

Fencing Disputes

When Your Fence is Damaged or Needs Repairing
May 2009

BUILDING A NEW FENCE

Bob wants to build a new brick fence between his property and a property owned by Graham. Bob is not sure if he needs permission from Graham to build the fence. He also wants to know whether he should ask Graham to contribute to the cost of the fence.

FENCE REPAIRS

Anna and Sarah are neighbours. Recently the fence between their properties was damaged when a tree from Anna's backyard fell onto it. Anna asked Sarah to contribute to the cost of repairs but Sarah is refusing to.

Things to Consider When A Fence is in Need of Repairs

Having a dispute with your neighbour can cause a lot of stress and have a negative effect on your relationship with your neighbours, as well as being costly and time consuming. You should always try to resolve any dispute with your neighbour before taking legal action.

Before Bob builds the fence he should get several quotes for the cost of the fence. He should then speak to Graham and try to come to an agreement about which quote to use and how much they should each pay for the fence. Generally neighbours should share the cost of the fence equally between them. However, in certain circumstances they might be able to contribute different amounts.

For example, if Bob wants to build a fence that is not a standard fence (e.g. a fence that is 8ft tall, brick, steel, or different from those usually built in a particular neighbourhood) he may be expected to contribute more to the cost of the fence.

If Bob and Graham come to an agreement about the fence they should put this in writing. A good way to do this is by signing the quote they have agreed on. If they cannot reach agreement Bob can serve a 'Notice to Fence' on Graham. This is a formal notice which requires Graham to contribute to the cost of building the fence.

If Graham agrees to the Notice, Bob can proceed with building the fence. However, if Graham does not agree within one month of receiving the notice, either he or Bob may take action in a Magistrates' Court.

It is best to seek legal advice before you decide to take legal action. Legal proceedings should be viewed as a very last resort. There are other, less expensive and quicker ways to sort out fencing issues. For example, you can go to the Dispute Settlement Centre to resolve the issue. Dispute settlement is less formal and less expensive than Court and does not take as long. It is also aimed at preserving the relationship between neighbours.

Generally when a fence needs to be repaired it is reasonable for each neighbour to pay half of the cost of the repairs. The process for approaching your neighbour about the cost of repairs and their contribution is the same as for having a fence built (see above). However, if the fence was in a reasonable state of repair and has been damaged by a falling tree, as a result of Anna's neglect, Anna will be legally responsible for either repairing the fence or replacing it.

Questions to Ask About Fencing

- Have I obtained several quotes for the cost of building or repairing the fence?
- Have I approached my neighbour about contributing to the cost?
- Should I pay more for my share of the fence (eg. do I want a non-standard fence)?
- Is there some way to come to an agreement with my neighbour without going to Court?
- If I cannot come to an agreement with my neighbour have we tried dispute resolution or mediation?
- If the fence was damaged, was the damaged caused by my negligence?

What to do if Things go Wrong

If you are unsure of your rights in relation to a fencing matter you should obtain legal advice about your particular situation. You can obtain free independent legal advice from the Eastern Community Legal Centre or Victoria Legal Aid. If you would like to find a private lawyer you can the Law Institute Victoria to find a lawyer in your area.

You can also contact the Dispute Settlement Centre to assist you in resolving your dispute.

Further information about fencing disputes can be obtained from the Fencing Online website. The Victoria Law Foundation also has a publication about neighbourhood disputes entitled 'Neighbours, the Law and You' which contains some information about fencing disputes.

Useful Contacts

Eastern Community Legal Centre

Suite 3, Town Hall Hub
27 Bank Street
Box Hill VIC 3128
Ph: 9285 4822

Suite B, 6 Floriston Road
Boronia, VIC 3155
Ph: 9762 6235
1300 797 088
Web: www.eclc.org.au

Victoria Legal Aid

23 Ringwood Street
Ringwood VIC 3134
Ph: (03) 9259 5444
Web: www.legalaid.vic.gov.au

Dispute Settlement Centre Victoria

4/456 Lonsdale Street
Melbourne VIC 3000
Ph: (03) 9603 8370
Web: www.justice.vic.gov.au/disputes

Fencing Online

Web: www.fencingonline.com.au

Law Institute Victoria Legal Referral Service

Ph: (03) 96079550
Web: www.liv.asn.au



eastern community legal centre