



Dividing Fences!

Do I have to have a dividing fence?

There is no requirement to have a fence if you and your neighbour don't want one. However, if you want a fence and your neighbour doesn't, you should firstly get a quote for one to be built and discuss it with the neighbour. If you and your neighbour then reach an agreement on the cost, type and position of the fence, it's most important not to have the fence erected until your neighbour either signs a form of acknowledgment agreeing to the fencing proposal and its cost or pays you for their share of the fencing costs. If you go ahead and have the fence erected without obtaining a signed acknowledgment or payment for the neighbour's share difficulties will arise in enforcing the neighbour's obligations under the Dividing Fences Act, 1991.

If you don't reach agreement, you can give the neighbour a written notice under the Dividing Fences Act specifying the fencing work proposed. If after serving the notice you and your neighbour still cannot agree, either of you may ask the Local Court to make an order about the fencing work required. If a fence is to be built, you and your neighbour usually, though not always, will have to share the cost.

Are there legal requirements regarding what type of dividing fences should be erected?

If a dispute arises regarding the cost, type and position of a fence, whether building a new fence or repairing an existing fence, there are procedures used to resolve the dispute commencing with firstly determining whether or not the work is necessary for "a sufficient dividing fence". This is determined by the Court and the Court will take a number of things into account in determining what a sufficient fence for your property should be (ie; the standard of the existing fence (if any), the kinds of dividing fences usual in the area, the way in which the land on either side is used or intended to be used etc).

Generally speaking if you want a better fence than what your neighbour is prepared to pay for, provided your neighbour agrees to the fencing you want, you will have to pay the additional cost to have the higher standard fencing above that required for a sufficient dividing fence.

Who pays for repairs to a fence?

Usually, you and your neighbour will share equally the cost of repairs to any fence between your properties. However, if the fence was damaged because either of you was careless (for instance, by a fire or by trees or structures in poor condition) then the responsible party must pay for repairs. If he or she does not, the other neighbour can do so and may take action against the responsible party to recover the cost of the repairs.

At Bateman Battersby we have substantial experience in assisting and advising clients on any matters relating to fencing disputes. If you need help knowing where you stand and what steps are necessary to be taken, please feel free to contact [John Bateman](mailto:enquiries@batemanbattersby.com.au) on (02) 4731 5899 or email us at enquiries@batemanbattersby.com.au for further information or assistance.