

## - "Avoid Conflicts Over Your Property"

Posted by Greg Womer

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### **Avoid Conflicts Over Your Property**

Ever experienced conflict with a neighbor or co-owner? A little knowledge about your rights and responsibilities can be useful in resolving, defusing or even avoiding it in the first place. The following three items come up in my practice from time to time.

**Fencing.** If your and your neighbor's properties are divided by fencing, the replacement or repair of the fence can be a divisive issue. Fortunately, there is an Oregon statute that requires neighbors to share equally the cost of repairs or replacement of a "partition fence." A fence is a "partition fence" if it was erected for the purpose of enclosing the adjoining owner's yard. Asking your neighbor to cover half of the costs of necessary repairs to such a fence is not only reasonable, but it's the law. This is true even with respect to a neighbor who is renting, so long as the adjoining property is being leased for a period of at least one year. Of course, it is always a good idea come to an agreement on the nature and cost of the work in advance. Without such an agreement, you'll be entitled to reimbursement for half of the cost so long as the work simply restored, as close as possible, the original fencing.

**Trees and Vegetation.** Another common source of conflict between neighbors has to do with trees or other vegetation that is located on both properties – and thus shared – or trees and vegetation owned by one neighbor but overhanging the other's property. With respect to vegetation that is shared, neither owner can remove it without the other's consent. Generally, overhanging vegetation may be cut by an adjoining landowner at the property line based on the legal principal that one's property line continues in a straight line up into the sky. As with shared fencing, it's always a good idea to alert your neighbor to your plans up front. It may be helpful to emphasize that the owner of overhanging vegetation will generally be liable for any significant damage caused by it to a neighbor's property. Before removing trees, please keep in mind that many municipalities require a permit before cutting down trees of a certain size, even trees on one's own private property. Check there first.

**Shared Property.** Shared property comes in different forms, whether via ownership or use. Adjacent property owners may share a private driveway. Vacation homes are often co-owned with friends or family. Before a conflict arises, make sure you've thought through what might lead to a disagreement and do your best to address it. Shared driveways are often subject to rules contained in documents you may have seen when you acquired the property, such as a deed, easement, or right-of-way agreement. If you purchase property with a friend or family member, it is wise to deal with each party's rights and responsibilities relative to the use and maintenance of the property and its contents. In addition, make sure there is a well-defined exit strategy for each owner in the event an owner dies or wishes to sell. The terms solving these issues are usually documented in a written "co-tenancy agreement." For investment properties, consideration should be given whether to acquire or own the property in a limited liability company (LLC). The LLC's operating agreement should then address all of the management and exit-strategy terms.

An experienced real estate or business attorney can help you avoid or resolve property-related conflict by helping you identify issues, by drafting language to address them, or by negotiating resolution on your behalf.