

CONSTRUCTION OF A FENCE

This is one of the most common sources of neighbour disputes. The Dividing Fences Act 1953 provides the mechanism by which these types of disputes are resolved.

The party wishing to construct a fence must serve on the owner of the adjoining land what is known as "Notice to Fence" pursuant to Section 8 of the Act. This Notice must state the following:

- Identify and specify the common boundary line;
- Contain a proposal to fence the boundary line; and
- Specify the kind of fence proposed.

It is recommended that the Notice must also contain a quotation of costs from at least two fencing contractors.

You must serve the Notice personally or by prepaid registered letter to the usual or last known address of the owner of the other land.

If you are unaware of the owner's whereabouts then you must satisfy the Court that you have made all relevant enquiries and attempts to contact them and locate them.

If the neighbour and yourself can agree to the proposal as outlined in the "Notice to Fence", it should then be put in writing and signed by each of you.

Under the Act the owner of the adjoining land is allowed one month after they are served with the "Notice to Fence" to come to an agreement. If agreement can't be reached then either party can apply to the Magistrate's Court or the Small Claims Tribunal for orders in relation to how to proceed.

TAKE NOTE: You cannot recover any money spent on construction if you carry out that construction prior to an agreement or an order of the Court.

If you cannot agree and have to go Court, you need to provide the following evidence in Court:

- The type of fence you intend to construct is one which accords with the usual standard of fences in the neighbourhood, eg. you will not be allowed to construct an 8 ft brick fence and seek contribution if the standard fence in the neighbourhood is a 4 ft wooden fence.
- You must ensure that you have the relevant quotations and you have to have an Affidavit from the contractor confirming the quotation.
- You should ensure that you have evidence to show that the fence you are seeking to construct is one which accords with normal standards and you can do this by either having evidence presented by other neighbours and/or photographs of adjoining fences.

The Court has the discretion when taking evidence to receive such evidence as it thinks fits and exercise all the ordinary powers of a Magistrates Court.

The decision of the Court is final and you cannot appeal it.

Once you have the order, you can arrange for the construction of the fence and seek payment of the share from the neighbour as ordered by the Court. If the neighbour still refuses to pay you can enforce it by any means provided for under the law.

Section 22 of the Dividing Fences Act authorises any person engaged in constructing or repairing a fence to enter adjoining lands for the purpose of affecting the construction or repair.

REPAIRS TO AN EXISTING FENCE

Owners of adjoining land are liable to contribute equally to the repair of existing dividing fences pursuant to Section 15.

Before you can proceed with repairs you must serve a "Notice to Repair". Again, within one month if there is no response from the adjoining landowner or there is no agreement then either party can apply to the Magistrate's Court or the Small Claims Tribunal for orders in relation to how to proceed.

You can proceed to repair the fence and then recover from the adjoining landowner, one half of the repair costs. The adjoining landowner, when they receive a "Notice to Repair", can dispute it or indicate that they will assist with the repair but will not pay half the costs. If the agreement can't be reached again, you must apply to the Magistrate's Court or Small Claims Tribunal to resolve the matter.