



## Department of Justice

Dispute Settlement Centre of Victoria  
Court Services

4/456 Lonsdale St  
GPO Box 4113  
Melbourne, Victoria 3001  
Telephone: 9603 8370  
Facsimile: 9603 8355  
Free Call: 1800 658 528  
dscv@justice.vic.gov.au  
DX210463

### FENCES

Fences are an area of common dispute between neighbours. The *Fences Act 1968* (Vic) makes occupiers of land (not owners) responsible for the construction and maintenance of fences. It also sets out how costs are to be shared between tenants and landlords. This will be explained more fully below under the heading "What if I am a tenant?".

#### BUILDING FENCES - WHO PAYS?

If two neighbours do not have a fence between them which is adequate for the purposes of *both* of them, they must both pay for one to be built. Usually they would each have to pay for half of the cost of the fence. If one neighbour wants a much larger or more extravagant fence than the other, the position is different. In all cases but one, it would then be up to the neighbours to reach agreement between themselves as to how they should share the cost. If they cannot agree they (or one of them) can ask a court to resolve the deadlock.

#### FARMERS

The exception is where one of the neighbours is a farmer and the other one isn't. The law says that the farmer only has to pay half the cost of the fence that the farmer needs. (This also applies to repairs to the fence.)

If there is nothing really wrong with a fence between a farmer and a non-farmer, but the non-farmer wants to put up new fence, the non-farmer must pay for the cost of the whole fence.

#### PROBLEMS

The Magistrates' Court can resolve disagreements about fences, or it can appoint an arbitrator to make a decision instead (s.7(2)).

In making a decision, the Court must look at what sort of fence is usually built in the neighbourhood. It would look at the type of material ordinarily used, the usual height, and perhaps even the colours that they are painted or stained.

If one neighbour wanted a larger fence than the other neighbour the Court would probably order the person who didn't want to pay for the larger fence to pay half of the cost of building a normal fence. The person wanting the larger fence would have to pay the rest of the cost.

#### HOW TO GET A FENCE BUILT

If you want to build or re-build a fence and you want your neighbour to contribute, the first thing you should do is to go over and discuss it. You may find that you can agree on the type of fence, how much you will pay, who will arrange for it to be built and so on.



If your neighbour does not want to co-operate, personally give him or her a written notice which sets out:

- (1) where you want the fence to go;
- (2) how you want the fence to be built;
- (3) what type of fence you want built.

You do not have to attach a quotation from a fencing contractor, but if you have one it is a good idea to attach a copy to the notice.

After one month, if you have not heard from your neighbour, or you have not reached agreement on any or all of the details concerning the fence, you can apply to the Magistrates' Court nearest to you for help.

### **WHAT THE COURT CAN DO**

The Court can make an order about:

- (1) the type of fence to be built;
- (2) how much you and your neighbour will each have to contribute to the cost of building the fence; and
- (3) where the fence is to be built.

Keep in mind that if you have to involve lawyers in your case, the cost of going to court will probably exceed the amount you are trying to get from your neighbour. It is best, therefore, to reach some sort of agreement with your neighbour.

### **WHEN SOMETHING GOES WRONG**

If you reach an agreement with your neighbour, but your neighbour doesn't do as he or she agreed, or if your neighbour doesn't do what the Court ordered, you can go ahead and build the fence and get what you were promised from your neighbour. This would involve going to court again.

If the Court ordered your neighbour to do something but did not set a time by which it was to be done, or if your agreement with your neighbour did not mention time, you must wait for three months from the date of the order or the agreement before you can go ahead and build the fence and get your money back.

The thing that your neighbour did not do must be more than just a minor thing.

### **WHAT IF I CAN'T FIND MY NEIGHBOUR?**

If you can't find your neighbour (for example, if the land next to you is vacant), and you want your neighbour to help you pay for a fence you want to build, you should either send a notice by registered mail to the person who is shown as being the owner in your council's rate records, or, if that is not possible, put an advertisement in your local paper asking the occupier of the land to contribute to the building of a fence between your properties (s.9(1)).

If nothing happens in the time specified for response, you can then go to a Magistrates' Court and get the same type of order as you could have got if your neighbour was there (s.9(2)). If you then go ahead and build a fence, and someone moves in next door, you can give that person a copy of the order. If you do this within one month of your neighbour moving in, that person will have to pay the share the Court ordered him or her to pay. If you do not receive the money within one month of giving your neighbour a copy of the order, you can go back to court to enforce the order for payment.

A neighbour who thinks the court order was unfair can go back to court and try to get the order changed. This must be done within one month of you giving the copy of the order to them (s.9(7)).

This whole procedure can be quite expensive and unpleasant, so you would want to think very carefully before doing it. If your neighbour never shows up, you will be left having to pay legal costs as well as the cost of building the fence.

### **WHAT IF I AM A TENANT?**

If you are a tenant and your neighbour gives you a notice asking you to help pay for a fence, send a copy of the notice by registered mail to:

- (1) your landlord;
- (2) the person to whom you pay your rent; or
- (3) anyone who you think is authorised to accept documents on behalf of your landlord.

You must do this within 14 days of receiving the notice, or you will have to pay for the whole of your landlord's share of the cost of the fence. You may have to pay part of the costs anyway, depending on the unexpired term of your lease (see table below).

| <b>Remaining length of lease</b> | <b>You pay</b>        |
|----------------------------------|-----------------------|
| Less than 3 years                | Nothing               |
| 3 to less than 6 years           | A quarter of the cost |
| 6 to less than 12 years          | Half the cost         |
| More than 12 years               | All the cost          |

As very few people lease a house for more than three years at a time, most tenants will probably never have to pay for a fence.

## **NEIGHBOURS OF GOVERNMENT LAND**

If you live next to land occupied by the government, you will not be able to get your neighbour to help pay for a fence. You will have to meet the whole of the cost of building or repairing the fence yourself. If the government sells or leases the land to someone, you can get back half the cost of the fence from that person (s.12).

## **MAINTENANCE AND REPAIR**

The rules for maintenance and repair are almost the same as they are for building fences (s.14).

If you think that your fence needs to be fixed up, go over and discuss it with your neighbour. If you can't reach agreement about what should be done and who should pay what, give your neighbour a notice requiring him or her to repair the fence or to help you to pay for repairs (s.15(1)).

If nothing happens within one week, or if you haven't reached an agreement by then, you

can repair the fence yourself and get a court order requiring your neighbour to pay his or her share. If your neighbour gives you a notice asking you to help pay for repairs, and you think they are asking for too much, you can go to the Magistrates' Court nearest to you and issue a complaint so that a magistrate can decide on what you have to pay for the repairs.

The law does not specify what should happen if your neighbour doesn't agree that the fence needs to be repaired, but it would probably only order your neighbour to pay if it thought repairs were necessary.

If any part of your fence is destroyed by an accident, you may repair it straight away and then get your neighbour to pay their share (s.15(3)).

If your fence is destroyed or damaged by fire or falling tree due to neglect by your neighbour, the neighbour must pay for the whole cost of the repairs (s.14(a)).

## **GOING NEXT DOOR TO FIX THE FENCE**

You, and anyone else helping you to build or repair a fence, may go onto your neighbour's land at all reasonable times and do whatever is reasonable and necessary to build or repair a fence between the two properties (s.32).

Taken from the Law Handbook 2003  
 (Pages 591-593)  
 (Your Practical Guide to the Law in Victoria)  
 Fitzroy Legal Services ☎ 9417-3744  
 For enquiries regarding purchases of the Law Handbook ☎ 9411-1309  
<http://www.fitzroy-legal.org.au>

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