



Dividing Fences

Dividing Fences Act 1991

The *Dividing Fences Act 1991* addresses how the cost of a dividing fence is shared between adjoining land owners, where an owner wants to erect a dividing fence or wants work done on an existing dividing fence. The Act sets out the minimum requirements owners may agree to arrangements exceeding these requirements. The Act also sets out the procedure for resolving disputes involving the cost, type and position of a fence.

You want to erect a dividing fence – what should you do?

Before erecting a dividing fence an owner should contact the Council to determine whether Council has any specific requirements or whether its consent is required prior to undertaking any fencing works. Apart from the approval process, Council has no further part to play in relation to the *Dividing Fences Act*. The Act is administered by Law Access NSW. Please refer to their website for more information:

https://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_fences/lawassist_fences.aspx

Things You Must Do

Negotiate with the adjoining owner. Under the *Dividing Fences Act* you must attempt to negotiate an agreement with the adjoining owner if you believe that a fence is needed and you want the cost of building the fence to be shared with the adjoining owner.

Generally, this agreement should be in writing and include:

- the type of proposed fence – material, height and colour;
- the position of the fence; and
- how much each of you contributes to the cost of installing the fence (consider providing two quotes for the proposed fence).
- If agreement is reached you should both sign the agreement and keep it in a safe place.

Mediate

Where you have been unable to reach an agreement with the adjoining owner you can contact a Community Justice Centre and arrange for mediation to assist in reaching an agreement with the adjoining owner.

What happens if you can't reach an agreement with the adjoining owner?

Generally, if you and the adjoining owner have not been able to reach an agreement you can apply to the Local Court for a Fencing Order.

To obtain a Fencing Order you must firstly give the adjoining owner a written “Notice to Fence” – this must specify:

- The proposed position of the fence (usually the boundary line);
- The proposed type of fence – material, height and colour;
- The estimated cost; and
- The proposed contribution of each neighbour.
- A sample Notice to Fence is available at:
https://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_fences/lawassist_fences/lawassist_samplefencingnotice_1.aspx
- You must deliver the Notice to Fence to the adjoining owner personally or post it to their usual or last known residential or business address.
- If after one (1) month of giving the adjoining owner the Notice to Fence there is still no agreement, either you or the adjoining owner can apply to the Local Court for a Fencing Order.

Generally the Local Court will then hear evidence from you and the adjoining owner at a hearing. Generally you must attend the hearing at the Local Court otherwise the Local Court may make a Fencing Order in your absence.

The Local Court can decide:

- whether a dividing fence is required at all;
- where the fence is erected;
- the nature and standard of work;
- how costs are to be shared;
- which part of the fence is to be constructed or repaired by each owner; and
- the time in which the work is to be carried out.

Where a Fencing Order is made, you must comply with the order within the time set out in the order. Where no time is specified you have three (3) months to comply. You may appeal a Fencing Order to the Supreme Court only where the Local Court or has made a legal error.

What can happen if I construct the dividing fence without agreement from the adjoining owner or a Fencing Order?

The adjoining owner may refuse to contribute to the cost of the fence and generally unless you can demonstrate that the fencing work that was carried out was urgent, you may not be able to require the adjoining owner to contribute to the cost of the fence.

The adjoining owner may refuse to allow persons to enter onto their land for the purposes of constructing the fence and may pursue an action in trespass if their land is entered onto without their permission.

The Local Court has made an order against the adjoining owner and they are not complying – what can I do?

Where an order has been made against an adjoining owner and they are not complying, you may need to take further court action to enforce the order.