

Managing property properly

Responsibility for boundary walls and fences

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Boundary walls and fences designate the **dividing line where one property ends and another begins**, and further designates the responsibility relating to these properties.

Without these walls and fences forming the boundary line, neighbouring properties are **often faced with encroachments**, such as overhanging roofs, balconies and branches, buildings, structures and roots of trees.

Boundary lines **marked by walls and fences are important in maintaining the harmonious relationship between neighbours**, and avoiding disputes. The area of our Common Law that deals with boundary walls and fences is Neighbour Law, and more specifically, the duty of lateral support, nuisance and encroachment.

Boundary walls and fences may be erected entirely on one property, and form part of the land belonging to the owner of that property. However, they are generally erected on the physical boundary between two properties, occupying space partly on both properties.

The nature of the boundary wall or fence is **determined by its location on the boundary line between two properties**, and not by factors such as whether or not it was built or erected by one property owner, or what the intention of the neighbouring property owners was at the relevant time.

In the case of *Dorland v Smits*, the court defined a boundary wall, as a “wall which stands partly on one property and partly on the adjoining property”. In its decision, the court stated that whenever such a wall straddles the boundary line between the adjoining properties, even if the wall physically occupies more space on one property than the other, it is seen as a boundary, irrespective of the intention of the property owners. In this case, the wall was situated approximately 88% on one property and 12% on the other property. Should there be uncertainty relating to the location of the wall, it is presumed to be a boundary wall.

There are two schools of thought on the nature of boundary walls. Some academics hold the view that neighbouring property owners are bound co-owners of the wall. Whilst others are of the opinion that half of the wall, up to the mid-point, belongs to each of the neighbouring property owners individually, and that each owner has a tacit servitude of lateral support against the other. However, both views have been criticised, and the **nature of boundary walls and the rights of neighbouring property owners remains unclear in South African law**.

The view of **bound co-ownership** provides that the co-owners, being the adjoining property owners, have full entitlements of use and enjoyment of the boundary wall or

fence, but can only use it in such a way that will not have a negative effect on the other owner.

In terms of this view, neither one of the owners can undertake any **unilateral action** affecting the wall as a whole, without the prior consent of the other owner. An example of such a unilateral action will be demolition of the wall.

Similarly, both owners are obliged to contribute equally to reasonable and necessary repairs and maintenance of the wall or fence. However, should one owner wish to replace the existing wall or fence with a better or more expensive one, the other owner has no obligation to contribute to the costs of replacement.

The view where each neighbouring landowner acquires ownership of half the wall up to its mid-point, combined with a **reciprocal tacit servitude** of lateral support, implies that each owner can use their part of the wall in any way they wish, provided that its overall stability is not compromised.

In terms of this view, either owner may claim, in terms of the reciprocal tacit servitude, that the other owner should reasonably maintain their half of the wall, and can prevent the other owner from demolishing any part of the wall, or from doing anything that would compromise the stability of the whole wall.

A neighbouring property owner may build on their half of the wall, if it is strong enough to bear the additional burden, but if the whole wall requires strengthening, the consent of the other owner is required.

However, should one owner build over the middle of the wall, or place an unreasonable burden on the whole wall by building up on their half of the wall, the normal remedies for encroachment are available to the affected neighbouring property owner.

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