



Neighbor Relations

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Background

Probably as soon as humans shifted from nomadic to agricultural, neighbors have had disputes. Through the centuries, these conflicts have been resolved numerous ways. In early history the resolution was sometimes amicable and other times it was literally a fight to the death. Modern conflict resolution of neighbor disputes is generally not so dangerous as in ancient times. However, the concept that one's home is one's castle is an idea ingrained deeply enough to create strong and sometimes seemingly uncompromising positions when neighbors face off.

Legal disputes in the area of neighbor relations can be unreasonably costly as disputes are typically about rights rather than monetary damages. Attorneys fees can run higher than any potential damage award by a court, and this fact can lead to both parties coming away dissatisfied and financially and emotionally drained. Thus, [MEDIATION](#) is often recommended as a means to resolve these types of disputes.

Neighbor Conflicts

Good neighbors communicate, resolving problems to their mutual benefit. However, conflicts can develop over a number of common issues.

Boundary Disputes

Surveys done at the time of any property purchase, should reflect the boundary lines. Prior to erecting a fence on a boundary line, an updated survey could be ordered which reflects the accurate boundary lines. This may be impossible, due to perhaps the age of the property or the wording of the [DEED](#). (Some older deeds can contain legal descriptions such as "52 feet from the bend in the stream" on a piece of land, which has only a dry riverbed where a stream once existed.) In such a situation, the owner may file a quiet title lawsuit and request the judge determine the boundary lines of the property. This procedure is generally more expensive than a survey due to the legal filing fees. An acceptable alternative is for adjacent property owners to agree on a physical object, such as a fence, which could serve as the boundary line between the properties. Each owner would then sign a quitclaim deed to the other, granting the neighbor ownership to any land on the other side of the line both owners had agreed upon.

If the piece of property in dispute has been used by someone other than the owner for a number of years, the doctrine of adverse possession may apply. State laws vary with respect to time requirements, however, typically, the possession by the non-owner must be open, notorious, and under a claim of right. In some states,

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the non-owner must also pay the property taxes on the occupied land. A permissive use of property eliminates the ability to claim adverse possession.

Fences

Good neighbors should agree to split the cost of the repair of fences or common boundary walls. Local fence ordinances usually regulate height and location and sometimes the material used and appearance. Residents of subdivisions are often subject to even stricter Homeowners' Association restrictions. In residential areas, local rules typically restrict backyard fences to a height of six feet and front yards to a height of four feet.

Exceptions exist and a landowner can seek a variance if there is a need for a higher fence. While some jurisdictions have specific aesthetic [ZONING](#) rules with respect to fences, as long as a fence complies with local laws it cannot be taken down simply because it is ugly. In fact, unless the property owners agree otherwise, fences on a boundary line belong to both owners when both are using the fence. Both owners are responsible for keeping the fence in good repair, and neither may remove it without the other's permission. In the event that trees hang over the fence, most states agree that the property owner may cut tree limbs and remove roots where they cross over the property line, provided that such pruning will not damage the basic health and welfare of the tree.

Trees

Sometimes disputes arise between neighbors when trees belonging to one property owner fall on and damage or destroy adjacent property. In such cases, the tree owner is only responsible for damage if some failure to maintain the tree contributed to the damage. If the damage was solely the result of a thunderstorm or act of God, the tree owner will not be responsible, as the damage could not have been foreseen. If a tree limb appeared precarious and the owner failed to maintain the tree after warnings, the owner may well be responsible for resulting damage when a storm causes the limb to fall. If, however, the tree was well maintained and a storm causes a tree limb to crash into a neighbor's roof, the tree owner is not responsible. If, however, the tree owner allows the tree to grow so that it uproots the fence, it would be considered an [ENCROACHMENT](#) onto the adjacent property. In that instance, the tree owner would be required to remove the offending tree. A boundary tree is one planted on the boundary line itself and should not be removed without mutual agreement. Leaves, bean pods, or acorns which fall off and end up on adjacent property are considered a natural occurrence and are the responsibility of the landowner on whose property they ultimately come to rest.

Property owners in every state have the right to cut off branches and roots that stray into their property, in most cases this is the only help that is provided by the law, even when damage from a tree is substantial. A property owner who finds a neighbor's tree encroaching must first warn or give notice to the tree owner prior to commencing work and give the tree owner the chance to correct the problem. If the tree owner does nothing, the tree can still be trimmed. As a general rule a property owner who trims an encroaching tree belonging to a neighbor can trim only up to the boundary line and must obtain permission to enter the tree owner's property, unless the limbs threaten to cause imminent and grave harm. Additionally, the property owner cannot cut the entire tree down and cannot destroy the structural integrity or the cosmetic symmetry and appeal of a tree by improper trimming.

Animals

In the old courts of England, the owner of livestock was held strictly liable for any damages to person or property done by the livestock straying onto the property of another. The mere fact that they strayed and damaged crops, other livestock, or [PERSONAL PROPERTY](#) was sufficient to hold the owner liable for the injuries inflicted by cattle, sheep, goats, and horses. This strict liability position made sense in the confines of a small island such as England, but in the United States with herds of livestock wandering over vast expanses

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of land, a different process developed. The legislatures enacted statutes which provided that livestock were free to wander and that the owner was not responsible for damage inflicted by those livestock unless they entered land enclosed by a legal fence. These became known as open range laws. Some years later, certain states reversed the open range laws and required the owners of livestock to fence in their livestock. This position was similar to the [COMMON LAW](#) position, only instead of strict liability, the livestock owner could be held liable only upon a showing that the livestock escaped due to the owner's [NEGLIGENCE](#). Dogs or other animals inflicting bites may make their owners both civilly and criminally liable for such behavior. In some jurisdictions, an animal can be declared dangerous by a court and a judge may order the animal be confined or destroyed. If the issue is that the neighbor has too many pets, the neighbor could be in violation of a zoning, health code, or noise [ORDINANCE](#).

Views

Disputes sometimes arise between neighbors about changing views. If a tree entirely on a neighbor's property grows so large that it blocks a property owner's view or even natural sunshine, the best tactic is to discuss the matter with the neighbor. The homeowner probably has no [LEGAL RIGHT](#) to get the neighbor to alter the tree unless a local ordinance or Homeowners' Association rule exists regarding such an issue.

Structural Additions/Changes

Sometimes structural additions or changes ruin views and may potentially damage property values. Local zoning and building departments typically require permits and set rules for any building or structural changes. If the neighbor meets the legal requirements, generally nothing can be done. Homeowners' Associations and CC&Rs may be of some assistance, particularly if the change is unusually hideous and more cosmetic than structural.

Water

Natural water runoff from a neighbor's property due to rain or snow is not actionable. However, natural runoff is uncommon in city areas. Any grading or building which alters the natural runoff and may cause the neighbor to be liable for damages. If a neighbor's home improvement project causes a water line to burst, creating flood or water damage, the neighbor will likely be responsible. Fortunately, most homeowner's insurance policies cover this type of negligence.

Parking

Parking is governed by local laws and ordinances and typically enforced by the local municipality. If a car is parking in a no-parking zone, fire lane, or parked unlawfully in any manner, a citizen can simply call the local parking enforcement authorities and have the vehicle ticketed and/or towed. A car parking on private property without permission can be considered abandoned and can be towed away by order of the property owner; however, unless the property owner has some arrangement with the towing company, a charge will likely be assessed at the time of the tow. Broken cars or unsightly recreational vehicles parked on any property may violate a provision of the zoning code or perhaps Homeowner's Association rules. If not, and the vehicle is parked either on a neighbor's property or a public street, not much can be done to remedy the matter other than convincing the neighbor that such items detract from the neighborhood. There must be a written agreement to enforce any agreement for sharing maintenance and/or towing expenses for a shared driveway.

Noise

Excessive noise is usually a criminal [MISDEMEANOR](#) violation. Police can be called to quiet a noisy event; however, it is difficult to measure damages for any type of civil suit for continued noise violations. It may be

possible to appear at the trial for a noise violation and, once the neighbor is found guilty of the violation, ask the judge to order no excessive noise as a condition of the violator's [PROBATION](#).

Weeds

Homeowner's Associations, health codes, local ordinances, and nuisance laws may prohibit unmaintained yards. Homeowner's Associations sometimes have provisions in which, after adequate notice, the association may hire a landscaper to maintain the property and assess the homeowner.

Home Business

Although thousands of people work out of their homes, home-based businesses can cause traffic congestion, noise, unwelcome smells, unsightly signage, and general neighborhood upheaval. Local ordinances regulate home businesses and may require specific business licenses. Zoning ordinances may prevent home based businesses in residential areas altogether.

Alternative Dispute Resolutions

Increasingly widespread in recent years, alternative dispute resolution may be helpful in resolving neighborhood disputes. In lieu of costly [LITIGATION](#), parties involved in a dispute may settle their differences through a mediation or [ARBITRATION](#). This is known as alternative dispute resolution, the alternative to litigation and court. Essentially, arbitration differs from mediation in that arbitration uses a neutral third person who makes a decision after [HEARING](#) from all sides. A mediator is also a neutral third party, but a mediator assists the parties in reaching an agreement rather than making the decision for the parties involved. Mediation, and arbitration to a degree, give the parties greater control in the outcome of the situation. The parties can also agree upon a framework in which any future disputes may be resolved.

Mediation

Mediation is an attempt by the parties to resolve a dispute with the aid of a neutral third party known as a mediator. The mediator is often an attorney or retired judge, but the parties may use any mediator. The mediator may offer advice or creative resolutions, but mediation is a non-binding process in which the parties must agree in order to reach some type of resolution. If the mediator is a licensed attorney, mediation proceedings can be fully confidential. In a mediation, the parties are not bound to award only monetary damages as a court might be but instead can fashion a process and a solution especially well suited to the dispute between them.

Additional Resources

The Legal Edge for Homeowners, Buyers, and Renters. Bryant, Michel J., Renaissance Books, 1999.

Jordan, Cora. *Neighbor Law: Fences, Trees, Boundaries and Noise.* Nolo Law, 2001.

Natelson, Robert. *Modern Law of Deeds to Real Property.* Natelson, Robert, Aspen Law, 1992.

Organizations

American Arbitration Association

335 Madison Avenue, Floor 10
New York, NY 10017 USA
Phone: (212) 716-5800
Fax: (212) 716-5905
URL: <http://www.adr.org>

International Centre for Dispute Resolution

1633 Broadway, Floor 10
New York, NY 10019 USA
Phone: (212) 484-4181
Fax: (212) 246-7274
Primary Contact: Luis Martinez, Vice President

Neutrals' Services

3200 North Central Avenue, Suite 2100
Phoenix, AZ 85012 USA
Phone: (602) 734-9300
Fax: (602) 279-3077
Primary Contact: Harry Kaminsky, Vice President

The Tenants Union

3902 S. Ferdinand St.
Seattle, WA 98118 USA
Phone: (206) 723-0500
Fax: (206) 725-3527
URL: <http://www.tenantsunion.org>

Environmental Health Center

1025 Conn. Ave., NW, Suite 1200
Washington, DC 20036 USA
Phone: (202) 293-2270
URL: <http://www.nsc.org/ehc.htm>

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