

Fencing Duels And Other Border Disputes

June 15, 2014

Dear Dave: I would like to have a fence built around my front yard and want it built up to the sidewalk. Is that okay, if it falls within my boundary? Someone also told me that I should build the fence 6 inches in from the survey lines at the side as my neighbor would have rights to the fence if built on the shared property line. Is that correct? What are the rules for fences?

Answer: It is very important to ‘get it right’ when putting up a fence, not only to comply with laws, but also to avoid squabbles with neighbors.

Here are the rules:- First, the Municipality of Anchorage (or your local authority wherever you live) has restrictions. In Anchorage, a fence up to or along your front property line cannot exceed 4 feet in height. Neither can it exceed 4 feet on the side until it reaches the line of the front of the house structure. It can be up to 8 feet in height all the way back from the front of the house and around the rear of the home.

The materials used, be it chain link, wood or brick, are not of much interest to the Muni. However, your local covenants and restrictions could well add further conditions on height, location or materials. In fact, some subdivision covenants do not allow fences at all (e.g. Southpark Bluff).

Now, let’s talk about location of the fence. You cannot build a fence outside your property line and many people are confused about where exactly that line is, especially out front where the right-of-way easement is almost always wider than the road itself. Your mailbox, for example, is probably not on your property but on the city right-of-way easement. Only an as-built survey can tell you where your front property line stands. The sidewalk boundary is not necessarily the property line, in fact, probably not.

Building on the property line is acceptable and you may want to talk to your neighbors, as they may be willing to split the cost with you. If you do a joint project then you both own the fence. The problem arises when someone buys a home and nobody knows who owns it. It is best to work on the theory that both neighbors on a fence-line are responsible for the fence unless it is definitely not on the property line. Then it belongs exclusively to the owner of the real estate to which it is attached.

Building a fence at least 3 inches inside your property line certainly makes it yours alone, but don’t expect neighbors to think of it as ‘not theirs’, in the sense that their kids and pets will be playing in that 3 inches of your land that is on their side of the fence. Also, if you do put up a fence, I recommend the smooth palings be on the outer side to prevent your neighbor’s children from climbing on it. Keep the structural members on your side so that you can protect them.

Dear Dave: My neighbors and I share a fence which sits on our border line. A few years ago, part of that fence blew down during a windstorm. I have approached them many times in the hopes that we would share the cost of putting up a new section of the fence that blew down.

However, to no avail. Fed up! Have I the right to tear down the rest of the fence without their permission?

Answer: Sharing a fence is not the same as owning a fence. If you paid for it, or bought it with the acquisition of the home, it is your fence and you can do what you like.

If, as in many cases, neighbors do not know who actually owns the fence, you certainly have the moral high ground if it is leaning into your air space, since you do own the space above all your real estate. (e.g. In some cities the Railroad leases air space to shopping malls who build over it.)

If your neighbor owns the fence, why not build another one on your property so you don't have to see the problematic one? I have done that myself on one occasion.

While I cannot give legal advice, here's what I would do. Give written notice to your neighbor that you intend to tear it down after 14 days (unless he has a better suggestion), and then go ahead. I would also replace it with a new fence, even if it is at your expense, since it sounds like you want to keep your neighbor from spreading his careless lifestyle onto your space.

Dear Dave: What are the municipal statutes on trees that are growing in your neighbor's yard that are now bending your fence due to their circumference and destroying your existing patio due to tree roots?

Answer: There is no Municipal Statute or regulation on neighbor to neighbor trees. The Municipality is interested in trees on the Right-Of-Way, and Utility Companies are very interested in trees in a Utility Easement, but issues between neighbors are a Civil matter and are a separate issue for neighbors to solve.

In ancient times, this would be resolved with tribal weapons but, in a "civil" society, we work through more peaceful methods. Border disputes are as old as Mesopotamia. Even Moses had to deal with squabbling property owners - just read the Book of Leviticus in your Bible.

First, one should always try to talk with neighbors. It pays to keep them friendly. However, you do own the real estate at ground level, above ground, and below ground up to your property line, and the Law supports this.

Technically, your neighbor can be said to be trespassing into your property with his trees. You could consult an Attorney, or request repairs in writing from your neighbor followed by a Small Claims action in Court if necessary, since patio repairs can be expensive, or simply excavate on your property and cut out the problematic roots. Damage to the fence depends on who owns it and where exactly it is located, as discussed above.

Caveat: As always, consult an Attorney for strict legal advice.