

Invasion of the “Squatters”

This is an issue that seems to come up in various forms all too often. The latest incident involved a client of mine who had come back from vacation only to find that her neighbor had built a fence between their backyards. The fence looked nice, and the neighbor had become a casual friend, so at first blush, it did not seem to be a problem. But that is when my client noticed that the fence had been built more than 10 feet on my client’s side of the actual lot line.

My client had casually expressed her concern, but the neighbor said that since their respective lots were each over 3 acres in size, and the fence was already in, the neighbor said he couldn’t do anything now, moving the fence would be too costly, and it didn’t really matter anyway.

When clients come to us with this kind of a problem, we tell them that they are dealing with what lawyers call a case of “adverse possession” – and what most laymen have heard described as “squatter’s rights”. If you aren’t careful, after a certain period of time goes by, you could legally lose your right to that part of your property that has been fenced in by your neighbor. Usually, that takes 20 years, but under some circumstances, it can be as little as 10 years.

You could find out that title to that strip of property has legally passed to your neighbor, and you have lost rights to make him move the fence! When dealing with a residential lot, losing land area like that could mean that your home is now sitting on a lot that is less in land area that the zoning ordinance requires, or that your home is now technically too close to your “new” lot line than what the zoning laws require.

You need to stop worrying about being polite, and protect yourself. In many instances, a written agreement can be recorded that states that your neighbor realizes his fence encroaches on your property, but that you are permitting it to remain for the time being – subject to your future right to make him move it back (for example, when you sell your home). You can be a nice neighbor without losing your property rights.