



## Dividing Fences Residential & Rural



### 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 deer or ostriches 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.

Public authorities, including Aboriginal Land Councils with control over adjoining lands, parks reserves, roads etc, **do not have to contribute**. However, you may be able to negotiate with the authority for a contribution towards the cost of a fence.

## **Materials**

The fence must be "sufficient for the situation" and "adequately divide the properties", and be of a **recognised standard for the area**. For example, a paling fence in a residential area or a wire and post fence in a rural area.

The following are taken into account to determine what is a recognised standard for the area:

- The materials of the existing fence, if there is one.
- The use of the land on either side of the fence.
- The kinds of dividing fences used in the area.
- The needs of the land owners.
- Any environmental planning instruments or local council requirements which may be applicable in that area.

## **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 (see Useful Contacts below). 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 or Land Board.

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 the local 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: 883 65373

Law Access 1300 888 529

[http://www.lawlink.nsw.gov.au/lawlink/local\\_courts/ll\\_localcourts.nsf/pages/lc\\_forms](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_forms)