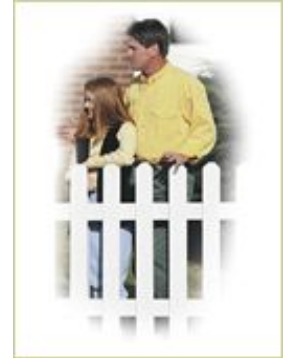




Being a good neighbour

- » Living in society involves accepting a certain level of inconvenience. However, not everything has to be tolerated, and you do not have to accept damage caused by a neighbour's bad faith or lack of care. The Civil Code provides a framework for maintaining good relations between neighbours.



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» Property limits and boundary determinations

The limits of a property are mainly determined by the deeds of ownership, the cadastral plan and the boundary lines. The boundary lines may be set by staking, or by a boundary determination.

Staking

Staking is a series of operations performed by a land surveyor to physically mark the boundaries of a property.

The staking of a property indicates the land surveyor's opinion as to its boundaries. It is carried out for the sole benefit of the owner who asks the surveyor to do the work.

Staking does not have the same legal value as a boundary determination, since it only marks the apparent limits of the land.

Boundary determination

If the dividing line between two properties is challenged, it may be established permanently and irrevocably by a boundary determination.

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A boundary determination may involve one of two situations.

First situation

You and your neighbour agree on the need to carry out a boundary determination, and you agree on the choice of a land surveyor.

The surveyor will listen to the opinions of you and your neighbour, your witnesses, and any legal advisors such as an attorney or notary you ask for assistance. Next, the surveyor will study the cadastral plan, examine the deeds of ownership of both parties, going back to previous centuries if necessary, and study the limits of adjacent properties. The surveyor will then make a written report, describing the actions taken and expressing a conclusion.

If you agree on the conclusion

If you and your neighbour both accept the conclusion of the land surveyor's report, you will be invited to witness the placing of boundary markers. You can choose to be present or not. The land surveyor will then draft the minutes of the boundary determination, which will be recorded in the land register.

You and your neighbour will pay the surveyor, generally by splitting the bill equally.

If you do not agree on the conclusion

If you and your neighbour do not agree on the conclusion of the land surveyor's report, the dividing line between your properties will have to be determined by the courts. Either you or your neighbour may, within 30 days of receiving the report, file an application with the courts to determine the boundary. The surveyor's report will be filed at the clerk's office, and you and your neighbour will each be able to present your point of view. In Québec, the Superior Court has jurisdiction in these matters.

Given the complexity of these types of cases, the owners generally hire attorneys, but often face long delays and high costs.

Once the court makes its decision, the cost of the boundary determination is split equally between the parties.

Second situation

Your neighbour refuses a boundary determination.

If your neighbour refuses a boundary determination, you must send a [formal notice](#) demanding that he or she agree to a boundary determination. You can write this formal notice yourself or get help from an attorney or notary. Formal notice is generally given in the form of a letter, sent to your neighbour using a method that provides proof of receipt (for example, certified mail). In the case of a boundary determination, the formal notice must contain

- the date, and your neighbour's name and address as the recipient;
- the heading "without prejudice", which protects you in terms of the statements you make in the letter;
- the words "formal notice" in the body of the letter, to ensure that the recipient is aware of its importance;
- a clear explanation of the reasons for your demand (in this case, for a boundary determination);
- a description of the properties involved;
- the name and address of the surveyor you would like to carry out the work;
- a demand that your neighbour agree, within a reasonable time (such as 15 or 30 days) to a boundary determination and the choice of a surveyor, and a

- statement to the effect that, failing an agreement, you will apply to the courts;
- your signature and contact information.

If your neighbour, after receiving the formal notice, consents to a boundary determination and agrees with you on the choice of a land surveyor, you proceed as described in the [first situation](#).

However, if your neighbour still refuses to consent to the boundary determination, despite receiving the formal notice, you may take your case to the Superior Court, which will take charge of the matter.



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» Access to your property

You must allow neighbours access to your property to carry out construction, repair or maintenance work on their own property. However, they must give you spoken or written notice, and must repair any damage caused by restoring your property to its original condition.

Some incidents can also affect relations between neighbours. For example, the wind may blow the roof off your house and onto a neighbour's property, or an animal may jump over several fences and end up three properties away. In such cases, if the owner of the property on which the objects or animals end up does not immediately return them to their owner, he or she must allow the owner to search for and recover them. These objects or animals continue to belong to their original owner unless he or she abandons his search, in which case they become the property of the owner of the property where they end up. This neighbour may also ask the original owner to remove them and restore the land to its original condition. If the original owner refuses, the neighbour may apply to the court to order the removal of the objects or animals and any necessary repairs to the land.

» Protection of another person's property

If a building or other structure on your land seems likely to collapse onto your neighbour's land or onto a public road, you must repair or demolish it as necessary.

In addition, if you erect a building or structure or make a plantation on your land, you must be careful not to disturb the neighbouring land or undermine any buildings, structures or plantations on the land.

» Encroachment

Sometimes, a person acting in good faith erects a structure on a piece of land that belongs to a neighbour. If you are this person, your neighbour may ask you to purchase the piece of land or, if the structure is temporary, to pay compensation for the temporary use of the land.

However, if the encroachment is considerable, causes serious damage or was made in bad faith, your neighbour may ask the court to order you to purchase the piece of land at its full value or to remove the structure and restore the land to its original condition.

» Direct views

One aspect of feeling “at home” is being safe from prying eyes. For this reason, the Civil Code of Québec contains rules governing the placement of windows or other openings in a wall. As a result, you may not have “direct views”, namely windows or doors with transparent glass, less than 1.50 metres from the dividing line between two properties. This rule does not apply to views onto public roads or public parks, and does not include solid doors or doors with translucent glass, meaning glass through which objects cannot be clearly distinguished.

» Right of way

You may own a piece of land with no access to a public road, or with inadequate or impassable access. In such a case, you may ask a neighbour to grant you a right of way in return for compensation that is proportionate to any damage you may cause. You must see to the upkeep of the right of way and use it so that any damage is kept to an absolute minimum.

If your neighbour refuses to grant you a right of way, you may take your case to court.

» Water runoff

You must make sure that water, snow or ice from your roof falls on your land only and not on your neighbour's. Where necessary, your neighbour may force you to install a snowguard or eavestrough to keep snow and water on your side of the boundary.

» Fencing your land

You may enclose your land in any way you wish, by means of walls, ditches, hedges, barriers or any other type of fence. As long as it is located entirely on your land and does not touch the dividing line with your neighbour's land, the fence may be of any height, colour or materials.

You and your neighbour may agree to build a common fence on the dividing line (see the section on [Common fences](#)) and to share the construction and maintenance costs. In this case, you will decide together what type of fence to put up, its height and colour, what materials to use and what accessories to add.

If your neighbour refuses to share the cost of the fence along the dividing line, you can force him or her to do so with a court judgment. Before going to court, you will have to send a formal notice to your neighbour demanding his or her cooperation in erecting the fence.

Last, it is important to remember that whatever type of fence you decide to build, article 1002 of the Civil Code of Québec stipulates it must take into account “the situation and use made of the premises”. For example, a cattle fence must not be installed in a residential neighbourhood and, of course, various other municipal by-laws apply.

»» Common fences

A fence located on the dividing line between two properties is presumed to be a fence common to both neighbours unless the original owner can prove that he or she erected it alone and has not agreed to it becoming a common fence.

A wall that is shared by and separates two buildings is also presumed to be a common wall. When two buildings are of unequal height, the law assumes that the common wall stops at the height of the lowest building.

The cost of maintaining, repairing and rebuilding a common wall must be borne by all of the property owners concerned. You can surrender your right to the wall and free yourself from the obligation of contributing to the costs by filing a notice to that effect with the registry office for registration in the land register. You must send a copy of this notice to the other owners. However, this means that you give up your right to make use of the wall.

»» Trees

Sometimes the branches or roots of a tree on your land can extend onto a neighbour's property, causing major problems. In this case, the neighbour may ask you to cut back the branches or roots. If you refuse, the neighbour may file for a court injunction compelling you to do so, after first sending you a formal notice. If one of your trees seems likely to fall onto the neighbour's property, the neighbour may, using the same procedure, compel you to cut the tree down or shore it up.

When planting trees on your property, you should avoid placing them where they may damage electrical or telephone lines or underground cables or pipes. They should also be planted a good distance from the dividing line between two properties.

»» Noise


You may not subject your neighbours to excessive noise. Many municipalities have set a limit on the number of decibels allowed and impose fines for violations. For instance, if the constant drone of your ventilation system or heat pump prevents your neighbours from sleeping, you will have to correct the situation. Similarly, if your dog barks loudly or howls at night, you may be forced to rectify its behaviour, or to dispose of it.

»» For more information

To register a land transaction or to consult the Land Register of Québec:

- [Land Register](#) 

Laws relating to property:

- [Civil Code](#)  (Book IV: Property)

The content of this document is strictly informative and has no legal value.

If you find some of the information difficult to understand, do not hesitate to [contact us](#).
Please note, however, that we cannot interpret the information to apply it to a specific situation.



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Demand letters

» A demand letter is a formal notice demanding that the addressee perform a legal obligation, such as rectifying a problem, paying a sum of money or honouring a contractual commitment, on specific terms and within a specified time. The letter gives the recipient a chance to perform the obligation without being taken to court.

In certain types of legal proceedings, a demand letter is mandatory; a person failing to send it could lose his or her case. It is always best to send a demand letter before instituting legal proceedings; in many instances, it encourages the recipient to settle the matter out of court.

Sending a demand letter will not require the sender to actually sue the recipient. The decision on taking the matter to court is made when the recipient does not respond within the allowed time or refuses to perform the legal obligation.

A demand letter may be written by the person seeking redress or by a lawyer on that person's behalf. The original must be sent by certified or registered mail; a copy of the demand letter and the delivery confirmation or advice of receipt issued by Canada Post must be kept as proof that the letter was successfully delivered to the intended recipient.

A demand letter must contain the following information:

- the date, the recipient's contact information, and the legal phrase *WITHOUT PREJUDICE* to protect the sender with regard to the contents of the letter;
- a summary the matter at issue;
- a demand for a specific relief or payment;
- a deadline by which the matter must be settled;
- the sender's contact information and signature; and
- the term demand letter stated in the body of the letter to direct the recipient to act accordingly.

A sample demand letter is available in the section on [small claims](#) on this website.





General Information

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1200, route de l'Église, 6^e étage
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Telephone: 418 643-5140

Toll free: 1 866 536-5140

Email: communications.justice@justice.gouv.qc.ca

Please note: The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

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