

FACT SHEET – Fences: Neighbours

CONSENTS:

- A building consent is required for any fence 2.5m or over in height or those identified in the Fencing of Swimming Pool Act.
- Resource consent is also required for any fences over 2m in height.

FENCES:

Most of the law relating to fences is contained in the Fencing Act 1978. Property owners can enter into agreements or covenants concerning fencing matters. These may be registered against the titles of the land affected so that subsequent owners will be bound for up to 12 years after Registration. An agreement or covenant covering fencing matters may be a useful way to safeguard against future misunderstandings.

Unless there is an agreement to the contrary with your neighbours:

- All fences must be on the boundary line
- The cost of erection or repair of a fence is borne equally between adjoining owners, unless one owner damages it when the cost of repairs will fall on that owner
- A compulsory contribution to the cost of a fence cannot be obtained unless a fencing notice under the Fencing Act has been served on the adjoining owner and other procedures followed
- Usually in a new subdivision the subdividing owners exempt themselves from contribution to the cost of a fence
- There are also special provisions in the Property Law Act 1952 relating to fences by which an occupier of a residential property may apply to the district courts for an order to remove or alter a fence when the fence is injuriously affecting the neighbour's land or any undue obstruction of a view. Generally speaking the cost of any removal would fall on the applicant
- There are sometimes provisions in the District and Regional Plans that regulate such matters as the height and colour of fences and how close they may be built to rivers, streams and lakes

Sometimes you may not see eye-to-eye with your neighbours. If this happens, the law may be able to help you live in peace with them. Your lawyer is the best person to advise you if a dispute with your neighbour develops.

All disputes concerning a fence such as its type and cost can be dealt with by the court but it is obviously better to reach agreement if you can. While the law provides a remedy in many cases, it does not cover every case in which disagreements arise between neighbours. Your lawyer knows the details of the Fencing Act and can advise you of your rights of ownership and obligations any remedy available to protect you from your neighbour's conduct.

BOUNDARIES & ENCROACHMENTS:

At the time you bought your property your lawyer probably gave you a plan taken from the title showing the boundaries of your land. These boundaries were fixed by survey when the land was first subdivided and cannot be altered without your consent and the consent of anybody else whose property is affected. In the event of a dispute a surveyor can always establish where the boundary line runs and, if necessary, can replace survey pegs which have been lost or removed.

An encroachment can occur when a building or fence is over the boundary. This is technically a trespass for which the encroaching owner is legally responsible whether or not he or she erected the building or fence. The court has certain powers to help in the case of encroachments. Your lawyer can advise you on these points.

TREES & STRUCTURES:

Traditionally, you had no legal claim if your neighbour's trees or structures blocked out your view or enjoyment of your property. Since 1975, where land is zoned and used for residential purposes, the district courts have power to order the removal or trimming of any trees or the removal, repair or alteration of a structure. In considering the matter the District Courts may take into account elements of danger, undue obstruction of view, undue interference in enjoyment of the land and, in relation to trees, environmental and public amenity factors. The court is required to balance the 'hardship' between competing parties in the circumstances of each case.

Generally, the cost of carrying out any work shall be borne by the applicant. Subject to the provisions, both you and your neighbours are entitled to plant and grow trees as part of your natural right of land ownership. If trees, roots or branches cross the boundary, this amounts to trespass and they may be cut or trimmed by the owner of the adjoining land. Such branches or roots or any fruit remain the property of the tree owner, however. If the roots of your neighbour's trees block your drains on your land, this is not only trespass, but also a legal nuisance for which for which you can apply for an order to unblock the drain or damages.

HOW TO PREVENT NEIGHBOURHOOD DISPUTES:

The essence of being a neighbour is neighbourliness – that combination of respect and consideration for others which enables most people to live on good terms with those next door. A dispute between neighbours can upset relationships and lead to discomfort and unhappiness.

While using your lawyer to advise you on your rights and remedies, remember it is often best to try to resolve any problem that arises by discussion. Talk to your neighbours about it and, if necessary, write to them – but not in an abusive or unreasonable manner. With goodwill most disputes between neighbours can be settled.

LEGAL REMEDIES AGAINST NEIGHBOURS:

There are several legal remedies available in neighbourhood disputes. If the activity is contrary to local bylaws or district or regional plans or other regulations the local authority concerned has responsibility to prosecute, but you may still need your lawyer's assistance to pursue your legal rights which continue in existence.

Neighbourhood disputes are ideally suited to mediation. Your lawyer can suggest a suitable mediator.

NOTE: Information in this pamphlet has been taken from the pamphlet 'Over the Fence . . . Are Your Neighbours' produced by the New Zealand Law Society. Council has used only pieces relevant to the production of this leaflet. A full pamphlet can be obtained from any Law Shop. Alternatively you can visit www.consumeronline.org.nz.