

Fact Sheet

Shared Obligations for Fence Boundaries

Fence disputes are the most common type of dispute between neighbours. Disagreements over fences may relate to: where the fence is, whether it's necessary, who should pay for it, who should maintain it, who should do the work on it or what type of fence is needed.

Usually, neighbours are legally obliged to share the cost of repair or construction equally.

But there are exceptions to this rule.

A. Where a particular type of fence is requested. Anyone wanting a special kind of fence, a more expensive fence or a fence different from that usually built in a particular neighbourhood, cannot demand a neighbour to pay half the cost of its construction. For example, if the usual type of fence is a paling fence and one neighbour wants a brick fence instead, his or her neighbour is only obliged to pay half the cost of a paling fence and he or she will have to pay the balance of the cost of building a brick fence him or herself.

B. Where a property is occupied by a tenant. If you are a tenant of a property you are not obliged to contribute to the cost of repair or construction unless you have a lease for more than three years. If your lease is for more than three years you will have to pay a proportion of your landlord's share of the cost of construction or repair. If your lease is for more than 12 years you will have to pay the whole of your landlord's share. If you are a tenant and you receive a notice to fence you should immediately send copies of the notice to your landlord and estate agent. If you don't do this within 14 days, you may be liable for the whole of the landlord's share of the cost of the fence.

C. Government owned property. If you live next to land occupied by the Government, for example, a council lane, you will be totally responsible for the cost of maintenance and construction of a fence. The Government is not obliged to pay half.

D. Farming land. If you use your land for residential purposes and your neighbour is a farmer, he or she is only legally obliged to contribute half the cost of a fence which is suitable for his or her needs usually a farm fence of Post & Wire.

E. Damaged as a result of negligence. If a fence is destroyed or damaged by fire or by a falling tree due to your neighbour's neglect, your neighbour will have to pay the total cost of repair.

Apart from these above exceptions neighbours must share the cost of maintenance and construction equally.

How to approach your neighbour to contribute to the cost of a fence

Having decided that the fence needs repairing or replacing how do you go about obtaining your neighbour's contribution?

Approach your neighbour in a friendly way and discuss the building and repairing of the fence with him or her. Now that you know your legal position this should not be difficult. Discuss the type of fence, the sharing of the cost, the location of the fence and the obtaining of quotations.

Once you have discussed this with your neighbour you now have a number of options open to you:

- You could decide not to take the matter further

- You could reach an agreement with your neighbour
- You could decide to proceed with court action
- You could decide to pay the total cost of construction yourself

These may help you reach a compromise with your neighbour but these are only suggestions.

No Further Action

The Notice to fence could prompt your neighbour to discuss the matter and for one reason or another, you may decide that it's not worth the cost, stress or time lost taking the matter further

Reach an Agreement

The Notice to fence may prompt further negotiation your neighbour, but make sure you are both absolutely clear about:

- The location of the fence
- The type of fence to be built
- The height of the fence to be built
- When the building is to commence so that access can be made available and pets and property secured
- How much each person is to pay and when and how payment is to be made

You can then turn the notice to fence into a legally binding agreement and building can begin in accordance with the notice.

This agreement also creates a right of entry for work to be undertaken. So even if the neighbour does not perform their part of the agreement, the fences act still gives you the right to go proceed.

Court Action

If your neighbour is unwilling to discuss the matter or you cannot agree you might consider telephoning a mediator from a Dispute Settlement Centre. A mediator will ring or write to your neighbour on your behalf and seek his or her co-operation in discussing the problem further. This is a free service funded by the Department of Justice.

Irrespective of whether or not you decide to contact the Dispute Settlement Centre you should prepare a written notice to fence and give this written notification and a quotation from a fencing contractor to your neighbour.

If you are unable to locate your neighbour, for example, if the land next door is vacant, you should either send the notice by registered post to the occupier of the property at the address shown in the council rate book asking the occupier to contribute to the cost of a new dividing fence.

Legal action should always be a last resort. It is expensive and has a lasting detrimental effect on neighbour relations.

You must send a written Notice to Fence document as well as a copy of a quotation from a fencing contractor by registered mail to the occupier of the property at the address shown in the council rate book and give them 30 days to respond.

If, however, your neighbour does not respond to the written notice within one month, you have the legal right to issue a summons at your nearest Magistrates' Court with a view to obtaining

an order from the court about the type and position of the fence to be built, how much each of you should build or pay and the time in which the fence is to be built.

If your neighbour refuses to comply with the court order you can go ahead and construct the whole fence according to the terms of the contract, and then sue to recover the proportion of the cost due from your neighbour.

Pay Total Cost Yourself

If you do not wish to peruse your neighbour for half of the costs of construction then you may decide to pay the total cost of the fence construction yourself.

A written notification of your decision construct a fence and that you are covering the costs in full should be sent by registered mail to the occupier of the property at the address shown in the council rate book.

If you decided to cover the cost of the fence construction then you can go ahead 30 days after notification as long as there are no disputes from your neighbours and have the works done at your expense.

This information is of a general nature only and is not intended to be a substitute for independent legal or other professional advice.

This information has been gathered from:

***The Department of Justice web site
<http://www.justice.vic.gov.au>***

***Parliament of Victoria - Law Reform Committee web site
<http://www.parliament.vic.gov.au>***

This document is a guide only and in no way forms any part of any legal representation from Teriton Fencing or any of its representatives.

If unsure of anything seek your own legal representation.