

FACTS ABOUT: FENCES



This fact sheet is designed to help you work out what to do if you and your neighbour have a dispute when building or repairing a fence.

There are four possible steps you can take in order to resolve a fencing dispute:

1. Talk to your neighbour;
2. Get help from a mediator;
3. Begin Notice to Fence or Notice to Repair process;
4. Complete the repairs or construction yourself.

Step 1: Talk to Your Neighbour

Building a Fence Normally neighbours pay equal amounts for building a 'sufficient' fence between their properties. A 'sufficient' fence is one that is the standard or common fence in your neighbourhood. If you want a bigger or better fence than the standard type and your neighbour doesn't, then you may have to pay the extra cost involved.

Repairing a Fence Neighbours also normally pay equal amounts towards repairs. However, if repairs are due to the fault of one neighbour (eg: their dog chewed it) then they must organise and pay for repairs within one month of damage occurring. If repairs are not completed within a month you can do the repairs yourself. If your neighbour does not pay you for the cost of repairs, you can file a Small Claim in the Local Court against your neighbour to recover the cost.

If you and your neighbour cannot agree you will have to serve them with a written notice. Repairs due to 'acts of God' (eg. lightning, flood, etc) can be repaired immediately by one or both neighbours without the need for a notice being served. (See Step 3)

If Your Neighbour is a Tenant When your neighbour is a tenant you should negotiate directly with the owner or agent. Ask the tenant if they know the name and address of the owner. If they don't you will have to inquire at the Council or Land Titles Office.

Step 2: Get Help From a Mediator

Try to Agree Going to court can be expensive and is unlikely to help your relationship with your neighbour in the future. If you can't talk about the problem with your neighbour it can help to get a mediator to assist you come to an agreement. A mediator will not decide who is right or wrong and they cannot impose a decision on you like a court can. For more information about mediation, contact the Community Justice Centre on 1800 000 473.

Note: Put it in Writing It is a good idea to put any agreement you reach in writing. State clearly what you agree to (the type of fence, amount to be paid, position of the fence and completion date). Don't forget to sign and date your agreement.

Step 3: Begin Notice to Fence or Notice to Repair Process

If you and your neighbour have been unable to reach an agreement on the work needing to be done on the fence, the cost or how you will divide the cost, you should prepare a written notice.

If you are building a new fence this notice is known as a "Notice to Fence". If you are repairing an existing fence it is known as a "Notice to Repair". It can take the form of a simple letter which should include:

- 1 Where the fence is to be built/repared;
- 2 How the fence will be built/repared;
- 3 Type of fence to be built/repared;
- 4 Estimated cost and contribution expected from both of you; and
- 5 Date the fence must be built/repared by.

The Notice to Fence or Notice to Repair should be delivered in person or sent by registered mail to the owner of the neighbouring property. Make sure you keep a copy of the Notice and the registered mail receipt for your own records.

If you do not know where the owner lives then you will need to search local council rates books or contact the Land Titles Office to find out their name and address. You may have to prove to the court that you made reasonable efforts to contact the owner.

If the owner agrees to the Notice to Fence or Notice to Repair then they should sign the Notice and return it to you. If for any reason they go back on the agreement you can take the signed document to court to be enforced.

After You've Served the Notice Your neighbour has one month from the time they are "served" with the Notice to reach agreement with you about the construction or repair of the fence. If agreement is not reached within a month you can apply to the court to decide the matter. This may be costly and cause delays. If you do go to court, the Magistrate will make an order about the type of fence or repair, how much you should each pay, when the fence must be constructed or repaired and the positioning of the fence or repair.

Step 4: Complete the Repairs or Construction Yourself

Getting Your Neighbour to Obey Your Agreement or the Court Order

Once the date for construction or repair of the fence (as specified in the agreement or court order) has passed you can go ahead and do the agreed work.

Note: Entry to Your Neighbour's Property to Build or Repair a Fence You, or anyone helping you to build or repair a fence, can go onto your neighbour's land at all reasonable times to do whatever is necessary to build or repair the fence.

If no date was specified for the work then you must wait for six months from the date of the order or the agreement before you can go ahead and build the fence or three months before you can repair the fence. If your neighbour does not pay their share you can lodge a Small Claim in the Local Court.

A Small Claim is a claim for an amount of money up to \$10,000, or a work order (an order that a defendant perform work, return, repair or replace goods).

Call the Legal Aid Helpline on 1800 019 343 if you would like information on making a Small Claim or need an appointment for legal advice.

Contacts

Northern Territory Legal Aid Commission
Call the Helpline toll free 1800 019 343
www.ntlac.nt.gov.au

Darwin
6th floor, 9-11 Cavenagh St, Darwin

Palmerston
Shop 6, Goyder Centre,
25 Chung Wah Terrace, Palmerston

Katherine
20 Second Street, Katherine

Tennant Creek
Shop 3, 163 Paterson St, Tennant Creek

Alice Springs
77 Hartley Street, Alice Springs

Non-English speaking people can access the Legal Aid Helpline by calling the Translating and Interpreting Service (TIS) on 13 14 50 and asking for the interpreter to connect them to Legal Aid on 1800 019 343.

Produced in-house by the Northern Territory Legal Aid Commission. The information in this fact sheet is current as at August 2014.

Disclaimer: This content is provided as an information source only and is not legal advice. It is correct at the time of publication but laws change. If you have a legal problem you should seek legal advice from a lawyer.