

Kimball, Tirey & St. John LLP

Fences – Shared Fencing Costs

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Under California law, landowners and their adjoining neighbors are jointly responsible for constructing, maintaining, and replacing fences that divide their properties. While the legislature enacted some procedural changes to the law under the Good Neighbor Fence Act of 2013, the spirit of the original law remains the same.

Eligible Fences and Landowners

Adjoining landowners share equal responsibility for “division fences”—fences on the boundary line between two properties that physically lie on both owners’ properties. The law does not apply to fences that are completely within the property of one of the two landowners.¹ If a fence is located on the land of only one landowner, the neighbor is not legally responsible for any portion of the fence cost, unless the parties agree otherwise.

Note that if a fence is a “division fence”, neither adjoining owner can move or alter the division fence without the other owner’s consent.

Landowners include any private person or private entity that holds a possessory interest in real property. The law does not apply to any city, county, city and county, district, public corporation, or other political subdivision, public body, or public agency. Theoretically, the law applies to tenants in addition to the owner of the real property. However, most residential leases will require that the landlord bear financial responsibility for fence maintenance, construction, and replacement.

Exercising the Right to Equal Contribution

A landowner seeking contribution from the neighbor for a division fence must send 30 days’ written notice to each neighbor. The notice must include the following:

- A statement regarding the presumption that landowners share equally in the construction, maintenance, and replacement of division fences²;
- A description of the problem facing the fence, or the problem the two properties face due to the lack of a fence;
- The proposed solution to the problem;
- The estimated cost of the solution;
- The proposed allocation of the cost; and
- The proposed timeline for addressing the problem.³

¹ *Ingwersen v. Barry*, 118 Cal. 342, 343 (1897); *Western Granite & Marble Co. v. Knickerbocker*, 103 Cal. 111, 116-117 (1894).

² The following language may be used: “Under Cal. Civ. Code § 841(b)(1): ‘Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.’”

³ The timeline should begin after the expiration of the notice (30 days).

The statute does not specify a method to deliver the notice. However, the property owner sending the notice should use a method that keeps a record of delivery (e.g. prepare a proof of service, or send by registered mail, certified mail, or overnight delivery).

Exceptions to the Contribution Obligation

If the adjoining neighbor can establish that imposing equal responsibility for the fence cost would be unjust, a court may order that the neighbor pay less than their proportionate share of the costs or none of the costs.

When making this determination, the court will consider the following factors in addition to any other relevant information:

- 1) The financial burden on the neighbor compared to the benefit the neighbor receives from the fence;
- 2) Whether installation / maintenance of the fence results in a net increase in the value of the neighbor's property;
- 3) The fence's financial burden on the neighbor given the neighbor's financial circumstances; and
- 4) The reasonableness and necessity of the costs associated with the project.

Un-Neighborly Refusals to Pay

Unfortunately, some neighbors aren't good neighbors. A neighbor may ignore / refuse to pay their share of the fence's cost.

In preparing against a neighbor's potential refusal, the fence builder should keep a paper trail as the fence project is contemplated and planned. Records should include photographs and a video of the problem with the fence (or the lack of a fence) that justify the proposed solution. The fence-building neighbor should keep copies of all cost estimates from contractors to prove they chose the contractor offering the best value^{4,5}.

Work on the project should not begin, nor should costs be incurred, until the 30 day notice period expires. Upon completion of the project, the fence-building neighbor should pay the contractor (and any other expenses) in full and keep copies of invoices and receipts related to the project.

After completing the fence, the fence-building neighbor should make a final written demand for contribution to the neighbor. The demand letter should request the neighbor make payment immediately and include the final cost of the originally-proposed project, copies of the invoices or receipts, and a copy of the original 30 day notice.

If the neighbor *still* refuses to pay, the fence-building neighbor can (after having conducted due diligence and armed with proper documentation), file suit for contribution from the neighbor for their share of the costs. If the amount at issue is less than the jurisdictional limits (generally \$10,000 for an individual, and \$5,000 for an entity), small claims court may be the quickest and most cost effective way to pursue claims.

⁴ If the landowner chooses a higher-priced contractor, they should maintain evidence to prove that the selected contractor was a better choice.

⁵ A contractor's license is required if the person constructing the fence is charging the homeowner \$500 or more.

If the fence is a “division fence”, and a property owner wants to request contribution from a neighbor for a portion of the fence cost, Kimball, Tirey & St. John LLP has a package of four letters to request contribution from the neighbor. The letters are available for \$500, and can be purchased by contacting our Business Real Estate Group at (619) 231-1422.

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California Civil Code §841

(a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.

(b) (1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.

(2) Where a landowner intends to incur costs for a fence described in paragraph (1), the landowner shall give 30 days' prior written notice to each affected adjoining landowner. The notice shall include notification of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence. The notice shall include a description of the nature of the problem facing the shared fence, the proposed solution for addressing the problem, the estimated construction or maintenance costs involved to address the problem, the proposed cost sharing approach, and the proposed timeline for getting the problem addressed.

(3) The presumption in paragraph (1) may be overcome by a preponderance of the evidence demonstrating that imposing equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence would be unjust. In determining whether equal responsibility for the reasonable costs would be unjust, the court shall consider all of the following:

(A) Whether the financial burden to one landowner is substantially disproportionate to the benefit conferred upon that landowner by the fence in question.

(B) Whether the cost of the fence would exceed the difference in the value of the real property before and after its installation.

(C) Whether the financial burden to one landowner would impose an undue financial hardship given that party's financial circumstances as demonstrated by reasonable proof.

(D) The reasonableness of a particular construction or maintenance project, including all of the following:

(i) The extent to which the costs of the project appear to be unnecessary or excessive.

(ii) The extent to which the costs of the project appear to be the result of the landowner's personal aesthetic, architectural, or other preferences.

(E) Any other equitable factors appropriate under the circumstances.

(4) Where a party rebuts the presumption in paragraph (1) by a preponderance of the evidence, the court shall, in its discretion, consistent with the party's circumstances, order either a contribution of less than an equal share for the costs of construction, maintenance, or necessary replacement of the fence, or order no contribution.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Landowner" means a private person or entity that lawfully holds any possessory interest in real property, and does not include a city, county, city and county, district, public corporation, or other political subdivision, public body, or public agency.

(2) "Adjoining" means contiguous to or in contact with.

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=841