Good fences do not always make good neighbors—sometimes you need a good lawyer. Often I have had friends reach out to me when they had a problem with the neighbors’ tree limbs, or the neighbor has turned his backyard into a scrap yard, or the neighbor plays Willie Nelson at all hours for all the neighbors to hear. Problems such as these can make life at home quite unpleasant. And like anything else, you need to know your rights. Below are some specific neighbor issues along with an explanation of what you can do to deal with it.

Tree limbs or encroaching vegetation
The neighbor’s tree limb may be hanging over your fence. Maybe the limb is threatening to fall on your shed or in your pool. Perhaps the root system of the neighbor’s tree has come onto your land and is disrupting pavers, a retention wall or damaging your sewer system. All of these are encroachments. Fortunately, Virginia allows for a remedy of self-help. You are legally permitted to cut branches, limbs or the roots of encroaching vegetation back to the property line. If you cut the branches or roots and the tree dies, so be it. That is the neighbor’s problem. But be careful: you can only cut up to the property line. If you go beyond the property line, you’ve committed a trespass onto your neighbor’s property. It would be wise to use your survey when cutting back encroaching vegetation. Also, if the offending landowner is directly adjacent, you may also have a claim for reimbursement of any money you have spent to cut back the encroaching limbs or roots.

Trespass and nuisance
These terms may seem similar but they have different meanings in the law. A trespass is an unauthorized entry onto land. It is not just people who can be liable for trespass, but also objects. For example, the tree limbs or roots we just reviewed can be a trespass. Fences, underground pipes or any other person or property that is on your property constitutes a trespass.

By contrast, a nuisance can occur without anyone or anything ever coming onto your property. Nuisances can occur next door or far away. When the problem makes its way to you, either by smell, sight or hearing, a nuisance has occurred. A nuisance is generally defined as anything that endangers life or health, offends the sensibilities of others, or interferes with the reasonable use, enjoyment or comfort of property. This can include sewage, barking dogs or even a drug dealer who lives next door (especially one with lots of traffic).

To remedy the situation, you can obtain an injunction (a court order) requiring the abatement of the trespass or nuisance. Under certain circumstances, you can obtain money damages for compensation and also the diminution in value to your property, depending on the severity of the situation.

Also, as residents of the Hampton Roads area, there is one other special form of trespass that we should discuss.

Diversion of surface water
The law says that everyone is permitted to take steps to protect one’s property from surface water, but one must do so reasonably and without causing injury or damage to neighboring property. A landowner cannot divert surface water onto a neighboring property. Oftentimes this may occur unintentionally. A neighbor may not be aware, or perhaps doesn’t care, that water is running from his property onto yours. This can happen with drainage swales, pipes or even retention ponds that overflow, and result in water coming onto your land. This also constitutes a trespass and can be stopped. Also, the offending neighbor can be held liable for damages if out-of-pocket expenses are incurred.

Unfortunately, good fences aren’t always enough. You might need a good lawyer.

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