

Boundaries, Easements, and Interests in Your Land

Boundaries

As a rule, boundary lines are set forth in the property description in your deed. Sometimes, though, if the property was originally recorded decades or even centuries ago, that description may be a bit murky.

Before you erect a fence or other structure on your land, make sure that it is indeed your land. If you innocently but mistakenly erect a fence on your neighbor's property, you may be liable for trespassing on your neighbor's land. The neighbor could ask the court for an injunction to make you tear down the fence, as well as a money payment for any damage you may have caused to their land. The same applies in reverse: If your neighbor starts building on land you feel is rightfully your land, notify her immediately. If you allow the construction to continue and wait too long to complain, you may be giving up your right to that strip of land. After many years of uncontested use, courts sometimes grant the party that has used the land a prescriptive easement allowing them to continue doing so.

When your neighbor's house, garage, or other permanent structure stands partially on your property or hangs over it, that's *an encroachment*. So is your new addition if it starts 23 feet back from the sidewalk, when the local setback ordinance requires 25 feet.

It's even possible to encroach on an easement, for instance by locating the slab of your new patio on the gas company easement across your property for underground gas line. In that case, the company may have a right to dig up the slab and structure and charge you for it.

In the case of a neighbor's roof overhanging your property or his fence being two feet on your side of the line, you may or may not be able to demand its removal. Your rights might depend on how obvious the encroachment is, and how long it has been in place. If it was open, visible and permanent when you bought your home, you may have taken your property subject to that encroachment.

If the encroachment is less obvious, you may only discover it when you have a survey conducted for some other purpose. What to do? You have several options, among them being:

- Demand that the neighbors remove the encroachment. If they refuse, you could file an ejection lawsuit and obtain a court order requiring removal. Of course, this approach isn't the best for neighborly relations, especially if the fixture in question is the cornice of his house. Further, if prior owners of the neighboring property have used that bit of your land for quite a few years, your current neighbor could ask a court to declare his

interest in your property through a prescriptive easement or by adverse possession (described below).

- Sell the strip of land to your neighbor. Confirm the extent of the encroachment by having a land survey done. Get the encroaching strip appraised, if necessary, and exchange quitclaim deeds with one another.
- Grant written permission to use your land in that way. This maneuver can actually ward off a claim for prescriptive easement or adverse possession; because perfecting either of these claims requires showing that the use was open and hostile (without permission). If you like this neighbor but may not like those who follow, you might grant permission only as long as that neighbor owns the property. As your attorney, Voge Law Office, PLLC could draw up a document granting permission and file it for you.

The primary question when someone has encroached a bit onto your property is how important it really is to you. Typically, disputes over encroachments arise when there's already dissension between neighbors. If everyone's getting along fine, chances are you can live quite happily even though your neighbor's fence does stand a foot or two on your side of the line. You may want to just choose the least contentious option and get on with your life.

Let Voge Law Office, PLLC review your case and provide you with the best solution to resolve any boundary dispute.

Easements

If there's an *easement* on your property, someone else may have a right to use part of it for a specific purpose. For instance, your lakefront property might have an easement granting public access to the waterfront. These are normally established by the developer at the time the subdivision is platted, to provide needed services to the development. If a utility company wants an easement that won't benefit a given property, such as using a strip of land for a high-voltage power line, it must pay the property owner for the property's diminished value (if the property owner refuses to grant the easement, the utility owner may be able to exercise its power of eminent domain to force his right).

It's also possible for your neighbors to have an easement on your property, whether to use your driveway to get to their house or to restrict you from blocking their view of the lake (view easement).

An easement may be created by a deed, by a will, or by means of an *implied easement* (i.e. a previous owner divided a single lot in half and the only access to the back lot is through the front one).

You may not be aware of an easement on your property until your title records are searched at the county recorder's office and a subsequent land survey is performed on your property. If you

haven't had a survey done yourself, at least look at the prior owner's or lender's survey (if one is available) before you purchase a property.

If you discover an easement, check the wording. When a document grants an easement to a particular person, the restriction usually terminates when he dies or sells the property. But if it's granted to someone for a term of years or to someone and "his heirs and assigns," it's probably in effect no matter who owns the property. Unless and until the easement expires, your legal obligation is to refrain from interfering with that right.

Adverse Possession

Although you have a right to keep trespassers off your land, it's possible under the law for a trespasser who uses the property as you would yourself to actually become the owner. This entitlement is called *adverse possession*. It's unlikely to occur in an urban area like Duluth, where lots are relatively small and homeowners know when someone else has been using their property. But if you own a remote hunting cabin somewhere up the Gunflint Trail, you might not know that your neighbor has been using the four wooded acres in a corner of your twenty acre property for his personal and exclusive use.

Adverse possession is similar to a prescriptive easement, where a court declares that, say, your neighbor has a right to keep his hedge on that strip of your land because it's been there for the statutory period of time. The difference is that while prescriptive easements concern use of the land, adverse possession concerns actual ownership.

In order for a claim of adverse possession to succeed, the trespasser has to show that his occupation of your property was open, continuous, exclusive, actual, and non-permissive for a statutory period of time (15 years in Minnesota). As with prescriptive easements, granting the person permission to use the property cancels his claim to ownership by adverse possession.

Proving adverse possession or a prescriptive easement requires a thorough gathering of all of the facts necessary to establish your rights under Minnesota law. Voge Law Office, PLLC will be glad to assist you in analyzing your case and provide competent advise on asserting your rights in these circumstances.