What Can You Do About an Encroachment?

What is an Encroachment?
Put simply, an encroachment is when another person puts up a structure that intrudes on (or over) your land. This issue might come up if, for example, one of your neighbors were to build a shed that is partially on your property, or expands his house so that a porch ends up on your property.

You might decide that your neighbor’s encroachment doesn’t bother you and do nothing about it. This option has the advantage of preserving good will between you and your neighbor. However, if you ever want to sell your property, you will need to disclose the encroachment to any potential buyers so that they can consider the issue as part of their purchasing decision.

Remedies for an Encroachment
Fortunately, there are number of ways to handle an encroachment. However, before you do anything, make sure you know where the boundaries of your property are. You are about to begin discussions with your neighbors, and do not want to cause any ill will over mistaken boundaries.

• To begin with, you can, and probably should, talk to your neighbor about it. He might be able to move the structure, or you might come to some alternate arrangement. Resolving any disputes out of court can save both of you legal fees, as well as the stress of hiring attorneys and going to court. If you and your neighbor decide to leave the encroachment in place, you may consider giving them written permission to use your property. This can prevent a later claim of adverse possession.

• If your neighbor is unable or unwilling to remove the encroachment, but is otherwise open to resolving the issue, you may wish to consider selling the encroached-upon property to him. That way, you get some money for the loss of your property and your neighbor gets to use the land without worry. It is usually a good idea to contact your mortgage lender before such a sale, in order to make sure all the land records are accurate and up to date. A local real estate attorney can help you get all these documents in order.

• If all else fails, going to court may be required to get rid of an encroachment. In many cases, you would need to prove two things: 1) that you actually own the property; and 2) that the neighbor is using the land improperly and should be removed. This first goal is accomplished through what is known as a “quiet title” action, while the second is done through what is often referred to as an “ejectment action.” This is a long process and usually (not surprisingly) does not encourage a good relationship with your neighbors. To make matters worse, you might lose. If your neighbor has been improperly using your land for some time, he could succeed in an adverse possession action, or, more likely, get the court to grant him the right to limited use of the property (known as a “prescriptive easement”).
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