

# A Guide to

# Boundary Disputes for Landowners

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gray

Always here for you.

■ Understand how legal boundaries are determined.

■ Understand possible defences to an individual case.

■ Understand what steps may need to be taken.

## Section

## 1

*This Guide has been designed to assist you in understanding the basic principles and general issues surrounding boundary disputes. This Guide is only intended to be a general overview of the law in relation to boundary disputes. Legal advice should always be obtained from Leonard Gray in application to a particular case.*

## Introduction

*This Section of the Guide sets out the circumstances in which a boundary dispute may arise.*

Boundary disputes usually arise when one person asserts ownership over a piece of land, which is owned by their neighbour. A common example would be if one neighbour moves their fence towards their neighbours' property, annexing the neighbour's land to theirs - this would give rise to a boundary dispute. Other examples can include parts of one neighbour's property (for example, a driveway, garage or other structural feature) being built over the other's land, one neighbour removing the other's hedge and replacing it with a fence, or one neighbour purchasing their property and mistakenly believing they were buying more land or discovering their neighbour has been using their land for a period of time. Situations such as this can quickly spiral out of control, as emotions between neighbours can run very high.

One point to bear in mind is that boundary disputes can be a long and costly process, and can have a detrimental effect on the value of either neighbour's property. Therefore, parties to a boundary dispute should look to reach an early settlement with their neighbour, as the stigma attached to land which is the subject of a boundary dispute can be severe. As such, neighbours could find themselves living in a property which they may be unable to sell in years to come.

Generally speaking, Local Authorities will not be particularly interested in becoming involved in boundary disputes so it is important to seek professional advice at the earliest opportunity.

*The next Section of the Guide considers how legal boundaries are determined.*

## Section 2

# Determining Legal Boundaries

*This Section of the Guide considers how legal boundaries are determined.*

A common misconception about boundaries is that people seem to think aerial snapshots obtained from the Land Registry are conclusive – when they are not. The law on boundary disputes is complex and involves evidence from various sources, which the Courts will usually need to consider in order to decide a case. The law is as follows:

- The starting point is that the neighbours should examine the historic title deeds to their properties and look at what description their respective pieces of land were given within the deeds.
- If the descriptions in the title deeds are unclear, then the neighbours should examine their title plans which are annexed to the title deeds, as these can give a slightly better description of the land. Plans and Ordnance Survey details from the Land Registry can be helpful, but these are not determinative and should be treated with an element of caution.
- If 1 and 2 above are inconclusive, the neighbours must examine “extrinsic evidence” (also known as “the lie of the land”) and the neighbours will need to determine what has actually been transferred from the previous owners of the property to them.
- In addition to all points above, the neighbours will have to investigate whether there have been any informal arrangements in place, which may be historic or current, relating to the land in dispute.

Both parties will also need to produce any additional evidence they have in their possession which relates to the position of the boundaries – this can include old photographs and witness statements from people who have knowledge of the position of the boundaries.



In nearly all cases, both parties will instruct their own boundary surveyor who will review their title deeds and plans. In addition, the surveyor will conduct a site visit, which will usually include taking detailed measurements of the land and deciding whether or not either of the neighbours have a reasonable case against the other. Be careful when instructing a boundary surveyor, as you will need to check whether:

- They specialise in boundary disputes;
- They have experience in mapping and surveying;
- They have experience in preparing expert witness reports for Court; and
- How often they are instructed on boundary disputes.

The boundary surveyor will need to have experience in both land surveying and interpretation of title deeds and historic documents. Therefore, if you have any doubts about the surveyor's background or their experience then you should contact the Royal Institute of Chartered Surveyors ("RICS") or your solicitor who will be able to advise on who is best to instruct.

*The next Section of the Guide considers the possible defences to a boundary dispute case.*

## Possible Defences

*This Section of the Guide considers the possible defences that can be raised in a boundary dispute case.*

Whilst it is important to examine the strengths of bringing a case, the opposing neighbour may have the benefit of a number of defences. Each case will turn on its own individual facts and the circumstances of the case will need to be carefully considered. As a general guide, here are the possible defences that a neighbour could raise:

### 1. Adverse Possession (also known as “squatter’s rights”)

This arises when the opposing neighbour argues that they have been in uninterrupted factual possession of the disputed land and have intended to possess it to the exclusion of all others. Depending on whether the land in dispute is registered at the Land Registry, the opposing neighbour will need to show either a period of at least ten or twelve year’s uninterrupted occupation of the land. If the land is registered, then the defence will need to be detailed and robust, and explain all the acts of possession in intricate detail.

Defences of adverse possession are very heavily reliant on historic evidence, such as witness statements from other people who are familiar with the land and boundaries, and old photographs which can show the disputed land being used without interruption.

### 2. Profits à Prendre

If the opposing neighbour has used the disputed land by visiting it and taking something from the land or using it in any way, then they may be able to claim a profit



à prendre. Examples of this could include opposing neighbour visiting the other's land and taking soil or minerals from it, or keeping animals on it. The law in this area is complex and goes back many years, but as a general guide, the rights of one of the neighbours can be determined as follows:

- Through Prescription – if the opposing neighbour has used the disputed land by visiting it over a period of 30 years', then they may be able to claim it through this period of usage.
- Through Necessity – if it can be argued by the opposing neighbour that their land is dependent on the use of the disputed land, then they may have a defence of necessity.
- Through Common Intention – this is similar to necessity but would arise when there has been an intention of both neighbours over the years to use the land in the manner which it has been used.

### **3. Rights of Way**

If the opposing neighbour has used the disputed land to gain access to a part of any other land, then they could argue they have acquired a right of way. These can arise as follows:

- Through Prescription – if the opposing neighbour (and the previous owners of their property) has used the disputed land as a right of way for a period of 20 years, then they may be able to claim it through this period of usage.
- Through Necessity – if the both neighbours' pieces of land used to exist as one and the opposing neighbour needs to pass and repass over the disputed land to gain entry and exit, then they may be able to claim it through necessity.



- Through Common Intention – this is similar to necessity and, as with profits à prendre, the opposing neighbour would need to demonstrate an intention of both neighbours to use the land in this manner.

There are various other legal concepts that can be argued in defence to boundary disputes and these would need to be considered as part of the circumstances of an individual's case.

*The next Section of the Guide considers the steps which should be taken to resolve a boundary dispute.*

## Section

## 4

## Resolving the Dispute

*This Section of the Guide considers the steps which can be taken to resolve a boundary dispute.*

Always seek advice from a property litigation solicitor or a boundary surveyor at the earliest possible opportunity. The Courts will require the parties to adopt an open-minded approach to their dispute and explore all possible avenues of settlement before a contested trial takes place. It is possible to reach a negotiated settlement with your neighbour quite early in the process by any of the following methods:

### 1. Solicitors' correspondence

By instructing your solicitor and asking them to make offers of settlement, an early resolution can sometimes be reached. The prospect of protracted litigation to one neighbour may seem like a daunting experience so it could be that this enables the both neighbours to see sense and compromise their position. This would also have the effect of saving both neighbours' legal and surveying costs.

### 2. Mediation

Your solicitor may be able to appoint a mediator on your behalf, with the agreement of your neighbour. The mediator is an independent third person who would be jointly instructed by both neighbours and would encourage both parties to try to resolve the dispute amicably. The mediation is likely to last for a day and would involve the mediator shuttling between both parties and seeing if there are any agreed terms of settlement that can be reached.

It is important that both parties mediate sooner rather than later, as once Court proceedings have started, the Court timetable will be underway and both parties will





need to comply with fairly tight deadlines. All forms of litigation carry a degree of risk and the case could, in theory, fall apart at trial, so a mediated settlement during the proceedings is preferable to the risk of trial.

### **3. Joint site visit**

This would involve the parties, together with their solicitors (and sometimes surveyors) meeting at the properties and discussing a possible settlement. The solicitors would take an active approach in talking to one another and they would relay information onto each of the neighbours, in an attempt to try to resolve the dispute.

If a settlement is not reached between the neighbours, then the final stage will be a contested trial, when the Judge will hear evidence from both neighbours, their witnesses and their surveyors. After hearing all the evidence, the Judge would proceed to make a final Order, concluding the case. It is also usual for the Judge to order the losing party to pay the winning party's reasonable legal costs of the proceedings – this is the reason why both neighbours should look to reach a settlement with the other before the case goes to trial.

*The next Section of the Guide will look at how to make an appointment.*

## Section

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## Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact either **Erin Duffy** or **Joe Sandercock** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

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