



Fences, "Boundary Line" and "Division"

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Dear Mr Duman:

My next door neighbor and I have a fence that runs along the property line, separating our properties. We have both agreed that the fence is dilapidated and needs to be rebuilt.

My neighbor is now telling me that he does not want to pay for a new fence and that he is quite willing to leave the fence as it is, and that if I want a new fence, then I should pay for it.

It is my understanding that neighbors must share the cost of boundary line fences. Could you discuss this issue in your column, so that I can show it to my neighbor?

A.J., San Lorenzo

Dear A.J.:

California Code of Civil Procedure, Section 841, addresses the obligations of adjoining neighbors to share in the cost of maintaining boundary line fences (also called "division fences"). The law specifically provides that coterminous (adjacent) owners of real property are "mutually bound equally to maintain: (1) The boundaries and monuments between them; (2) The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter."

In order to be considered a "division fence", the structure must lie precisely on the boundary separating the properties in question. If the fence is located completely on the property of one or the adjoining owners, it is not a "division fence", and there is no obligation by the neighbor, whose land does not have the fence, to share in the cost or maintenance.

If the fence is truly a "division fence," neither adjoining owner can move or alter the "division fence" without the consent of the other.

The duty to share the cost of maintenance only arises for owners whose properties, as a whole, are enclosed by fencing. An owner who "chooses to let his land lie without fencing" is not obligated to contribute to the repair and/or maintenance of the division fence until such time as the neighbor later decides to fully fence and enclose his property. He must then reimburse the other owner for his share of the costs of any "division fence" that separate the two properties.

When an adjacent owner wrongfully refuses to contribute to the maintenance and repair of a division fence, the other owner may take steps to compel payment of the non-paying owner's share of such contribution by initiating judicial proceedings against the non-contributing owner.

Questions regarding this subject should be directly addressed to your attorney, who can, more fully, explore the facts of your specific circumstances and formulate the proper legal strategy for your situation.

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