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DRAINAGE BASICS FOR

Private Property Owner Disputes

Understanding your rights and responsibilities as a private property owner can be challenging. Landowners should have a basic awareness of the potential risks and liabilities that they can face when dealing with property rights of a neighbor. Basic elements of some of the most common issues are described in this brochure. Consult an attorney to determine how the information applies to any specific situation.

A photo of a metal dam on a small river.

Know Your Rights

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NATURAL DRAINAGE

Michigan courts rely on common law to resolve disputes related to drainage. Michigan's "Natural Flow Doctrine" states that if your property is at a higher elevation than your neighbor's, the water that falls on your property most likely flows over your neighbor's land. You have a right to continue this natural flow, and your neighbor has a duty to not interfere with it.

PRESCRIPTIVE EASEMENTS

A prescriptive easement is a property right in another's land that gives the bearer a legal right to continue to use the land in the same manner. This will give you certain rights against your neighbor if he or she attempts to block that use.. You may have a prescriptive easement if:

- Your neighbor has not given you permission to use his or her land in a certain way;
- The "use" does not need to exclude your neighbor from using his or her property; and
- The "use" is uninterrupted for at least 15 years.

FOR EXAMPLE

If a farmer tiles his land and outlets the drain tile onto a neighbor's property, and does so for at least 15 years without interruption, the farmer may have a prescriptive easement over the neighboring property to continue to use the outlet, regardless of the natural flow of water.In such a case, the neighbor is not allowed to interfere or obstruct the prescriptive easement and may be ordered by a court to remove anything that obstructs the easement or the outlet.

Common Lawsuits

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TRESPASS/NUISANCE

Whenever you enter your neighbor's property for any reason, be sure to have permission and clarify the purpose and scope of what you will be doing on his or her land. Many unnecessary disputes arise from not seeking permission or exceeding or misunderstanding the permission granted.

Nuisance is similar to trespass, but instead of a physical intrusion, a nuisance is interfering with a person's use and enjoyment of their land. An example of a nuisance is the pollution of ground-water. If a river runs over your land, you and your neighboring properties have a responsibility to not pollute the water. You will be liable for any damage that occurs to a neighboring property, and vice versa.

Consequences

COSTS OF PROPERTY DAMAGE

If a person willfully and voluntarily entered another's land and damaged or cut down trees or removed any soil, that person may be liable for up to three times the amount of actual damages caused. To avoid this, be sure to:

- Clearly identify, in writing, the amount of and the location of any work that will be done; and
- Do not exceed the boundaries of the agreement, even if it would be in the best interest of your neighbor, until you get permission in writing.

This communication highlights specific areas of law and is not legal advice. It is provided to help landowners begin to develop a basic awareness of the potential risks and liabilities that they can face when dealing with property rights of a neighbor. Each situation is unique, and may have implications or consequences that are complex or unclear. Property owners should consult an attorney to determine how the information applies to any specific situation.

Fahey Schultz Burzych Rhodes is a Michigan law firm specializing in the representation of Michigan municipalities. Our lawyers have more than 130 years of combined experience in Michigan municipal law.
We represent the Michigan Association of County Drain Commissioners and drain offices throughout Michigan. This communication highlights specific areas of law and is not legal advice. Consult an attorney to determine how the information applies to any specific situation.

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