

Owning or renting a home can be a legal minefield. Here's our guide to 10 key issues you really need to know about, from boundary battles to the scourge of Japanese knotweed. By **Sarah Lonsdale**

**M**aking a home is all about building a nest, a shelter from the slings and arrows that bombard us daily. Little do we know, as we're imagining granite worktops, power showers and cosy nights in front of the woodburner, that we may need to know about things called easements, or that boiler flues can commit trespass, or that party walls aren't something to do with mirrored tiles. And as for flying freeholds...

You may have lived somewhere for several years before a legal problem

rears its head — and unless you are among the 0.4% of the population with a law degree, having to decipher a deed of covenant may induce anything from mild panic to hysteria.

Never fear: with the help of some of the country's finest property-law minds, Home has found answers to the most common legal bugbears that come with buying or renting a home.

**1 My neighbour has a right of way over my driveway, but has now started parking on it. Can he do this?**

The first thing to do is to check the wording of the deed: is there a right to park or just a right to drive over it? "If there is no right to park, you can take out an injunction," says Nikolas Ireland, a solicitor at Forsters LLP ([forsters.co.uk](http://forsters.co.uk)). "However, this

is expensive — about £750 — and can make relations worse. Disputes are often resolved by extending the right to include parking in return for an annual fee."

**2 I think the wall between my property and my neighbour's is in disrepair, but he says there is not a problem. What can I do?**

If the wall is wholly within one property, that owner must maintain it at their own cost. If it sits astride the boundary, it is deemed to be a "party fence wall". In this case, you can carry out the necessary repairs provided you give two months' written notice or obtain prior written consent from the adjoining owner; the cost should be split between you. If works are needed

urgently, you could seek an injunction or undertake temporary work to protect your land, and claim the costs if your neighbour is at fault. Yet it may be cheaper to do it yourself, warns Jonathan Smithers, vice-president of the Law Society of England and Wales. "People have lost their homes due to the legal fees that have built up over these kinds of disputes."

**3 The local authority wants to divert a drainage tunnel underneath my garden, which will mean digging up part of it. Can I refuse permission?**

"With a freehold, the presumption is that you own everything up to the sky and down to the core of the Earth," says Ed Cracknell, senior associate solicitor with the law firm

Russell-Cooke ([russell-cooke.co.uk](http://russell-cooke.co.uk)). "However, local authorities and other public bodies have the right compulsorily to purchase your subsoil to carry out important works. For example, the route of Crossrail passes under our building, and we were paid £400 to have the subsoil replaced with a rail tunnel." The compensation for disruption and removal of subsoil needs to be fair, but generally, large-scale public works offer reasonable redress.

**4 I want to do some work on my leasehold property. Do I need the freeholder's permission?**

"In most cases, the rules are contained in the lease," says Paula Higgins, chief executive of the HomeOwners Alliance ([hoa.org.uk](http://hoa.org.uk)).

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# property jungle

"Generally, redecorating is fine, but structural alterations need permission." The freeholder is unlikely to withhold consent, but may want to obtain a professional opinion to be sure your plans represent an improvement. If they do so, they are likely to charge the costs to you.

**5 I moved into my house less than a year ago and have found Japanese knotweed in the garden. It wasn't mentioned in the HomeBuyer's Report. What can I do?**

Japanese knotweed is such a pervasive problem that the HomeBuyer's Report asks sellers to assert categorically that there is none on the property. If the seller knowingly lies, this can form the basis of a claim of misrepresentation.

"Problems arise if the new owner doesn't notice the knotweed for a year or two," Ireland says. "The previous owner could argue that it spread from a neighbouring garden, or that the new owner introduced it themselves." It can cost up to £10,000 to get rid of the weed, so resorting to a claim, although costly, may be the only option.

**6 My neighbour recently started a home hairdressing business, and clients' cars are causing parking problems. Can I do anything?**

If your neighbour's business is causing parking problems or noise, or is introducing imposing signage on a quiet residential street, they will need permission for a change of use. In a residential area, there

will often be a restrictive covenant in the deed prohibiting commercial use. Act quickly if you want to object: if the business has been there for more than 10 years, the council may not be able to act.

**7 I've moved into a flat as a tenant. How do I know that my deposit is safe and that the landlord won't claim for spurious damages when I leave?**

Deposits must be registered with one of three schemes, each of which has

an arbitration service: MyDeposits ([mydeposits.co.uk](http://mydeposits.co.uk)), Deposit Protection Service ([depositprotection.com](http://depositprotection.com)) and Tenancy Deposit Scheme ([tds.gb.com](http://tds.gb.com)). To ensure yours is protected, search the sites using the address of your flat. "Make sure you are present during the inventory inspection, and check that existing damage is logged," Cracknell advises. "There is no legal right to receive the inspection report, so insist that you see it. If you spot any damage that is not listed, take a picture and alert the inventory company right away."

**8 Rain from my neighbour's roof discharges via a downpipe and flows onto my property. I am worried that it is making our external wall damp. What can I do?**

A landowner must ensure that water collected on his property does not cause damage when released. There should be sufficient drainage, and runoff should be diverted away from the boundary. If the water has damaged your building, you may be

entitled to sue your neighbour for the cost. To prevent further damage, you could apply for an injunction against your neighbour, although it may be cheaper to install drainage yourself and claim for this cost.

**9 My neighbour has let his trees grow so tall that they are blocking the once fabulous view I had. What are my rights?**

"Unfortunately, there is no such thing as a right to a view," Ireland says. "You may be able to reach an agreement, and if a tree overhangs your property, you can cut it back to the boundary." There is also an ancient "easement" known as the "right to light", which can protect a property's access to natural light across neighbouring land ([lawcommission.justice.gov.uk/areas/rights-to-light.htm](http://lawcommission.justice.gov.uk/areas/rights-to-light.htm)).

**10 I bought my house in joint ownership with a friend five years ago. Now she wants to take a career break and let out her 'half' to a stranger. Can she do it?**

"No," Smithers says. "When you jointly own a property, you co-own all of it, not half each. A co-owner can't expect you to fund their midlife crisis. It would also breach the terms of a residential mortgage."

**If the new owner doesn't notice the knotweed for a year or two, the previous owner could avoid blame**

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