



FENCES

YOU & YOUR NEIGHBOUR



Disputes over trees and fences are a common cause of bad feeling between neighbours – trees that block you sun, roots that choke your drains, fences that your neighbours want built or replaced, often at considerable expense. These differences can usually be settled with a combination of tact and compromise, but if you are forced into a stand-off, legal action may be your only way out. That could cost you anywhere from a few hundred to thousands of dollars (depending on whether you can take the matter to the Disputes Tribunal yourself or use a lawyer to go to court) and will most likely destroy neighbourly goodwill. This information sheet explains where you stand if a neighbour's trees or fences are causing trouble.

Please note you should seek legal advice if you are unsure of your rights and obligations under the Fencing Act 1978, or in respect of problem trees. This leaflet does not constitute legal advice.

FENCES

The Fencing act 1978 sets out your rights and obligations for building a fence between your property and your neighbours.'

When can I ask a neighbour to contribute to the cost of a new fence?

Generally if you want to build a fence on a common boundary with your neighbour, or upgrade an existing fence, you can expect the neighbour to go halves on the bill for an "adequate fence." An adequate fence is one that is "reasonably satisfactory" for the purpose it is intended to serve. It is important to note that you can only claim half the cost from your neighbour if you have given them prior written notice that you are having the fence built, including details of how much it will cost.

What should I do?

Talk to your neighbour when you are at the planning stage. Try to keep the proposal for the fence reasonable. They are entitled to object to your proposal if they disagree about what is an appropriate fence. If you fail to reach an agreement, or your neighbour refuses to agree to pay half, there is a formal process which you can follow.

First you must serve your neighbour with a "fencing notice." The notice should state that it is served under the Fencing Act 1978. It should contain the names and addresses of both you and your neighbour. It must also describe: –

- The boundary to be fenced
- The type of fence to be built
- Who will build the fence
- The estimated total cost
- How materials are to be purchased
- The start date for the work

You should use the suggested notice which is in the schedules of the Fencing Act (which also contains some useful descriptions of various types of fences). Upper Hutt City Council holds a copy of the Fencing Act for reference purposes, and you may also be able to find a copy of it in your local library.

Time periods

The fencing notice must explain that your neighbour has 21 days to object to any aspect of your proposal, and to make any counter-proposals. It should also say that if your neighbour does not accept liability, you must be told within 21 days

the reason why, and they must also give you the name and address of whoever they believe is liable to contribute to the cost (for instance if your neighbour is a tenant of the property, they must give you the owner's contact details). If that is the case, you have to start again and serve a new notice on the liable person. They will then have 21 days to reply.

The fencing notice must also say that if your neighbour (or the property owner) makes no communication within 21 days, they will be considered to have agreed to the proposal, and will have to share half the cost.

Serving the notice

Before you give the notice to your neighbour, you must remember to sign and date it, and also keep a copy of it for your own records. You can deliver the notice to your neighbour either by registered letter or by giving it to them in person. This is called "serving the notice."

My neighbour doesn't want a new fence at all

Your neighbour must give you a "cross notice" within 21 days after you have given them your fencing notice. They are able to object to part or all of your proposal if they believe the existing fence is adequate, or if they think that your proposal is excessive. They can also object to being asked to pay if they don't own the property (as discussed above).

A cross notice must be "served" on you either in person or be sent to you by registered mail. The cross notice must contain details of your neighbour's objection to your proposal, and details of any counter-proposals that they want to make. A cross notice should be in the same form as the cross notice included in the schedules to the Fencing Act.

If you cannot get agreement...

If you and your neighbour can't agree between you, there are various options to resolve the issues. These include mediation (being assisted to reach an agreement through compromise), arbitration (having a third party hear both sides and make a decision that binds both of you), going to the Disputes Tribunal, or filing proceedings in the District Court. The method you choose to resolve your dispute is up to you and your neighbour. If you want to go through the Disputes Tribunal, the value of the half share of the fence cannot exceed \$7,500 unless your neighbour agrees (then the half share can be up to \$12,000).

An alternative is that you could simply build the fence just back from the boundary on your own side of the property; however, you will have to pay for this yourself. Even then, your neighbour still has the right in the future to insist on a boundary fence being built.

Who gets to choose the type of fence?

If you can't agree on the type of fence, you will have to get the issue resolved through the means outlined above. But remember that your neighbour doesn't have to pay any more than half the cost of an "adequate" fence, so if you want something fancy, you will have to pay a larger part of the bill.

My neighbour has sold and I still want a new fence – do I have to issue a new fencing notice?

A new neighbour means a new chance for a friendly relationship, and you may find that they readily agree with your plans. If they don't agree, you will have to start the whole process again, beginning with giving them a new fencing notice.

My neighbour still objects to the fence and won't let the builder cross the boundary line while building the fence. Can the builder or I still go on to the neighbour's property?

The Fencing Act gives you limited rights to access someone else's property if the construction of the fence makes it necessary. However, this can only be done by getting a court order under Section 26 of the Fencing Act. You can only apply for such an order if it is too difficult for the work to be done from your side of the property. If you do get an order and go on to your neighbour's property, you must do as little damage as possible, particularly to plants. You are only allowed to enter at reasonable times to do whatever is reasonably required to build the fence.

To avoid difficulties, it might be useful to raise the issue of access in your fencing notice. This way, if you have had to go either the Disputes Tribunal or the District Court, you can ask for an order at the same time as the other issues are being sorted out.

Where should the fence go?

The fence posts should be placed right on the boundary line or as near to it as practicable. If it is the sort of fence which does not have any posts, the middle of the fence itself should be on the boundary line between the properties.

My neighbours destroyed the fence – do I have to pay for a new one?

NO! If your neighbours were responsible for the damage, then they have to pay the cost of replacing the fence with another adequate one.

A storm destroyed the fence but my neighbour is away and I need to get it repaired quickly. Can I ask them to help with the cost when they get home?

Yes. Immediate repairs can be done while the neighbour is away and you can recover half the costs. Remember, you should replace it with a comparable fence, and you cannot upgrade without the neighbour's agreement (but you can install an "adequate" fence).

Is there a limit on fence height?

You can usually build a fence up to two metres in height without the need to get planning consent or a building consent from the Council. However, you should always check with the Council first to make sure. It may be that you live in a special heritage area, or are affected by rules in the District Plan which mean that you cannot build a fence as high as this.