



Dividing Fences - (Residential & Rural)

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

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

1. Speak to your neighbour; discuss the height, type and material of the fence.
2. If you and your neighbour agree on the type and cost of the fence, get at least two quotes;
3. Write your agreement, 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.

Once you have an agreement in writing it can be enforced. If one neighbour does not fulfil their part of the agreement within the agreed time (or within three months if there is no time stated), then the other neighbour may undertake the work and recover the costs as a debt in the Local Court.

Shared Costs

The *Dividing Fences Act 1991* (NSW) requires for the cost of a dividing fence to

be shared equally between adjoining land owners.

You may recover costs from an adjoining owner for what is a sufficient dividing fence. If you want to build a fence greater than what is a sufficient standard 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 it would be unlikely to be considered standard fencing.

If you construct the fence without agreement or without a court order, you cannot later recover a contribution from the adjoining land owner. The exception is if 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 the NSW Civil & Administrative Tribunal (NCAT) within a month for a review.

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.

Not Shared Costs

Shared costs are exempted where the fence needs replacement or repair as a result of damage caused by the actions of one of the land owners, their tenant(s) 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 to fencing costs. 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
- 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 would be considered as standard for these areas.

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

- The materials of the existing fence;
- 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 pick one up at your nearest Local Court.

If your neighbour does not agree to your proposal after one month, you can ask a Local Court or NCAT to make orders. Either party can apply to the Local Court or NCAT.

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.

Local Court or NCAT

Filing an application in the Local Court costs a filing fee of \$87.00. Courts are also bound by rules of evidence. Any order made by the Court is enforceable.

Filing an application in NCAT costs a filing fee of \$61.00. NCAT requires conciliation before the hearing. The hearing is generally set down within 4 weeks and NCAT is not bound by the rules of evidence. While an NCAT order is enforceable if it is not complied with the order requires a small fee to be made enforceable by the Local Court.

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

NCAT: 1300 006 228

Law Access: 1300 888 529

http://www.localcourt.lawlink.nsw.gov.au/agdbasev7wr/_assets/localcourts/m40155115/fo rms_fences_noticetofence.pdf