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A Question: Does My Neighbor Have To Pay For The Repair/Replacement Of Our Shared Fence?

By David Hamerslough

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If you have ever asked this question and had your neighbor tell you "no," then you will find the California legislature's amendment of Civil Code Section 841 interesting.

The typical neighbor rationalization for not contributing has been that they are happy with the fence, see no reason to repair/replace it, or don't have the money. Existing California law (Civil Code Section 841) provided that property owners were only responsible for contributing if they were using the fence to enclose their own property. If the fence did not complete an enclosure of the neighbor's property, there was no obligation for that neighbor to pay. Most local ordinances or CC&Rs were either silent on this issue or consistent with California law.

The California legislature amended Civil Code Section 841, effective January 1, 2014, to clarify in modern English the statute's original intent, *i.e.*, that neighbors gain mutual benefits from the construction and maintenance of a boundary fence between their properties and are therefore appropriately presumed to share equally in the need to contribute to the construction and maintenance of such fences. Another motivation for updating the law was a desire to minimize neighbor disputes and for the law to reflect the modern benefits associated with boundary fences, which include protecting privacy and preventing unlawful encroachments.

The new law provides that there is a rebuttable presumption that adjoining landowners gain an equal benefit from the shared fencing dividing their properties, unless otherwise agreed to by the parties in a

written agreement, and adjoining landowners are presumed to be equally responsible for the reasonable costs of construction and maintenance of any such fencing.

The statute now requires a landowner who intends to incur costs due to constructing or repairing a fence shared with an adjoining landowner and who wishes to have reasonable contribution toward those costs by the adjoining landowner to provide the neighbor written notice at least 30 days prior to any construction or maintenance of the fencing.

The 30-day notice must include the following: (1) notification of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence and (2) the estimated construction or maintenance costs. Other suggested inclusions in this notice are a description of the problem with the fence, how the proposed construction or maintenance is going to solve the problem (if that is not clear from the description), any proposed cost-sharing other than an equal sharing, and a schedule or timeline for the work.

The statute provides that in the event there is a subsequent dispute about the shared fencing project, a court shall order contribution of the reasonable costs of construction or maintenance of the fencing, unless the adjoining landowner either rebuts the presumption or demonstrates a financial hardship. The court will then determine that no contribution or a contribution of less than an equal share is owed to the requesting landowner. In order to rebut the presumption, the non-contributing neighbor must demonstrate, by a preponderance of the evidence, that imposing equal responsibility for the reasonable costs would result in a manifest injustice.

The factors the court will examine to determine whether that injustice exists include the following: (a) whether the financial burden to one landowner is substantially disproportionate to the benefit conferred upon that landowner by the fence in question; (b) whether the cost of the fence would exceed the difference in value of the land before and after its installation; (c) whether the financial burden to one landowner would impose an undue financial hardship given that party's financial circumstances; (d) the reasonableness of a particular construction or maintenance project, including (1) the extent to which the costs of the project are unnecessary and (2) the result of the landowner's personal aesthetic, architectural, or other preferences; and € any other equitable factors appropriate under the circumstances.

This amended statute applies to any private person or private entity holding a possessory interest in the property. It specifically excludes any city, county, district, public corporation, or other political subdivision, public body, or public agency holding any possessory interest in the property.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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