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Water Damage and Neighbor Disputes

Neighbor disputes over water damage to property can arise over everything from a broken pool pump to drainage systems that fail.

Even though life could not exist without it, water can be quite a pain when it causes serious property damage. Water is great at seeping into those areas of our home that are most vulnerable and causing the most mayhem possible. But when water damage may have been caused by a neighbor, serious disputes can arise.

Surface Water

In general, a neighbor will not be responsible for damage to your property caused by runoff from naturally occurring rain and land conditions. As almost anyone who has lived on land lower than that of their neighbor's will tell you, water really does like to flow from higher to lower ground, even if that means running around whatever measures you have in place to control it. So even if your prized garden full of roses is ruined during every spring downpour from water running off of your neighbor's land, you probably don't have any recourse.

If your neighbor has landscaped his land, however, or altered his property in some other way that causes more water to run onto your land than would otherwise naturally occur, then you may have some recourse to recover for the damage. Even if your neighbor tries to argue that it is still not their problem, and it was not their landscaping or changes that caused the increase in surface water flowing onto your property, you may still be able to prevail. Generally speaking, there are three different types of laws that may allow you to put liability on your neighbor for the surface water damage to your property.

Reasonable Use Rule -- A majority of states follow the reasonableness approach. These laws can be boiled down into one sentence -- if a neighbor alters their land or property in some way, and damage is inflicted upon your land or property from surface water, then your neighbor will be liable for the damage if the alteration was *unreasonable*. In order to succeed in a lawsuit against a neighbor, you will need proof showing that your neighbor did something to his land or property, that the alteration was unreasonable, and that the alteration changed the natural flow of water onto your property.

You may ask, understandably: what kinds of alterations are considered reasonable, and what sorts are unreasonable? Courts will look at each case carefully when considering whether an alteration was reasonable, so there is no clear cut line separating reasonable from unreasonable. Courts do sometimes look at some general factors to help them in their judgment, however. These factors may include:

- How important the alteration was. For example, an alteration that diverted more water onto your land in order to save the home of your neighbor may be more important than an alteration that only protected your neighbor's tulip garden.
- Whether the increased damage from surface runoff was reasonably foreseeable to your neighbor at the time the alteration was made. For example, a pipeline meant to direct water directly onto your back yard is more foreseeable to cause damage than a pipeline that direct surface water to the street gutter.
- The comparison of the damage to your property versus the increased use or value of your neighbor's property. For example, if you now need to spend an extra \$20 to seed your lawn every year because of extra surface runoff, this may not compare to the structural soundness of your neighbor's home.

Common Enemy Rule -- This rule was derived from English Common Law and treats rainwater and other natural sources of water as a common enemy to all landowners. Under this rule, followed by many states, each landowner is expected to protect his or her own land from surface and runoff water. Landowners can take whatever steps they wish, such as building dikes or drainage ditches. If surface water runs from your neighbor's land onto your land, causing more damage than natural, you are still expected to protect your land from this water.

Many states that still follow the common enemy rule, however, have modified it to make it less strict. Under these modified rules, you may still be able to hold your neighbor liable for damage to your property if the modification (protection) of your neighbor's property was negligent.

Civil Law Rule -- This rule can be considered the opposite of the common enemy rule. The civil law rule, also known as the Natural Flow Rule, imposes liability on any landowner that changes his or her land in a way that changes the natural flow of surface water across the land. For example, if your neighbor built a drain pipe in his land that drained more surface water onto your land, your neighbor would be liable to you because he changed the natural flow of surface water.

Like the common enemy rule, the civil law rule has been modified in most states that follow it. Much like the reasonable use rule, states that follow the civil law rule allow modifications of land so long as the modification is reasonable. Under the modified civil law rule, however, the owner of the land seeing the increased harm may also be expected to take reasonable measures to protect his or her land from damage due to the increased surface water.

Careless Water Damage

Neighbor disputes often arise over water damage if the damage was caused by the carelessness of one of the parties. If your property has been damaged because of the carelessness or negligence of your neighbor, you may be able to collect compensation for your damage and losses. In addition, in certain situations, you may also get a court order that directs your neighbor to stop doing whatever it is that has caused water damage to your property.

Careless water damage is often the result of simple accidents and forgetfulness. Sources of these types of damages include leaking or broken water hoses, leaky sprinkler heads, broken, frozen or burst water pipes, and even clogged rain gutters. Even if it is no fault of the owner, you can still be compensated for damage caused by your neighbor's water pipes that burst or break from cold or age -- even old pipes are the responsibility of your neighbor. Just as your neighbor is responsible for water damage caused by sources from his own property, however, so are you. For example, if a tree on your property has roots that go across the property line and break a neighbor's pipes, you will be responsible for any water damage caused.

What Damages Must Be Paid?

If you can prove that your neighbor is responsible for water damage that you suffered, you may be able to collect damages for:

- The cost of repairs or replacement of water damaged property
- The cost of staying at a hotel while your home is uninhabitable because of water damage
- Any medical bills directly related to the water damage, either for physical injury or mental distress
- Punitive damages if you can show that your neighbor acted maliciously

In addition, as mentioned previously, you may be able to get a judge to issue a court order that directs your neighbor to fix the problem. Judges are more likely to issue such an order if the fix or repair is minor, such as replacing a broken garden hose or unplugging a drain. The more extensive the repair, however, the less likely it is that a judge will issue such an order.

Insurance

There are two types of insurance that may cover you if your home or property has been damaged by water -- homeowner's insurance and flood insurance. If your property was damaged by water that had its source within your home, such as a pipe breaking in a shared basement, then your homeowner's insurance should be able to cover it.

If the water damage comes from an outside source of rising water, however, homeowner's insurance may not be adequate. In these situations, it would be wise to have flood insurance, even if the damage was caused, at least in part, by a neighbor. In addition, you may be able to collect damages from your neighbor's insurance company.

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