

## New Customary Use Law FAQ (House Bill 631)

Q: What is customary use?

A: "Customary use" is a common law term referring to public access to private beachfront property. Generally speaking, beachfront property owners in Florida own the "dry sand" area leading down to the mean high tide line. The land seaward of that, commonly known as the "wet sand" area, is held by the state in trust for the public.

The process known as customary use allows a local government to adopt an ordinance that allows public access to the private dry sand area of beachfront property where the use has been *ancient, reasonable, without interruption and free from dispute*.<sup>1</sup>

Q: Are customary use ordinances new?

A: No. The public trust doctrine is embodied in Art. 10, s. 11 of the state's Constitution. Further, the customary use process has existed in Florida for many decades.

Q: If customary use is not new, then what does this new law (HB 631) that was passed actually do?

A: The previous process for adopting a customary use ordinance was not structured in a way that encouraged active dialogue about the issue between property owners and the local government. The intent of the new law is to allow customary use practices to continue, but in a way that is more transparent, efficient and economical, while requiring active dialogue between local governments and private property owners on the front end to avoid costly legal challenges.

Q: What was the old customary use process and how does it work now?

A: Simply put, prior to this law a local government would evaluate its public beach needs and previous public use, draft a customary use ordinance to address the issues they found, and then vote to adopt that ordinance. Property owners affected by the new ordinance could then pursue a legal challenge if they wished to.

Under the new law, the local government must first hold a public hearing to make the public aware of the new customary use ordinance they want to adopt. They also need to notify every affected property owner of the proposed ordinance in writing, as well as identify the use they are seeking and show evidence of the need of that use. They will then bring the proposed ordinance forward for a judicial determination and must notify affected property owners that they have 45 days from receipt of the notice to intervene in the legal proceedings.

<sup>1</sup> 1974, in the case of *City of Daytona Beach v. Tona-Rama*, 294 So.2d 73 (Fla. 1974)

Q: Does the new law allow property owners to put up fences and other barriers to block beach access?

A: The new law is silent on the issue of fences or other barriers. Q: Is public access to Florida's beaches cut off under this new law?

A: No. The law only changes the process by which a local government would follow to adopt a customary use ordinance.

Q: I live in a county that has an engineered beach/erosion control line. Does this issue affect me?

A: There are thirty-five coastal counties in Florida. A total of twenty-six coastal counties have an engineered beach/erosion control line. If you live in one of these counties, then customary use ordinances are highly unlikely for your area.

There are nine counties that do not have an engineered beach/erosion control line. These counties are: Walton, Jefferson, Taylor, Dixie, Citrus, Hernando, Pasco, Volusia, and Flagler.