PARTY WALLS

A wall which divides two adjoining properties, and in which each of the owners of the adjoining properties has rights of enjoyment of the wall is a party wall. The main point to be noticed is the that "each of the owners of the adjoining properties has rights of enjoyment." That is, the wall is equally owned by both parties, and must, therefore, benefit both parties. The party wall sits on the boundary line of the properties in question. Each owner owns half of the wall and may use the wall at leisure. But what if one neighbor does not want a wall separating his property with his neighbors? Since half the wall is going to be on his property, does he not have the right to refuse construction of the wall?

Constitutionality of Party Walls
According to the only United States Supreme Court case regarding party walls, Edward F. Jackman v. Rosenbaum Co., the Party Wall Act deprived an owner of his property without due process of the law due to the fact that the owner had no chance to be heard on the question on whether his property should be occupied. Furthermore, no compensation for the taken property was rewarded in any way. The court found that the act was in violation of the Fourteenth Amendment, and that the construed Pennsylvania State Statute of the Supreme Court also violated the due process of law. The United States Supreme Court made it evident that the powers embodied in the Pennsylvania State Statute were unconstitutional. In effect, the Supreme Court of the United States left the laws regarding Party Walls up to the individual states. The Supreme Court still deems the statute to erect party walls constitutional, despite the fact that one may use a neighbor's property for a wall without his consent and compensation. According to the court, the statute has existed in excess of forty years and has not been objected upon, therefore, may be deemed constitutional. There are a number of California cases regarding party walls and their erection, payment, rights, ownership, alteration, destruction, compensation, and venue.

California Law regarding Party Walls

The Erection of Party Walls:
Common law states that no party wall may be erected until an agreement between the two adjoining landowners has been reached, that is convention between coterminous proprietors. Today, a party wall may be developed through contract, prescription, statute, or conveyance by both or one of the proprietors. An owner of land is permitted to erect a party wall on his neighbor's land and enter the land to build the wall. The wall must be half on his neighbor's land, and may be used by the neighbor to compensate for the land. In most cases, there must be consent by the adjoining proprietors to construct a party wall. There are instances where there was no such agreement, such as the case Bank of Escondido v. Thomas. The board of collectors allowed an adjoining neighbor to use an erected party wall without objection. As the neighbor made improvements on the wall to his benefit, he relinquished his right to object to the party wall. The corporation was estopped to deny such adjoining owner's interest in the wall. Since the adjoining neighbor used the party wall, he is compelled to accept it as a party wall. In another instance in creation of a party wall, Nippert et al. v. Warneke et al., the wall was created by an incident or consequence of the conveyance of land. One single owner of two adjacent lots of land with a common foundation, sold the land to different owners. A wall was built as a party wall.
before either party purchased the land in question. The wall remains a party wall, but who owns the wall?

**The Ownership in accordance to Party Walls:**
General legal principles govern the ownership of a party wall when no agreement was made prior. The adjoining owners hold title in common on the party wall in question. Or, a separate title for each part of a wall exists with an easement on the other portion of the wall in question. In some instances, the same rule applies if the party wall sits as a whole on one side of a boundary. Contracts may govern, depending on the nature of the agreement. A wall built on a boundary line may be determined as a party wall even if the adjoining land owner has not used or paid for it. The builder owns the wall until the other person uses it to his advantage or puts up payment. Such as in the case of McCarthy v. Mutual Relief Assn of Petaluma.

**The Payment in accordance to Party Walls:**
If a land owner uses a party wall consented to be erected, he may be obligated to contribute to the cost of the construction of the party wall. As long as the owner consents to the construction of a party wall, he may have to pay. This is evident in the case, Watkins et al. v. Glas et al.. Since there was a contract between both parties, the defendant was required to compensate for his share of the wall. In reference to an interest statute, if one disclaims liability to pay for a constructed party wall under the argument that the neighbor cut out openings in the wall, the disclaiming party may be responsible to uphold payment if the openings do not interfere with the planned use of the party wall.

**The Rights in accordance to Party Walls:**
The party wall may be utilized by either adjoining neighbor to the full extent of the party wall. Even in the instance of an absence of a controlling statutory. The right to use the party wall is paralleled to the right to use it as it where their own property. The only limitation in using the wall, is that the landowner must not infringe on his neighbor's rights. The owner must also keep the structural capacity of the party wall. The fact that the party wall is defined as an easement, the right to use the wall is granted. The easement exist due to the fact that an agreement also exists between the two parties. There are limitations as in the case, Nippert et al. v. Warneke et al.. The defendant demolished his portion of the party wall causing damage also to the existing foundation of his neighbor.

**The Destruction or Damage of Party Walls:**
The right to remove or demolish a party wall may be determined through contract, statute, law of negligence, rule of absolute liability, or trespass. A person who does any damage to an existing party wall is responsible for the damages caused to any adjoining property. The person is liable for property and personal injury at the amount of the initial cost of the construction of the wall or the amount to repair or replace the party wall. In the case, McCarthy v. Mutual Relief Ass'n of Petaluma. The plaintiff was awarded the possession of the defendant's half of the party wall due to the damage done by the defendant for compensation. And in the case, Nippert et al. v. Warneke et al., the defendant had the foundation wall removed and awarded the plaintiff compensation. If an owner of a piece of land wants to stop a trespass or prevent one from occurring, he may acquire a prohibitory injunction. An injunction is used to prevent an attempted
replacement of a party wall that has been accidentally destroyed, causing a loss of all attendant party rights. It may also prevent any unauthorized alterations to a party wall.

The Alteration of Party Walls:
The height of the party wall may be altered with the agreement of both proprietors. In the instance where there is a discrepancy, either owner has a right to change the height of an existing party wall as long as the alteration does not impair the strength of the wall, or damage the adjoining building. The case Henn v. Lankershim, the court awarded the defendant due to the agreement of the plaintiff to erect a party wall. Since the agreement did not mention the height of the wall, each owner has a right to build the wall as high as desired without presenting any physical damage to the opposite party. If the height of the party wall was determined and agreed upon during the construction of the wall, that height would stand.

Conclusion
A wall dividing connecting and mutually supporting buildings with different owners, usually standing half on each of the lands, maintained by both owners at equal cost, and used consistently with the rights of the neighbor is called a party wall. These walls cause some discrepancy between ownership and costs to maintain. They also cause static between neighbors and friends. The wall are inevitable and usually benefit both parties. People should be thankful for the existence of party walls and the laws that govern them. Neighbors with party walls pay half the price of a wall and half the price to maintain it. California law protects individuals that are forced to live with party walls and attempts to make it benefit the common good and, for the most part, succeeds. Most of the cases in California regarding party wall are straight forward and "cut-and-dry". Most of them are for compensation for damages that are easily determined who was at fault. Since a party wall is for the benefit of both parties, how can the court go wrong? Since a party wall must be agreed upon prior to construction, the law has little "lee-way" in regards to payment and ownership. The existence of party walls in the State of California, mutually benefits the people that reside in close quarters such as in Los Angeles, Sacramento, and San Francisco.