## CALIFORNIA BOUNDARY LAW:

CRITICAL ISSUES AND SOLUTIONS EVERY PRACTITIONER NEEDS TO KNOW







# COMMON BOUNDARY ISSUES

- Encroachments
- Trees & Vegetation
- Views
- Road & Driveways
- Lateral Support
- Water Intrusion

## <u>Encroachments</u>

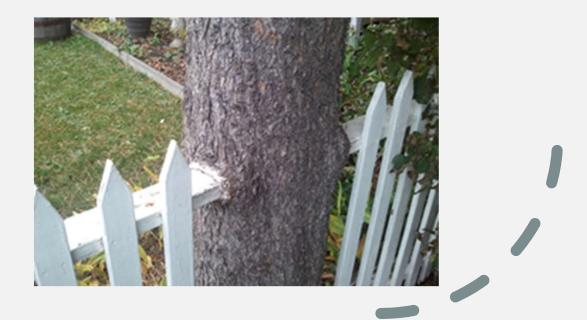
Fences Retaining walls Planters Irrigation Pools



Do not assume that fences mark property lines!



Topography often causes encroachments



## TREES AND VEGETATION

#### Tree trunk located wholly on one property.

- That property owner is the owner of the tree even if its root and branches extend over to the adjacent property. Civ. Code §833.
- Overhanging branches and roots are a nuisance
- The property owner affected by the nuisance has the right of self-help to cut the branches back to the property line. Bonde v. Bishop 112 Cal. App. 2d 1 (1952).
- But that right is not an absolute right. Every property owner must act reasonably. See Booska v. Patel (1994) 24 Cal. App. 4th 1786

## TREES AND VEGETATION

#### **\***Tree trunk is on the common boundary line.

- Tree is owned by both neighboring landowners. California Civil Code §834.
- Neither owner has a right to cut down a tree located on the boundary line, even if the continued existence of the tree or its overhanging branches will cause damage to his or her property.

#### Views

- No right to view in California
- Must have granted view easement or restrictions in CC&Rs. But, a row of trees
  planted for the purpose of annoying the owner may constitute a spite fence under CC
  841.4 (Fence over 10') entitling the plaintiff to a court order enjoining a nuisance.
- Wilson v. Handley (2002) 97 Cal.App. 4th 1301

### Roads and driveways

Lateral support (Civ. Code §832)

### Water intrusion

- Surface water (uphill owner always liable for changing natural surface water flow unless downhill owner is unreasonable)
- Keys v. Romley (1966) 64 Cal. 2d 396



## **RESOLVING THE DISPUTE**

### **Prelitigation Considerations**

- Initial Client Consultation: Obtain All Review Relevant Title Documents and other documents relating to the dispute
- Research Local Ordinances
- Is insurance available? Homeowners Insurance? Title Insurance?

 $\rightarrow$  ALWAYS TENDER THE CLAIM!  $\leftarrow$ 

#### **\*** Alternative Dispute Resolution:

- Easement agreements, Encroachment and license agreements, Lot line adjustment, Party wall agreements Mediation, Arbitration
- Cost of litigation
- Damage to neighbor relationship

# Litigation of Boundary Disputes

#### Investigation and Fact Gathering:

- Conduct a Site inspection: take your expert
- Locate All Existing Surveys And/or Obtain a New Survey
- Choosing a Surveyor
- Other experts: Civil Engineer, Appraiser, Cost Estimator, Consulting Arborist, Certified Arborist
- Photographs (aerial photos); Google maps; Bing Maps, Ariel Photo Archives

# Litigation of Boundary Disputes

**\*** Do you want to be a Plaintiff or Defendant?

#### **\*** Invite the lawsuit to trigger insurance coverage.

- May get attorney's fees if they apply for preliminary injunction.
- Bond: It is well settled that reasonable attorney's fees, expert witness fees and related litigation expenses are recoverable as "damages" within the meaning of the undertaking. *Abba Rubber Co. v. Seaquist*, (1991) 235 Cal. App. 3d 1, 15-16.
- If the amount of the bond becomes to low, go back and ask for more, C.C.P. 996.010(a).

# Pleadings

### ✤ Quiet Title CCP §760.010 et seq.

- Specific description of property claimed required
- Verified Complaint
- Lis Pendens CCP §405 et seq.
- Acquire Litigation Guaranty from Title Company.
- Declaratory Relief CCP §1060
- Trespass
- Nuisance
- **\*** Key Defenses :
  - Balancing of the hardships
  - Adverse possession/prescriptive easement
  - Irrevocable license
  - Statutes of Limitations : Permanent/continuing trespass: 3 years; Recovery of real property: 5 years [*Harrison v. Welch* (2004) 116 Cal App 4th 1084]
- Cross-Complaint

# Special Considerations for Trial

- ✤ Motion in Limine: Jury or court view CCP §651
- Burden of Proof for adverse possession/prescriptive easement: clear and convincing
- Proving payment of taxes [See Fredricks v. Sorensen (1952) 113 Cal.App.2d 759]
- Residential Building Record shows increases in taxes based upon improvements
- Demonstrative evidence is important: Blowups, Elmo, Trial presentation software (Trial Director) Trial presentation Apps (TrialPad, Trial Director)
- Jury or court trial? Right to jury trial despite equitable nature of quiet title and declaratory relief [Arciero Ranches v. Meza (1993) 17 Cal. App. 4th 114, 125-126
- Jury Instructions: Special instructions necessary. Source for easement jury instructions: Matthew Bender California Forms of Jury Instructions, 7700A

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