



## CIVIL CODE - CIV

**DIVISION 2. PROPERTY [654 - 1422]** ( *Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.* )

**PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5]** ( *Part 2 enacted 1872.* )

**TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS [818 - 855]** ( *Title 3 enacted 1872.* )

### CHAPTER 2. Obligations of Owners [840 - 848]

 ( *Chapter 2 enacted 1872.* )

(a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.

**841.** (b) (1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.

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

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

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

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

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

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

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

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

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

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

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

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

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

*(Repealed and added by Stats. 2013, Ch. 86, Sec. 3. Effective January 1, 2014.)*