

QUICKLAW

ANSWERS YOUR QUESTIONS

NEIGHBOURS

Are you having problems with your neighbour regarding any of the following:-

- Boundaries of your property.
- Your neighbour building on your property.
- Walls or fences.
- Overhanging branches or intruding roots or
- Noise.

If you are, then continue reading.

How do we determine the boundaries of our property?

- Boundaries between properties are recorded in diagrams kept by your local municipality.
- If you and your neighbour have a dispute about the boundary lines of your property, you can contact your local municipality.
- If the dispute cannot be sorted out, a land surveyor will be able to help you determine the boundary lines.

What happens if my neighbour builds something on my property?

- A person may only build on his or her own land.
- If your neighbour builds on your land, he may be guilty of encroachment. This means intruding on someone else's territory.
- If your neighbour is encroaching on your land you may demand:-
 - ▶ That the building that encroaches your land be broken down or
 - ▶ That you be paid for that part of your land being

used.

- This must be done within one year of finding out about the encroachment.
- If the matter is taken to court, a court might rule that demolition would be unreasonable (because the cost of removing the structure is too expensive) and order you to take transfer of that part of your neighbour's land on which the building has encroached.
- The court will take into account the value of the land encroached upon and the legal costs of transferring that portion of the land.

What is the position regarding walls and fences?

- If the wall, fence or hedge is between two adjoining properties, it is presumed to be half on one property and half on the other property. This means that the wall or fence is jointly owned by both neighbours.
- An owner who transfers his or her property, automatically transfers the joint ownership of the wall.
- Neither owner, may without the other neighbour agreeing, remove, raise or lower the boundary wall or alter it except in an emergency.
- Either owner may put up a boundary wall destroyed by an unexpected event, for example a fire, flood, lightning and the other neighbour would have to contribute half of the cost.
- Each owner is obliged to contribute to the maintenance and repair of the wall.

What is the position regarding overhanging branches and intruding roots?

- If branches of a tree growing on your neighbour's property overhang into your property, you may ask your neighbour to saw them off and remove them from your property. If your neighbour refuses, you may saw the parts off that hang over your property.
- You may not keep the branches unless your neighbour refuses to collect them.
- You may then recover the amount of money you paid

for removing the branches from your neighbour or you may force your neighbour to remove the overhanging branches by obtaining an interdict, compelling him or her to do so.

- If there is fruit on the overhanging branches you may pick fruit from these branches and keep the fruit, you may also take fruit if it has fallen off the tree by itself.
- You can not claim compensation even if damage is caused by leaves from your neighbour's trees, eg: blocking your gutters.
- If leaves, branches, flowers or fruit fall from your neighbour's tree onto your property, you cannot force your neighbour to remove them. You may demand the removal of roots that encroach on your property, whether beneath the ground or on the surface, or you may remove them yourself.
- If the roots have damaged your property, you may insist that they be removed and you may claim compensation for the damage they caused.

What is the position regarding noise?

- An occasional noisy house party would have to be tolerated as a rule, although the police might charge the offenders with disturbing the peace (normally after a warning).
- If your neighbour creates unreasonable noise, you can take legal action over the nuisance. You would be able to sue your neighbour if you could show that your own interest in your property had been affected negatively in some way.
- You can apply for an interdict to control individual instances of noise, if your neighbour's conduct is unreasonable.

KEY:

1. BOUNDARIES - a line that marks a limit of your property
2. ENCROACHMENT - intruding on someone else's territory or property

How can Legal Wise help you? If you are involved in a dispute of this nature your Legal Counsellor may be able to assist you by negotiating a settlement with your neighbour that is acceptable to both of you. If it is not possible to come to any sort of agreement, consult an attorney. LegalWise may pay for your legal expenses if the events which caused the dispute occurred after your LegalWise cover date, if your claim is good in law and you have a reasonable chance of succeeding.