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Ten Years After Silacci, Mehdizadeh and Scruby, Neighbors in California are Still Behaving like the "Hatfields and McCoys"

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The Hatfields and McCoys carried on their neighborhood dispute with lethal weapons. Today's feuding neighbors use weapons not quite so lethal, but far more expensive—lawsuits. This article discusses two areas of easement law in which the courts have virtually invited neighbors to sue each other.

It has been a decade since the courts of appeal radically changed California easement law governing both prescriptive easements and express, non-exclusive easements. Under prior law, (1) a party could establish the elements of an easement by prescription based upon encroachments amounting to exclusive use of his neighbor's property, even though that party could not obtain fee title through adverse possession, because he or she had not paid property taxes for the prescriptive period; and (2) the owner of a servient tenement could not construct any encroachments within an expressly granted, non-exclusive easement of a defined width. While it is safe to say that neither of these is a correct statement of current law, it is far more difficult to discern what the current law is, and how to apply it.