

FACTS SHEET: NEIGHBOURS – DIVIDING FENCES

What is a ‘dividing fence’?

The law defines a ‘dividing fence’ as fence that separates the land of adjoining owners. A dividing fence may be on the common boundary of the adjoining land or on a line other than the common boundary.

What are your obligations regarding dividing fences?

If there is no sufficient dividing fence, both you and the owner of the adjoining land are responsible for contributing equally to fencing work for a dividing fence of a sufficient standard.

What should be considered in determining the standard for a ‘Sufficient Dividing Fence’?

The following circumstances should be considered in determining a sufficient standard:

- the existing dividing fence (if any)
- the purpose the adjoining lands are intended to be used
- any privacy concerns of you or your neighbour
- the kinds of fences used in your neighbourhood
- any council policy and/or Environmental Planning instruments relating to dividing fences

What if you or your neighbour wants a fence that is of a greater standard?

If you or the adjoining owner would like a fence that is of a greater standard than a ‘sufficient’ dividing fence, then the person wanting the fence of a greater standard will be liable to the extent that the cost of the fence exceeds the cost of a standard sufficient dividing fence.

Who is liable for damage to a dividing fence?

Whoever is responsible for the damage or destruction of a dividing fence will be responsible for the entire cost of fixing the fence. The fence should be repaired to a reasonable standard. The fence should be restored to a reasonable standard, having regard to its state before the damage.

What if urgent repair is required?

If urgent repair to a dividing fence is required and it is impracticable to serve notice to the adjoining owner, you may carry out the urgent work required to fix the fence. The adjoining land owner will be liable for half the cost incurred. If urgent repair work is undertaken without giving notice, the other party may apply to the Local Court or Land Board to review their liability for the cost of repairing the fence. The application for review must be made **within 1 month** after the work has been completed.

You want to Build or Repair a Dividing Fence

Negotiate

Approach the adjoining land owner and attempt to reach an agreement with them about building or repairing a dividing fence. If you reach an agreement, it should be put in writing and signed by both parties.

The agreement should specify:

- Type of fence;
- Height & Colour;
- Cost;
- Position;
- Provision for removal of existing fence.

If you fail to reach an agreement, contact your local Community Justice Centre to mediate the matter.

Notice to Fence

If you still cannot reach an agreement and mediation is unsuccessful, you may serve the adjoining land owner with a 'Notice to Fence' requiring them to contribute to the cost of building or repairing the fence.

A Notice to Fence form may be downloaded from the NSW Lawlink Website. Click on the "Forms and Fees" Link (www.lawlink.nsw.gov.au/lawlink/local_courts)

The 'Notice to Fence' must specify:

- the boundary line the proposed work will be carried out on;
- the type of fencing work to be done; and
- the estimated cost

The 'Notice to Fence' must be served on the adjoining land owner by delivering it personally or sending it by post to their usual address.

What if the other party does not agree with the 'Notice to Fence'

If the other party does not agree with proposal in 'Notice to Fence', you may make an application to the Local Court or Land Board to seeking a fencing order. This application must be made **within one month** of the 'Notice to Fence' being served.

An application form may be downloaded from the NSW Lawlink Website. Click on the "Forms and Fees" Link (www.lawlink.nsw.gov.au/lawlink/local_courts)

Enforcing a Fencing Order

If the adjoining land owner does not comply with a court order, additional court action can be taken to enforce the order. Any money which an adjoining owner is required or liable to pay may be recovered as a debt by filing a Statement of Claim in the relevant court.

When will an adjoining owner NOT be liable for contribution?

An adjoining owner will not be liable to contribute to cost of dividing fence if:

- the work was carried out before a 'Notice to Fence' was served (unless work was urgent);
- the work was carried out after 'Notice to Fence' served but before any agreement was reached or before matter was determined by the Local Court or Land Board.

Contacts

Local Land Board	Ph 02 49 342280
Local Court Wyong	Ph 02 4350 3010
Local Court Gosford	Ph 02 4325 6922

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.