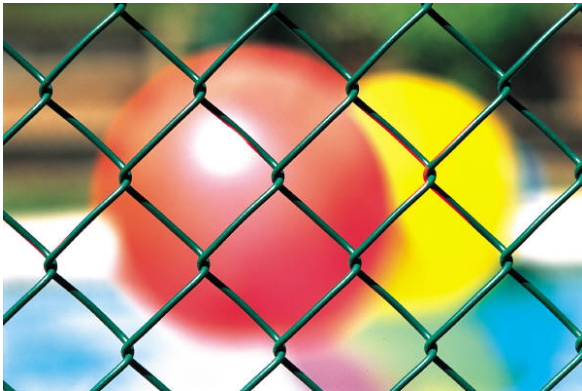


Fences, and Your Neighbours



YOUR LEGAL RIGHTS

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Your Legal Rights

Disputes over trees and fences are a common cause of bad feeling between neighbours - trees that block your sun, roots that choke your drains, fences that your neighbours want built or replaced (often at considerable expense).

Your 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. This could cost you anywhere from hundreds to thousands of dollars and will most likely destroy neighbourly goodwill.

In this article (the first of our Legal Rights Series) we explain where you stand if a neighbour's fences are causing trouble.

Fences

Disputes over fences are more clear-cut. Your legal rights are covered by the Fencing Act 1978.



Q. You buy a house in a new subdivision. Your neighbour has barely introduced himself when he asks you to contribute half the cost of the fence he has had built between your sections. Trying hard to keep your cool, you say that you are not obliged to pay because the fence was built before you bought the property, and if anyone should pay, it should be the developers. Are you right?

A. YES. The neighbour can only claim half the cost from you if he has already notified you that he is having a fence built.

Q. Over the years you have fallen out with your neighbour. The day comes when you realise the fence between your properties needs replacing and you approach the neighbour about sharing the cost. He slams the door in your face. You decide to go ahead and build the fence entirely at your own expense, but when the contractor begins the job your neighbour tells him that he must not set foot on his property or he will "have him for trespassing". Can he do this?

A. NO. Under the Fencing Act you can go onto someone else's property if the construction of the fence makes it necessary. But the Act also warns that you must do as little damage as possible to the neighbour's property, particularly plants.

Q. A storm blows your fence over. Because your neighbour is overseas for six months and you want a fence to grow passionfruit and sweet peas on, you go ahead and build a new one at your own expense. When the neighbour comes back you ask him for half the cost of the new fence but he refuses. He says he wasn't here at the time and had no say in the cost or type of fence that was constructed. Can you get him to pay half?

A. YES. The Fencing Act says that, if a fence clearly needs repairing or replacing, you can do the job yourself and recover half the cost from the neighbour. A warning though - obviously, the new fence should not be something expensive and exotic. A neighbour would have good reason to dispute a half share if what was a fairly ordinary wooden fence was replaced with a plastered concrete wall topped with Spanish-style tiles.

Q. Your neighbour decides she'd like to replace a hedge with a fence on your shared boundary. She says you have to pay for half the cost. You tell her that the hedge does a perfectly good job and doesn't need to be replaced with a fence. You say there's no way you will agree to it, let alone pay anything. Are you within your rights?

A. Under the Fencing Act you have 21 days to lodge an objection to a neighbour's proposal for a fence. If you don't object (to the District Court Registrar), the fence can be built and you will have to pay half the cost. If you object, the dispute will have to be settled in Court - an expensive and usually unpleasant business.

