

Recovering Your Attorney's Fees in Adjoining Property Disputes

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Even though most people consider themselves to be reasonable and easy to get along with, most people also have had the uncomfortable experience of running into a dispute with one of their neighbors. Whether commercial or residential properties are involved, neighbor disputes run the gamut from loud noise, to cars parked in front of driveways, to tree roots or overhanging limbs, and to boundary line disputes. The list of things neighbors can get into fights about is endless and often emotionally charged.

These kinds of disputes can be a source of extreme stress and frustration. Moreover, if you are in the right, the issue in dispute is one you care deeply about, and your neighbor or adjoining business owner refuses to be reasonable, you will likely have to initiate litigation to get the matter resolved. While it is in the interest of any attorney to say so, it is still true that hiring an attorney to enforce your rights increases the likelihood of obtaining a desirable outcome in a dispute. Yes, attorneys are costly so you should decide how important the dispute is to you before retaining an attorney. Moreover, attorney's fees are often not recoverable in neighbor disputes.

Code of Civil procedure section 1033.5(a)(10)(A)-(C) provides that attorney's fees are recoverable as costs only when authorized by contract, statute, or law. Many neighbor disputes simply do not fall within that purview since there often is no contract, statute, or law specifying that attorney's fees can be awarded to the party who prevails in the dispute.

However, under certain circumstances, attorney's fees may in fact be recoverable to a party who prevails in a neighbor dispute. That is, Penal Code section 496(a) states: "Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished . . . [.]" Penal Code section 496(c) states: "Any person who has been injured by a violation of subdivision (a) . . . may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees."¹

¹ In addition, a party who prevails in an action regarding the enforcement of Covenants, Conditions, and Restrictions ("CC&Rs") of a common interest development is entitled attorney's fees pursuant to Civil Code section 5975. CC&Rs also often have a prevailing party attorney's fees provision.



For example, if there is a dispute regarding the location of a fence you have erected on the property line and your neighbor removes your fence, you arguably would be entitled to your attorney's fees if you prevail in court. If your neighbor decides to engage in self-help by removing a tree from your yard because the branches cross the property line, you arguably would be entitled to your attorney's fees if you prevail in court. Even if your neighbor removes your holiday lawn decorations, you arguably would be entitled to your attorney's fees if you prevail in court.

Every attempt to resolve a neighbor dispute should take place before initiating litigation. However, in addition to other factors, such as future good relations with your neighbor and the aggravation of litigation, whether Penal Code section 496 appears to apply to your neighbor dispute should also be a factor to consider when deciding whether to hire an attorney to have a court resolve the dispute.

If you would like to discuss reviewing a current dispute, please contact Joshua Bevitz, located at Newmeyer & Dillion's Walnut Creek office at joshua.bevitz@ndlf.com or by calling 925.988.3226.

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