

FENCES BETWEEN NEIGHBOURS

WHAT ARE YOUR OBLIGATIONS?

➔ Neighbours have obligations in respect to fences

The Fencing Act 1978 is the law that regulates the problem of fencing between neighbours. The general rule is that neighbours are **obliged to contribute equally** to the cost of an **adequate fence** between their properties provided the procedures in the Act are followed. There are exceptions to this rule where for example there is a pre-existing fencing agreement or covenant. The Fencing Act 1978 can be found at www.legislation.govt.nz



➔ What is an “adequate fence”?

An adequate fence will depend on the circumstances of each case. If you're in the country an adequate fence may well be seven strands of wire supported by posts. If you're in the city you won't get away with a wire fence and you're looking at picket fences or close boarded fences. If you go to the back of the Fencing Act definitions for adequate fences are given in the second schedule. These include:

Urban Areas	Rural Areas
Post and rail fence (at least four rails)	7 or 8 wire fence
Close boarded fence	9 or 10 wire fence
Paling fence	Prefabricated (netting) fence
Panel fence	Live fence (e.g. a hedge)
Masonry walls	

➔ What is the first step if a fence is wanted or needs repair?

The first step is to talk to the neighbour about the proposed new fence (or repairs). Where neighbours reach agreement there will be no need to get involved in Disputes Tribunal proceedings. Any agreement that is reached should be recorded in writing and signed by each neighbour so there is no confusion as to what has been decided. Work can then proceed on the agreed proposal.

➔ What happens if the neighbours just can't agree on the need for or style of a fence?

If no agreement is reached the final decision will be left to a Disputes Tribunal referee where the cost of the proposed fence is under \$7,500. The tribunal has increased jurisdiction where the value of the fence is between \$7,500 and \$12,000 and the neighbours agree to refer it to the Tribunal.

➔ What's the process for getting a dispute to the Tribunal?

Where neighbours can't agree, the next step is for the neighbour wishing to build the fence to **serve a fencing notice** on their neighbour setting out the what the fencing will be made of, its style and cost and giving 21 days to respond – (see the attached Fencing Act notice).

➔ What do you mean by “serve a notice”?

Under the Fencing Act notice is served if it is either personally handed to the neighbour or sent by registered letter to their address.

➔ What if the neighbour doesn't respond?

If there's no response within the 21 days after receipt of the letter then construction can proceed and the neighbour is obligated to contribute 50% of the cost. Once the 21 day period elapses, you must start work on the fence within 28 days.

➔ What if the neighbour makes a counter-proposal?

If however the adjoining neighbour is unhappy with the proposal and doesn't agree with the proposal in the notice, they will need to serve a “cross notice” which sets out their proposal (see the attached Cross Notice).

Case Study Example

Hohepa Brown has lived next door to Mary Smith for 10 years. Over that time their relationship has steadily deteriorated to a point where they no longer speak to each other. One of the problems has been the feijoa hedge which separates their properties. It needs regular trimming and Hohepa feels he is too old to do this anymore. He has decided to put a formal proposal to Mary to erect a fence on the boundary.

Hohepa hands Mary the following notice:

FENCING NOTICE – FENCING ACT 1978

TO: Mary Smith
21 Broadacre Street
Ponsonby

PLEASE TAKE NOTICE that I wish that a fence be erected between your property and my adjoining property at 19 Broadacre Street, Ponsonby in accordance with the following particulars:

1. The entire length of the boundary between our two properties being 55 metres be fenced.
2. Types of fence being 2 metre high close boarded (200 mm H3 boards).
3. Construction by Bob Builders Ltd of 123 North Rd Ponsonby.
4. Estimated cost being :
 - Removal and disposal of existing hedge \$1,000
 - Labour for construction of new fence \$3,000
 - Materials \$1,500
 - Total Cost \$5,500
5. Total cost to be shared equally.
6. Work to commence on 15 July 2006

WITHIN 21 DAYS of receipt of this notice you may object to any of the above proposals and make your counter proposals.

In the same time if you claim you are not liable to pay for fencing, you may notify me accordingly and supply the name and address of the person who is liable for fencing in connection with your property.

If no objection is received I will proceed with the fencing in accordance with this notice and you will have been deemed to have agreed to the proposals set out in this notice and will be liable to share the cost accordingly.

This notice is given under the Fencing Act 1978.

Dated 15 June 2006

Hohepa Brown
21 Broadacre St
Ponsonby

Mary's response

Mary Smith is unhappy with the proposal and immediately responds with the cross-notice below.

She likes the feijoa hedge and distributes the fruit from the hedge to her family every year. She hands the cross notice to Hohepa 5 days after receiving his notice.

CROSS NOTICE – FENCING ACT 1978

TO: Hohepa Brown, 19 Broadacre St, Ponsonby.

PLEASE TAKE NOTICE that I object to the proposal to remove the existing hedge between our properties and to erect a new fence on the boundary.

Counter Proposal

I believe the existing "live" fence between our properties is adequate and does not require removal. It is a benefit to both neighbours in terms of its appearance and the fruit it bears.

This notice is given under the Fencing Act 1978 which provides that if we are unable to agree regarding the particulars to which objection is taken by this cross notice and the counter proposals that are made in this cross notice the matters in dispute may be determined by the Disputes Tribunal or District Court.

Dated this 20th day of June 2006

Mary Smith
19 Broadacre St
Ponsonby

Resolution at the Disputes Tribunal

Because the parties are unable to agree and the procedures in the Fencing Act have been correctly followed the matter can now be sent off to the Disputes Tribunal for resolution.

Hohepa can obtain a claim form from his local District Court and after completing it, file it at the court paying the \$100 filing fee at the same time. The parties will be notified of the hearing date at which time they are given an opportunity to present their respective views. The referee will try to get the parties to agree on a resolution but if that is not possible, the referee can make a decision which has the same legal effect as an order by a District Court judge. For more information on the Disputes Tribunal go to www.communitylaw.org.nz publications / self-help resource.

For more information contact your local Community Law Centre

www.communitylaw.org.nz