



PROPERTY LAWS FOR NEIGHBORS

BY ROBERT MOORE, ATTORNEY AT LAW

To paraphrase Robert Frost's famous poem, good laws make good neighbors. Many property disputes arise because one or both neighbors do not understand property law. Ohio law can address almost any dispute that arises between neighbors. We have good laws to help protect our property but we need to understand those laws to avoid conflicts and lawsuits between neighbors.

Trespassing

Your neighbor may not enter onto your property without your permission. A common misperception is that a property must be posted with warning signs before a trespass can occur. This is not so. Ohio law is based on the notion that a visitor must ask permission to enter onto another's property; Ohio law does not require the landowner to take active measures to prevent trespassing. In fact, someone who enters onto property by accident is still committing civil trespass (criminal trespass requires intent).

Overhanging Trees


Many property lines in Ohio have trees on one side or the other, especially when it is a fence line. The limbs from trees can overhang onto the neighbor's property and interfere with farming or other uses. Ohio law is very clear that the property boundary extends upward towards the sky. An adjoining landowner is

allowed to remove any limbs overhanging onto his property. The owners of the property on which the limbs overhang does not need permission to cut limbs nor does he need to provide any warning or notification to the adjacent landowner, although it is a good idea to do so.

A tree that is growing on the property line is jointly owned by the neighbors. Either neighbor can cut the limbs on his property but permission must be sought before the entire tree is cut down.

Water Drainage

One of the most contentious property disputes involves water drainage. Ohio has adopted the "reasonable use" doctrine that generally allows a person to change the course of water as long as the change does not unreasonably interfere with the neighbor's ability to use his property. There is no precise definition of "unreasonably interfere" and each drainage issue is determined on a case by case basis.



A couple of classic examples of unreasonable interference is a retention pond and dam. With a retention pond, the upper landowner builds a pond and discharges the overflow onto the neighbor at a single point source. This water discharge causes erosion and other problems for the neighbor that interferes with his use of his property. With a dam, the lower landowner can cause unreasonable interference by damming up the natural flow of water causing flooding of the upper property.

Subsurface drainage is also a source of significant litigation. The common situation occurs where old clay tile breaks down and does not allow water to move through to the outlet. The landowner above the blockage incurs flooding and significant crop loss. The landowner where the blockage occurs may not want to pay for the cost of repairing the tile or may not want to allow the neighbor on his property to make the repair.

A court case out of Fairfield County established if the tile has been in the ground for 21 years or more, a prescriptive easement is created. This easement gives the upper neighbor an easement on the lower property to repair or replace the property. The tile cannot be expanded in scope or size, the old tile must be replaced in the same place with the same size tile. A prescriptive easement is generally determined by the county judge who issues an order allowing the work to take place.

Issues related to tile that has been in the ground for fewer than 21 years becomes more complicated. However, generally if a neighbor has given permission to install drainage tile, he cannot later remove that permission and block the tile. Ohio law is reluctant to allow a landowner who formerly gave permission to install subsurface drainage to withdraw that permission at a later time and render the neighbor's investment in tile useless.

Ohio property law is extensive and at times rather complex. If you find yourself at odds with a neighbor over a legal dispute, it is often well worth the time and money to consult with an attorney to assess your legal standing. Misunderstandings of property law have caused the best of neighbors to quickly become the worst of neighbors. ■

