

Wildwood Sailing Club

ABANDONED BOAT POLICY

Abandoned Boats: People who do not join the club the next year and have left their boats at the club will be considered to have abandoned their boats. A letter will be sent to the former member asking them to remove the abandoned boat. Boats must be removed by May 1st or the club will charge a fee for boat storage. The storage fee will be the same amount as the membership fee. After an appropriate amount of time has passed, these abandoned boats, if not removed by the owner, will be offered for sale to the members of the club. A former member's property must be removed from the club within 30 days of termination of membership. Any items not removed shall be deemed abandoned and ownership forfeited to Wildwood Sailing Club for disposal as the sailing club sees fit.

Abandoned Boat Removal

(a) Introduction: The Wildwood Sailing Club ("the Sailing Club") has members who have dinghy, keel sailing boats, canoes, kayaks, wind surfers and row boats. On occasion boats are abandoned, that is the ownership of these boats cannot be established. This policy details the Sailing Club's position with respect to abandoned boats and the course of action to be taken.

(b) Definitions: "Abandonment" occurs when there is "a giving up, a total desertion, and absolute relinquishment" of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property" (R.A. Brown, *The Law of Personal Property*, 2nd ed. Chicago, 1955, quoted in Bruce Ziff, *A Property Law Reader*, at page 305).

(c) Background: The Supreme Court of Canada, in *Senez v. Montreal Real Estate Board*, held that the obligations created by Sailing Club by-laws and regulations are contractual in nature.

All members, including those who own boats, are required to enter into a membership agreement when they join the Sailing Club. This agreement includes an agreement to follow the Sailing Club rules and regulations. The Sailing Club's Membership Agreement includes that the member will obey all of the Sailing Club Rules and Regulations. Sailing Club rules and regulations state that "Items not suitably identified will be collected and may be disposed of by the Sailing Club without notice or redress."

Operationally boats are identified by means of a name on the boat and ownership information with respect to the boat on file with the Club.

The Ontario Court of Appeal, in *Foran v. Kottmeier*, held that the administrators of an association or club were provided with a wide discretion so long that it was exercised in good faith.

A court will consider the boats to be abandoned if the Club can show that the people who owned the boats intended to relinquish ownership of them. The following factors can be considered in determining an intention to abandon:

- (a) Passage of time;

- (b) Nature of the transaction;
- (c) The owner's conduct.

(d) Policy: On an annual basis (at launch time or at other times where appropriate) all boats will be checked by the **Harbour Master** to establish their ownership. If a boat, located on Sailing Club property (property leased by Wildwood Sailing Club), cannot be properly identified the Executive will make every effort to identify the owner.

If ownership cannot be established after 12 months the boat will be determined to be "abandoned" and the Harbour Master will make recommendations to the Executive on the options for dealing with the boat. Once a boat is deemed abandoned then the original owners will not have any claim to them and the Sailing Club will be considered the owners. Boats deemed abandoned may be re-located to a storage area as needed.

Each spring a list of 'abandoned' boats will be posted for members to view, requesting that the owners identify themselves to the Sailing Club administration. Subject to the recommendations of the Harbour Master the Executive may take the following action with boats on the 'Abandoned Boat' list:

- (1) Lend the boats out to members.
- (2) Auction off the boat
- (3) Dispose of the boat if it is not seaworthy

If member ownership can be established within 12 months the boat will be removed from the 'abandoned boat' list provided that the original owner pays all outstanding fees and any costs incurred by the Club related to the boat in question.

(e) Timelines for an 'abandoned' boat:

- (1) Year 1 in spring
 - (a) Attempt made to establish ownership
- (2) Year 2 in spring
 - (a) Boat ownership is not established despite attempts to locate owner,
 - (b) Boat is deemed 'abandoned' and ownership is assumed by Club
 - (c) Boat may be relocated to a storage area
- (3) Year 3 in spring
 - (a) Abandoned boat list posted
 - (b) Boat may be lent out to members, auctioned off or disposed of if it is not seaworthy