



## Problems with neighbours?

### What should be my first step when I have a problem with my neighbour?

Neighbours are considered to be people who live close together enough to notice and perhaps be affected by each other's actions.

In general, you should attempt to resolve any dispute with a neighbour by talking with them and trying to reach a solution satisfactory to each of you. After all, you may be living alongside one another for years to come and it's in both your interests to be on reasonable terms.

Taking disputes with neighbours to court can be expensive for both you and your neighbour and the outcome may leave the parties bitterly antagonistic towards each other. We suggest that it's best not to take any action over a problem before talking the matter over with your neighbour, or if necessary, obtaining legal advice about your rights and possible remedies.

As an alternative to going to court you can take a neighbour dispute to a Community Justice Centre (for phone numbers and addresses, see the New South Wales Government section in the phone book). At these Centres, trained mediators help people in dispute to come to a settlement. Mediators do not decide who is right or wrong, nor do they have the power to award costs or impose penalties. Community Justice Centres and Community Legal Centres may advise you to see a solicitor before mediating so that you are aware of your legal rights before negotiating a settlement to a dispute.

### Can my neighbour come on to my land?

The answer is - only under certain circumstances. For instance if the neighbour has a right of way or the benefit of an easement affecting your property then they can exercise their rights under such instruments. Usually, these will be described on your and your neighbour's land title documents and cannot be ended or varied except by both of you agreeing to do so.

Another circumstance is if access is required to your property in order for a neighbour to carry out maintenance or construction works on their own property. If consent is not given by you, the neighbour requiring access is able to apply for an "access order" from the Local Court under the Access to Neighbouring Land Act 2000 (NSW). The Court can grant a one-off temporary right of access to your property to enable the neighbour to undertake maintenance, repairs and development to their property or for utility works (ie sewerage, drainage, water, gas electricity, telephone services etc)

You can otherwise give your consent to any person to come on to your land for a particular purpose but can withdraw the permission at any time. Once you have withdrawn permission, the person must leave immediately; if the person does not, he or she becomes a trespasser.



Unless you give permission, your neighbour has no right to come on to your land to retrieve something that has crossed the boundary, for instance a ball or an animal. Anyone who comes on to your land without your permission is a trespasser and you can sue a trespasser for any damage caused including any damage that may have been caused by the trespassing object or animal.

## What can I do about overhanging branches?

Cutting back the branches and roots of your neighbour's tree that protrude on to your property will usually require the consent of your local council under its Tree Preservation Order regulations.

Orders generally cover trees above three metres in height and may include large bushes. It would be wise to check with your local council before proceeding with any cutting back. Remember, if there is such an Order and you breach it, you could be prosecuted and fined.

If you have cut overhanging branches or protruding roots, strictly speaking they should be returned to their owner, your neighbour.

If a neighbour's tree causes damage on your property, for instance by its roots lifting a driveway or a dead branch falling and knocking tiles off your roof, you may be able to sue for compensation.

## What can I do about my noisy neighbours?

The most common types of noises emanating from neighbours are from alarms, lawn mowers, power tools, air conditioners, barking dogs, noisy vehicles, sound systems, pool pumps or heat pump water heaters. There are regulations that restrict the use of these noisy items and you should approach the local council, police or the Environment Protection Authority to obtain the time restrictions in which these certain noise sources are not to be heard from within residential premises.

If a source of noise is a problem for you, there are several things you can do:-

- Firstly, try to solve the problem amicably by talking to whoever is causing the noise. Often people do not realise they are being noisy and are happy to work with you to solve the problem as alternatives are often available.
- Contact your Local Council. Local Councils can serve various notices on people occupying homes and business, requiring them to control offensive noise and advising them what noise levels are acceptable.
- Seek a "noise abatement order". If your neighbour is continually being noisy, you can apply for a noise abatement order from the Local Court and provided the court is satisfied that the neighbour is causing an offensive noise or that the noise is likely to recur, it may order them to stop the noise or prevent a recurrence. If the person or neighbour fails to comply with the order, they can be prosecuted.
- When the noise is a one-off problem (such as a noisy party) you can contact your local police station and they can issue a warning or a noise abatement direction, directing a person to stop making the offensive noise. A noise abatement direction may be issued at any time of the day or night and can remain in force for up to 28 days from the time it was issued. A person who fails to comply with it can be issued with an on-the-spot fine of \$200.00.



## What happens if a building crosses over my boundary?

If something has been built across the boundary between two properties, this structure is referred to as an “encroachment” and the situation may be covered by the Encroachment of Buildings Act 1922. There are certain circumstances under this Act which provide that an encroaching structure may be granted a relief to encroach a boundary.

An encroachment includes any part of a structure that overhangs the boundary, and any part of a structure below ground or on the ground that crosses the boundary.

If there is a dispute between you and your neighbour as to whether or not a structure is actually encroaching, the first step to take would be for either you or your neighbour to obtain a survey of the boundary from a licensed surveyor.

If the structure does in fact encroach, and the encroaching structure is not entitled to relief under the Encroachment of Buildings Act 1922, then either owner can apply to the Land and Environment Court to decide the matter. The Court may then make a decision stating who may be entitled to “relief” which can include:-

- Compensation
- Transfer or lease of the affected land
- The removal of the part of the structure causing the problem.

If an encroachment onto your property has been caused by the result of a neighbour’s extension, the local council should be advised. If the council finds that the building is different from the approved building plans, it can make an order that the extension be removed or altered to comply with the approved plans.

***At Bateman Battersby we have substantial experience in assisting and advising clients on any matters relating to neighbour 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:John.Bateman@batemanbattersby.com.au) on (02) 4731 5899 or email us at [enquiries@batemanbattersby.com.au](mailto:enquiries@batemanbattersby.com.au) for further information or assistance.***