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### Fencing Laws and Your Neighbors: FAQs

#### What is the height limit for a fence?

Most fencing laws limit the height of artificial fences in residential areas to four feet in front yards and six feet in backyards. Local ordinances set by cities and counties, and sometimes subdivision rules called Covenants, Conditions, and Restrictions (CC&Rs), regulate fencing.

Some local height restrictions contained in fencing laws apply to natural fences made of bushes or trees. Ordinances will apply if the natural fence meets the definition of a fence or if the law specifically mentions it. The placement of a row of trees or bushes that border a property will usually meet the definition of a fence. Sometimes an ordinance will include phrasing, such as "naturally grown or constructed," in the definition of a fence. This language, or similar language, indicates the inclusion of natural fences in the definition. Many natural fence height restrictions range from five to eight feet.

A fence that violates local fencing laws can remain in place under the following circumstances:

- **The fence was built before the passage of the law:** If a previously existing fence violates new height regulations, in most cases it can remain. Once the owner constructs a new fence, it must conform to current height regulations.
- **A variance applies:** A person can apply for a variance, a one-time exception to the law, if they intend to build a fence that violates a local ordinance. Typically, a city will grant a variance when the property owner intends to shield the property from adverse conditions, such as noise from a highway.

#### Who is responsible for the maintenance of a fence between two properties?

Boundary fences sit on the boundary line between two properties. Boundary fences, or division fences, must conform to fencing laws established by local ordinances and CC&Rs. Both property owners own the fence erected between the property lines when both use it. Every state interprets "use" differently. There are three main definitions:

- **Occupancy:** use of the land up to the fence
- **"Join" for use:** the attachment of another fence to the boundary fence
- **Entire enclosure:** the property owner's entire property is enclosed by the attachment of other fencing to the boundary fence

Most state laws or local ordinances cast responsibility for the maintenance of boundary fences on the owners that use the fence unless an agreement indicates otherwise. The law places responsibility on both parties because both benefit from the fence. Consequently, when a fence needs repair, both property owners must share the cost. If one party refuses to cooperate, the other party can do any of the following:

- Write a letter to the neighbor explaining the problem with the fence.
- Have the repair work performed. Then write a demand letter requesting payment from the neighbor.
- Go to mediation.
- If state or local laws provide a provision, request a "fence viewer" examine the fence and make a recommendation of whether the fence needs repair or whether the amount requested for repair is reasonable.
- Sue the neighbor for reimbursement.

#### **A neighbor constructed an unsightly fence that is inconsistent with the style of the surrounding neighborhood. Is the appearance of a fence subject to regulation?**

Local fencing laws guide fence requirements, such as the height of a fence, how far an owner must set back a fence, the use of prohibited material, the maintenance of a fence, and dangerous fences. In most cases, except in a very few communities, the appearance, style, or design of a fence is unregulated by local law. However, blight ordinances may apply to an ugly fence that is dangerous or poorly constructed.

Subdivision CC&Rs, however, often have provisions that regulate the appearance of fences. Restrictions on the type of material an owner may use and height regulations ensure design consistency throughout the neighborhood. If a property owner's fence violates a subdivision rule, the homeowners association may ask the owner to make it conform. If the owner refuses, the association or a neighbor can sue to enforce the rules.

Sometimes a neighbor may build an ugly fence out of spite for a neighbor. Many states have laws that regulate "spite fences." A spite fence serves no reasonable purpose other than to annoy a neighbor. Most of these laws create the presumption that a fence is a nuisance to a neighbor when it is useless, when it is constructed to annoy a neighbor, and when it exceeds spite fence height limitations. Under these statutes, the neighbor may sue for its removal.

**My neighbor's fence violates a local ordinance. How can I have the ordinance enforced?**

The neighbor may be unaware of the ordinance, so it is important to tell the neighbor of the violation. If the neighbor refuses to make changes, notify the city of the violation. The city will send a written notification to the neighbor and request conformance. If the neighbor refuses to conform, the city can issue a fine and sue for compliance.

Many local governments will not pursue insignificant violations. Usually, these violations substantially comply with the ordinance. You may choose to sue the neighbor in small claims court for the loss of enjoyment of your property, but this will not result in the removal of the fence. If you would like the fence removed, a trial court judge can issue an injunction against the neighbor.

**My neighbor constructed a fence on the property line dividing the land. Do I have to pay for the fence?**

The neighbor that built the fence owns it and is solely responsible for its maintenance unless the other neighbor decides to use it. Every state defines "use" differently (see above), but most laws are satisfied when a property owner encloses their property by using an existing fence. Once the neighbor uses the fence, co-ownership of the boundary fence exists. In many states, fencing laws require the neighbor to pay the other owner one-half of the fence's value.

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