



SOLVING NEIGHBOURHOOD PROBLEMS

Series: Solving Neighbourhood Problems

Part 1 of 12: Fences and Boundaries

With the exception of noise, dividing fences are a common source of most neighbourhood disputes. State legislation covers the rules for working out who pays for the dividing fence and also what happens if there are disputes about where the boundary lies. These laws apply to bodies corporate.

Basic Principle

The *Fences Act* 1968 provides that adjoining owners are required to share in the cost of "a fence sufficient for the purposes of both occupiers" with the costs in agreed proportions. If there is a dispute about the standard of fencing, a neighbour must give the other a fencing notice which sets out the type, length and cost of the proposed fence. If agreement cannot be arrived at, an application can be made the Magistrates' Court to determine the matter.

What is a "sufficient dividing fence"?

In deciding what is a sufficient dividing fence, the court will take into account the following:

- The standard of the existing fence;
- The purpose of the fence;
- The way the land on either side of the fence is used;
- The privacy or other concerns of each neighbour; and
- The kind of dividing fence that is usual in the area.

The basic principles of this act are reflected in other state based dividing fences legislation including the Neighbourhood Disputes Resolution Act 2011 (QLD), Fences Act 1968 (VIC), Common Boundaries Act 1981 (ACT) – the main difference is the issue of crown liability for dividing fences.



Who Pays?

The general rule provides for neighbours to equally share the cost. However, if one neighbour wants a fence of a different standard, that neighbour will usually pay the additional cost involved. As for construction of a fence, if there is disagreement as to the fence or cost sharing, application may be made to the Magistrate's Court for determination.

The legislation does not specifically address responsibility for maintenance of dividing fences other than require adjoining owners join in contribution in agreed proportions. In the absence of agreement, application to the Magistrates' Court can be made,

The following is the determination and cost sharing for land affected by an owners corporation.

- A dividing fence between a lot and common property is shared between the owner of the lot and the owners corporation.
- A dividing fence between two lots is shared between the lot owners.
- A boundary fence between a lot and an adjoining property is shared between the lot owner and the adjoining property owner.
- A boundary fence between common property and an adjoining property is shared between the owners corporation and the adjoining property owner.

Boundary Disputes

If there is a dispute about the boundary line, a land surveyor needs to be engaged to fix the boundary.

Avoiding Disputes

To avoid disputes about fences and boundaries, an owners corporation should act reasonably and should take care to keep notes and written correspondence about the essential elements of the fencing proposition. A land owner who proceeds to repair or construct a fence without an agreement with the neighbor may surrender the opportunity to recover a share of the cost.

Given the cost of litigation, it is desirable that agreement regarding fences can be reached as the legal expenses may exceed the cost of the fence a court process is involved.

Next week: Part 2—Trespass and Responsibility for Visitors