

# Won't You Be My Neighbor? (But Respect My Property)

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August 12, 2024

Publication 2421



There's no experience quite like cutting your own live Christmas tree out of your neighbor's yard.

– Dan Florence, *Zombies Love Pizza*

Many readers will remember being sent to a neighbor's house to "borrow" a couple of eggs or a cup of sugar, and it was once common for neighbors to gather for "barn raisings." Those practices are less common these days, but neighbors remain an important part of life, for better or worse.

In the best of circumstances, neighbors respect each other's rights, help each other, and may become good friends. Some interactions between neighbors, however, are not so neighborly. Here are some of the more common issues landowners face in dealing with the folks next door.

## My Neighbor and I Can't Agree on the Boundary!

The boundary between adjoining properties is generally determined by the description in the deed that conveyed the

## Key Takeaways

- Property owners have rights, but actions causing harm or nuisance to neighbors can have legal consequences.
- Property line disputes are best resolved with a written boundary line agreement.
- Building structures beyond property lines can lead to legal liabilities and may require removal.
- Natural water flow between properties is allowed, but altering it in a way that harms neighbors can lead to legal action.

property. Thus, the line surveyed and described is the property line. Property lines are not determined by the location of a fence or any other physical thing unless those things are used as monuments in the survey.

Sometimes, of course, neighbors disagree on the location of the boundary, and sometimes descriptions locate the boundaries in different places. In the event of uncertain or disputed boundaries, landowners have several options (including going to court, but that's often not the best option).



Neighbors may orally agree to the location of the boundary. However, the boundary must be marked by some monument or a fence, and such agreements may not be binding on subsequent purchases of the property. Boundary line agreements may be implied in the proper circumstances, but proving them requires litigation.

Often, the best option is for neighbors to enter into a written boundary line agreement describing the location of the line. The agreed line should be marked. If there are any existing fences or markers that do not accurately mark the agreed line, the agreement should specify that they do not mark the boundary.

### **My Neighbor Built Over the Property Line!**

In the absence of an easement or agreement, a landowner may not put any structure on his property that encroaches beyond the boundary.

Examples of encroachments include buildings or structures extending over the boundary (including eaves hanging over the boundary), fences, tree branches or roots, and drainage ditches.

If the encroachment infringes on the adjoining landowner's rights, the encroaching landowner may be held liable in damages, and a court may require him to remove the encroachment and restore the property. A landowner may petition a court for an injunction against a threatened encroachment.

### **It's My Property and I Can Do What I Want!**

Unless deed restrictions, regulations, or zoning ordinances say otherwise, a landowner may use his property however he wants, as long as the use is reasonable and does not infringe on his neighbor's legal rights. That is, he may not damage his neighbor's property by nuisance, negligence, or physical harm.

Examples might include diverting or impounding water, causing the encroachment of a damaging substance, or removal of lateral support (discussed later in this article). Other things, such as foul odors, dust, smoke, noise, vibration, or bright lights, can be nuisances if sufficiently extreme.

As mentioned above, regulations and zoning ordinances may give others the right to limit how land may be used. This generally falls under the police power of a governing entity. Likewise, deed restrictions may give other landowners or property owners associations the right to control land use. Usually, such covenants are public record and run with the land. Essentially, the landowner has agreed to these restrictions by purchasing the property.

### **My Neighbor's Property Drains Onto Mine!**

When one property is higher in elevation than an adjoining property, the owner of the higher property may allow water to flow to the lower property as long as the water flows in its natural course. However, the owner of the higher property may not change the natural slope to divert water from its natural course onto the lower property. If this happens, an injured landowner may seek damages and/or an injunction.

### **My Neighbor Is Contaminating My Property!**

A landowner may be liable to his neighbor if he causes or allows a damaging substance to encroach on his neighbor's property or groundwater. These might include agricultural waste, salt water, air contaminants, or dangerous or toxic chemicals.

### **My Neighbor's Excavation Is Destroying My Land!**

Right of lateral support means that land has the right to be supported by adjoining land. Each of two adjoining parcels of land is entitled to the lateral support of the other. Land in its natural state and not burdened with structures is entitled to lateral support, and a landowner is liable for interference with the lateral support of adjoining land.

For example, if a neighbor excavates or builds a ditch that causes the land to cave in or wash away, he is liable for damages and/or subject to an injunction. This right to lateral support is absolute; it is not subject to the rights of the neighbor.

However, this right is absolute only with respect to the land itself. Put another way, the right protects only the soil, not improvements placed on the soil. If a neighbor's removal of lateral support damages buildings or structures on the land, he is liable only if he is negligent in doing so. The idea is that by placing improvements on the land, the land has been altered in a way that creates a need for lateral support (i.e., to support the improvements) where none previously existed. Likewise, if one landowner adds dirt to his land and raises it above his neighbor's land, he has no absolute right to his neighbor's lateral support of the newly created land. The adjoining landowner is liable only if he is negligent.

### **Where Does the Fence Go, and Who Has to Pay for It?**

In a closed-range county, county stock laws require livestock owners to fence their livestock in. Additionally, livestock owners must not knowingly permit animals to

roam on the right of way of a highway. Otherwise, if there are no applicable restrictions or regulations, a landowner may choose to fence his property or not.

In certain circumstances, a fence may be a nuisance. For example, it may restrict access or pose a danger. (Texans should note that barbed wire is generally not considered dangerous.) As long as the fence is not a nuisance, however, it can be any type of fence the landowner chooses. Again, other regulations, ordinances, or deed restrictions may apply.

A fence that separates two properties may be on the boundary line, or it may be on one side or the other. If the fence is built on the boundary, landowners may share the cost of the fence, but adjoining landowners have no obligation to do so. If neighbors share the cost of a fence on the boundary line, it is jointly owned. If one owner builds a fence on the boundary line at his own expense, he owns the fence. In that situation, the adjoining landowner may still use the fence as part of a fence enclosing his property, and may attach his fence to the neighbor's fence, as long as it is on the boundary. If a fence is built on one side of the property line, it belongs to the owner of the land on which it is located. The adjoining property owner may not change the fence or attach another fence to it without permission, as that would be trespassing.

A jointly owned fence may not be removed except by consent or after six months' written notice. If a fence is on one side of the property line, the owner may require a neighbor's adjoining fence to be disconnected by giving six months' written notice. Likewise, if a neighbor's fence is

attached to a fence owned by another, six months' written notice is required before detaching the fence.

Neighbors may enter into agreements about the placement and maintenance of fences. Such agreements should be in writing and recorded in the property records of the county where the properties are located.

## **My Neighbor's Trees Hang Over My Property!**

A tree is owned by the person who owns the land on which the trunk is located. The owner of the tree may be liable if the encroaching tree limbs or roots damage the neighbor's property. Thus, it is prudent for a property owner to trim his trees back to avoid such problems. If he fails to do so and the branches hang over a neighbor's property, the neighbor may trim the branches, but only up to the boundary line.

The neighbor may not enter the adjoining property to do so without consent. A neighbor who trims the overhanging branches should take great caution to make sure of the boundary line, and also to avoid damaging the tree, or he could be subject to liability.

And, of course, neighbors should refrain from cutting their neighbors' trees, even for Christmas.

Nothing in *TG* should be considered legal advice. For advice or representation on a specific situation, consult an attorney. 📍

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