



eGuide

Dealing With Annoying Neighbors

by Attorney Cora Jordan

October 1999

An Important Message to Our Readers

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Editor Mary Randolph

Production André Zivkovich

Josh Silvermoon

Jeff Brasher

Proofreading Susan Cornell

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Part 1 Help for Common Complaints

Nothing so needs reforming as other people's habits.

—Mark Twain

We don't have the pleasure of choosing our neighbors—they simply come with the territory. What a great joy it is to move into a strange city or new area and be warmly welcomed by a courteous and thoughtful person who lives next door. And what a terrible disappointment when instead, the next-door neighbor is thoughtless or given to some activity that is a constant annoyance.

In today's society, the limited space of properties magnifies even a small annoyance. Especially if it occurs every day, what starts out as a bother can turn into a nightmare for a neighbor. And sadly, neighbors (even those who are the cause of the problem) sometimes retaliate when they feel threatened or disturbed, fueling what can escalate into open warfare.

But the law offers protection from a neighbor's disturbing activities. Local laws and subdivision rules prohibit almost anything one neighbor can do that would seriously annoy another. And when there isn't a relevant law, a person can sue a neighbor who unreasonably interferes with the use and enjoyment of his property.

The most frequent grounds for serious neighbor disputes—trees, fences, boundaries, easements and noise—are covered in separate eGuides available at www.nolo.com. This eGuide outlines a strategy for dealing with almost any other kind of neighbor problem, starting with friendly negotiation and, if necessary, taking the problem to mediation.

Local Laws

If your neighbor is doing something that is terribly annoying to you, the activity is probably against the law. Most everyday activity that could disturb a neighbor is regulated by city or county ordinances. When citizen involvement is high in a community, what bothers residents the most finds its way into a local ordinance. Uncut weeds, dogs roaming at large, even old cars up on blocks may all be against the law.

Whatever your particular concern, always check your local ordinances thoroughly. The best way to find out what your city or county ordinances cover is to go to the public library or the county law library (usually located in or next to the courthouse) and read them yourself. Then you can make copies of anything that you think is pertinent. ([Part 3, Legal Research](#), has more on looking up local laws.)

Once you have a copy of an ordinance that addresses the problem, your troubles may be almost over. The neighbor probably has no idea that what he is doing is actually against the law. In most circumstances, just presenting a copy to him will resolve the problem.

If the neighbor does not respond, you can report the violation to the appropriate city department. The clerk at city hall will know which department to call, and many departments are in the phone book under the city government listing. For example, offices of the Health Department, Animal Control and Zoning Board will be listed separately, especially in larger cities.

When someone complains about the violation of an ordinance, the city or county can warn the person, issue a fine or take measures to correct the problem. Sometimes, if the person is uncooperative, the city will fix the problem (for instance, cleaning up rubbish) and bill the person responsible. In serious situations, the city or county attorney can sue the person to force compliance with the law. Someone who wants to fight a citation for a violation can go to court. If the judge orders the person to comply, violation of the order can result in another fine and, in some circumstances, a jail sentence.

Here are some of the topics most commonly covered in local laws.

Blighted Property

Blighted property is property that has been allowed to fall into a state of disrepair. Ordinances prohibit the maintenance of such property when it creates a danger to others or is such an eyesore that it reduces the value of surrounding property. Some blighted property ordinances prohibit accumulations of weeds, garbage or rubbish.

Changing Local Laws

If the problem is not covered by the law, you could set about garnering support from your neighbors and try to get one passed. Talk to a member of the city council or county board of supervisors about the possibility of enacting a needed ordinance.

For example, the blighted property ordinance in Oakland, California, mentions weeds and rubbish, and also has a long list of other items not allowed on property. The list includes structures (including fences), windows, driveways, sidewalks and retaining walls that are broken, deteriorated or defaced with graffiti.¹ An uncaring neighbor can be forced to repair the unsightly mess or face a fine.

Weeds, Rubbish and Garbage

Most towns prohibit high weeds, rubbish and garbage on property, and often lump them together in one ordinance. Communities may consider these health problems because they encourage the breeding of insects and rodents, or because they are fire hazards. The city can fine a person for a violation, clean up the property and bill the owner. When necessary, it can also get a judge's order for the owner to keep the premises clean from then on.¹

Some laws address weeds alone. They prohibit the kinds that bother neighbors the most, such as weeds that are downy, wingy, poisonous or noxious to the community.²

Instead of prohibiting garbage and rubbish in yards, an ordinance may instead require a property owner to keep the premises clean and sanitary and the yard neat and orderly.³ In Emeryville, California, a person violating this law is entitled to a hearing, and the city council makes a decision on the matter. If the violation stands, the property owner is given five days to clean up the premises before the city does it and sends a bill.⁴

Most towns also require property owners to keep the sidewalks in front of their property clean.⁵

Loud and Offensive Language

Loud and boisterous conduct is often prohibited in noise ordinances. If a neighbor is fighting and screaming, she is probably also violating state or local disorderly conduct laws, which means she can be arrested, fined and jailed. A neighbor can call the police, who will usually warn the person first and then may write a citation or make an arrest. Some local ordinances also prohibit profane and vulgar language that could create a breach of the peace.⁶

Drug Dealers

When someone sells illegal drugs, it is ordinarily a matter for the police and the district attorney's office. But many police departments and prosecutors' offices are overburdened and unresponsive to citizens complaints about neighborhood drug dealing.

Some frustrated neighbors have recently banded together. They have brought individual small claims court lawsuits against owners of properties where drug dealing and other associated crimes flourish—and they have won. Because the small claims court limit in most states is \$2,000 to \$5,000, clusters of such claims quickly add up to big bucks.

In 1989, 19 neighbors plagued by the crime, noise and fear generated by a crack house in Berkeley, California, won \$2,000 each (the California small claims maximum has since risen to \$5,000) in small claims court against an absentee owner who had ignored their complaints for years. In San Francisco, a similar rash of small claims suits cost a landlord \$35,000. Soon after the verdicts, both landlords evicted the troublesome tenants.

Many cities are also passing new laws aimed at getting drug dealing tenants evicted. The laws both make it easier for landlords to evict and punish landlords who sit by while drug dealing takes place on their property. In Los Angeles, for example, the police department can notify landlords when tenants are arrested or convicted of drug-related offenses. In Pasadena, a landlord who refuses to evict the tenants after a request from the city can be fined up to \$5,000.

Local governments are also rigorously enforcing laws that allow them to sue landlords to have premises declared a public hazard or nuisance. In New York City and other places, owners have been fined and buildings have been closed down.⁷

Landlords can even lose their property altogether. Federal or local law enforcement authorities can take legal action to have housing used by drug dealers seized and turned over to the government, even if the owner's part in the crime is merely to ignore it. In 1988, the San Mateo County, California, district attorney brought just such a suit against the owner of a 60-unit drug haven in the city of East Palo Alto. The owner was fined \$35,000 in civil penalties and had to shut the building down and pay tenants' relocation expenses.

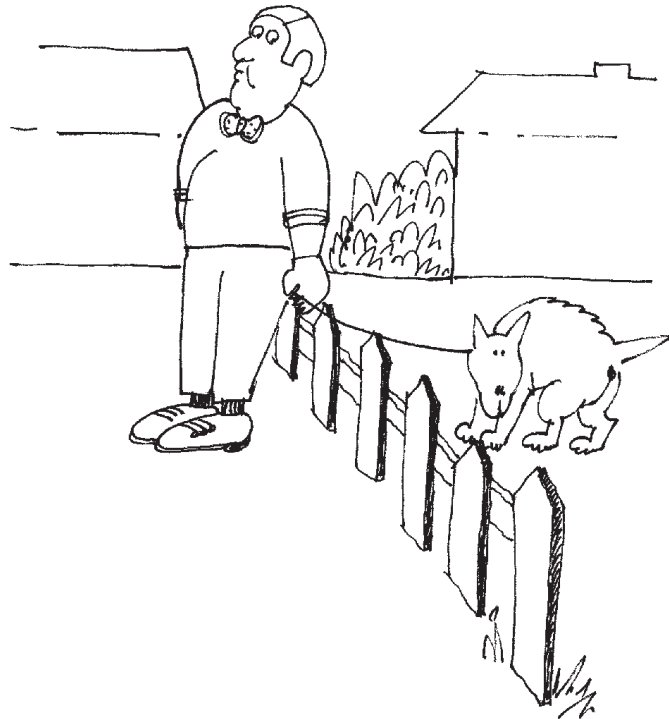
Animal Problems

Most towns have several ordinances designed to deal with problems created by animals—or more accurately, by irresponsible animal owners.

Noise. Noise ordinances often single out barking dogs, but dogs are sometimes regulated in separate ordinances indexed under “Dogs” or “Animal Control.” Wherever the laws are found, they usually limit the length of time a dog may bark, or the frequency of the barking allowed. The watchdog down the street that barks at intruders, or even occasionally at passersby, is within the law. But the owner of the pooch next door left out to howl at the moon all night is not. (See our more comprehensive eGuide on noise, if you have this specific problem, at www.nolo.com.)

Leash laws. Almost all towns have leash laws, requiring dogs to be under restraint when they are off the owner’s property. Sometimes these are called “running at large” laws. A neighbor can report the dog, and the city will pick up and impound the animal and fine the owner.

As for the nightly cat fight under the bedroom window, some areas—Peoria County in Illinois, for example—also have leash laws for cats.⁸



Pooper scooper laws. Most people are familiar with pooper scooper laws. These require the owner of an animal to immediately remove and dispose of an animal's defecation when the animal is away from the owner's premises. When a town doesn't have such a law to handle this annoying problem, the neighbor whose yard is the target could still sue the owner.⁹ (See "[Suing Your Neighbor](#)," below.)

Number of animals. Local ordinances often limit the number of certain animals allowed per household to two or three adult animals. Minneapolis, for example, limits households to three dogs or cats over four months old.¹⁰ These laws are designed to cut down on noise, odors and health problems. Someone who is determined to keep more animals may have to buy a special kennel license from the city.

Although dog and cat owners are the animal owners most likely to be affected by these laws, they are not the only ones. An Albany, California, law restricts the number of geese per household.¹¹ While such an ordinance may seem out of date, it is far from it. Some people in that city use geese as a substitute for watch dogs. The honking of too many faithful watch-geese can create a neighborhood disturbance for several blocks.

Ordinances also limit the number of ducks, pigeons and chickens on property within the city limits. Raising pigeons is a common hobby in some urban areas, and the laws regulate not only how many pigeons a person can keep, but also how close the coop can be placed to a neighbor's property.

Other farm animals, such as pigs, hogs, goats and horses, are usually not allowed within the city limits. But again in Albany, California, a property owner is allowed to keep one goat—but for only a sixty-day period—for weed control.¹² Be aware that ordinances addressing farm animal control are very different outside the city limits.

Licenses and Special Permits. Dogs and cats must usually be licensed, and special permits are often required for exotic or dangerous animals. Dangerous dogs—usually defined as dogs that have injured someone—are outlawed in some areas. In others, the owner must get a special city permit and buy liability insurance.

Regulations may also cover the keeping of bees, both by requiring a permit and limiting the location of hives.

Residential-Only Zoning

In most residential areas, zoning laws allow only single-family dwellings. This means that the investor who purchases property down the street and then turns it into an apartment house for partying college students may be violating the zoning laws.

Zoning laws also prohibit running a business at home that attracts customers and creates traffic in a residential area. These can prohibit, among others, home-based beauty parlors, typing services, tax preparers and car mechanics. The neighbor who has a yard sale once a year is not really in business (although some towns require a permit), but the one who opens the garage door every Saturday morning for a sale is probably violating the law.

Before you complain about a possible zoning violation, always check the zoning map at city hall. The neighbor creating a problem might be located just over the zoning line, and be in an acceptable district for what she is doing. Also be aware that in some circumstances, cities have the power to zone land that lies just beyond their boundaries. In Illinois, for example, towns may zone land that lies up to one-and-a-half miles outside their boundaries.

Vehicles

Old broken-down cars in the yard are an unwelcome sight to neighbors and are usually a violation of local law. A typical ordinance requires any disabled car to either be enclosed or be placed behind a fence. Some limit the parking of RVs and disabled cars to 72 hours, unless they are enclosed or out of sight.¹³ Almost all cities prohibit leaving any vehicle parked on a city street too long—often, over 72 hours.

When someone in the neighborhood brings it to their attention, some towns will tow away a vehicle that has been parked for too long. And the relatives in their RV, who have been visiting across the street for the past year, could pay their next visit to a judge.

Outdoor Lights

Some cities where houses are located fairly close together have enacted laws protecting people from a neighbor's glaring lights. These laws prohibit directing an outdoor light in a neighbor's direction.¹⁴

Subdivision Rules

If you live in a subdivision or planned unit development, you are likely to be subject to property regulations called Covenants, Conditions and Restrictions (CC&Rs). These CC&Rs are normally contained in a separate document that is referred to in each property owner's deed.

Although you can still use a local ordinance to help you in most of these communities and subdivisions, the CC&Rs are often much stricter and more detailed than local laws. They restrict all types of activity on the property—for instance, some don't allow the use of outdoor clotheslines, and others prevent installing a basketball hoop on the garage. When the property is subject to these extensive restrictions, just about anything one person could do to annoy another will probably be addressed.

In areas that have these regulations, a disturbed neighbor can inform the homeowners association of a violation of the rules. Depending on the particular structure of the association, complaining can be done quite informally or an official complaint may have to be in writing. The association will notify the person responsible for the violation and demand conformity to the regulations. It may sanction the

Good Will to You, Too

Six neighbors in Little Rock, Arkansas, celebrated the 1993 Christmas season in court. They sued to stop a couple in their midst from throwing the switch on their annual Christmas light display, which consisted of a million red lights. The display included glowing Santas, reindeer, Mickey Mouse and a 40-foot high revolving globe.

The neighbors charged that the giant display not only bathed the entire area in red, but also created bumper-to-bumper traffic. Sightseers blocked the neighbors' driveways and covered their lawns with trash. The festive couple with the lights pointed to freedom of speech and religion.

The court found the display to be a nuisance and ordered it toned down. But the story has a happy ending. The light show (now expanded) has found a new home at Disney World.

person by suspending privileges, for instance the use of a tennis court or a swimming pool.

Some associations have the power to sue a member of the group to conform. One neighbor can also sue another to enforce the restrictions, but the lawsuit must be in regular court (not small claims court) and will be expensive.



Approaching Your Neighbor

Although it is sometimes hard to believe, many neighbors are unaware that their behavior could possibly bother anyone else. The dog owner who lets Rover roam at night doesn't look at the next-door neighbor's yard in the morning and see the recently dug hole where the petunias had been. The car buff who spends every Saturday on his restoration project never even thinks about what his junk looks like from his neighbor's living room window.

These neighbors need to be told that there is a problem. It is never easy to complain to a neighbor, but simply telling your neighbor will resolve a significant number of problems. And it beats the alternative—spending your life irritable and resentful.

[*Part 2, Tackling a Neighbor Problem*](#), outlines a complete strategy for approaching your neighbor, informing yourself about your rights and getting your problem solved before it escalates.

Using Mediation

If your neighbor thinks your complaints are unreasonable and does nothing to remedy the situation, you have a choice: go to court or suggest mediation. Because most legal mechanisms will cost time, money and any future good relationship, trying mediation first is a worthwhile effort to keep the dispute just between you and your neighbor, and to arrive at your own solution.

In mediation, you work out your own agreement with the help of a trained, neutral third party (mediator). One reason mediation between neighbors is so successful is because sometimes both neighbors simply need to have their say. Often, both have complaints about other issues. Once they are aired, a compromise involving everything in dispute is possible.

You can find a good mediator in just about any urban area. Many communities have free neighborhood mediation centers, designed to handle serious and not-so-serious neighbor disputes. ([*Part 4, Mediation and Beyond*](#), has all the details.)

Suing Your Neighbor

If you can't work things out with a neighbor or get help from the city, don't give up. You can sue the neighbor directly for money and for a judge's order making the neighbor remedy the problem. If you sue just for money, you can handle the lawsuit by yourself in small claims court. To get the neighbor ordered to do something, you'll probably need to hire a lawyer.

When someone does something that is unreasonable or unlawful that interferes with the use and enjoyment of property you own or rent, you can sue the person for creating what is called a private nuisance

Some states describe what constitutes a private nuisance in their state statutes. The statutes in California, Indiana and Nevada, for example, make someone who does anything at all to interfere with the use or enjoyment of a neighbor's property legally liable to the neighbor for a nuisance.

The laws in a few states require conduct to be unlawful (in violation of an ordinance, for example) or unreasonable before it can create a nuisance to the neighbor. In these states, it can be a little harder for a neighbor to win a nuisance lawsuit, but most activities that seriously disturb a neighbor would be considered unreasonable.

Most states don't have a general nuisance statute; instead, they list certain activities that are legally considered nuisances—for example, having garbage on property or keeping anything that's a health hazard. An activity that's not on the list can still be a nuisance under the common law (case-by-case decisions made by courts) if it interferes with someone else's use of property. The Appendix at the end of this eGuide shows each state's definition of a nuisance. In states that require unreasonable conduct, ask yourself if what the person is doing would be considered by most people as an unreasonable use of property. If you are not sure that what the neighbor is doing is unreasonable, you probably have very weak grounds for a legal complaint.

A Delicate Dilemma

Ruth lives in a small apartment in San Francisco, where people keep windows open for air. Her neighbors downstairs are chain smokers, and the smoke drifts straight up and into Ruth's apartment, making her sick. The neighbors obey laws banning smoking in many public places, but they aren't about to stop smoking in their homes. The fact that she cannot open her windows without subjecting herself to cigarette smoke shows a definite interference with her use and enjoyment of property.

But even in California, where any activity that interferes with her use of property is a nuisance, Ruth feels on shaky legal ground about bringing a lawsuit against these neighbors. (In a state requiring unreasonable conduct, her chance of a successful lawsuit would be very slim. Smoking cigarettes in one's home has not been ruled to be unreasonable conduct anywhere.)

In California, Ruth might be able to get a money award from a sympathetic judge. But she really doesn't want to sue her neighbors; she just wishes there were already a law to help her. Sooner or later, she'll have to do something about her problem or move somewhere else. Ruth may even find herself trying to break new legal ground.

What You Can Sue For

You can ask the court to award you money to compensate you for your annoyance and also to order the neighbor to stop the nuisance. For a court order to stop the problem, you will need to hire a lawyer and use regular (not small claims) court.

But for money alone, you can use small claims court, which is fast, and where you don't need a lawyer. You must ask for an amount that is within your state's small claims court limit—between \$2,000 and \$5,000 in most states. A typical annoyance award would be within the limit.

How much money to ask for is always subjective. Approaching the problem on a daily basis is the easiest method. If you had to clean up your yard after your neighbor's dog once a day for ten days, \$5 to \$10 a day would be considered reasonable by most people. When the dog's mess harmed the lawn, you would include the cost of fixing it. If the problem is more serious, such as something that makes you ill, keeps you awake, or decreases your property value, you could easily ask for as much as \$50 a day.

After you sue a neighbor successfully for creating a nuisance, if the neighbor doesn't remedy the situation, the nuisance continues. You can sue again and again until something is done. Suing is a complex process outside the scope of this guide. If you decide you must sue, see *Everybody's Guide to Small Claims Court*, by Ralph Warner (Nolo).

Suing a Landlord

In many situations, the person causing a problem for a neighbor is a tenant, rather than the owner of the property. The neighbor can sue the tenant in this case, but can also sue the landlord for maintaining a nuisance on the property—allowing the tenant's activities. Just complaining to the landlord can work wonders. If a landlord is allowing noisy all-night parties or worse—drug dealing, for example—on the property, suing the landlord can result in the tenant's being evicted.

Neighbors Banding Together

One of the most effective approaches to stopping a nuisance in a neighborhood is for all neighbors who are affected by the activity to sue at the same time. What may seem like a small sum of money multiplied by ten or twenty small claims awards gets the attention of the person responsible (including a landlord) and usually stops the activity.

Neighbors have organized and successfully brought these multiple lawsuits when faced with everything from teenagers squealing tires to noise at a major airport.¹⁵ Increasingly, they are getting together and using this method to aim at drug dealing in the neighborhood.

What You Must Prove

When you sue for a nuisance, you must prove the following:

- The neighbor is doing something that seriously annoys you.
- Your ability to use and enjoy your property is diminished by the neighbor's acts.
- The person you are suing is responsible (and, in some states, the conduct is unreasonable or unlawful).
- The amount of money you need to compensate you for the annoyance.

You must be prepared to show the judge what the harmful activity is, and exactly how it affects you. In a case of illegal activity such as drug dealing, a person may rightfully fear being sued himself for making such an accusation. When neighbors know illegal activity is going on but can't really prove it, they can instead, and just as successfully, complain to a court just about the noise, traffic and disturbance created.

If the neighbor is violating any ordinance, take a copy of the law with you to hand to the judge. If your state has a general nuisance statute, have a copy of the statute. And although it is not usually necessary in small claims court, you can do a little legal research and find a similar court case from your state to bolster your complaint. (See [Part 3, Legal Research](#).) ■

Endnotes

- ¹ Oakland, Cal. Mun. Ord. 15-1.01 and following.
- ² A city obtained such a permanent order in *City of Union v. Julius*, 706 S.W.2d 513 (Mo. App. 1986), based on the Union, Missouri, ordinance, after the owner continued to ignore the violations.
- ³ For example, see Emeryville, Cal. Mun. Ord. 6-10.02.
- ⁴ For example, see Emeryville, Cal. Mun. Ord. 6-2.04 and following.
- ⁵ Emeryville, Cal. Mun. Ord. 6-2.08.
- ⁶ For example, see Hayward, Cal. Mun. Ord. 4-1.62.
- ⁷ For example, see Oakland, Cal. Mun. Ord. § 3-4.01, and Code of Ords., Oxford, Miss. 19-16.
- ⁸ For example, see Berkeley, Cal. Mun. Ord. 13.56.030.
- ⁹ Peoria, Ill. County Code § 5-19.
- ¹⁰ You can find answers to many dog problems in the book *Dog Law*, by Mary Randolph (Nolo).
- ¹¹ Minneapolis, Minn. Code § 64.100.
- ¹² Albany Cal. Mun. Ord. 10-3.6.
- ¹³ Albany, Cal. Mun. Ord. 10-6.1.
- ¹⁴ For example, see Oakland, Cal. Mun. Ord. 15-1.01, and following. In Oakland, disabled vehicles are covered in the blighted property ordinance.
- ¹⁵ For example, Albany, Cal. Mun. Ord. 20-3.
- ¹⁶ A group of neighbors actually forced a policy change at the San Francisco airport by collectively and repeatedly suing in small claims court about the noise.

Part 2 Tackling a Neighbor Problem

So far we have talked about how to handle a specific problem between neighbors. Now we discuss an overall strategy to cope with almost any neighbor problem. Following this step-by-step guide can make you feel more in control of your own situation and may produce surprisingly positive results.

Getting Prepared

Instead of plunging into a neighbor quarrel, you can take preliminary actions on your own that, in the long run, will make you more effective in your efforts to truly resolve the problem.

Open Lines of Communication

How fortunate neighbors are when they know and respect each other so well that they can easily discuss and solve any problems that arise. For most of us, this is not a reality. But most people can still lay the groundwork that will make things easier should a dispute occur.

Long before you complain, before you even have a problem, get out there and meet your neighbors. The long-range benefit of simply being able to call someone by name, of creating even the tiniest bit of goodwill is enormous when a problem arises. This is something every one of us should do and do it now.

Many people simply don't have the time or the inclination to be friendly with their neighbors. But it is not necessary to socialize with someone in order to make conversation possible. A simple introduction followed by a cordial "Good morning" or "Hello" on a regular basis will put you on the right footing and make communication easier.

This approach is in your own best interest and will make you a better neighbor. Just knowing something about your neighbors can be helpful and avoid conflict. If the person next door is a nurse working the night shift and sleeping during the day, you want to know this to avoid creating problems yourself. Knowing the neighbor is a no-lose situation for everybody.

Never Be Hasty

When an annoyance occurs, there are several reasons for not diving into the water too soon. Acting in anger, whether it's racing over in your bathrobe and slippers, screaming through the telephone or bringing in the police, reveals your own lack of control and guarantees disastrous resentment.

But even more important, you need to know just how serious the problem is—whether it will be ongoing or a single or occasional disturbance. You need more facts and therefore more time.

Suppose a new neighbor moves in and immediately throws a rowdy party that is still going strong at 2 a.m. You rush over, bristling with outrage, and try to stop the party. Later you learn that the affair was a giant housewarming or an annual birthday party and that this person is a quiet, model neighbor the rest of the time. What have you done? You've spoiled your future relationship—and you've also given up your own right to gather a few friends together.

This same rule of wait-and-see applies when a barking dog appears on the scene. Maybe the neighbor is dogsitting for one night, or trying a new dog outside and will learn without your help that it doesn't work. Stereo suddenly blasting? The neighbor could have invested several thousand dollars in a new system and wants to be enveloped in it just once for the experience. Screaming fight next door? Well, people fight occasionally and in the heat of the battle, they forget about the neighbors.

All too often, when one neighbor does something that annoys another, it is easy to jump to the conclusion that the problem is more serious and long-lasting than it actually is. A small irritation may turn out to be temporary and not worth the rise in blood pressure.

Make a Written List

The most effective way to remain in control when faced with a neighbor problem is to sit down and describe on paper what is happening. This simple act will distance you from your anger and help you manage the situation. Writing down your concerns will tell you how serious the problem is and how often you are being disturbed.

Make a list of what has happened and when for your own satisfaction. The list will prove very helpful later when confronting the neighbor, talking

to the authorities or going to court. Even if it means putting up with the problem for a time while you accomplish this, you will have exhibited your own tolerance and discipline and be in a better position to take action.

Know Who Is Responsible

When the peace of the neighborhood is suddenly shattered and you don't know your neighbors, the easiest reaction can be to simply call the cops to investigate the disturbance. This approach has several disadvantages.

An anonymous phone call or report to the authorities can make the situation much worse than it already is. The neighbor at fault won't know who the accuser is and so can't explain or even apologize. The neighbor will feel defensive, isolated and suspicious of everybody—a bad neighbor. You may succeed in stopping a problem for the time being, but the same problem or others will almost certainly surface again.

Try to find out who the offending neighbor is and deal directly with the person responsible. The long-term results will be more desirable.

Knowing who is responsible also includes more than finding out who is committing the offense. If the problem neighbor is a tenant who turns out to be uncooperative, the landlord may well be the person who can remedy the situation. In many cases in which tenants interfere with neighbors' rights to enjoy their property, courts will hold the landlord liable for the intrusion. This can be true for many problems, including noise, property deterioration and tree and boundary disputes. (See chapters on specific problems for discussion of landlord liability.)

Learn the Law

As emphasized in this book, a serious disturbance or infringement by a neighbor is likely against the law. Most often, the person will be violating a local ordinance. You can find the appropriate local laws at your public library. ([Part 3, *Legal Research*](#), explains how to find local ordinances and other laws that may bear on the situation.)

When you find yourself on the receiving end of a neighbor annoyance, you will strengthen your position by finding, reading and photocopying the relevant law. When a neighbor balks at remedying an irritation, or even when the dispute becomes hostile, there is probably still no intention of

breaking the law. If the offender realizes his or her conduct is a violation, you may have found the key to ending a conflict.

Find Out Who Else Is Affected

If you are being seriously disturbed by a neighbor, chances are you are not alone. A noise problem, for example, likely affects several neighbors. You may find that other concerns also bother more than one neighbor. Neglected property, blocked views, even an unclear boundary line can be a problem in common. Contacting others who are adversely affected and having them join you in your efforts can be very wise. It strengthens your position and also dilutes the possibility of hostility or retaliation.

Approaching the Problem Neighbor

Complaining to a neighbor is never easy. In fact, it can be so intimidating that people put up with terrible problems for years just to avoid confrontation. However, by being prepared and using common sense, you can make the task less unpleasant and much more productive.

Assume the Neighbor Doesn't Know

Most neighbors do not intentionally set out to create problems. The very last person to know that someone is disturbed is usually the one causing the disturbance. It is sometimes amazing how dog owners really don't hear their dogs bark. The neighbor who plays Yankee Doodle Dandy each night at mega-volume just when your head hits the pillow may actually believe it helps everyone to sleep. And some people are just plain thoughtless and have to be told that a problem exists.

Even if you are almost positive that the neighbor knows and doesn't care about an annoyance, when you approach that neighbor, assume he or she wants and needs to be told. Making the assumption can't hurt and may help.

Expect a Complaint Against You

Whenever you approach a neighbor with a grievance, be ready for a complaint against you; the neighbor may desperately grab for one. Never forget that you may actually be at fault for some minor irritation at the

present time or in the past and not know it. Your neighbors may be leaving their dog, who could sing bass in the choir, under your window at night because they're angry about your tree's annual shower of debris but too timid to speak up. Ask yourself how you would like to be approached if you were responsible for a problem.

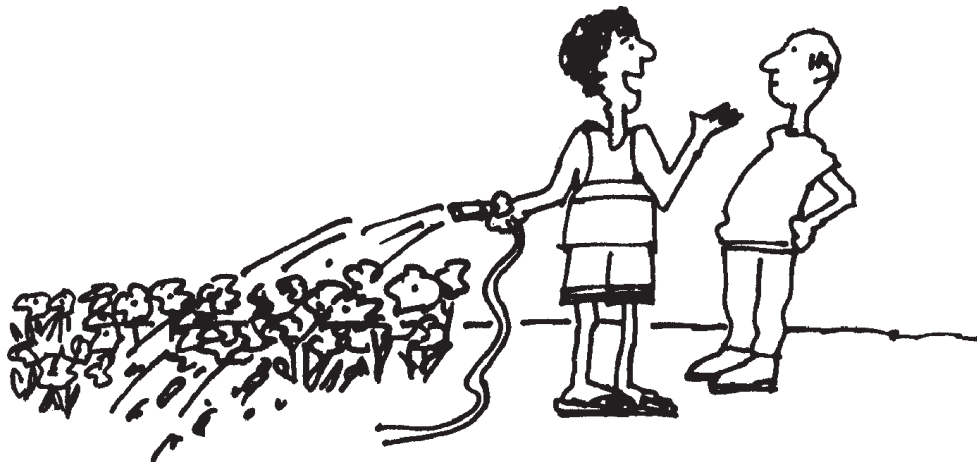
Choose Neutral Ground

Observe the neighbor's habits. What time does she get home from work? Does he water his yard at a certain hour? When does the trash go out? How about shopping trips or doing laundry?

What you're looking for is a common ground, a place to meet that is not exactly your territory and not your neighbor's. A parking lot, sidewalk, laundry room or the boundary of properties are all possibilities. Choosing a neutral spot for your chat creates a more equal footing and can head off territorial defensiveness.

Talk About Something Else First

Try bringing up a subject of common interest. "Do you think it will ever rain?" "Do you think the city will pass that parks referendum?" "How about those Raiders?" Get the conversation going before you plunge into a complaint. Once you are talking, you can gently shift into the problem.



Use a Question as an Answer

Imagine the perfect scenario. You and the neighbor are out side by side on the boundary watering your parched plants and complaining about the weather together. You look up at the neighbor's monster tree loaded with dead menacing limbs and innocently ask, "What do you think we should do about this tree?" You've asked for an opinion instead of stating, "By golly, I hate that tree of yours; do something about it or else."

How about, "Now that the weather is cooler and the windows are all open, do you think we should all turn down our TVs a little?" Or, "The walls in this building are so thin that the sound passes straight through them. Is there anything you can think of that we could do about it?"

With conversation first, common interests and neutral ground, the neighbor may help solve the problem and you may find you have avoided any confrontation at all.

Phone or Visit the Neighbor

If for some reason you can't use neutral ground, you can still attempt a tactful phone call, using some of the tips above. Be sure to show your own consideration by calling at a convenient time, say early evening. The neighbor will be more responsive and less defensive than if inconvenienced.

If you wish to personally go over to the neighbor's house, again choose a reasonable time when you are unlikely to disturb him—a weekend afternoon, for example. If you have found others affected by the problem, go together and complain together. Be prepared for some defensiveness when you complain on the neighbor's own territory, and use common sense. Something as basic as what you wear can affect the outcome. Keep it casual. If you come calling dressed to the hilt in a coat and tie and the neighbor is in cut-off jeans, you may have unwittingly encouraged hostility.

State the Complaint

You may be forced to just come out and tell the neighbor that a problem exists and it needs correcting. Still, some approaches work better than others. Try, "I'm sure you would want to know that your stereo (or tree, or collection of old cars in the yard) is disturbing me." Explain why you are disturbed, for example that you couldn't sleep Tuesday, Thursday and

Saturday night (remember your list), or you fear the tree, or you think the yard adversely affects property values on the street.

Don't be afraid to say you are sorry, that you hate to complain. Most people really are sorry to have to complain and if you say it, then it's easier for the neighbor to also say it.

Have a solution to the problem already in your mind and offer it. For instance, "Would you please be willing to keep the TV low after nine o'clock when I have to sleep?" "Would you be willing to trim this tree before it causes severe damage?" (Or possibly, "Could we go in together and trim this tree?")

Complain in Writing

Sometimes, for many reasons, it is necessary to complain in writing to someone as a first step. If you are too timid to face the neighbor directly or you don't know him well enough, you can state your complaint effectively in writing. When you have already spoken to the neighbor without success, you'll want to complain in writing as a next step. A diplomatic approach is still the best choice. A sample letter is shown below.

Sample Complaint Letter #1

Dear Mr. Costas,

I am sure you would want to know that your dog has kept me awake for three nights this week. Could you please put him in the house after ten o'clock so that he won't disturb the neighborhood? Thank you very much.

Sincerely yours,

Alice Batter

Alice Batter

Take a deep breath and sign your name. If others are affected, get everybody you can to sign with you.

Present the Law

Most neighbors will attempt to correct a situation that is bothering someone without even thinking about the law. But when this is not the case, it is time to present a copy of the relevant law.

How you do this will depend on the individual circumstances. If the relationship is still cordial, you can again use the “I’m sure you would want to know” approach and then simply give the neighbor a copy of the law. When hostility has developed, enclose the law with a firm letter, like the one below.

Sample Complaint Letter #2

Dear Ms. Hamur,

As I pointed out to you last week, your puppy has been digging up and ruining my vegetable garden. I have enclosed a copy of our local ordinance which prohibits dogs running at large.

Please leash your dog when off of your property as required by the law. Otherwise, I will be forced to contact the authorities. Thank you.

Sincerely yours,

John Ono

John Ono

Keep the letter civil, retain a copy and send it certified. You are creating a record to present to the authorities if you wish, and later if necessary, to a judge. (See [Part 4, Mediation and Beyond](#).) You also want to make it clear that you mean business.

When a problem is not directly addressed by a specific law, such as an encroaching tree or a danger to children, a preliminary letter to the neighbor written by an attorney on a legal letterhead can often still head off more trouble and expense. Having the laws explained to the neighbor by an attorney may be worth the cost and could even end the dispute.

Turning to the Authorities for Help

Sometimes all the courtesy and common sense in the world just don't work. Some neighbors can be thoughtless, nasty and dangerous. If your efforts produce nothing but hostility, the time has arrived to seek help.

The proper authority, whether it is the police, a zoning board, a city health department or other entity, should be more receptive to your complaint because of your own efforts. Tell them what you have done to try to solve the problem. Present a copy of the records you have kept. When several people are involved, get everyone to complain at once, and keep it up until you get some action.

In addition to official channels for complaint, if you live in a larger town or city, you also have another avenue open to you. Very often, instead of calling the police, calling your local conflict resolution center will result in a much more desirable solution to the problem. Mediation of neighbor disputes is so successful that we explain the process in detail in the next chapter. ■

Part 3 Legal Research

When you are involved in a neighbor dispute, you need to know what the law is on the subject. No deep mysterious powers are required. You simply need the few simple skills necessary to find the relevant local ordinances, state statutes and, occasionally, judicial decisions that speak to your particular problem. Whether you are preparing for a neighborly meeting, hoping to use mediation, heading for small claims court or about to hire a lawyer, you will almost surely benefit from doing some basic research on your own.

Most of this chapter explains how to use a law library. However, if you are on the Internet, you have many excellent resources available to you right from your home or office computer. Throughout this chapter we alert you to where and how you can find materials on the Internet, but if you want a more systematic approach to that type of legal research, as well as research in the law library, visit the [Legal Research Center](#) at Nolo.com.

Local Laws

Much of the law affecting neighbor relations is local, passed by a city council (or board of selectmen) or a county (parish) board of supervisors. Local laws often cover topics such as:

- animals
- blighted property
- building codes
- fence appearance
- fence height
- fence location
- garbage
- noise
- protected trees
- sick trees
- trash
- view obstruction
- weeds
- zoning

You can often get some answers to local law questions simply by phoning the appropriate government office—for instance, a zoning or planning office will answer questions about fence height restrictions or building permits. However, it also pays to read the law yourself. Certainly, when it comes time to deal with the neighbor, you will want a copy of the law in your hand. Some city offices will send you a copy of a particular law if you know exactly what you want.

If you're on your own, you can find the whole set of local laws, called ordinances, at city halls, county courthouses and public libraries. Or check

the county law library, which is usually located in or near the courthouse. Simply go in and ask the clerk or librarian where the ordinances are. The whole set is sometimes called the municipal or county code.

Once you have the ordinances in hand, look for your topic in the index. Be prepared to look under several different terms. Some indexes are not as helpful as they should be. For instance, if you have a dangerous tree problem, you may not find anything under “danger” or “tree.” Keep looking. Try “sick trees,” “hazardous conditions,” “nuisance” or even “miscellaneous.”

Often, local ordinances are kept in a big looseleaf binder, and the pages get jumbled when people take parts out and copy them. Be aware of this in case you find something in the index but can’t find the page. You may have to do some searching.

If the index doesn’t get you anywhere, read the table of contents and see if you can find your particular problem. If you are looking for building height restrictions or fence regulations and there is no entry under height or fence, check under zoning laws. Don’t stop your search until you have read all ordinances that might possibly be relevant.

For example, if your downhill neighbor plans a large addition to his house that will block your view, you probably won’t find anything in the ordinances to help you under “view.” Look instead at the building code and the zoning restrictions. You’ll obviously want to check any building height ordinances. But you’ll also want to read road setback rules and any ordinance that limits the ratio of building area to that of the total lot. If you find an ordinance limiting a building to 55% of a lot and your neighbor’s proposed addition will exceed the legal limit, you may be able to stop the project.

But don’t stop reading. Go on and see if other restrictions apply. Some ordinances call for design review and approval by a city commission in certain situations. For example, if your neighbor’s planned addition is so large that it upsets the scale of the neighborhood, you may be able to appeal to the planning authority.

If you can’t find what you are looking for, ask the librarian or clerk to help you. Even if you find exactly what you want, check with the librarian to make sure you’ve got an up-to-date version of the law. The updates for local laws may be in an different place, like the front or back of the book,

or even a different volume. Ask the librarian when the library received its most recent update (public libraries are sometimes out of date). If you're not sure whether or not you have the most recent ordinance, call the city or county clerk's office and ask when the law was last amended.

Occasionally, the language of an ordinance is confusing. If you find one on your topic that is a little unclear, try calling the relevant office and ask exactly how they interpret the law.

If you want to see whether or not any of your state's courts have issued written opinions interpreting a particular ordinance, you can use a set of books called "Shepard's Citations." Shepard's is available in law libraries. For instructions on how to use it, refer to one of the legal research books listed in "Other Resources," below.



Increasingly, local governmental entities such as counties, cities and school districts are maintaining websites and making their rules available through this means. To find out whether the local rules you seek are available, visit <http://www.spl.org/govpubs/municode.html> (a service of the Seattle Public Library).

State Statutes

Some situations that affect neighbors are regulated by state laws, passed by the legislature. These subjects include:

- adverse possession
- boundary fences
- damage to trees
- disorderly conduct
- easements
- nuisance
- spite fences
- trespass

You can find your state statutes in the county law library and probably in a large public library. Many publicly funded law school libraries, which will also have the state statutes, allow people to use their facilities. Use a law library if possible, especially if your question is complicated, because law librarians can be wonderful in sharing their research skills and directing you to the books you need. You can also find the statutes for the most states on the Internet.

Finding a Statute in the Law Library

State statutes (also called the state code) are published in two forms: a brief version, containing only the laws themselves; and an annotated version, which includes small summaries of cases and other helpful resources following the text of each law.

Ask the librarian to show you to the annotated version of your state statutes. What you will find looks like a set of encyclopedias and has a separate index.

Sit down with the index for a few moments and become comfortable with it. If you look under fences, for example, the index will probably list several numbers to find. These are not page numbers but the actual numbers of the state laws that have to do with fences. Each statute is numbered, and in most states, statutes are arranged in numerical order.

EXAMPLE: In Maine, under “fences,” you would find a reference to 30.3452. This means Title 30, Section 3452. The titles are arranged in numerical order and then by the sections within them.

In Utah, under “fences,” you would find just Section 4-26-5. Several states number their laws only with section numbers. The sections are printed in numerical order and easy to find.



Often, the numbers are on the outside of the particular volume you are looking for, on the spine of the book. The book may say “Title 30,” or it could say “Section 3-1-1 to Section 4-20-17,” depending on which system the state uses.

A few of the larger states, such as California, New York and Texas, break their codes down by subject matter. For instance, California has a Civil Code, a Health and Safety Code and so on. If you are looking for fences in California, the index refers you to C.C. 841; this means Civil Code, section 841. The index has a table explaining abbreviations. If you have any trouble, ask a librarian for help.

Also check to see if there is a paper supplement in the back of a hardback index volume. The supplement has an updated index and will contain any additional laws passed since the hardback index volume was printed. When the index itself is in paperback, look on the shelf beside it for any smaller supplemental paper index volumes.

Once you see how the index works—and it is usually pretty straightforward—make a list of terms to look up in the index for the subject you need. Ask the librarian for a legal thesaurus, which will suggest more terms for the subject, probably including some legal terms that you may not be aware of. Also, look in the statute index under “words and phrases.” This section can point you in the right direction. Take the time to look under all the terms you can think of that might possibly apply to your situation; if you don’t, you may miss a crucial statute.

If someone has cut down your tree, look under “trees.” Nothing useful there? Try “timber” or “trespass”—anything you can think of. For next-door neighbor problems, always check under “adjoining landowners.”

We wish we could tell you that finding a particular state statute is easy. Sometimes it is. But sometimes, depending on the subject and the particular state, it can take quite a bit of time and patience. A few states have pretty bad indexes.



Finding state statutes on the Internet. All states have their statutes on the Internet. The best way to find these is to visit the [Legal Research Center at Nolo.com](#). Choose your state and you’ll be whisked to the website where your state statutes can be searched. If you are a novice at this, click the help link next to the State drop down menu. You’ll get a crash course

in how to search state statute websites and how to read and understand state statutes

Reading a Statute

When you find a statute on your subject, read it carefully. The language of the statute may be unnecessarily complicated. Try to keep your cool and remember that the laws are written by lawyers, many of whom seem unable to write in plain English.

If you are using a law library, always check the back of the book for a paper supplement that has been slipped into a pocket in the inside back cover. This is called the “pocket part.” It contains any changes in the law that have been made since the hardback volume was printed. Just look for the number of the law in the pocket part. If nothing is there under that number, it means there has been no change. If you find a change, it replaces the law printed in the hardbound volume. If there is nothing but the word “repealed” after the number of the law, the law printed in the hardbound volume is no longer in effect.



Finding legislation on the Internet. All states post their legislative enactments on the Internet. To find these, visit the [Legal Research Center at Nolo.com](#). Choose your state and you will be taken to the website that lets you search for laws enacted by your state’s legislature.

Be aware too that many states have more than one statute addressing a particular subject. This is especially true in the area of adverse possession and easements. You may find one law listed under “adverse possession” and another under “limitation of actions.”

In the law library, look at the notes, called “annotations,” following the laws in both the main volume and the pocket part. You may find a reference to a court decision in a case that is very similar to yours. (“Court Decisions,” below, discusses how to find the entire text of these written decisions.) You could also find a reference to another statute that you want to read, or even to an article written about the subject.

This information does not accompany the statutes on the Internet. However, it’s possible to locate cases that have interpreted the particular statute by using the statute’s number as a key word search term and

running a search through your state's court case database. While the cases decided by your state's courts for the last several years are available for free, you will have to pay for access to a true archived case service. Fortunately, Versuslaw at <http://www.versuslaw.com> offers an excellent case database for \$6.95 a month. This may be less than one trip to the law library will cost you. If you want to find out more about searching cases on the Internet, visit the [Legal Research Center at Nolo.com](#).

Below is an example of a state statute found in the law library (Figure 1). This state law on spite fences is from the annotated laws of Massachusetts. Note the references beneath the law to other sources, especially the court opinions that interpret different questions that have come up regarding the law on spite fences.

Resources Listing and Explaining Court Opinions

Most of the law concerning neighbor relations is addressed either by local ordinance or state statute. But a few problems are up to the courts to decide. And some state legislatures have not passed laws on questions that are covered by state law in other states.

Even when you find a certain law that looks as if it will help you, you may wonder how courts have actually interpreted some issues.

In most states, courts have addressed the subjects of:

- boundary lines
- boundary trees
- encroaching trees
- hazardous trees
- negligent behavior
- nuisances
- other next-door neighbor questions (adjoining landowners)

You can use a law library for research into case law, or you may want to learn how to search for it on the Internet. County law libraries, especially in larger cities, as well as public law school libraries, will have the books you need. Even if your county seat is located an hour or so away, it may well be worth the trip to read what is available.

Legal Encyclopedias in the Law Library

When you can't find a specific law on your problem, ask the librarian to point you to the legal encyclopedias. Some states have their own; if yours doesn't, use a national one, such as American Jurisprudence (almost always

SPITE FENCES

§ 21. Definition; remedy of injured occupant

A fence or other structure in the nature of a fence which unnecessarily exceeds six feet in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance. Any such owner or occupant injured in the comfort or enjoyment of his estate thereby may have an action of tort for damages under chapter two hundred and forty-three.

Historical Note

St.1887 c. 348.

R.L.1902 c. 33 § 19.

Library References

Nuisance \Leftrightarrow 3(12).
C.J.S. Nuisance § 39.

Comment. *Damnum absque injuria*, see M.P.S. vol. 14, Simpson, § 1373.

Notes of Decisions

- Constitutionality 1
- Distance from boundary line 3
- Motive in erecting fence 2
- Persons liable 4
- Subsequent proceedings 5
- Validity 1

tutional. *Rideout v. Knox* (1889) 19 N.E. 390, 148 Mass. 368, 2 L.R.A. 81, 12 Am.St.Rep. 560; *Smith v. Morse* (1889) 19 N.E. 393, 148 Mass. 407.

2. Motive in erecting fence

Under St.1887, c. 348, purpose of annoyance must be dominant motive for erecting and maintaining fence. *Rideout v. Knox* (1889) 19 N.E. 390, 148 Mass. 368, 2 L.R.A. 81, 12 Am.St.Rep. 560.

3. Distance from boundary line

Where defendant maliciously erected fence unnecessarily more than 6 feet

1. Validity

St.1887, c. 348, declaring fences unnecessarily exceeding six feet in height for annoyance of adjoining owner to be private nuisances, applies to existing structures subsequently maintained as well as those afterward erected and is consti-

5A M.G.L.A.—29

Figure 1

called *Am. Jur.* for short). Like regular encyclopedias, these books are arranged alphabetically by topic. They discuss how courts have ruled in actual court cases.

Some of them have more than one series; you want the most recent. For instance, the current series of *Am. Jur.* is *Am. Jur. 2d*. The encyclopedias also have updated pocket parts in the back of the hardback volumes.

Figure 2 shows a page from *Am. Jur. 2d*, discussing uncertain boundary lines—in this example, neighbors setting a boundary by building a fence. You can see the small summaries of court decisions that follow each issue that is raised.

On the page from *Am. Jur. 2d*, you will see a reference at the bottom to *A.L.R.*, a set of volumes whose full name is *American Law Reports*. This is another excellent national compilation of court decisions, books and articles published concerning all areas of the law. *A.L.R.* also comes in several series—the 4th is current—and has updated pocket parts in the back. *A.L.R.* has separate index volumes that list the topics in alphabetical order.

Law Library Books on Particular Subjects

Books on particular topics can be most helpful for gaining an overall perspective on the subject, and also for getting more citations to court cases in your area.

- For property questions, a huge series of volumes called *Powell on Property* covers topics such as boundaries, easements and adverse possession in detail.
- For questions on nuisance (such as encroaching tree branches) and negligence (such as allowing a dangerous tree to fall) see *Prosser and Keeton on Torts* (a single volume).
- For information on problems between next-door neighbors, look at a recent book called *A Practical Guide to Disputes Between Adjoining Landowners —Easements*, by James H. Backman and David A. Thomas. This large loose-leaf volume covers many subjects of

12 Am Jur 2d

BOUNDARIES

§ 88

mutual acquiescence and recognition by the adjoining owners is essential to practical location, provided that there is, at the time of the location, a disputed, indefinite, or uncertain boundary line between the adjoining owners.¹¹ A practical location of a boundary line has been said to be simply an actual designation on the ground, by the parties, of the monuments and bounds called for by the conveyances,¹² and it has also been said that when a disputed or uncertain boundary line is fixed by practical location it is binding, not by way of transfer of title, but by way of estoppel.¹³

§ 88. Erection of fence.

Where there is doubt and uncertainty as to the location of the true boundary line¹⁴ between adjoining landowners, they may agree that a fence may be the division line between their lands.¹⁵ To constitute the fence the boundary line it is not necessary that the agreement be express; it may be inferred from or implied by the conduct of the parties, especially where the fence is acquiesced to as the boundary line for the period of the statute of limitations.¹⁶ It has

11. *Drury v Pekar*, supra, quoting *Kincaid v Peterson*, 135 Or 619, 297 P 833.

The practical location of a boundary line can be established in any one of three ways: (1) the location relied upon must have been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations; (2) the line must have been expressly agreed upon between the parties claiming the land on both sides thereof and afterward acquiesced in; or, (3) the parties whose rights are to be barred must have silently looked on, with knowledge of the true line, while the other party encroached upon it or subjected himself to expense in regard to the land which he would not have done had the line been in dispute. *Fishman v Nielson*, 237 Minn 1, 53 NW2d 553.

12. *Wells v Jackson Iron Mfg. Co.* 47 NH 235.

Boundary lines may be determined by physical indications of the lines on the ground accepted by the parties over a period of time. *Fallone v Gochee*, 9 App Div 2d 569, 189 NYS2d 363, app den 9 App Div 2d 699, 191 NYS2d 560.

The actual location of a deed may be satisfactorily established, not only by the natural objects found on the ground, but by the fact that all the parties who knew the facts and were interested in the land located the deed in a certain way. *Kenmont Coal Co. v Combs*, 243 Ky 328, 48 SW2d 9 (holding that location of deed by grantor and his grantee, subsequently acquiesced in for more than 30 years, could not be disputed).

13. *Adams v Warner*, 209 App Div 394, 204 NYS 613, quoted with approval in *Drury v Pekar*, 224 Or 37, 355 P2d 598.

14. Uncertainty of or dispute as to the location of the true boundary line is essential in order that a fence built on a line agreed as the boundary line may operate to preclude the parties from later claiming a different boundary line. *Vowinckel v N. Clark & Sons*,

217 Cal 258, 18 P2d 58; *Pederson v Reynolds*, 31 Cal App 2d 18, 87 P2d 51; *Blank v Ambs*, 260 Mich 589, 245 NW 525; *Talbot v Smith*, 55 Or 117, 107 P 480, 108 P 125. Annotation: 170 ALR 1146.

But it is not necessary that there should be an actual dispute between the parties regarding the true division line; it is sufficient if it appears that they were uncertain as to the true line and therefore agreed to a designated and certain boundary upon which they constructed a fence and occupied and cultivated or improved their respective portions to that division fence for more than the statutory period. *Martin v Lopes* (Cal App) 164 P2d 321, superseded 28 Cal 2d 618, 170 P2d 881.

When the real boundary line between contiguous landowners is known to them, neither of them may acquire title by acquiescence beyond such line by merely building a fence upon the other's property and cultivating and claiming the land to that point, since title to land by acquiescence is founded on an agreement when an uncertainty exists as to the true line. *Martin v Lopes*, supra.

15. An oral agreement fixing an uncertain and disputed dividing line of lands, and execution thereof by the building of a fence thereon, is not in violation of the statute of frauds, since the parties do not thereby undertake to acquire and pass title to real estate, but merely fix the location of the boundary of the land that they already own, the purpose being to identify their several holdings and make certain that which they regard as uncertain. *Holbrooks v Wright*, 187 Ky 732, 220 SW2d 524.

Generally as to oral agreements fixing boundary lines, see §§ 78 et seq., supra.

16. *Hannah v Pogue*, 23 Cal 2d 849, 147 P2d 572; *Roberts v Brae*, 5 Cal 2d 356, 54 P2d 698; *Kandlick v Hudek*, 365 Ill 292, 6 NE2d 196.

Annotation: 170 ALR 1145.

623

Figure 2

concern to next-door neighbors, is updated periodically and lists court cases for most states.

Because all of these books are written for lawyers, they are predictably full of frustrating legal jargon. However, if you approach them with a little patience, you can learn a lot about a particular subject. The Prosser book, especially, is quite readable and punctuated with Professor Prosser's fine sense of humor.

Digests in the Law Library

In Figure 1, showing the spite fence statute, look under "Library References." You'll notice a small symbol of a key that says "Nuisance 3(12)." Every topic in the law has its own "key number." These numbers form the backbone of the state and regional digests published by West Publishing Company. Each digest has an index by subject that tells you that subject's key number.

Once you find the key number in the index for the topic you want, you can look in the digest under the number for that topic and find citations to any court cases in your state that talk about that issue. When you get the key number directly from the statute, as shown in Figure 1, you won't have to look in the digest's index.

The digests can be the most helpful tool of all in finding exactly what you are looking for, because the issues in every published court opinion are broken down into these key numbers for the whole country. For example, if you look in any state digest under the key number "Nuisance 3(12)" (referred to in the Massachusetts spite fence statute above), all spite fence cases for that state should be listed.

Finding Court Decisions in the Law Library

When there are no state statutes or local ordinances to help you, you have to rely on what's called the "common law"—court decisions in a particular state that govern what the law is. When the highest court in a state (usually the state Supreme Court) decides an issue, that decision binds other courts in that state until the decision is later changed by the same highest court or the legislature. Although judges are sometimes influenced by decisions in other states, each state has its own common law.



When you are depending on case law, you need to read the actual court opinions to completely understand the law that affects your problem. And sometimes you may also want to look up and read a case referred to in the annotations to a statute, a legal encyclopedia or this book to learn the court's interpretation of a law.

Once you have a reference (called a citation) to a court decision, it is time to read the court opinion itself. Never depend on what a reference book tells you an opinion says. The people doing the research for these books are only human, and occasionally summaries are very misleading.

Tracking down exactly what you need does take a little work, but there is no reason why you can't do it yourself. Let's take an example.

Suppose you are worried about a neighbor's dying tree and wonder who pays for what if it falls. In a legal encyclopedia, you look under "adjoining landowners." The article tells you that the tree owner may have to pay for the damage and then cites *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 356 S.E.2d 123 (1987). Here's how to decode the citation.

The case name: Israel versus Carolina Bar-B-Que (Israel sued Carolina).

The books it is printed in: *South Carolina Reporter*, Volume 292, page 282, and *Southeastern Reporter, 2nd Series*, Volume 356, page 123.

The date: 1987 (when the court ruled on the case).

The second book listed in the citation, *Southeastern Reporter, 2nd Series*, contains cases from several states in the Southeastern United States and is called a regional reporter. Opinions from all states (except two) and the District of Columbia are published in the seven regional reporters. (New York and California use only state reporters for most of their states' court opinions.) To find out which regional reporter includes opinions from your state's courts, look at the opening pages of any regional reporter or check an encyclopedia for a regional reporter-state table.

Regional reporters are available in most law libraries, although the state ones may not be. The regional reporter is usually the easiest one to find and use. In the example, once you have volume 356 of the *Southeastern Reporter, 2nd Series* and look on page 123, there's the case.

Let's take another example, this time from New York. The reference book you are using says that a neighbor was not able to collect money for damage caused by a healthy tree next door, and cites *Turner v. Coppola*, 102 Misc. 2d 1043, 424 N.Y.S.2d 864 (1980).

New York and California reporters are usually available in law libraries across the country, just like the regional reporters. For this case, you take the last citation, volume 424 of the *New York State Reporter, 2nd Series*, look on page 864, and find the court opinion.

Figure 3 shows a copy of this page. You'll see a summary of the history of the case first, including what this court ruled. Then there's a sentence about each issue in the case and the West key number for that issue (see "Digests," above). The judge's full opinion follows this kind of introduction in all published cases.

Other Resources

In the rare situation where you would be going to court alone over a neighbor problem and relying only on a court decision, you need to be sure that the law is still good—that the court has not changed its position. Sometimes a case that is a hundred years old is still the law in a state. But many cases are later overruled or reversed, and are no longer good law.

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"8. The instruction and supervision given * * * were so negligently given as to result in the * * * injuries sustained."

No other factual averment was made by plaintiff which in any way indicates a basis for his conclusion of negligence (*Koppers Co. v. Empire Bituminous Products, Inc.*, 35 A.D.2d 906, 316 N.Y.S.2d 858); and, such is not satisfied by a mere repetition of the complaint without factual evidence upon which to impose liability upon the movant (*Golding v. Weissman*, 35 A.D.2d 941, 316 N.Y.S.2d 522).

Defendant, Senior's motion is granted.



102 Misc.2d 1043

Barbara G. TURNER, Plaintiff,

v.

**Caroline COPPOLA, Richard Petersen,
Minna Petersen and Freda
Amster, Defendants.**

Supreme Court, Special Term,
Nassau County, Part I.

Feb. 13, 1980.

Plaintiff, who alleged that branches on defendants' trees encroached on plaintiff's property, caused cosmetic damage to her garage and prevented her lawn from receiving adequate sunlight and that twigs, branches and buds from the trees constantly fell on her property, brought action for omnibus relief. On defendants' motion to dismiss complaint for failure to state cause of action, the Supreme Court, Nassau County, Special Term, B. Thomas Pantano, J., held that: (1) the trees were not a "nuisance per se," in such a sense as to sustain an action for relief; (2) complaint did not state cause of action for relief from private nuisance; (3) plaintiff did not have a cause of action in trespass; (4) plaintiff did not

have a cause of action in negligence; but (5) plaintiff could protect herself by self-help consisting of a reasonable cutting of branches to extent that they invaded her property.

Motion to dismiss complaint granted.

1. Nuisance ⇌ 1

Essence of a "private nuisance" is interference with the use and enjoyment of land amounting to an injury in relation to a right of ownership in that land.

See publication Words and Phrases for other judicial constructions and definitions.

2. Nuisance ⇌ 3(1)

In light of fact that defendants' trees, whose branches allegedly encroached on plaintiff's property and from which twigs, branches and buds were alleged to have constantly fallen onto such property, were not poisonous or noxious in their nature, the trees were not a "nuisance per se," in such a sense as to sustain an action for relief.

See publication Words and Phrases for other judicial constructions and definitions.

3. Nuisance ⇌ 42

Right to recover damages from overhanging branches depends on presence of actual injury to plaintiff or plaintiff's property.

4. Nuisance ⇌ 48

Complaint, in which it was alleged that branches on defendants' trees encroached on plaintiff's property, caused cosmetic damage to her garage and prevented her lawn from receiving adequate sunlight and that trees, branches and buds from the trees constantly fell on plaintiff's property, did not state cause of action for relief from private nuisance. RPAPL § 871.

5. Nuisance ⇌ 3(1)

Trespass ⇌ 10

If an invasion of plaintiff's interest in exclusive possession of his land also deprives him of use and enjoyment of the land, trespass and nuisance would jointly arise, so long as the interference causes

Figure 3

You can check to see if a case opinion is still good law by using an update service called Shepard's. This task is fairly complicated, and explaining it is beyond the scope of this eGuide. But there is no reason you can't learn how to do it. For detailed instructions in updating cases and guides for doing more extensive research by yourself, we recommend using one of the resources listed below.

All of these books, or at least most of them, should be in almost every large law library. Many will be in your public library.

- *[Legal Research: How to Find and Understand the Law](#)*, by Elias and Levinkind (Nolo).

In a nontechnical but detailed way, this book covers all the basic research legal materials and is designed for the average person. One of the best features is the first four chapters, which help you decide what words and concepts might guide you in framing a particular research question. This book is meticulously updated and explains how to do research on the Internet.

- *Legal Research in a Nutshell*, by Cohen (West Publishing Co.).

This book is more technical but still can help the nonspecialist. It discusses, in detail, the types of books used in the legal research process. This book is a classic that should be in almost every law library. It is a paperback and is usually inexpensive, at least as law books go. Unfortunately it is now a bit out of date. ■

Part 4 Mediation and Beyond

A long dispute means that both parties are wrong.

—Voltaire

One of the most troublesome aspects of neighbor disputes is that they can fester for years. One neighbor becomes angry, the other retaliates, the first neighbor adds fuel to the fire and the dispute escalates. Sadly, it is not uncommon to find neighbor quarrels that have gone on for years where the people can't even agree on how it started. If one neighbor actually sues another, the lawsuit drains not only money and time, but usually ends any possibility of salvaging a friendly relationship. Then the neighbors continue to live side by side, sometimes not speaking ever again, more often finding something else to fight about.

Happily, there is a way out of this problem—it's called mediation, and in one form or another it's probably available in your community. Today, many judges commonly order disputing neighbors into mandatory mediation after they get to court. Far better for the neighbors to arrange it early on by themselves, and to avoid ever darkening the doors of the courthouse.

What Is Mediation?

Mediation is a process in which the people involved in a dispute sit down and find their own solution with the help of a mediator. A mediator is a person who is neutral to the dispute and has training in techniques to get people talking.

Mediators are not necessarily lawyers; in fact, many are not. Some undergo hours of intensive training in mediating disputes. Many are volunteers, which helps enormously in keeping costs down. Often a mediation service provides disputing neighbors with a panel of several skilled people to hear and guide them.

The job of the mediator is to help keep the neighbors focused and reasonably civil, to allow the presentation of each person's side and to suggest compromise. The mediator has no power to impose a solution or

order any action. If the neighbors reach an agreement, the mediator helps to put it in writing, so everyone can remember exactly what was agreed.

The amazing thing about neighbor dispute mediation is how well it works. Unlike a court of law, each neighbor comes in not to win at any cost, but to simply be heard and to work at a solution. The fact that no judge or arbitrator can impose a decision greatly reduces the need to posture and shade the truth. The mediator's expertise helps, but usually most neighbors are tired of the quarreling and really would prefer peace in the neighborhood.

Another great feature of mediation is that unlike a court proceeding, where only matters relevant to the dispute can be considered, anything can be discussed in a mediation session. Often, the result is that hidden problems, not even mentioned at first but at the heart of the dispute, emerge. For example, a dispute over a tree may really have its roots in a perceived slur about one neighbor's race, religion or taste in motorcycles.

How to Find a Mediator

If you live in an urban area, you will probably have little trouble finding a mediator. The small claims clerk at the courthouse, the county law librarian or the police may have a list of free community mediation services. For example, in San Francisco, an organization called Community Boards provides free mediation services on a neighborhood-by-neighborhood basis. In some East Coast cities, the Society of Friends has provided mediation services for many years. And in other areas, state or city funds support local mediation (dispute resolution) centers. You simply call the center and, in many cases, a mediator will contact your neighbor for you.

In any planned unit development or subdivision, the homeowners association may offer mediation services to its members. If there is no neighborhood or community mediation service where you live, contact your local or state bar association. The American Bar Association has thrust its support behind mediation in the past few years. Many attorneys volunteer as mediators through their local bar associations.

Private mediators are listed in the Yellow Pages of the phone book. Some lawyers may also mention mediation services in their telephone book listings under "attorneys." If you choose a mediator at random like this, find

out first what her training is and how much she charges. Some may be as high as \$75 or \$100 an hour, but if they are good, the cost can still be far less than a lawsuit.

In areas that do not yet have organized mediation services, a troubled neighbor can still arrange for mediation of a dispute. All it takes is someone who is respected by both parties, who can remain neutral and who is willing to help. A respected member of the neighborhood or of the clergy, a retired cop—you can probably think of someone who would be willing to help you and a neighbor work out a problem.

How Mediation Works

When choosing mediation, the disputing neighbors decide that they are willing to try to work something out themselves. Usually, one neighbor contacts the dispute resolution center and asks for help. A mediator contacts the other neighbor and attempts to get that neighbor to simply sit down for one meeting. Mediators are very skilled at making disputing neighbors realize there is nothing to lose by such a meeting. The neighbors make no obligation beyond agreeing to sit down together in the same room with the mediator. Often the mediator has her own set of procedures. For example, sometimes a mediator wants to meet alone with each disputant before the mediation session.

At the mediation session, the neighbors may feel comfortable attending alone or may bring someone with them. Typically, each neighbor has a turn to explain his side, with the mediator sometimes asking questions. It is the mediator's job to try to keep the neighbors from interrupting each other and guide them toward a dialogue. In some instances, a mediator also explains relevant laws, but the neighbors don't have to follow the solution the law sets out; they are free to make their own agreement. If an agreement is reached, the mediator helps put it into writing.

Let's take an example:

Mary and John have been next-door neighbors for years. In the last year John has begun to complain bitterly about the debris in his yard from Mary's oak tree. Mary does nothing. John gives veiled threats about cutting down the tree. One day they have harsh words over the tree, and Mary warns him to leave her property alone.

John doesn't say anything more but turns up the volume on his TV when he watches late-night movies. And he moves his TV closer to a window on Mary's side of the house, which he leaves open a few inches. When Mary complains, John just smiles and does nothing.

A few weeks later, while watering her yard, Mary just happens to place the sprinkler too close to the property line, wets down John's tools, and soaks his cactus garden. John says nothing but begins parking his car right at the edge of Mary's drive so it's hard for her to turn into her driveway and even harder to see traffic when she pulls out. (Does this sound familiar to anyone?)

Mary and John no longer complain; they no longer speak. One night when the TV keeps Mary awake, she calls the police, claiming John is in violation of the local noise ordinance.

A cruiser pulls up, and the war goes up a notch. The police talk to both of them (with all of the neighbors watching, of course). Fortunately, a perceptive officer senses that there is more going on than one loud television set. He hands them both the name and address of a free local mediation project with offices at the local courthouse. Although it's a voluntary program, the officer gets both Mary and John to somewhat reluctantly agree to try it.

Mary and John are interviewed separately by the mediator. He takes notes in each session and prepares a tentative summary of the complaints. A date is scheduled for them to meet together. John, who lives alone, attends alone. Mary, upset over a confrontation with John, takes along her son, Bill, for support. Here is what happens:

Mediator: Thank you for coming. We will do this in an orderly fashion, with one complaint at a time. Mary, please begin by telling us what is happening. John, please do not interrupt; you will have plenty of time for your own story.

Mary: I don't really know why I am here. The only problem is that John here has suddenly begun turning up the volume on his TV at all hours and I can't get any sleep. I just want him to turn it down, or off.

Mediator: You told me earlier that John is also blocking your driveway and threatening your tree.

Mary: That too. I don't know what has happened. We used to get along, but then he started acting like a real jerk.

John: Jerk? Who's a jerk? You're the one who ruined my tools.

Mediator: Slow down. Let's start by keeping language as civil as possible. It's fine to be mad, but calling each other names won't help. Also, John, let Mary tell her story first in as much detail as she wants. Then it will be your turn.

Mary: I don't mind dealing with the tools. I was just watering my yard. There must have been a surge of pressure. I'm not the kind of person to deliberately harm someone else's things. (pause) I didn't mean to ruin any tools. John has just made me so angry.

Mediator: Mary, I have written down three complaints that you have about John: his loud television set, his blocking your driveway, and his threatening your tree. Would you like to add anything?

Mary: No. That's about it, and that's enough.

Mediator: John, you have the floor.

John: I never was going to hurt her precious tree, even though it drives me crazy. Living downwind from that thing with all the leaves it sheds is a nightmare. But the real problem here is Mary. She ruined \$200 worth of my tools and destroyed my garden. I should be taking her to court.

Mediator: What about the loud television?

John: It's my house, and I can watch TV anytime I please. Besides, noise doesn't seem to bother her when she's throwing those loud parties.

Mary: Parties? What parties? (This is the first time she has heard this and she is surprised. She thinks back for a moment. The only party she had this year was her annual Christmas open house. It didn't seem loud, even though it did go a bit late. And John knew he wouldn't be invited this year, after he had been so nasty.)

Mediator: Just a minute, Mary. John, let's talk about the tree, the oak in Mary's back yard. You say it is driving you crazy?

John: I've never seen so much debris in my life. I dread the fall when I'll have to spend all of my time raking up the leaves.

Mediator: How long have you two been next-door neighbors?

Mary and John: For ten years.

Mediator: During the past years, have you had any trouble before?

Mary: No. (pause) In fact, John has been a good neighbor in the past. I don't understand what is wrong. He used to like my tree; he even raked the leaves in my yard sometimes when he raked his. Now all he does is

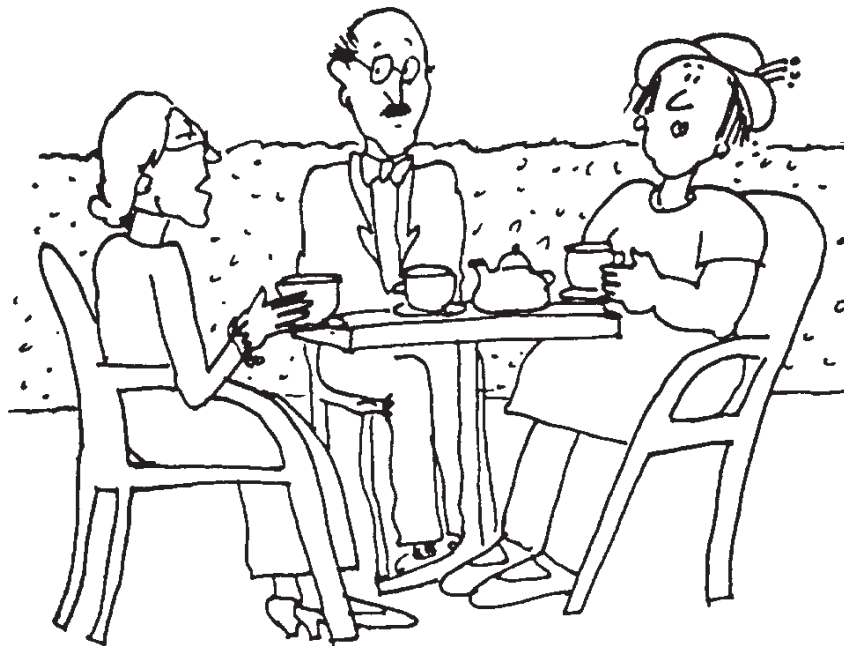
complain. I won't allow my tree to be harmed. And John, I have never had loud parties.

John: There just seemed to be so many more leaves last year. I can't rake as well after my back surgery. I can't do much of anything anymore. (He thinks maybe he should have told Mary about his back, and maybe asked her son, Bill, to do the raking. He realizes that he does still like the tree.)

Mary: Surgery, what surgery? When did you have surgery? Why didn't you tell me? I'm your next-door neighbor.

At this point the anger over the television and the tools is subsiding. Both Mary and John are beginning to see the trap they have made for themselves with their quarrels. They both are beginning to want out of the hostilities.

The mediator suggests that they make an agreement between them covering the issues that have caused their disputes. With the mediator's help, they draft one in writing, so they will have it for future reference.



AGREEMENT

Mary Malone and John Jasper, in an effort to settle their differences and live peaceably, make the following agreement:

- The entire oak tree in Mary's back yard is to be trimmed and thinned every three years, cost to be borne by Mary.
- Any branches of the oak tree over John's property may be cut at his expense at any time, if he chooses.
- There will be no loud television playing that disturbs the other. If John watches TV after 11 p.m., he will use earphones or move the TV from the wall on Mary's side of the house.
- At least a three-foot clearance will be left between John's car and Mary's driveway.
- Watering of lawns will be done with care and attention to each other's property.
- Any parties will be held at a reasonable time and without excessive noise.

In the case of any future dispute, Mary and John agree to talk to each other, with or without a mediator, to try to solve the problem amicably.

<u><i>Mary Malone</i></u> Mary Malone	<u><i>March 15, XXXX</i></u> Date
<u><i>John Jasper</i></u> John Jasper	<u><i>March 15, XXXX</i></u> Date

And yes, Bill started raking the leaves and John was invited to the next Christmas party. Corny? Not really. This is not nearly as emotional as some neighbor disputes. The real problem is usually lack of or missed communication.

If Mediation Fails

Of course there are times when mediation doesn't work. Sometimes, one neighbor just flatly refuses to participate in the process. Other times, the neighbors storm out, unable to agree, and head straight to court. There are also situations when it appears that only one neighbor is completely at fault and there is no room for compromise.

In these situations, you may have no choice but to take your dispute to court. But be prepared. The time and energy it will take to settle your dispute through the legal system will be substantial. Taking a dispute to court is beyond the scope of this guide. If you have to go that route, you may find it useful to refer to [*Settle Your Small Claims Dispute Without Going to Court*](#), [*Everybody's Guide to Small Claims Court*](#), or [*Represent Yourself in Court*](#). ■

Common law definition

The following states have statutes that follow the common law definition of private nuisance. Typically, they define nuisance something like this:

“Anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.”

Alabama	Ala. Code Ann. 6-5-120 (slightly different language)
California	Cal Civ. Code § 3479
Georgia	Ga. Code Ann. 41-1-1 (slightly different language)
Idaho	Idaho Code Ann. 52-111
Indiana	Ann. Ind. Code 34-1-52-1
Iowa	Ia. Code Ann. 657.1
Minnesota	Minn. Stat. Ann. 561.01
Montana	Mont. Code Ann. 27-30-101
Nevada	Nev. Rev. Stat. 40.140
Utah	Utah Code Ann. 78-38-1
Washington	Rev. Code Wash. Ann. 7.48.010

**Conduct or condition must be unlawful
or unreasonable**

In these other states, conduct must be unlawful or unreasonable to be defined as a nuisance.

Kentucky	Ky. Rev. Stats. Ann. 411.550
New Jersey	N.J. Stat. Ann. 2C:33-12 (limiting public nuisance)
New Mexico	N.M. Stat. Ann. 30-8-1 (limiting public nuisance)
North Dakota	N.D. Cent. Code Ann. 42-01-01
Oklahoma	50 Okla. Stat. Ann. 1
South Dakota	S.D. Comp. Laws Ann. 21-10-1

The states not listed above have no statute but use the common law definition of nuisance. ■

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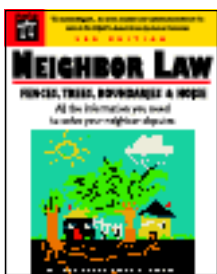
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