



PHOTO: JIM PATRICO

# Tree Trouble

**Recently a neighbor's tree fell on our fence. We moved it ourselves and fixed the fence. It cost us \$750. They have another large, dead tree on their property—this one leaning in the direction of our barn. We're worried it will fall during the next big storm. Is there some way to force them to remove this tree before it tears up our barn?**

Under the laws in most states you can't recover for an injury to person or property until the actual injury has occurred. I believe your neighbor is liable for the damage to your fence, and he would most likely be liable if another tree falls on your barn.

Perhaps you could visit with the neighbor and try to work out a way to get the tree removed before it falls. At the very least, send him a letter by certified delivery. The letter should state that if the tree falls you will seek damages for harm caused. This won't guarantee you success if the tree falls, but it will help if you have to seek damages later. Other than that, all you can do is pray for a wind blowing away from the barn.

—Scott Tidwell, *Tidwell & Tidwell*

**I own about 80 acres in Minnesota. A lot of surface and tile water run across my farm and into a ditch across the street. The ditch is on land owned by an absentee landowner. It is so overgrown that water backs up onto my property now and stands for long periods of time. Should I just clean out the ditch myself and send the landowner a bill?**

In Minnesota, as in many other states, the courts apply a reasonable-use test for changes to the land that alter the natural flow and drainage of surface water. Surface water results from rain, snow melt or percolation of underground water. It is not a continuing and established creek, stream or river.

Property owners can increase or obstruct surface water flow only to the extent such change is reasonably necessary for the use of their property; the change is made with reasonable care so as to avoid unnecessary injury to another's property; and the benefit outweighs the injury to the other's land.

In your case your neighbor has failed to manage the vegetation to prevent an obstruction. So you may have a good case to force your neighbor to control the vegetation to prevent flooding. Your neighbor is not receiving any benefit from the vegetation, and it is reasonable to expect landowners to control obstructions to natural drains.

That said, if the cost of controlling the vegetation is so high as to outweigh the damage to your land, the outcome in court might not be certain. Since both of you would benefit from removing the vegetation, I suggest you contact the landowner and offer to perform the work for a portion of the cost.

—Robert P. Achenbach/  
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**For 30 years my neighbor and I had an agreement on about 8 feet of unclaimed land between our properties; we used it as a common drive. While I was out of the country in Kuwait, my neighbor had a survey**

**done and put up a fence, taking in that 8 feet. He says he even went to the courthouse to change the deed, showing that the 8 feet belong to him. Do I have any options? We only had a verbal agreement.**

First, get a survey done on the disputed property to determine who actually has legal title to the land. If that survey reveals the property belongs to your neighbor, you are probably out of luck. Where a landowner gives another permission to use his property, he may, at any time, withdraw that permission.

If the survey reveals you are the legal owner, you may be forced to file a "trespass to try title" lawsuit to get the title "quieted" in your name.

If in fact you are the true owner and your neighbor has fenced you out, there is the risk he will establish title against you by adverse possession. To pursue this you'll need to see an attorney in your state who is knowledgeable about real estate law.

—C. Dan Campbell/  
Brooks & Campbell

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