



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.

A dividing fence

A dividing fence is a fence that separates the lands of adjoining owners. The fence may be a structure of any material, a ditch, an embankment or a vegetative barrier (e.g. hedge). It does not include a wall of a building. A retaining wall is not a dividing fence, except if it is a foundation or support necessary for the support or maintenance of the fence.

The cost of a dividing fence includes the cost of all related fencing work, such as preparation of the land, as well as the design, construction, replacement, repair and maintenance of the fence. The cost of a dividing fence does not include the cost of:

- any work on a retaining wall required to provide support for land
- trimming, lopping or the removal of vegetation except for the purpose of fencing work for a sufficient dividing fence.

The *Dividing Fences Act 1991* and Land and Property Management Authority

The Land and Property Management Authority (the Authority) is the authority charged with the administration of the *Dividing Fences Act 1991*. However, this responsibility is limited to administration matters such as the setting of fees, making of appropriate regulations or arranging for any necessary amendments to the Act.

It does not include the provision of advice relating to fencing disputes nor does it include providing specific legal advice relating to the provisions of the Act. This advice should be sought from other sources including Legal Aid services, chamber magistrates at the local court, LawAccess NSW, Community Justice Centres or private lawyers.

Contact details for these sources can be found at the end of this fact sheet.

Sharing the cost of a dividing fence

Under the *Dividing Fences Act 1991*, adjoining owners must share the cost of the fence, except that:

- an owner must pay the additional cost if they want a fence of a higher standard than is required for a sufficient dividing fence
- an owner will have to pay the full cost if the existing fence is damaged, either deliberately or negligently, by the owner or by someone else with the owner's permission. If the fence is damaged by a tenant, the owner must pay for the work even if they plan to claim the cost from the tenant
- public authorities with control over Crown lands, parks, reserves, roads etc. do not have to contribute to fencing costs. However people living next to such properties may be able to negotiate with the authority for a contribution.

A sufficient dividing fence is a fence that adequately separates the properties. For example, a paling fence in a residential area, or a wire and steel star post fence in a rural area. The *Dividing Fences Act 1991* lists the factors a court would take into account if there is a dispute about the standard of fencing required, such as the standard of any existing fence, the uses of the lands on either side, privacy or other concerns of the owners, the usual kind of fence in the locality and any relevant local council requirements.

If one owner wants a fence of a higher standard than a sufficient dividing fence, the owner wanting the higher standard is liable to pay the difference in the cost between that fence and a sufficient dividing fence.

If an existing dividing fence is damaged or destroyed by one owner or someone on the owner's land, that owner is liable to pay up to the whole cost of restoring the dividing fence.

Serving a fencing notice

An owner wanting an adjoining owner to share in the cost of a dividing fence must first serve a fencing notice on that adjoining owner (personally or by post). Unless urgent fencing work is required, no fencing work for which a land owner seeks a contribution from an adjoining owner should be done until agreement is reached or an order is made by the local land board or local court. Owners must share in the cost once agreement is reached.

Resolving fencing disputes

A Community Justice Centre through mediation may be able to help if adjoining owners have difficulty reaching agreement. If agreement is not reached within one month of the notice being served, either owner may apply to a local court or local land board to have the matter decided.

Applying to the local court for an order - Application to the local court can be made, as part of its fencing order, to direct the other party to pay a contribution to the fencing. Contact your local court for more details on lodging applications.

Applying to the local land board for an order - Local land boards consist of a chairperson and two local members with knowledge of land management practices and are generally familiar with the local area. In most residential areas a chairperson may sit alone in an appropriate dividing fences matter. A local land board sits as a dispute resolution tribunal and conducts hearings in relation to a variety of matters including dividing fences. Applications should be lodged with local land board registrars and cost \$61.00.

When a fencing notice need not be served

If urgent fencing work is needed on a dividing fence which has been destroyed or damaged (for example, due to a storm or accident), adjoining owners must share equally the cost of that urgent work even though a fencing notice has not been served.

Reasons for urgent fencing work include safety, security or to prevent stock loss. A local court or local land board can review any dispute arising out of these circumstances.

An owner who goes ahead and builds a new fence without consulting the adjoining owner, before either coming to an agreement or seeking an order, has no grounds under the Act for recovering the cost. Any agreement about fencing, including the type, position and contributions to cost, should be in writing and signed. If either owner does not carry out their part of the agreement within the agreed time, the other owner can go ahead with the work and later recover the cost as a debt in the local court.

An owner can apply to a local court or local land board for an order about costs if a fencing notice is unable to be served because the whereabouts of the adjoining owner are unknown.

Carrying out fencing work

An owner who is carrying out fencing work under this Act is able to enter the adjoining land for that purpose at any reasonable time. This also applies to the owner's employees or agents.

Recovering money

Any money which an owner is required to pay under *Dividing Fences Act 1991* may be recovered as a debt in a court. If a court or a local land board makes an order against the adjoining owner and this is not complied with, an owner may need to take additional court action to enforce the agreement or order, unless the order only relates to payment of a particular amount of money.

A party can initiate action through the civil claims jurisdiction of the local court (or other court with jurisdiction) to recover the money. In a case where a local land board makes an order for a particular amount of money to be paid the order may be enforced as an order of a local court (or other court with jurisdiction) where the order is certified by the chairperson of the local land board and filed in the appropriate court.

To assist the local land board to make an order for a particular amount of money to be made, the adjoining owners should bring current quotes for the fencing work they propose to the hearing of their matter.

Authorities not covered by the Act

Some authorities do not have any rights or liabilities under the Act. They are:

- the Crown
- local councils or other trustees in respect of public reserves
- roads authorities including local councils in respect of public roads.

Nevertheless, an authority may wish to contribute to the cost of a dividing fence.

Local council approval

Before erecting a dividing fence an owner should contact the local council to determine whether council has any specific requirements or whether its consent is required prior to undertaking any fencing works.

The height of fencing is not specifically regulated by the *Dividing Fences Act 1991*. Councils may have planning restrictions on fencing heights within local environmental plans or other planning policies. In some cases, fences or other structures may require development consent. Councils should be contacted in regard to any queries relating to the height or actual construction of dividing fences. This is not a matter which the Authority can advise on.

Further information

A copy of the legislation is available from the NSW Parliamentary Counsel's Office website at www.pco.nsw.gov.au. The website is the official NSW Government website for the online publication of legislation.

The Authority provides basic information on how the *Dividing Fences Act 1991* operates through this fact sheet. However, The Authority is not a legal service and does not provide information or advice relating to owner's rights under the *Dividing Fences Act 1991*, nor does it provide specific legal advice relating to the Act.

The Authority does provide general procedural information on how to make application to the local land board to determine a fencing dispute. The land board registrar can be contacted on (02) 8836 5332.

The land board registrar does not offer any legal or other advice regarding actual procedures relating to the *Dividing Fences Act 1991*. The registrar only provides instructions on how to lodge a dispute with the land board.

If specific legal advice relating to aspects of dividing fencing disputes is required, advice should be sought from one of the following sources.

Legal Aid - Can provide limited free legal advice through either their head office in Sydney or one of their regional offices. Free legal aid advice is usually limited to 15 minutes.

For further information contact Legal Aid:

323 Castlereagh Street
Sydney NSW 2000
T (02) 9219 5000
F (02) 9219 5935
www.legalaid.nsw.gov.au.

Chamber magistrates - Most local courts can offer free advice and will assist in filling out forms etc. Contact your local court to arrange a meeting with the chamber magistrate.

Community Legal Centres - Give free legal advice and provide help with problems not covered by Legal Aid.

Community Justice Centres - Provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy-to-use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at www.cjc.nsw.gov.au.

Private solicitors - You may choose to employ your own private solicitor to give you legal advice and guidance through your dispute. The NSW Law Society can refer you to private solicitors or lawyers in your area. It can also provide information about private solicitors/lawyers who do legal aid work. Contact the society's Community Assistance Department on phone (02) 9373 7300 or 1800 357 300 (country callers only).

LawAccess NSW - Provides legal information, referral or advice either by phone 1300 888 529 or through their website at www.lawaccess.nsw.gov.au.

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Disclaimer

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Advice from a professional adviser (such as a solicitor) should be sought if there is doubt as to the applicability of this information to individual circumstances.

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