

DEAR READERS: Do you have a legal question that has been burning in your mind (but are afraid to ask an attorney...ching...ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q. Thirteen years ago my neighbor put a horse fence along our property line. Good-looking fence. Ten years ago I happened to measure my boundaries and found that he started correctly but over a 300 foot run encroached 18 inches at the end of the run. I talked to him about the over-run, and he threw a “tizzy” and said he was going to pull the fence down. All I wanted was to register with the county that the fence did not match the property line. He moved away. The 18-inch is not bothering me that much—I plan to stay in my house for the next 40 years. What do you recommend? D.K., Forestville

A: Dear D.K.: I knew it would be a matter of time before I received a question about a property line/real estate issue. Our West County natural terrain lends itself to such simple questions, with complex answers. I should also comment that I am **not** a real estate attorney (my law practice is primarily personal injury law and clearing criminal records); but, I will share with you, in 750 words or less, three thoughts that come to mind:

1) Some folks like to throw around legal terms like “adverse possession” or “prescriptive easements” which in essence have their origins from the days of squatters roving westward and taking possession of lands by merely using the land and openly living on it. In California, if someone was to occupy your property continuously for **five years** (thirty years, I believe, in the lone-star state, Texas), make improvements, and pay taxes on the land, that constitutes “adverse possession”. The true landowner/ title-holder of the land would have to reclaim the land by filing a lawsuit against the squatter. (For you West County bookworms, check out California Civil Code Section 325 that describes the elements of adverse possession.)

Typically, adverse possession is not available if an **unimproved strip** of land is in question. Unless those eighteen inches of disputed boundary have been converted into a miniature ant farm or exotic cactus garden, odds are you will not have an equitable claim for adverse possession.

2) One practical question for you--how do you know the line is off by eighteen inches? You say that the boundary was measured, but was it surveyed? The reason I ask is that now that the fence is approaching its adolescent years, it may need therapy. Our wise Legislature passed a law that neighboring landowners should contribute to the repair or replacement of fences in some instances (check out California Civil Code Section 841). One option is to approach your neighbor in the spirit of repairing or maintaining the fence, and offer your survey (if one exists) as grounds for realigning the property line to

its true measure. Just an idea—albeit an expensive one...so.. let's move on to door number three;

3) Assuming the fence stays its course, hire a real estate attorney (I know you didn't want to hear that one)! If your wine budget needs refreshing and you want to save money, consult with a savvy title agent (including your own title agent under **your title policy**) to discuss a "simple agreement" between you and the new neighbor. They can also advise you on filing options with the county to protect your rights.

The agreement may be classified as a type of "easement deed" or "temporary license" that addresses issues such as i) description of the area in issue; ii) purpose of the easement (i.e. you are letting the neighbor use your land strip for horse-roaming or landscaping, etc.); iii) description of your adjoining land that the easement will be used with; and iv) a specific term or duration of the agreement, which will clearly create a record that the encroachment is not permanent. At least that way you have something in writing that acknowledges that the fence line is not the true boundary line in case you win the lotto and decide to move to Greece. Good luck!

Debra A. Newby is a resident of Monte Rio and has practiced law for 24 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in historic Railroad Square in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email (debra@newbylawoffice.com), phone (707-526-7200), fax (526-7202) or pony express (10 Fourth Street, Ste 212, Santa Rosa, 95401).