

AMENDED IN ASSEMBLY APRIL 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1404

Introduced by Committee on Judiciary (Wieckowski (Chair), Alejo, Chau, Dickinson, Garcia, Muratsuchi, and Stone)

March 12, 2013

An act to repeal and add Section 841 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, as amended, Committee on Judiciary. Real property: boundaries.

Existing law defines the rights and obligations of owners of real property. Under existing law, coterminous owners are equally bound to maintain the boundaries between their properties. Existing law further requires coterminous owners to maintain fences between their properties, except as specified.

This bill would, instead, require ~~adjacent~~ *adjoining* landowners to share equally, *with certain exceptions*, the responsibility for maintaining the boundaries and monuments between them. The bill would establish a presumption that ~~adjacent~~ *adjoining* landowners share an equal benefit from any fence dividing their properties and, absent a ~~lawful~~ *written* agreement to the contrary, are equally responsible for the reasonable costs for the fence, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known, and may be cited, as the*
2 *Good Neighbor Fence Act of 2013.*

3 ~~SECTION 1.~~

4 *SEC. 2. Section 841 of the Civil Code is repealed.*

5 ~~SEC. 2.~~

6 *SEC. 3. Section 841 is added to the Civil Code, to read:*

7 841. (a) ~~Adjacent~~ *Adjoining* landowners shall share equally
8 in the responsibility for maintaining the boundaries and monuments
9 between them.

10 (b) ~~Adjacent~~ *(1) Adjoining* landowners are presumed to share
11 an equal benefit from any fence dividing their properties and,
12 ~~absent a lawful agreement to the contrary, unless otherwise agreed~~
13 *to by the parties in a written agreement*, shall be presumed to be
14 equally responsible for the reasonable costs of construction,
15 maintenance, ~~and or~~ necessary replacement of the fence.

16 *(2) Where a landowner intends to incur costs for a fence*
17 *described in paragraph (1), the landowner shall give 30 days'*
18 *prior written notice to each affected adjoining landowner. The*
19 *notice shall include notification of the presumption of equal*
20 *responsibility for the reasonable costs of construction,*
21 *maintenance, or necessary replacement of the fence. The notice*
22 *shall include a description of the nature of the problem facing the*
23 *shared fence, the proposed solution for addressing the problem,*
24 *the estimated construction or maintenance costs involved to*
25 *address the problem, the proposed cost sharing approach, and the*
26 *proposed timeline for getting the problem addressed.*

27 *(3) The presumption in paragraph (1) may be overcome by a*
28 *preponderance of the evidence demonstrating that imposing equal*
29 *responsibility for the reasonable costs of construction,*
30 *maintenance, or necessary replacement of the fence would be*
31 *unjust. In determining whether equal responsibility for the*
32 *reasonable costs would be unjust, the court shall consider all of*
33 *the following:*

34 *(A) Whether the financial burden to one landowner is*
35 *substantially disproportionate to the benefit conferred upon that*
36 *landowner by the fence in question.*

37 *(B) Whether the cost of the fence would exceed the difference*
38 *in the value of the real property before and after its installation.*

1 (C) Whether the financial burden to one landowner would
2 impose an undue financial hardship given that party's financial
3 circumstances as demonstrated by reasonable proof.

4 (D) The reasonableness of a particular construction or
5 maintenance project, including all of the following:

6 (i) The extent to which the costs of the project appear to be
7 unnecessary or excessive.

8 (ii) The extent to which the costs of the project appear to be the
9 result of the landowner's personal aesthetic, architectural, or other
10 preferences.

11 (E) Any other equitable factors appropriate under the
12 circumstances.

13 (4) Where a party rebuts the presumption in paragraph (1) by
14 a preponderance of the evidence, the court shall, in its discretion,
15 consistent with the party's circumstances, order either a
16 contribution of less than an equal share for the costs of
17 construction, maintenance, or necessary replacement of the fence,
18 or order no contribution.

19 (c) For the purposes of this section, the following terms have
20 the following meanings:

21 (1) "Landowner" means a private person or entity that lawfully
22 holds any possessory interest in real property, and does not include
23 a city, city and county, district, public corporation, or other
24 political subdivision, public body, or public agency.

25 (2) "Adjoining" means contiguous to or in contact with.