



THE ILLUSTRATED AND ENHANCED

BOUNDARY PRESUMPTIONS HANDBOOK



LandRegistry
TITLE DEEDS

CHAPTER 1

Boundary Search

SECTION 1

Boundary Presumptions

Section Contents

- Introduction
- Hedges and Ditches
- High Hedges
- Fences
- Walls
- Trees and Shrubs
- Apartments
- Highways
- Rivers and Streams
- Islands
- Lakes
- Seashore
- T and H Marks
- Horizontal Boundaries

Buy Searches referred to in this Section

- [Boundary Search](#)

INTRODUCTION

Legal Presumptions are common law rights that only apply in the absence of contrary agreement or where an Act of Parliament supersedes that right. Therefore it is very important to look at any documents that may constitute a contrary agreement before attempting to apply a Legal Presumption.

If there is a Contrary Agreement it will almost certainly be evidenced in the property's title documents. These are the documents that have been supplied to you with this document, and which you should read first.

HEDGES AND DITCHES

Where two properties are divided by a hedge (or bank) and a ditch the boundary is presumed to be on the far side of the ditch from the hedge. This presumption is based on the surmise that the owner of the land, standing on his side of the boundary looking towards his own land, dug his drainage ditch within his own land and planted a hedge on the mound of earth removed from the ditch. This presumption can be rebutted by evidence to the contrary. In any event it only applies to

Link to: [UK Land Registry Services](#)

man-made ditches and does not apply if at the time the ditch was dug the land on either side was owned by the same person.

Hedge and Ditch



In Scotland, where the boundary is a wall, fence or ditch alone then the boundary is presumed to exclude the wall, fence or ditch

HIGH HEDGES

Part 8 of the Anti-Social Behaviour Act 2003 gives local authorities power to deal with complaints relating to high hedges. So long as they have tried and exhausted all other avenues for resolving their hedge dispute, people can complain about a neighbour's evergreen hedge to their local authority, i.e. your district or borough Council.

High Hedges



The role of the local authority is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act - the hedge is adversely affecting the complainant's reasonable enjoyment of their property. In doing so, the authority must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

If they consider the circumstances justify it, the local authority will issue a formal notice to the hedge owner which will set out what they must do to the hedge to remedy the problem, and when it should be done by. Failure to carry out the works required by the authority is an offence which, on prosecution, could lead to a fine of up to £1,000.

Link to: [UK Land Registry Services](#)

You can contact Communities and Local Government about high hedge matters at hedges@communities.gsi.gov.uk.

High Hedge Law restrictions:

The legislation does not require all hedges to be cut down to a height of 2 metres

You do not have to get permission to grow a hedge above 2 metres

When a hedge grows over 2 metres the local authority does not automatically take action, unless a justifiable complaint is made

If you complain to your local authority, it does not follow

If the title documents are silent then in the case of a fence with posts or struts on one side the general presumption is that the owner on the side with the posts or struts owns it and is responsible for its upkeep.

FENCES

Fences should normally be on the boundary line and the cost of erecting or repairing should normally be borne equally between the adjoining owners.

Fences



If the fence is supported by upright posts on one side, there is a presumption that it belongs to the owner on that side.

Fences that detrimentally affect adjoining land or obstruct the view can be removed by obtaining a court order under the Property Law Act 1952.

WALLS

If the title documents are silent the general presumption is that the boundary will be immediately on the side of the wall furthest away from the garden of the owner who put it up. It is presumed that the builder would take care to build it with its outer face on the limits of his own land.

There is a right to carry out basic preservation work under the Access to Neighbouring Land Act 1992 to the exterior walls of a dwelling that cannot be accessed from your own property. Prior to this Act an adjoining owner had little right of access unless permitted to do so in the Title Deeds.

Link to: [UK Land Registry Services](#)

Party Walls



There are strict rules under the Act that must be adhered to, and written notice of your intention to rely upon it must be given. In the event that the adjoining owner refuses an injunction can be obtained to allow your entry.

The Party Wall Etc. Act 1996 provides further rights in relation to walls dividing adjoining properties. A Party Wall is a wall that divides semi-detached or terraced houses from each other. There is a general assumption that ownership is divided down the middle, with one half belonging to each owner. This means that maintenance and repairs should be a joint expense. Such walls, to fall within the Act, should be of solid structure, such as brick, stone or concrete. Fences and wooden posts would not be included.

If a wall or fence has been built on your land by an adjoining owner, and shouldn't have been, this would constitute a trespass, which is enforceable by an action for damages and injunction from your local county court. An injunction is an order compelling your neighbour to do some act, e.g. to remove, or move the wall. There is also a right of self-

help whereby you could demolish the wall, but in practice it may be dangerous to proceed in this way. The right of self-help would cease to apply in the event that a court had adjudicated on the matter.

If the Title Deeds state the height of any wall/fence and/or the materials to be used and it is built contrary to the same, then you would be able to take legal action.

TREES AND SHRUBS

Trees and shrubs that form a boundary belong to the owner of the land on which they grow, including their branches, roots, fruit, flowers and windfall fruit (but there is no obligation on the owner to sweep up fallen leaves, branches or fruit). There is no right to enter on neighbouring land or to lean over it in order to cut your trees or shrubs or to collect windfall fruit, without your neighbour's express permission.

OVERHANGING BRANCHES

Notwithstanding the above where overhanging branches protrude over adjoining land they are trespassing on the adjoining land's airspace and the adjoining landowner is allowed to cut back the branches, and to return them and any fruit or foliage. The adjoining landowner is not permitted to cut back beyond his boundary without your consent.

ROOTS

Similar rules apply to tree roots that trespass onto the adjoining land. The adjoining land owner can cut back the roots to the boundary without your consent. Using poison to kill the tree roots would not be permissible as this may kill the whole tree, but cutting the trespassing roots would be,

Link to: [UK Land Registry Services](#)

even if the result would be the death of the tree. Whenever possible action is preferably taken with the adjoining landowner's consent.

Tree and Shrub Boundaries



APARTMENTS

A flat is normally taken to include its external walls notwithstanding the landlord has legal obligations to carry out exterior repairs.

HIGHWAYS

The boundary of land abutting a public highway or a private right of way extends to the centre of the public right of way, subject to the rights of the highways authority who will usually have adopted the surface. However, the owner of the land will own the subsoil, theoretically to the centre of the earth, and the space above. Where the highways authority have adopted the surface they are liable for the upkeep of it. This presumption is subject to contrary agreement, which would normally be evidenced in the Land Registry documents.

Public Highway Boundaries



As a general rule Ordnance Survey maps and the index maps held at the Land Registry show the boundary as extending only to the edge of the road. This is general practice and does not override the legal presumption of ownership.

Where a highway is fenced or hedged on both sides the boundary of the highway will be presumed to extend to each fence or hedge, but this presumption only applies where it can be shown that the fences or hedges were erected to separate the adjoining land from the highway.

NON-TIDAL RIVERS

The boundary of land abutting a non-tidal river or stream is presumed to extend to the centre thereof. If the course of the river or stream changes naturally then the boundary follows the changed course, but not where the course of the river or stream is changed purposely or by any sudden means whether natural or non-natural.

Link to: [UK Land Registry Services](#)

Non Tidal River



If the course of a river changes over time the position of the boundaries will also change, but not where the river has changed course as a result of human intervention.

A canal boundary does not include the canal and tow path.

ISLANDS

An island in the middle of a non-tidal river or stream will belong equally to adjoining land owners in such proportion as the centre line of the river or stream bisects it. If the island is entirely on one side of the centre line of a river or stream it will belong to the land owner of that side.

If the island is situated in a tidal river or estuary it will belong to the Crown.

River Island



LAKES

The bed of a lake belongs to the owner of the surrounding land if the lake lies within his sole ownership. If it does not lie within his sole ownership the presumption does not apply.

SEASHORE

Where land joins the sea the boundary lies at the top of the foreshore, i.e. the land lying between the high and low water marks of an ordinary tide between spring and neap tides. The foreshore is owned by the Crown unless it has been let. The same presumptions apply to land bordering tidal rivers and inlets. The high and low water marks may move gradually over time, in which case the boundaries will move with them, save where the same move suddenly.

Link to: [UK Land Registry Services](#)

The position is different in the Orkney and Shetland Isles, where Udal law applies. The general presumption here is that where the title is stated to include foreshore, the title extends to the lowest ebb.

Foreshaw Ownership



The owner of the land on which the bar of the T appears is the owner of the boundary structure. If there is an H mark this means that the boundary structure is jointly owned.

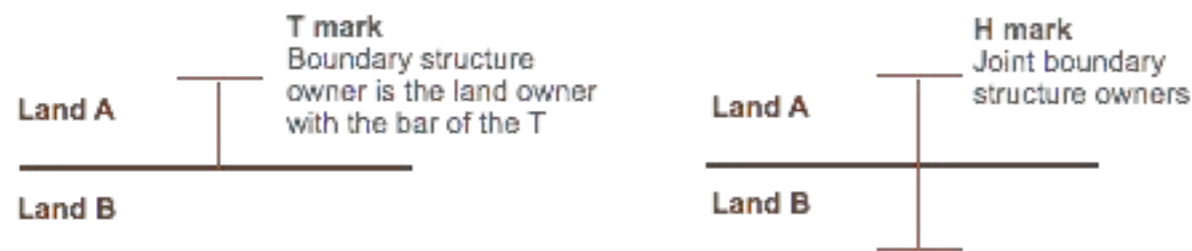
HORIZONTAL BOUNDARIES

Horizontal Flat Boundaries



T AND H MARKS

T and H Marks



Sometimes the Title Plan or one of the plans attached to a Registered Old Deed will contain T marks or H marks. These denote boundary structure ownership.

The owner of the surface of land is presumed to own the air above the surface thereof and also the subsoil beneath it. This presumption may be rebutted, and where it is not the case the Land Registry will make an entry in the A section of the Register. Examples of instances where this may occur are:

- Where the underground mines and minerals had been sold separately. In such cases a statement similar to “The mines and minerals are excepted” would appear in the A section of the Register.

Link to: [UK Land Registry Services](#)

- Where the property is divided into flats. In such a case a plan must be provided to clearly show the separate flats.
- Cellars may sometimes project below another property. There is a presumption that such cellars or other similar underground spaces are owned by the owner to which the property belongs. The Land Registry will include a statement in the Register for the property above to say that a cellar is excluded from ownership, and a statement in the Register for the adjoining property to say that it is included.