



NEIGHBOR RIGHTS AND RESPONSIBILITIES

Introduction

This handout briefly summarizes the rights and responsibilities of adjacent neighbors in the types of disputes that often occur between them. This summary is not a substitute for legal advice. In almost every situation described in this handout, Project Sentinel's Mediation Programs are an effective alternative option to litigation or police involvement. Project Sentinel offers free counseling to neighbors to explain their rights and responsibilities, as well as offering mediation to resolve the underlying dispute.

Trees

Trees near the boundary or fences of neighbors are subject to the following rules:

- ✓ The neighbor owning the property where the trunk of the tree is located is the owner of that tree. The owner is obligated to maintain the tree and avoid being negligent in any way that might injure any person or damage the property of the neighbor, for example by failing to trim the branches properly. The tree's owner is not responsible for unforeseen acts of nature such as unusually severe weather.
- ✓ If the owner neighbor has been given notice of a danger, for example an overhanging branch that has died, the owner's duty to take action is greater.
- ✓ If the tree was planted on the boundary line and recognized as a boundary tree, both neighbors have ownership rights in that tree.
- ✓ If branches or limbs of a tree or plant are encroaching on the neighbor's fence or property, the neighbor suffering from the encroachment can trim the overhang, but is obligated to do so in a manner which avoids damage to the tree. The non-owner cannot enter the property of the tree's owner to perform the trimming without the consent of the owner.

- ✓ If the tree trunk itself has encroached on the property of the neighbor, the tree owner can be required to remove the tree because that constitutes a continuing trespass.
- ✓ The neighbor who owns the tree is responsible for the actual damage caused by encroaching roots from the tree if the roots damage the pipes or other property of the adjacent neighbor. The adjacent neighbor can choose to cut or sever the roots, but only if they are already causing actual damage and only if the tree itself is not harmed.
- ✓ A tree house or other structure in the tree that allows unreasonable observation of the neighbor's activities may constitute an invasion of the neighbor's privacy.
- ✓ If the owner's tree is blocking the light or view of the neighbor, there is no recognized legal right to require the owner to trim or remove the tree, except that trees must be trimmed if their branches block more than 10% of the solar panels or other solar collector on a neighbor's property. The solar collectors must be set back at least 5' from the property line. There is no requirement to trim the trees if the trees pre-existed installation of the solar collectors.

Fences

The California Good Neighbor Fence Act of 2013 requires neighboring landowners, with certain exceptions, to equally share the responsibility for maintaining the boundaries and monuments between them, absent a written agreement to the contrary. The duty to share equally applies to construction, maintenance and replacement of boundary fencing. A landowner must give 30 days' written notice to the neighboring owner before making any change in the boundary fencing.

- ✓ In the case of a "spite" fence, the neighbor can sue for removal or damages on the basis that it constitutes a nuisance, which is an unreasonable interference with a neighbor's enjoyment and use of his or her property. A spite fence is defined as a "fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property."

Boundaries

If there is a dispute about the exact boundary line between neighbors, they have the option of hiring a surveyor to establish the correct boundary. However, under California law if the neighbors through practice have acknowledged an existing boundary for a long period of time, and have made decisions such as building structures based on the assumed boundary, a court may recognize the apparent boundary as the true boundary.

- ✓ The same rule will apply to “easements” such as roads or trails through a property used by the parties over a long period of time.
- ✓ A neighbor building a structure, such as a storage shed, that encroaches on the neighbor’s property or easement can be required to remove it or pay damages, unless the amount of encroachment is very slight and the cost of removal is very high.

Barking dogs, other troublesome animals; parties, parking, other lifestyle differences

Apart from local ordinances governing each of these activities, California law prohibits any activity that constitutes a nuisance. Any of these activities as well as unregulated business activity on the property can constitute a nuisance to the neighbor. A civil suit can be filed if a nuisance is unreasonable and if it constitutes a significant and continuing interference with the neighbors’ enjoyment of their property.

- ✓ Dog owners are liable for any dog bite injuries, even if the dog’s owner was not negligent and even if the dog had never bitten or attacked a person previously.
- ✓ There is no state law requiring that owners of cats prevent the cats from roaming. If a neighbor traps a cat or takes other steps to stop the cat from entering the property, that neighbor is responsible for any injury or harm to the cat that results from doing so.

For assistance call **Project Sentinel (408) 720-9888**

Project Sentinel offers neutral counseling and dispute resolution services, but not legal advice or representation