

# ASK THE EXPERTS

## THE LAW

FEATURING MARITIME  
LEGAL EXPERT

**WILLIAM  
DEVVOE**



**“No man is above the law and no man is below it; nor do we ask any man’s permission when we ask him to obey it.”**

—Theodore Roosevelt



**WILLIAM DEVVOE**

*William DeVoe, known to most as Bill, was a partner at a premiere maritime law firm in Seattle for about 25 years. He wanted to try something different, and struck out on his own to start the successful Law Office of William DeVoe about a year ago. DeVoe earned his J.D. at Gonzaga University School of Law and was the 1987 Editor-in-Chief of the Gonzaga Law Review. He is admitted to practice in the State and Federal Courts of Alaska, Washington, and Oregon, as well as Idaho State Courts and the United States Court of Appeal for the Ninth Circuit.*

It’s 2017, and unlike 1717 when privateers largely ran the show on the high seas, the rule of law is as ubiquitous on the water as it is on land. Despite the hemming and hawing of nostalgic pirate costume wearers, the rule of clearly interpreted democratic law makes recreational boating as we know it possible. It is the law that protects marinas and tenants when a slip agreement is signed so both know their rights and obligations. The law gives citizens and private parties the power to sue large polluting entities, a vital equalizing force in our society. Lives are saved everyday by rules regarding driving under the influence and required safety equipment aboard a vessel.

But no system of law is flawless and the rules change all the time.

The Pacific Northwest boating scene has seen some major shifts in the law with regards to what roles marinas play in law enforcement, how state-legal but federally banned marijuana is treated on the water, an incoming copper bottom paint ban, and more. The important nuances of these changes can be a lot for the average guy or gal to follow who just wants to get on the water. For this edition of Ask the Experts, we turn to legal maritime lawyer William DeVoe of The Law Office of William DeVoe to wrap our heads around some of the rules

on the water. As it turns out, the marina, the beating heart of any boating community, is a primary component of this maritime lawyer’s focus.

**Q: I bet you get involved in some pretty interesting scenarios. Is every day a little different?**

It can be. I get calls on what you’d expect, then out of the blue, “We keep getting a guy driving through the marina with no clothes on, what do we do?”

**Q: Ha! What can they do?**

Ask him not to do that, and if he continues, tell him he will need to leave the marina.

**Q: What would you say is the most common issue that comes across your desk?**

It might not be the most common, but the lack of spare moorage in the Seattle area exacerbates a lot of marina-boat owner conflicts. Around here, if a boat owner in a marina is having problems with the marina, the boat owner often can’t just pick up and leave, or they don’t want to, because he or she might not find suitable moorage anywhere close. So, it really hurts the boat owner and the marina, because normally the strategy for a marina if somebody isn’t paying or if there is a troublemaker is to ask the boat owner to leave. It’s hard to get somebody to leave if they don’t see somewhere else to land. It may not be 100% unique to the Pacific Northwest, but it is definitely a Seattle-area problem.

It’s really tough if a boat is in bad shape. Based on the its location Elliott Bay Marina has boats dropped on it quite often. The same is likely true of Shilshole Bay Marina.

**Q: Are there legal precedents for these “dropped boats”?**

The statute (private marina moorage statute RCW 88.26.020 and for public marinas RCW 53.08.320) is good, because most boat owners a marina wants to get rid of aren’t paying moorage. It is about a 90-day process, and if the boat is worth something, it works well for the marina because it ends up selling the boat. The marina either gets the moorage paid or they can sell the boat in a private sale. If it is a derelict or abandoned boat, it can be challenging because the marina might end up with a boat it doesn’t really want.

There’s one statute for private moorage operators, like Elliott Bay, and a different statute for public moorage operators, like Shilshole. If you’re connected with a port district, you use a different statute. They pretty much are the same though.

**Q: I imagine there are a couple of checkpoints that make a boat eligible for this. Is your boat eligible if you miss one payment, for example?**

Once a boat owner is behind on payment, the marina must send the boat owner certain letters with specific content, and the marina must post the boat with information similar to the content of the letters. That starts the 90-day period. The statute also allows marinas to remove boats from the water and the boat owner may be required to pay the cost of that. Once the 90 days runs, the marina is required to publish a notice of sale of the boat in a newspaper within so many days and post a notice of sale on the boat. Then the marina can have a dockside auction.

**Q: These auctions might be a good way to pick up a boat if you’re on the market?**

If the boat is not in good shape, somebody, including nonprofits,

who wants a project can often times get a real deal. Marinas want to get rid of these boats and sometimes there is not an easy answer. My recommendation to marinas is to try all legal and practical approaches to get rid of a problem boat.

**Q: Let's say there is a scenario where a boat owner is overdue with his or her slip fee. What are some things a boater can do to cause the least amount of headache?**

Not only do I do commercial collection in the maritime setting, I also represent clients in the collection of general commercial debts. One of the things that a boat owner can do that oftentimes helps is to communicate with the marina and let them know if they are having difficult financial times or other problems. Most marinas I work for say they are in the hospitality business even more so than the marina business. They work quite hard to provide a really pleasant experience for boat owners and will go the extra mile if the boat owner is communicating and taking reasonable steps to pay the back moorage.

**Q: Has the state-wide legalization of recreational marijuana emerged as an issue? Federal agencies still treat it as a Schedule 1 Drug, while local law enforcement doesn't.**

At a previous Northwest Marine Trade Association Marina Conference, I spoke about marijuana in the marina setting. It can be confusing to be sure, but from a legal point of view it is more confusing than in a practical sense. People are handling it pretty well. One thing about marijuana use in Washington is you can't use it anywhere you want to. In a marina setting, it may be allowed on a boat, but if you're standing on a dock, the use of marijuana may not be allowed under the moorage contract or the marina rules. Usually Boat owners have moorage based upon a contractual agreement and their rights are defined in that agreement addressing what they can and cannot do. I don't know of any marinas that explicitly address marijuana use in the marina, but it would come under the broad heading of "Are you adversely affecting other people in the marina?"

If you are on the water the Coast Guard has extremely broad powers to search your boat, and possession and use of marijuana is a federal violation. Additionally, the likely new Attorney General Jeff Sessions sounds as though he

does not like pot, so it does not seem that the federal position is going to change anytime soon.

I would be careful about carrying pot on board, especially with the possibility that the Coast Guard might search your boat.

**Q: If somebody wants to search your boat, is it like a car?**

No. The Coast Guard has extremely broad authority to board and search your boat. They have the right to search a boater for safety reasons and other reasons.

**Q: How about environmental cases. Do you see a lot of pollution or discharge conflicts?**

I really don't see a lot of discharge incidents in Puget Sound. I don't think it happens all that much. There are a lot of certified Green Marinas, and that's one of the great things about the Northwest. I'm not sure how many other states even have a clean marina program.

**Q: Is there anything about the Pacific Northwest that's frustrating or weird from the law perspective? Something you would change with a magic wand?**

A couple of years ago, the legislature passed some requirements for what a marina is supposed to do when it got a new customer. The law requires a marina to get certain information from boat owners, and some of it is information that anybody would get like name and contact info. But one of the things is registration, because before the Department of Revenue or Licensing would come around marinas and say "let us walk your docks." Marinas either didn't want them, or said give us a list of who's got boats in here and we'll take care of it. Marinas didn't want to turn over information about their customers.

So this was passed that says not only does the marina have to collect basic contact information, but the marinas have to either get the registration from the owner or a statement from the owner that says he/she will get registered, or the marina has to get an affidavit from the owner saying the boat is exempt from registration. If you have a boat that is not registered in the state, the marina owner has to give the boat owner information about registration and tax requirements of Washington. And then the marina either has to turn over information to the department of Revenue and/or Licensing, and the state can ask for more information or the marina has to allow them to walk the docks and they can pick boats for more information.

## THE LAW OFFICE OF WILLIAM DEVOE

*The Law Office of William DeVoe is located in downtown Seattle and has a focus on maritime and admiralty law including commercial collections, collection of freight, maritime debtor-creditor issues, transportation law, and vessel foreclosures. The firm is not exclusively maritime-focused; trucking and viticulture law are also areas the firm specializes in.*

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This change is a mechanism to help the state get taxes and boats registered. In the old days, I'd get calls or emails from marinas who received correspondence from the state asking for boater information. The marina would ask me what they could do in this situation.

One of the reasons why I wanted to raise this is so boat owners can know marinas aren't gathering all this information because it's their operating procedure. The information gathering is required of marinas by the state, and boat owners should know what the obligations are for the marinas in turning over information about boat owners.

If you look at *Northwest Yachting*, everybody that's in there deals with marinas on one occasion or another. Marinas are a central

piece of boating life. There are some very professional marinas in the state of Washington, and there are people that work very hard to make Washington boating very spectacular.

**Q: Is there a good resource for maritime law information?**

Googling a topic is a good way to get started. Calling me or another maritime lawyer for a conversation can be helpful. The fall of 2016 Pollution Prevention for Washington State Marinas booklet is an exceptional resource. It has information on preventing pollution in all aspects of marina operations, including all the federal and state contact numbers and many relevant statutes and regulations that govern pollution in specifically the maritime setting generally. **NWY**

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