

Orlando Sentinel

ASK A LAWYER

A land's ownership determines your action

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Question: For 35 years I have placed trash bags, lawn clippings, etc., at the edge of my driveway apron on the public right-of-way behind my home for collection. It's a small area between two driveways. Regular household garbage in a rolling bin also is placed on the right-of-way. My neighbor does not want me to use this area and has planted shrubs all the way to the curb. He says it's his property, and he maintains it. He's only in Florida for a few months. When he leaves to return to his home up north, my husband and I maintain it. He is making our lives miserable. He has called code enforcement and the police, and they have explained to him that he must share the right-of-way. City code states bags, etc., must be placed at the curb for pickup but doesn't state a specific location. What is our legal recourse?

S.M.
Orlando



Answer: You must determine if the shrubs are located wholly within the boundaries of your neighbor's property. If they are, and your neighbor has never given you permission to cross his/her land, then you would have no legal basis to object to the shrub placement. Because land ownership includes the land and the air space above the land, you would have the right to trim any portion of the shrubs extending onto and over your land, but not the portion situated within your neighbor's boundaries.

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To the extent the shrubs extend into the public right of way, the city or county could remove those shrubs. Note that Florida law requires any transfer of an interest in real property, including grants of easements, be evidenced by a written document recorded in the public records -- verbal permission alone could be withdrawn at any time.

A title search of your property and your neighbor's property would reflect whether there are any recorded easements or restrictions which would prohibit the construction of a fence or the placing of shrubs at the front or back of either property, and also whether there is a homeowners association that could enforce any violations of recorded restrictions.

Municipal and county codes regulate collection of waste and recyclables. The Orlando Municipal Code, for example, provides that trash is to be placed on the curbside at designated times. Although this city code does not recite this, logically the "curbside" is the curb that abuts the owner's property, and not the neighboring property.

Recommendations: If the ownership of the land in question is at issue, obtain a survey of the property to determine your borders. Obtain a title search for your property and your neighbor's property if you wish to pursue other avenues of enforcement.

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