

Letters To Serve Your Neighbours

Mutual agreement

The best way to erect a fence between adjoining properties is by mutual agreement between the owners. Even if this is possible you should still give notice in writing as described below. If you have given notice and agreement has been reached do not begin to erect the fence until you have reached agreement concerning payment.

Where there is no agreement

If there is no common approach or agreement, the following steps should be taken. **It appears that Step 1 and Step 2 apply whether or not the adjoining land is vacant or has been built upon.**

Step 1 Notice

Give Notice in writing to the owner of the adjoining land. If the land is vacant you can find out the owner's name at the Land Titles Office. Your Local Government may also, for a fee, be able to assist you.

Notice must include:

- where you want to have the fence built (draw a diagram) (If you are replacing an existing fence, ensure there is no dispute about the alignment);
- when you want the fence and who in your view should build it;
- the type of fence you want.

If agreement is reached you can proceed, but whether agreement is reached or not, you should keep a copy of all correspondence and receipts.

Sample Letter:

*Dear Neighbour, I propose to erect a dividing fence on the boundary line between our properties. I propose to erect a 1.8 metre fence in treated pine paling fencing. I have obtained a quote from All Day Fencing for \$400.00. Your share will be \$200.00. Please let me know within 21 days whether you agree with this proposal.
Your Neighbour*

Step 2 Court Action

If the other owner does not agree within 21 days, you may apply to the nearest **Court of Petty Sessions** to decide the matter.

That Court can decide:

- (a) whether the fence is necessary;
- (b) what type of fence should be built;
- (c) how long it should take to build it;
- (d) the rate of contribution if the fence is wholly on piece of land.

Notice of this decision, if it is given to the other owner before the construction of the proposed fence, can the other owner to pay for half the value of the fence. The other owner has three months within which to with the agreement made (Step 1) or order which h made by the Court of Petty Sessions (Step 2) unless different period is agreed or ordered by the Court.

If after three months you have not received the other owner's contribution towards the cost of the fence, you may erect the fence, and recover half of its costs by applying to the **Local Court** and issuing a Summons for Debt.

There is no appeal from a Court of Petty Sessions' decision.

What to do if you cannot find the owner of the adjoining land

If you are unable to give the necessary Notice because you cannot find the owner of the adjoining land you may apply to the nearest Court of Petty Sessions and ask to proceed. **If you can satisfy the Court of Petty Sessions that you have made reasonable enquires (eg you have done a search at the Department of Land Administration) but have been unable to find the owner**, the Court may make an Order authorising you to construct the fence.

You **MUST** give a copy of this Order to the Chief Executive Officer of your Local Government **within 21 days. If you do not do this, you will not be able to recover any part of the costs from the other owner at a later date.**

If later you find the other owner (Whether or not that person was the other owner when the fence was constructed) you should give them a copy of the Court Order. (You, as the owner, may be presented with a copy of the Court Order when you purchase a property.)

If the owner considers the Order is unjust they must apply to the Court of Petty Sessions within a month. If that other owner makes no application then after one month they will be liable to pay you half the cost of the fence, that is half the cost of the fences value at the time you gave him or her a copy of the Order.

What happens if you erect a fence without giving notice or reaching agreement with the other owner?

In that case you cannot recover any of the costs from the other owner unless or until the other owner:

- (a) has constructed or constructs a substantial building or structure on the land; or
- (b) has occupied or occupies a building or structure already on the land;
- (c) had permitted or permits some other person lawfully to occupy a building or structure already on the land.

If any of the above conditions are satisfied, you may give the other owner a notice claiming half the estimated value of the fence at date of claim. The claim for contribution from the other owner exists whether or not they were the owners when the fence was constructed. Only the current owner who actually built the fence can claim a contribution from the other owner.

Sample Letter:

*Dear Neighbour, I am writing to you about the dividing fence between our properties. I had the fence built six months ago. The cost was \$400.00. Enclosed is a copy of the invoice we received from All Day Fencing. I would like to discuss arrangements for payment of your share of the fence, which is \$200.00. If you do not agree with this please advise me in writing within one month.
Your Neighbour.*

If the other owner gives you a notice of objection they may make a complaint to the Court of Petty Sessions nearest to where the fence is. Complaint Forms are available from the court. The Court will make a decision in the dispute. The Court's decision is final with no right of appeals.

If within one month of receiving your Notice of Claim the other owner does not pay the amount of the claim or give notice that they dispute your claim, then they will be liable to pay. You may then recover the sum by applying to the Local Court.

Repair of Dividing Fences

The ordinary rule is that when a dividing fence is in need of repair the owners of the land on either side are each liable to pay half the cost of those repairs.

The Act defines the word "repair" as including "re-erect and realign" so the provisions which deal with repairing a dividing fence apply in the same way to fences which need realignment or re-erection.

If you wish to have a dividing fence repaired, you must give the other owner a notice describing the repairs to be made, saying where and stating that you are prepared:

- (a) to repair the fence and pay half the cost if the other owner will also pay half the cost;
- (b) that you permit the other owner to repair the fence and you will pay half the cost; or
- (c) that you agree to pay half the cost of having the fence repaired by a third party.

Sample Letter:

Dear Neighbour

The fence dividing our properties is in need of repair because a number of pickets are missing (or, three of the timber posts have broken, etc.). I propose that we have All Day Fencing, Fencing Contractors do the work and that we share the cost equally. I have obtained a quote for the work for \$120.00. A copy of the quote is enclosed. Please let me know within 14 days whether you agree with this proposal.

Your Neighbour.

The other owner then has 14 days within which to object. They must notify you in writing of the objection. If the other owner objects you may apply to the nearest Court of Petty Sessions for an Order. If the other owner does not object within 14 days, you may repair the fence and you will be able to recover half the cost of repairs from the other owner. Both owners must allow access to enable the fence to be repaired and must also allow for the clearing of the fence line. If the other owner does not agree to pay you must take action in the Local Court to enforce payment.

Landlord and Tenant

As a tenant you do not have to pay for the cost of construction or repair of a dividing fence unless the term of the lease is for a period of five years or more.

Strata Titles

Where adjoining land is owned under a strata title, a claim against the owners for their contribution may be made.

Who owns the land may vary. The owners may be:

- the strata company, or
- another person, depending on the nature of the strata scheme, the by-laws of the strata company and whether a person has lodged a notice for recording on the strata/survey plan with the Registrar of Titles in accordance with section 123A (3) of the Strata Titles Act 1985.

To find out who to claim a contribution from:

- the name of the Strata Company can be obtained from Department of Land Administration, Land Titles Division and will be "the owners of (name of the building)" and the number of the strata plan.
- *information* about the type of strata scheme, the by-laws of the strata company and whether a notice has been recorded on the strata/survey-strata plan can be obtained from the Department of Land Administration, Land Titles Division.

Once you have this information you should seek legal advice before making any claim for contribution.

Notices

Notices must be:

- (1) in writing;
- (2) each notice must be served by either;
 - (a) delivering it in person, or
 - (b) sending it by registered mail addressed to the person's usual or last known place of residence.

If the notice is to be given to a company it may be served by –

- (a) delivering it to the head office of the company in the State in which the company is incorporated; or
- (b) sending it by registered mail to the company's principal office.

Legal Advice

Before taking any steps, which involve significant cost, and before commencing legal proceedings, you should get legal advice from the relevant service in your state.