

Dividing Fences Fact sheet

A dividing fence separates the land of different owners. This is true whether or not the fence is on the common boundary.

Dividing Fences are regulated under the Dividing Fences Act 1991 (NSW). Council does not regulate / administer the provisions provided for under the Dividing Fences Act 1991 (NSW).

What you should do if you have a dispute about a dividing fence with a neighbour?

1. Firstly, speak to your neighbour. Discuss the type and height of fence and what material the fence should be made of;
2. Secondly, if you and your neighbour agree on the type and cost of the fence then get at least two quotes for the type of fence you have agreed on;
3. Thirdly, put your agreement in writing, specifying a time for the work to be done and for payment to be made; and
4. Sign the agreement and both of you keep a copy of it.

Once you have an agreement in writing if one neighbour does not carry out their part of the agreement within the agreed time (or within three months if there is no time stipulated), then the other neighbour may carry out the work and recover the costs as a debt in the Local Court.

Costs

The Dividing Fences Act 1991 (NSW) provides for the cost of a dividing fence to be shared equally between adjoining land owners. However, if you construct the fence without agreement or without a court order, you cannot later recover a contribution from the adjoining land owner, unless it is for urgent or emergency repairs to a damaged fence. If there is a dispute over payment for urgent repairs, the owner must apply to the Local Court or Land Board within a month for a review.

You may recover costs from an adjoining owner for what is a sufficient dividing fence. If you want to build a fence to a standard greater than what is a sufficient dividing fence, then you must pay the additional costs. For example, if you want to build a brick fence rather than a paling fence in a residential area, or construct specialist fencing for livestock in a rural area. All items that are related to the fencing work, such as preparation of the land, design, construction and removal of the old fence, are included in the costs to be shared by adjoining land owners.

If it is necessary to remove vegetation for the purpose of fencing, or for the repair of retaining walls (if they are essential for the support of the fence), the costs of this work may also be shared by adjoining land owners. An exception to shared costs is where the fence needs replacement or repair as a result of damage caused by the actions of one of the land owners, their tenant or someone acting with that owner's permission.

If you cannot reach an agreement

If you cannot reach an agreement, you can serve your neighbour with a Notice to Fence. This can be done by post or by hand. A Notice to Fence outlines:

1. the position of the proposed fencing work;
2. the type of fence;
3. the cost of the fence; and
4. the amount to be paid by each owner.

You must include 2 quotes with this notice. Keep a copy of the Notice to Fence and record the date it was delivered or posted.

You can download a Notice to Fence from the Lawlink website, or you can get one from your nearest Local Court.

If your neighbour does not agree to your proposal after one month, you can attempt to resolve the disagreement by mediation through a local Land Board. The contact details are below. If you can't resolve the dispute through mediation, you can ask a Local Court or a Local Land Board to make orders. Either party can apply to the Local Court.

You and your neighbour must comply with a fencing order within the time specified in the order. If no time is specified in the order, you must comply within three months of the order. If either owner does not comply within those times, the other owner can go ahead with the work and recover the costs in the Local Court.

If a dividing fence has been damaged or destroyed and it urgently needs to be repaired it is not necessary to serve a Notice to Fence before carrying out the fencing work. In a case where there is disagreement costs of this may be recovered in the Local Court. However it is important to keep in mind that if it is not urgent and you proceed to construct a fence without agreement with your neighbour or a court order, you cannot later recover a contribution from the adjoining neighbour.

Local Council approval

You should contact Council before building a dividing fence to determine whether there are any specific requirements or whether Council consent is required.

Entering the adjoining land

An owner (or someone working for them) who is carrying out work under the Dividing Fences Act may enter the adjoining land for that purpose at any reasonable time.

Useful contacts

Community Justice Centre: 1800 990 777
Local Land Board: (02) 6923 6300
Law Access 1300 888 529

http://www.lawlink.nsw.gov.au/lawlink/local_courts/l1_localcourts.nsf/pages/lc_forms

The above information does not constitute legal advice and you are encouraged to seek your own legal advice if any dispute regarding dividing fences cannot be resolved.