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**When a good neighbor is better than a stack of law books-  
how prescriptive easements apply in the neighborhood.**

Prescriptive easement law evolved from the problems locating property lines in rural areas. Traditional real estate law provided the concept was that, if you used your neighbors land, by running livestock across it, building a road on the neighbors side of the property line, or so other use, the victimized neighbor has five years to do something about it or the trespassing neighbor has established a legal right to continue that use.

Something different happens when the trespasser uses the land in exclusive way, such as by building a structure on it, or fencing it in. Courts are less likely to find establishment of an “exclusive” easement, in which the original owner no longer has rights in the land. By putting a fence five feet over the actual line, the trespasser could establish an exclusive right to use that five feet, even though he does not own the underling land.

The issue is a big problem in residential neighborhoods. It problem starts when a homeowner, for whatever reason, has their property surveyed and discovers that one of their fences is not on the line, but instead is set inside their side, reducing the size of the backyard. Has the trespassing neighbor established a right to keep the fence in its location, enlarging his yard? California courts say no -the concept of an exclusive prescriptive easement “has no application to a simple backyard dispute.” Based on this, the trespasser can be forced to move the fence back across the line.

However, it is common for both neighbors to move in with the fence already in place, and both live in peace ignorant of the problem. Improvements such as drainage, structures, perennial plants or trees may have been installed. Once the surveyor makes his mark, is the innocent trespasser left without a solution?

Not necessarily; California courts have the power to reach an “equitable” or fair solution that is technically different from a prescriptive easement. It can grant the trespasser some legal rights, and also require them to pay for them. However, if the neighbor whose property is encroached on takes the fence down and places