



C R E S C E N T T I T L E

presents:

Neighbor Law:
What Every Real Estate Agent Needs to Know



C R E S C E N T
T I T L E

Crescent Title Offices

METAIRIE OFFICE

1421 N. Causeway Blvd.

Metairie, LA 70001

Daniel M. Douglass-Attorney

Phone: 504-888-1919 - Fax: 504-888-1977

Danny@CrescentTitle.com

LindseyS@CrescentTitle.com

UPTOWN OFFICE

7835 Maple St.

New Orleans, LA 70118

Robert J. Bergeron-Attorney

Phone: 504-866-5151 - Fax: 866-5858

Bob@CrescentTitle.com

Dexter@CrescentTitle.com

HAMMOND OFFICE

220 W. Thomas St.

Hammond, LA 70403

Matthew R. Emmons-Attorney

Phone: 985-269-7700 - Fax: 985-269-7701

Matt@CrescentTitle.com

Savannah@CrescentTitle.com

Loni@CrescentTitle.com

LAKEVIEW OFFICE

6270 Canal Blvd.

New Orleans, LA 70124

Jason Hernandez-Attorney

Phone: 484-0700 - Fax: 504-484-0710

Jason@CrescentTitle.com

Josie@CrescentTitle.com

RIVER PARISHES OFFICE

12 Storehouse Ln., Unit B

Destrehan, LA 70047

Abbey A. Mack-Attorney

Phone: 985-307-1515 - Fax: 985-307-1818

Abbey@CrescentTitle.com

Monica@CrescentTitle.com

NORTHSHORE OFFICE

1748 N. Causeway Blvd.

Mandeville, LA 70471

Kirk Frosch-Attorney

Phone: 985-626-3445 - Fax: 985-626-3704

Kirk@CrescentTitle.com

Kristi@CrescentTitle.com

HISTORIC OFFICE

831 Elysian Fields Ave.

New Orleans, LA 70117

Ian Fisher-Attorney

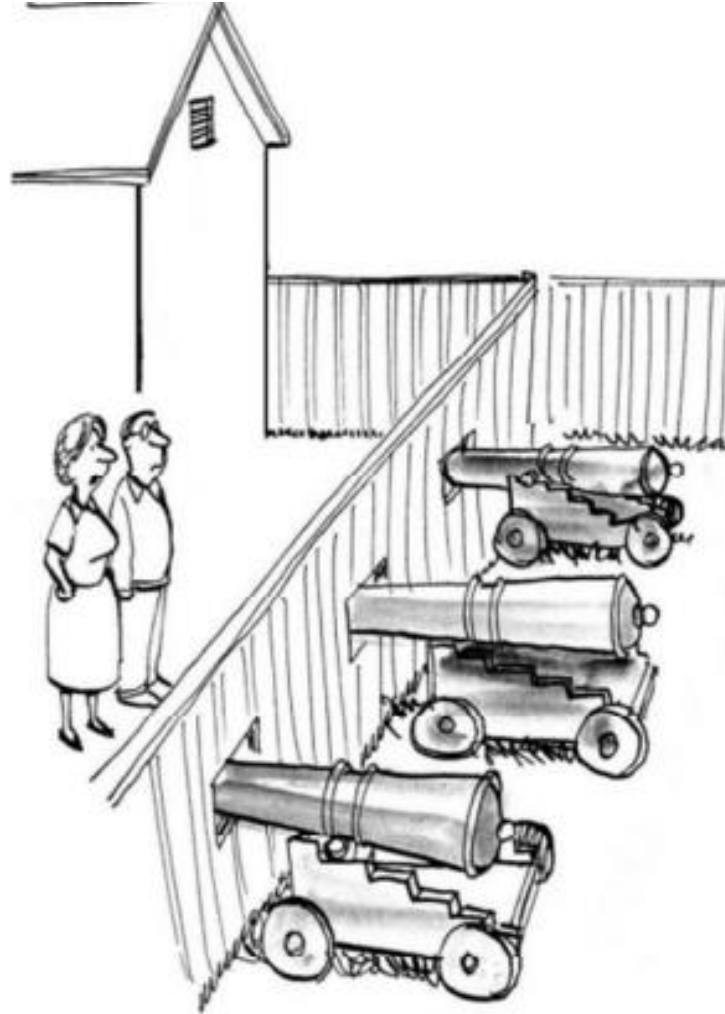
Phone: 504-218-4679 - Fax: 504-218-4689

Ian@CrescentTitle.com

Josie@crescenttitle.com







“Did we do something
to upset the neighbors?”







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Neighboring Property Issues

- Encroachments
 - What is an encroachment?
 - An infringement of another's rights or intrusion of another's property. - Black's Law Dictionary



Neighboring Property Issues

- Encroachments
 - Minor
 - Fences
 - Trees
 - Utilities



Neighboring Property Issues

- Encroachments
 - Major
 - Buildings
 - Overhangs
 - Balconies
 - Stoops



Neighboring Property Issues

- Encroachments
 - Civil Code Article 670 creates a legal servitude in favor of a property owner who constructs in good faith.
 - Court may allow the completed building or fence to remain if the cost to move is prohibitive.
 - Encroaching land owner must compensate neighbor for value of servitude taken and/or damages.

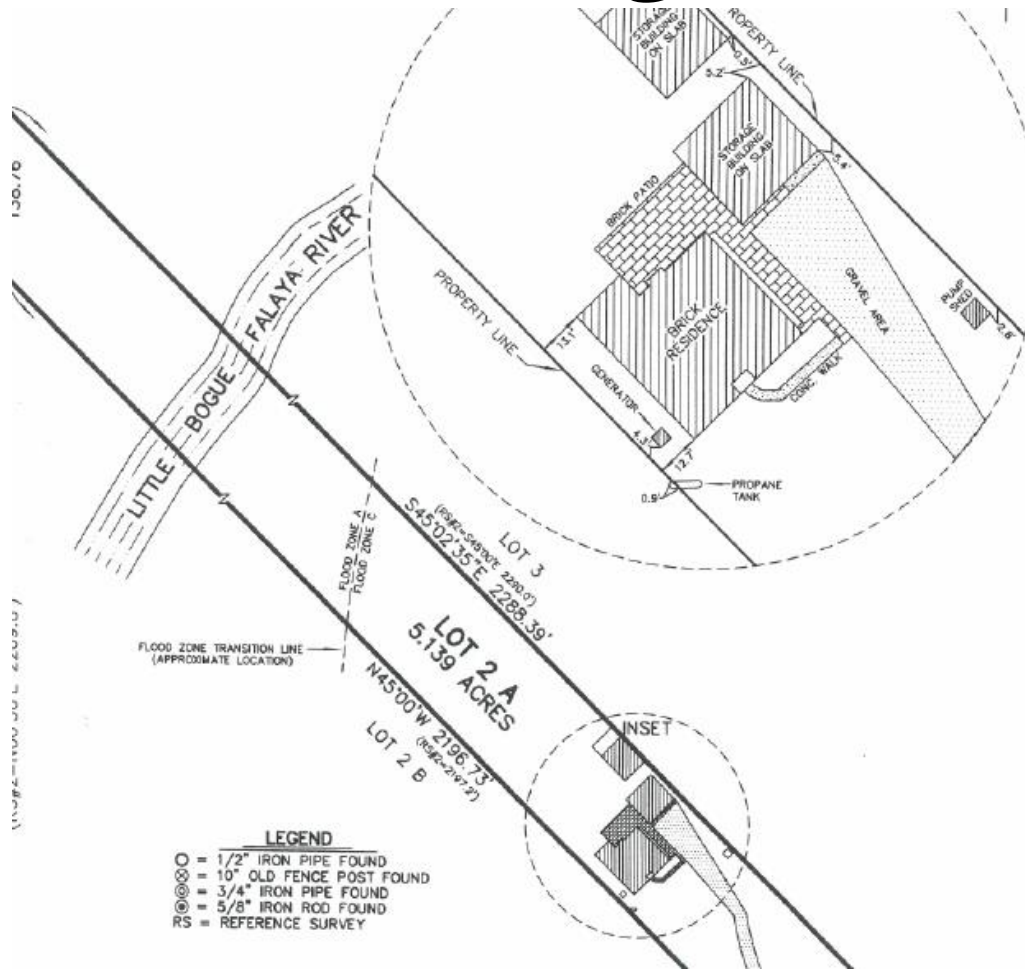


Neighboring Property Issues

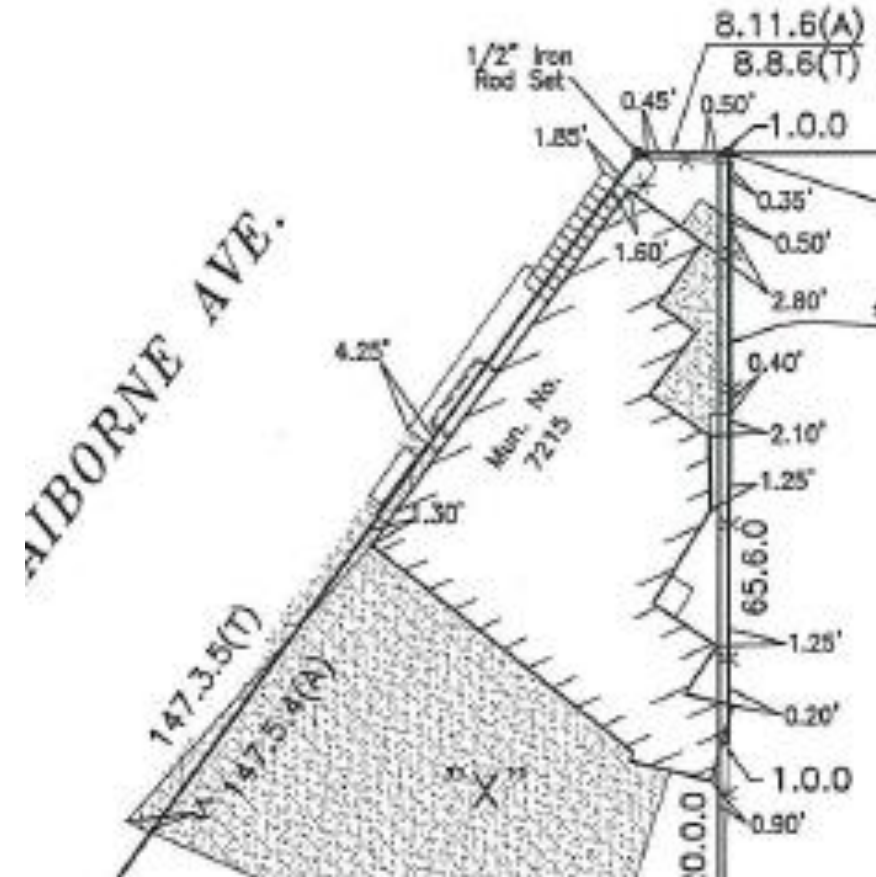
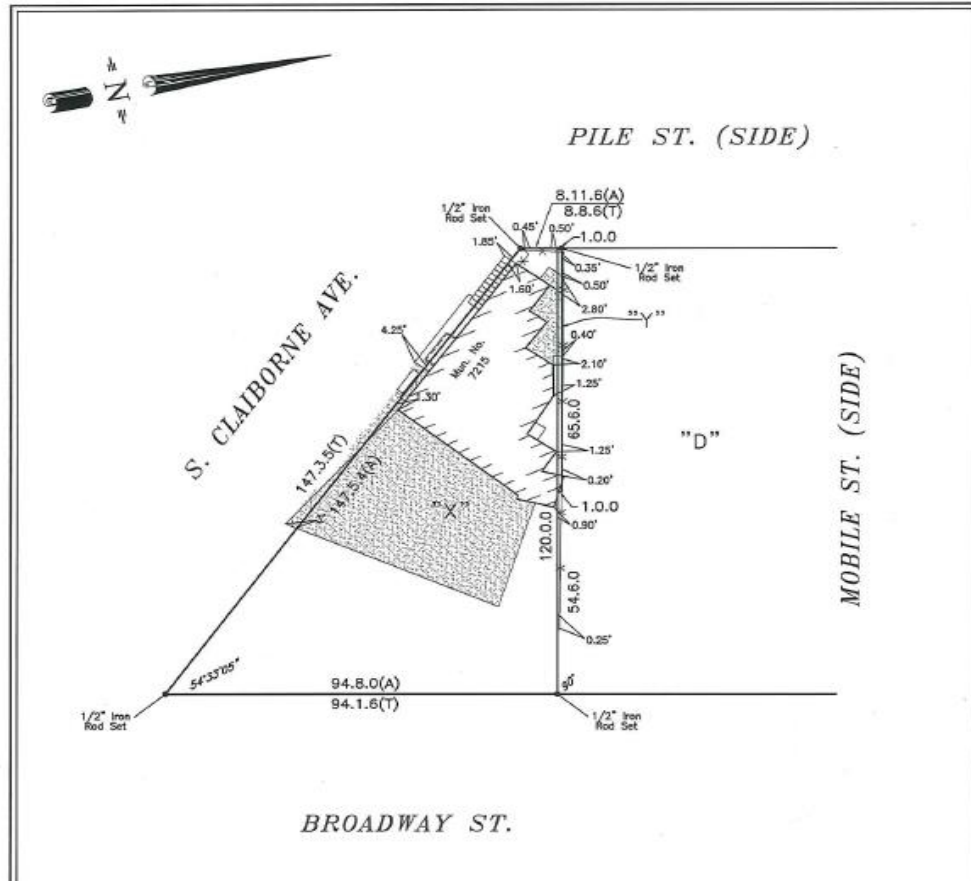
- Encroachments – Survey
 - Surveys will show encroachments of property.
 - Known encroachments are listed as an exception in the Act of Sale – buyer purchases the property subject to those encroachments.



Neighboring Property Issues



Neighboring Property Issues



Neighboring Property Issues

- Encroachments – Disclosure
 - Encroachments are included in the property disclosure form and must be disclosed, if known, by the Seller

SECTION 1: LAND

- (1) What is the length of ownership of the property by the SELLER? _____
- (2) Lot size or acres _____
- (3) Are you aware of any servitudes/encroachments regarding the property, other than typical/customary utility servitudes, that would affect the use of the property? Y N
- (4) Are you aware of any rights vested in others? Check all that apply and explain at the end of this section.
- | | | | | | |
|----------------------------|----------------------------|----------------------------|-----------------|----------------------------|----------------------------|
| Timber rights | <input type="checkbox"/> Y | <input type="checkbox"/> N | Common driveway | <input type="checkbox"/> Y | <input type="checkbox"/> N |
| Right of ingress or egress | <input type="checkbox"/> Y | <input type="checkbox"/> N | Mineral rights | <input type="checkbox"/> Y | <input type="checkbox"/> N |
| Right of way | <input type="checkbox"/> Y | <input type="checkbox"/> N | Surface rights | <input type="checkbox"/> Y | <input type="checkbox"/> N |
| Right of access | <input type="checkbox"/> Y | <input type="checkbox"/> N | Air rights | <input type="checkbox"/> Y | <input type="checkbox"/> N |
| Servitude of passage | <input type="checkbox"/> Y | <input type="checkbox"/> N | Usufruct | <input type="checkbox"/> Y | <input type="checkbox"/> N |
| Servitude of drainage | <input type="checkbox"/> Y | <input type="checkbox"/> N | Other _____ | | |



Neighboring Property Issues

- Servitudes
 - A servitude is a “right to the limited use of a piece of land without the possession of it; a charge or burden of an estate (property) for another’s benefit” - Black’s Law Dictionary



Neighboring Property Issues

- Servitudes – Two Kinds
 - Personal – benefits a person
 - Examples: usufruct, habitation, and rights of use
 - Predial – benefits a property
 - Can be natural or legal
 - Examples: servitude of passage, drainage



Neighboring Property Issues

- Personal Servitudes
 - Usufruct – the right to the “use” and “fruits” of the property.
 - Does not carry the right to dispose of the property.
 - Most commonly seen in successions – the surviving spouse will have a usufruct over the decedent’s half of community property.



Neighboring Property Issues

- Personal Servitudes – Usufruct
 - Usufruct is an ownership interest in property.
 - Usufructuaries MUST SELL their interest if the property is being sold, otherwise a Purchaser takes ownership subject to the usufruct.



Neighboring Property Issues

- Personal Servitudes – Right of Use
 - A right of use is a benefit in favor of a person instead of property.
 - Most common example is a right of way for power and utility companies.



Neighboring Property Issues

- Predial Servitudes
 - A charge on one property for the benefit of another property.
 - The two properties must belong to different owners.
 - Typically they are defined and limited.
 - Ex. A servitude of passage does not also confer the right to occupy the property.



Neighboring Property Issues

- Predial Servitudes – Natural
 - Natural drainage of water – property owners cannot obstruct or alter the flow of water.
 - Running water



Neighboring Property Issues

- Predial Servitudes – Legal
 - Created by operation of law. Examples:
 - Keeping neighboring buildings in good repair
 - Cannot build projections over property line
 - Servitudes imposed by law for the public or common utility (e.g., side walks electrical poles, drainage, etc.)
 - Right of passage for the benefit of enclosed estate



Neighboring Property Issues

- Predial Servitudes – Voluntary or Conventional
 - Voluntarily created by owner of servient estate, usually by contract.
 - Passes with title to the property
 - Can be created by:
 - Juridical act
 - Prescription
 - Destination of the owner



Neighboring Property Issues

- Predial Servitudes
 - An owner of property may do with it what he pleases, but he may not deprive his neighbor of the liberty of enjoying his own property, or which may cause damage to him.
 - Known as the Sic Utere Doctrine
 - Dominant estate – gets the benefit of the servitude
 - Servient estate – the property on which the servitude is charged
 - Owner of the servient estate must either abstain from doing something or permit a use on the property depending on the nature of the servitude.

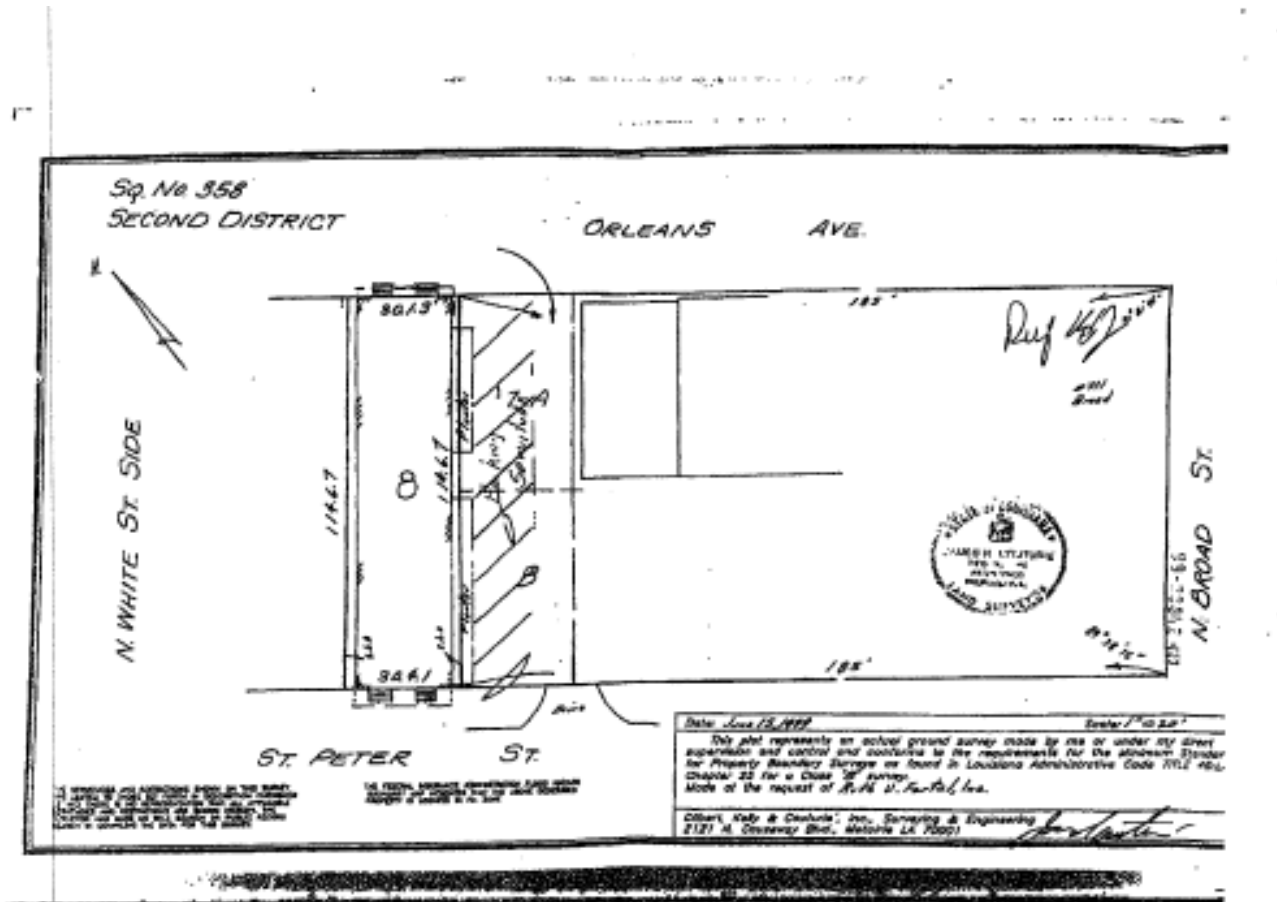


Neighboring Property Issues

- Predial Servitudes
 - Servitude of passage
 - Servitude of use
 - Servitude of support
 - Servitude of view



Neighboring Property Issues



Neighboring Property Issues

Appearers do hereby acknowledge the existence of a real servitude of passage over Lots B and 7-A, Second Municipal District, Square 358, as indicated on the map of survey prepared by Gilbert, Kelly & Couturié, Inc., dated June 15, 1999, attached hereto and incorporated herein by reference, for the joint use of Lots B, 7-A and 8, the title to which is to run with the title to Lots B, 7-A and 8 in perpetuity. It being specifically stipulated that the said real servitude of passage is

to be kept open at all times and is not to be built thereon and no obstructions placed thereon that would interfere with its use as a right of passage.

Appearers do hereby acknowledge the existence of a parking servitude over Lots B and 7-A, Second Municipal District, Square 358, which parking servitude is referred to as "Parking Servitude" on the map of survey prepared by Gilbert, Kelly & Couturié, Inc., dated June 15, 1999, attached hereto and incorporated herein by reference, for the exclusive use of Lot 8, the title to which is to run with the title to Lots B, 7-A and 8 in perpetuity.



Neighboring Property Issues

- Predial Servitudes
 - Predial servitudes can be acquired by 10 year good faith acquisitive prescription, or 30 year acquisitive prescription without title or good faith.
 - Predial servitudes are extinguished by nonuse for 10 years.



Neighboring Property Issues

- Servitudes
 - A purchaser can be protected by the warranty from eviction if a nonapparent servitude (no visible sign of its existence) exists and is not declared at the time of the sale, i.e. the seller does not disclose it or it is not listed as an exception in the Act of Sale.
 - For example, a pipeline running under the property that prevents construction from taking place.



Neighboring Property Issues

- Boundary Agreements
 - Conveys ownership to each party up to the designated line.
 - Typically used as a compromise between adjoining landowners.
 - Can be used to address an encroachment on property by a fence or other marker.
 - Parties agree that the fence or other marker does not reflect the true property line.
 - Usually references a survey
 - Interrupts any acquisitive prescription.
 - May provide for a servitude of use or passage.
 - Should be recorded in the public records.



Neighboring Property Issues

- Common Driveways/Alleyways
 - Two types:
 - Privately owned – goes with the ownership of abutting property
 - Nonpublic driveway or alley for the common use of abutting properties
 - Ex. Lakeview alleyways



Neighboring Property Issues

- Common Driveways/Alleyways – Private
 - Prevalent in Uptown and French Quarter neighborhoods
 - Referenced in the legal description of the properties that share the use
 - Right to use may be sold





Neighboring Property Issues





Neighboring Property Issues

- Common Driveways/Alleyways – Non Public
 - Nonpublic driveway or alley for the common use of abutting landowners
 - Not owned by any one landowner
 - The right to use cannot be lost by 10 year prescription of nonuse
 - One landowner may not prevent the use of the driveway or alley by the other owners



Neighboring Property Issues





Tree, Bush & Fence Issues

- Trees & Bushes on boundary
 - Presumed to be common to the properties unless there is proof to the contrary.
 - Adjoining owner has the right to demand the removal of trees, bushes or plants that interfere with the enjoyment of the property, but must bear the expense of the removal.



Tree, Bush & Fence Issues

- Trees & Bushes on Neighboring Property
 - Owner has the right to demand the branches or roots of a neighbor's trees that extend over the property line be trimmed at the neighbor's expense.
 - Owner does not have this right if the roots or branches do not interfere with the enjoyment of his property.



Tree, Bush & Fence Issues

- What happens if my neighbor's tree falls on my property? Who is responsible?



Tree, Bush & Fence Issues

- Fences
 - A landowner has the right to enclose his land.
 - Fences on a boundary are presumed to be common to the properties unless there is proof to the contrary.
 - An owner may compel the neighbor to contribute to the expense of making and repairing common fences.



Tree, Bush & Fence Issues

- Fences
 - Common issue may be who owns the fence if the fence needs to be moved or repaired.
 - Presumed to be common unless there is proof that one owner paid for it.
 - Both owners should contribute to repair or maintenance.







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Common Ditches

- A ditch between two properties is presumed to be common unless there is proof to the contrary.
- Adjoining owners are responsible for the maintenance of a common ditch.



Land Use Issues

- Zoning
 - Zoning regulations restrict the use of land.
 - Confines certain classes of buildings and uses of property to certain areas of the city or parish.
 - The purpose is to reduce the adverse effects that one type of land may have on another.
 - Ex: commercial properties in the middle of residential areas



Land Use Issues

- Zoning
 - Zoning laws must be construed in favor of the property owner.
 - Variances may be required if the use of property conflicts with the terms of a zoning ordinance.
 - Ex: minimum setback requirements, off-street parking, maximum height of construction



Land Use Issues

- Zoning – Nonconforming Use
 - Zoning ordinances are not retroactive.
 - Property use that was authorized may be disallowed following a zoning ordinance change.
 - Becomes a nonconforming use
 - This status may become lost if the property is not used for the nonconforming use for a continuous period of time, usually 6 months.



Land Use Issues

- Zoning
 - Building permits may not be issued if the proposed construction violates a zoning ordinance.
 - If a permit is issued by mistake it does not give conforming status to the building.
 - If building restrictions and zoning ordinances give different requirements, the more restrictive requirements govern.
 - Enforcement of zoning ordinances or building restrictions are subject to a 5 year prescription period.



Land Use Issues

- Zoning
 - Zoning ordinances for most parishes can be found online.
 - Tangipahoa
https://library.municode.com/la/tangipahoa_parish_council/codes/code_of_ordinances
 - Orleans – https://library.municode.com/la/new_orleans/codes/code_of_ordinances
 - Jefferson – https://library.municode.com/la/jefferson_parish/codes/code_of_ordinances
 - St. Tammany – https://library.municode.com/la/st._tammany_parish/codes/code_of_ordinances



Land Use Issues

- Resubdivisions or Partitions
 - Each individual lot created is a separate lot of record.
 - Parishes and municipalities have minimum lot size requirements.
 - Lots may be subdivided into smaller lots, provided they meet the minimum size requirements as set by the zoning ordinances.
 - Lots may be combined to form one larger lot.
 - Subdivision process will vary from parish to parish.
 - Owners, or potential purchasers, should consult the zoning ordinances of the parish to make sure the new lots meet the size requirements.



Land Use Issues

- Resubdivions – General Process
 - Survey of the property which shows the existing lots and the proposed new lot(s).
 - Application to the parish
 - Adjoining property info may be required to notify those owners of the change being requested.
 - Other parish departments and utility companies are notified and may have requirements.
 - Lienholders must consent to the subdivision.
 - Property taxes must be current.



Land Use Issues

- Resubdivisions – Process
 - Once all requirements are met, the subdivision may be approved.
 - Orleans Parish – approved by the City Planning Commission
 - Most other parishes – approved by council ordinance or planning commission



Land Use Issues

- Restrictive Covenants
 - Also called building restrictions
 - Often subdivision or neighborhood specific
 - Run with the land
 - Civil code article 775
 - “Building restrictions are charges imposed by the owner of an immovable in pursuance of a general plan governing building standards, specified uses and improvements”



Land Use Issues

- Restrictive Covenants – Enforcement
 - An injunction (typically by the homeowner's association) is needed to prevent a violation of the restrictions.
 - A property may be freed of the restriction if a violation has existed for more than 2 years and no action to enforce has been brought.
 - If enough properties have violated the restriction, after 2 years that restriction may be deemed to have been abandoned.



Land Use Issues

- Restrictive Covenants – Examples
 - Building setbacks
 - Height/square footage requirements
 - When garbage cans can be placed on the street
 - Permitted use of certain lots (mixed commercial and residential)
 - No RVs or boats in the driveway





Adverse Possession Issues

- Acquisitive Prescription
 - “A means by which property is acquired through possession over a fixed period of time” – Louisiana Fourth Circuit Court of Appeals
 - Also called adverse possession
 - Does not necessarily depend on a recorded title
 - Property owned by the state, parish, or municipality cannot be acquired through prescription



Adverse Possession Issues

- Acquisitive Prescription – Insurability
 - Title may not be insurable because it is not based on recorded documents.
 - Suit to quiet title must be filed to get insurable title.
 - Curator is appointed by the court when owners are absent.



Adverse Possession Issues

- Acquisitive Prescription – Requirements
 - Possession with the intent to possess as owner.
 - Continuous, uninterrupted, peaceable, public and unequivocal possession.
 - Possession with the permission of the owner does not count (lessees).
 - Corporeal possession is required first.
 - Corporeal possession is the exercise of physical acts of use, detention or enjoyment over property – determined by the nature of the property.
 - Civil possession follows – intent to possess as owner: maintenance, payment of taxes, improving the property.



Adverse Possession Issues

- Acquisitive Prescription – 10 Years
 - Requirements:
 - Possession for 10 years
 - Good faith
 - Just title
 - Property that can be acquired by prescription



Adverse Possession Issues

- Acquisitive Prescription – Good Faith
 - Reasonable belief that possessor is the owner of the property.
 - Presumption of good faith
 - Proof that possessor knew or should have known that he is not the owner rebuts good faith.
 - Prescription must have commenced in good faith.
 - Subsequent bad faith does not prevent the accrual of 10 year prescription.



Adverse Possession Issues

- Acquisitive Prescription – Just Title
 - A juridical act sufficient to transfer ownership
 - Ex: sale, donation, transfer, exchange, quit claim
 - Act must be written, valid in form, and recorded in parish public records.
 - Tax sales can be the basis for 10 year prescription if the tax sale appears valid and tax purchaser takes actual possession.



Adverse Possession Issues

- Acquisitive Prescription – 30 Years
 - No requirement of good faith or just title
 - Just title but bad faith possessor
 - No title at all and physical possession
 - Must be enclosed or boundaries established with certainty



Adverse Possession Issues

- Nola.com – February 16, 2016

4 'Washitah Nation' squatters arrested for trespassing at Bywater house

Updated Feb 16, 2016; Posted Feb 16, 2016



Adverse Possession Issues

- Encroachments on City Property
 - Common issue with balconies in the French Quarter and stoops in the Marigny.
 - Either pay the license fee or remove the encroachment, which may not be allowed.
 - City has suspended the license fees while the legality is reviewed.





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Please don't forget to sign out!

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