

# Iowa DRAINAGE LAW

***Drainage can increase agricultural productivity. It can also lead to additional nutrient runoff and increased soil erosion downstream, which commonly leads to disputes between neighbors. The question then becomes:***

## ***How may landowners drain water from their land?***

**Contracts.** Landowners can agree to different rights and duties than those established by law. This means you can enter a contract or grant an easement with your neighbors that will establish how each of you can manage the water on your land. It also means that if there is a conflict over drainage, one of the first things to check is the existence of a prior contract. These contracts should be recorded in the county recorder's office.

**Easements.** An easement is the right to use land owned by another for a specific limited purpose. Here, that purpose is the drainage of water across a neighbor's land. Easements can be created by

contract or simply by use over time.

A recorded drainage contract becomes an easement that "runs with the land," meaning that subsequent owners have to follow the terms of the agreement. Therefore, if you receive land, you have to abide by the terms of previously established drainage easements.

An easement that is created by use over a set amount of time is called an "Easement by Prescription." An easement by prescription is created when a drainage system is put in place and maintained for at least 10 years without a neighbor objecting to its existence. These easements

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have the same long-term consequences as contractual easements and bind subsequent owners of the land.

**Drainage Districts.** If there is no contract or easement regarding drainage, there are two sources of law that can govern. Some land is governed by Drainage Districts. Districts are established by a county's Board of Supervisors and paid for by the taxpayers who benefit. Drainage Districts can create their own regulations as long as they serve the purpose of increasing the economic value of the land. As a practical matter, Drainage Districts usually just

## *Additional Resources*

**Drake Agricultural Law Center**  
www.law.drake.edu/agLaw  
Phone: 515-271-2205

**Iowa Concern Hotline:**  
www.extension.iastate.edu/  
iowaconcern/  
Phone: 1-800 447-1985

## **Iowa Drainage District Association**

www.iowadrainage.org  
Phone: 515-221-1961

## **The Iowa Drainage Law Manual:**

http://www.ctre.iastate.edu/pubs/  
drainage\_law/



✧ www.WFAN.org ✧

follow the state drainage laws outlined below. More on Drainage Districts is available from [www.iowadrainage.org](http://www.iowadrainage.org).

**State Law.** Iowa's legislature and courts have established laws to promote the removal of water and agricultural productivity while protecting adjacent land and structures. There are several principles that govern how courts determine the rights and duties of landowners in relation to drainage.

***Below are common questions relating to Iowa Drainage Law.***

***Can you stop or dam up the water flowing from your neighbor's land?***

A lower parcel of land, referred to as the servient estate, must receive the water flowing from land situated above it, referred to as the dominant estate. This means you can't force water back onto your neighbor's land.

***Can you increase the flow of water onto adjacent land?***

Landowners can't divert water onto land to which it would not naturally flow, if it would cause substantial damage. Stated another way, you can't take water from one watershed and divert it onto land in a different watershed.

***Can you alter the flow of water onto adjacent land?***

It is possible, and common, to change the manner in which water flows from one piece of land to another. For instance, an owner can divert water off of, or around, a piece of land using drainage tiles or a ditch.

*Note:* The law expressly allows the use of open or closed drains, which means tile drainage can be used to remove surface water.

***What if drainage from my neighbor is damaging my land?***

Reasonable care must be used in diverting or altering the natural flow of water. This means neighbors must

be careful to avoid or minimize damage resulting from diverted water. So, if a landowner channels water in a way that causes erosion to land downstream, substantial damage may be found to have occurred.

*Note:* Extreme rainfall events or flooding does not negate existing drainage easements. This means that an altered drainage system, once established as an easement, cannot later be ignored even if damage results due to intense rainfall. This could become a significant issue if increased Spring rains become the norm, increasing downstream damage.

***How are disputes over drainage settled?***

It depends on who brings the complaint.

*If the higher situated, or dominant, owner is bringing the suit, they must prove they have a right to drain onto the adjacent land. Again, this right can exist because the drainage conforms to where the water would naturally flow or because there is a contract in place giving an owner the right to drain in a particular manner.*

*If the servient estate owner brings the suit, they must prove that their property will suffer substantial damage from an increased flow of water, an altered flow of water, or both. Substantial damage simply means that there is some diminished market value.*

The judge or jury can award money to pay for any damages to the land and the judge can also issue an injunction. An injunction is an order requiring someone to do something or to refrain from doing something.

*Mediation is also available.* This provides an out-of-court solution that can save money and help build a more cooperative relationship between neighbors.

***Support for this Project.***

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