishing lateral lines.
- Generally, also take Exception to any shifts or movements in boundary lines because of accretion, reliction, erosion or avulsion.

Title Insurance Considerations

The ALTA 41-Series Endorsements provide affirmative coverage against enforced removal or alteration by reason of the future exercise of any water right existing at Date of Policy.

- ALTA 41: Buildings
- ALTA 41.1: Improvements (including paved areas)
- ALTA 41.2: Described Improvements
- ALTA 41.3: Land Under Development (Future Improvements)

Thank you. Questions?



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