

Top 10 Neighbor Issues

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- 1. Your Neighbor Killed Your Trees by Over Pruning:** How do you even know that the trees that were located on your boundary line were yours and not your neighbor's in the first place? The only means to be certain is to outline your boundary line with monuments laid by a licensed land surveyor. Before even thinking of approaching your neighbor, be sure that you own the trees in dispute. Once your property is outlined, the key feature of a tree in determining ownership is the main support systems of the tree, such as the body or trunk, not the tree's branches or roots. If the tree is destroyed, as confirmed by an arborist, the wrongdoer is exposed to liability in an amount of up to three times the current fair market value of the tree, plus \$250, plus any permanent and substantial damages caused to the land where the tree existed.
- 2. Neighbor's Falling Tree Damaged Your House:** The existence of a claim depends on the condition of the tree prior to its fall. If the tree was left in a state of decay and that condition caused its fall, then your neighbor is liable to you for the cost of repairing the damage to your house and for the removal of the tree from your property coupled with the damage to your garden, grass, etc. that the tree's removal caused. However, if the tree was in a sound condition prior to its fall, you have no claim against your neighbor available at all. In fact, in determining whether the tree fell from decay or natural causes, your neighbor had no prior duty to regularly check all of her standing trees for nonvisible decay. Only where the decay was readily observable prior to the tree falling will your neighbor be liable. As a result, when trees fall from natural causes, such as a hurricane or tornado, your neighbor is not responsible for the damages caused by the tree or even for the removal of the tree itself. Instead, your neighbor, in such natural circumstances, only has an obligation to remove the tree to the extent that it exists within her boundary line after the fall.
- 3. Shared Driveway Maintenance and Repair:** A properly drafted deed, and/or covenants and restrictions in the chain of title, should spell out the respective duties and limitations of the parties' rights with respect to a shared driveway. The specific maintenance obligations of each neighbor should be set forth by explaining if the dominant estate-holder's rights are just to use the easement as a passageway, or, instead, if the dominant estate-holder can maintain the easement with such things as plantings, fencing, paving, etc. It should allocate the costs and decision-making powers of the neighbors so that there is no ambiguity as to the neighbors' ability to co-exist into the future. More so, it should unequivocally state if the servient landowner is completely excluded from use of the driveway existing for the benefit of the easement-holder, or if both the servient and the dominant estate can use the driveway in a shared manner. The latter being the default rule if the chain of title is silent as to this issue. In such a situation and absent an express agreement to the contrary, all persons benefited by an easement must share ratably in costs of its maintenance and repair. If you don't have an agreement concerning the maintenance of a shared driveway with your neighbor, before going to court, you should invite your neighbor to enter into a private agreement and thereafter file it in the chain of title, at the county clerk's office, as a covenant and restriction that runs with the land. This type of agreement will prevent future neighbors living at your respective properties from existing with the same type of ambiguity about driveway maintenance that created your conflict in the first place.

4. **Noxious Odors and Smells Next Door:** Damages may be available to you as the neighbor who has had to endure the offensive smell throughout its existence. In fact, the law is not so extreme that it requires odors to adversely impact your health in order for you to have rights. Instead, you have a claim so long as the odors are unpleasant and offensive. Odors that typically give rise to these types of disputes are caused by chemicals, farms, factories, restaurants and the like. To stop the smell, the claim that you should bring is called a private nuisance cause of action and to win on such a claim you will have to demonstrate that your enjoyment of life and property has been rendered objectively uncomfortable based upon unreasonable activities causing the smell.
5. **Water Runoff Causing a Flood:** If a neighbor undertakes affirmative acts that cause floods to intrude onto your property you have an action that can be brought, called a trespass cause of action, to stop your neighbor's wrongful acts. However, you need to either prove that your neighbor caused the floods through artificial means or that your neighbor undertook improvements to her own land in bad faith. To constitute bad faith, you must prove that such improvements have been undertaken without a bona fide attempt to enhance the usefulness of your neighbor's property, but instead, such improvements were done for the purpose of harming your property. Still further, you need to prove that the resulting floods created a material change in drainage from what previously existed on your neighbor's property. In such, a neighbor's paving of her property or even grading the property does not give rise to a claim because it only creates an immaterial difference in the property's drainage. So, your case requires you to establish that the flooding was caused by your neighbor's initial act of accumulating water (i.e., creating a dam) and then, discharging such water from their property, through a drain, piping or a ditch, onto yours in bad faith.
6. **Trespass to Your Beach:** If your neighbors continuously cross over your property to get to your beach, perhaps the best course of action is to build a fence. However, you must first make sure that your neighbor doesn't have a legal right to access the beach. If your neighbor has such a right and you deny access, you will be the one defending the lawsuit, not bringing it. To know if such a right exists, you should first check the chain of title, which should describe the limitations to your full ownership of your property in either the deed or the covenants and restrictions (i.e., easement or a right of way). While such a limitation should be contained in the chain of title, it could also have been implied by acts over the course of time through a concept called a prescriptive easement or, alternatively, your neighbor may actually even own the path to the beach through a closely related concept called adverse possession.
7. **Noise Issues and the Drummer Next Door:** Most communities have noise ordinances (i.e., zoning) prescribing the maximum decibel level of noise permitted by law. Often, these ordinances vary in terms of permitted decibel level by time of day and day of the week; so when checking the relevant ordinance, be particular in your search to the facts specific to your situation. Did you know that homeowners have a private right of action against their neighbor to enjoin the continual violation of an ordinance and for damages resulting from the breach? To bring this action, called a zoning violation cause of action, it is imperative to have proof of the noise level. Alternatively, you can bring a private nuisance claim where you must prove that your neighbor intentionally, unreasonably and substantially interfered with your use and enjoyment of your property. Also, under either claim, compile proof that you attempted to compromise with your neighbor as to his drumming (e.g., asking your neighbor to just not drum at 2 a.m., please...) before bringing the action.

8. **Lateral Access Right to Repair Your Property:** Like cities, suburban business districts are often comprised of buildings that are constructed right up against the lot line without any setback whatsoever. If you own such a building, you will likely require access to your neighbor's property in order to make necessary repairs to your own building. Yet, what do you do when your neighbor refuses your request for access and your roof requires immediate repair? You sue for a license to access your neighbor's property, as you have a statutory right to bring such a lawsuit. However, when accessing it, be sure to take good care of your neighbor's property because you will be liable for any resulting damages that occur incident to your entry thereon. You may also be taxed, in terms of attorneys' fees or otherwise, incident to your initial application for such a license to access your neighbor's property if you fail to explain to the court the steps that you undertook in attempting to negotiate a license for access without the need for judicial intervention.
9. **A Business in the Residence Next Door:** Regardless if the business is lawful, pursuant to the local municipal code (i.e., zoning), New York's highest court has said that "no one may make an unreasonable use of his own premises to the material injury of his neighbor's premises." Meaning, that there are no hard and fast rules in this field of law, which is called a private nuisance cause of action, but, instead, a trier of fact (i.e., judge or jury) must determine if a given business activity is unreasonable at the location where it is being conducted. If you wish to make a claim that the business is a private nuisance to your use of your property, you can let a court decide if the activity should be stopped. Further, let a court decide if you should be compensated for your lost use and enjoyment during the time that the business operated. To establish your lost value, look to the diminished rental value of your property during the time that the business operated from what that value would have been but for the existence of the business during that time.
10. **Fence Encroachment:** First, confirm the encroachment through a survey of the boundaries to your land, with monuments delineating the perimeter thereof. Next, act quickly in bringing an action to remove the fence because your neighbor may eventually seek ownership of your property by way of a legal doctrine called adverse possession if the fence exists for over 10 years. In taking action, you should claim that your neighbor's fence is trespassing on your property by way of the encroachment and seek out an order to remove the fence from your property together with damages stemming from the fence's wrongful placement on your property (i.e., loss in rental value of the property from the wrongfully taken piece). Nonetheless, be aware that a court will not require the removal of the fence if the encroachment is only de minimis (i.e., trivial) and the detriment caused by removal to your neighbor outweighs the benefit of removal that you will realize. To illustrate, courts have found that 1½- to 3¾-inch encroachments were de minimis and did not support removal. So, be prepared to articulate the negative secondary effects that the fence has caused to you. The goal is to show a court that, in balancing the equities between you and your neighbor, fairness is on your side.

Adapted from this [Dan's Papers](#) post.