

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #92

1. Legal Quotes

"If you want peace, work for justice." [Pope Paul VI]

"Argument weak; speak loudly." [Theodore Roosevelt, *a handwritten note to himself in the margins of one of his speeches*]

"I think the first duty of society is justice." [Alexander Hamilton]

2. Legal short

The boss speaking to his secretary: "Who told you that if I kissed you a couple of times you have the right to laze around all day long?"

Secretary to her boss: "My lawyer."

3. Inspiring quotes

"The man who has confidence in himself gains the confidence of others." [Hasidic proverb]

"Work for a cause, not for applause. Live life to express, not to impress. Don't strive to make your presence noticed, just make your absence felt." [unknown]

"No matter how hard the past, you can always begin again." [Buddha]

4. Neighbour law

Good fences make good neighbours, or so the saying goes.

Not necessarily: some neighbours have big cars and even bigger ego's and appear determined to intentionally irritate you at every turn.

Neighbour Law in South Africa is extremely broad as a result of the variety of disputes that can arise, but the most common disputes are those of **nuisance, encroachment, lateral support and interference with the natural flow of water.**

Our common law entitles everyone to the undisturbed use and enjoyment of his or her own land as long as he or she complies with the legislation, regulations, and by-laws concerning that land - and as long as that use poses no threat to anyone or their property.

Section 36 of the Constitution however provides that no right is absolute; all rights can be limited if it is just and equitable in our democratic society that this be the case.

The guiding principle followed by our courts is that of reasonableness and fairness [*Regal v African Superslate (Pty) Limited*, 1963 (1) SA 102 (A) at 111F-G; and H ad fin; 112 A-B; 114D-E] and echoed in the recent case of *Roseveare v Katmer, Katmer v Roseveare and Another* (2010/44337, 2010/41862) [2013] ZAGPJHC 18 (28 February 2013)]. **Many of our judges have adopted the view that "some discomfort, inconvenience or annoyance from the use of neighbouring property needs be endured."** Our courts will not consider that individual who is a "delicate or highly sensitive person", but will consider the objections of "a reasonable man."

Examples of nuisance are **neighbours who are generally threatening and abusive, branches overhanging your boundary (or tree roots) causing damage, and noise nuisance** (which differs from "disturbing noise" - both of which are illegal in terms of the Environment Conservation Act (73 of 1989) and the Noise Control Regulations). "Disturbing Noise" is objective and is defined as "a scientifically measurable noise level," and "Noise Nuisance," is a subjective measure and is defined as "any noise that disturbs or impairs, or may disturb or impair the convenience or peace of any person."

Encroachment has to do with **neighbours who have built over your boundary line** (there are various remedies here including boundary adjustments, demolition of the encroaching portion or the payment of compensation for the use of part of your neighbour's land).

You have an obligation of **lateral support** in favour of your neighbour's property, i.e. **you must ensure that when digging or excavating on your property you do not withdraw lateral support provided by your property to that of your neighbour's.** Your excavations must not threaten the stability of any part of any building on adjoining land. A claim for lateral support is one based on monetary damages.

The Roman Law principle with regard to **storm water management** is captured in the 'actio aquae pluviae arcendae', or "**the action of obstructing the course of rain-water**". This principle is that the neighbour in the lower lying property must, by law, accept the natural flow of water from the higher lying neighbouring property from which the water comes.

If the higher lying neighbour has done something that has increased the "natural flow" of water (for example, he has paved a certain area or he has built a new structure), then he has the duty to prevent the extra flow from reaching the lower lying neighbour.

Conclusion

Whilst most of us do not want to cause waves when it comes to our neighbours, it is useful to remember that **you have a right to use and enjoy your property in a free and undisturbed fashion**. No-one is obliged to continuously pay for (or endure) damage or disturbance caused by someone else's negligent or intentional actions. Hopefully you can resolve most of these issues with your neighbour simply through courtesy and common respect for each other. If there is no alternative, however, it is important to know that **you have rights and that they can be protected and enforced**.

I am available on 083 2515451 or fritz@sonnenberg.co.za.

Sonnenberg Property Services (Pty) Ltd is a registered estate agency.

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FRITZ SONNENBERG | Legal Consultant

Mobile: 083 251 5451 | Email: Fritz@sonnenberg.co.za | Skype: fritzsonnenberg



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