



DIVIDING FENCES

**A self help kit to the law of building and maintaining fences
between neighbours**

December 2005

Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is complex and constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.
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General Information

What information does this kit provide?

This kit provides general information about the building and maintenance of fences dividing two neighbouring residential properties.

What is a dividing fence?

A dividing fence is a fence between two pieces of adjoining land. It may be built to mark boundary lines for privacy, as protection from intruders or to keep in animals and children.

Who must contribute to the cost of a dividing fence?

Unless it is agreed otherwise, the owner of your property and the owner of your neighbour's property must contribute to the cost of the fence. If your neighbour's property is rented, you should make enquiries to find out the name and address of the owner.

Must we have a dividing fence?

No. You and your neighbour can agree not to have a dividing fence.

What if only one of us wants to have a dividing fence?

If either you or your neighbour wants a dividing fence, then (subject to the limitations discussed below) you must both share the cost of building the fence and maintaining it, unless you make a special arrangement about which neighbour will pay for the cost of the fence.

What do my neighbour and I need to talk about?

You should talk with your neighbour about:

- the boundary line;
- the type of fence;
- the cost of the fence and how it will be shared; and
- any special requirements.

What if we do not agree?

If you build a fence without your neighbour's agreement or without an order about the fence from a court, you cannot claim a contribution from your neighbour towards the cost of the fence.

How do we decide on the boundary line?

If there is no fence between you and your neighbour's property, then you will have to agree on the boundary line. You may need to measure out your properties to find the correct boundary. Access to plans of your land may assist, and it would be wise to do a proper survey.

If you cannot agree, you could share the costs of a surveyor to find the boundary line.

What to do if you and your neighbour agree to build a fence

How do we decide on the type of fence?

You and your neighbour should try to agree on the type and height of the fence to be built. You should choose a style that is appropriate to the neighbourhood and that will meet both your needs.

If you cannot agree, then one or both of you may have to compromise. For example, your neighbour may want a chain wire fence, and you may want a wooden fence to give more privacy. A compromise could be reached by building the chain wire fence on which you can grow vines and creepers to provide privacy.

How is the cost of the fence shared?

It is usual that each neighbour pays for one half of the fence. You should obtain at least two quotes to build the fence before you approach your neighbour to discuss costs.

Are there special requirements?

Occasionally local councils will have special requirements. You should check with your council before building the fence to ensure there are no special requirements for the height or type of fence you want to build.

How do we record our agreement?

It is appropriate to put your agreement with the neighbour in writing. This may be recorded on the quote that you have both agreed to accept. That quote should contain details of the type, height and cost of fence. You could record on the bottom of the quote

“We agree to build a new fence as per the above quote on the existing fence line and will both pay one half of the cost.”

Each neighbour should then sign. It would be wise to get someone to witness your signatures.

What to do if you and your neighbour cannot agree to build a fence

If you cannot reach agreement with your neighbour, you should write to your neighbour setting out your proposals for a new fence, including the type, height, cost, where it is to be built and how you propose the costs should be shared. You should send copies of the two quotes with the letter.

There is no special form for the letter to your neighbour that is known as a notice to fence. A sample letter is as follows:

Insert the date

*Insert your name
and address*

*Insert your neighbour's name
and address*

Dear *insert your neighbour's name*,

I wish to build a new dividing fence between your property at (*insert your neighbour's address*) and my property at (*insert your address*).

I propose that the fence be built along the full length of the boundary separating our properties. The fence will be built along the line of the existing fence.

I propose that the entire fence be constructed of timber palings supported by timber cross-rails.

I have obtained two quotes for that type of fencing. Copies are enclosed. I propose accepting the lower quote of \$1,750.00 from Harvey's Fencing Pty Ltd. I believe that we should equally share the cost of building the fence, that is \$875.00 each.

Please let me know within one month if you accept my proposal by signing the copy of this letter which I have enclosed, and returning it to me. I am happy to discuss this with you if you need further information.

Yours faithfully
sign your name

Sending the letter: The letter can be given to the neighbour personally, left at their usual place of business or residence with somebody over 14 years of age, who works or lives there, or sent by registered post. You should make a careful note of exactly when and how the letter was given to the neighbour.

What happens if my neighbour accepts the proposal?

If your neighbour agrees to your proposal for a fence, it is crucial that the agreement be in writing and signed by both parties. The agreement can be either attached to or written on the notice to fence. This means that a subsequent breach (e.g. refusal to pay) can be enforced as a debt owing.

What happens if my neighbour does not accept the proposal?

Your neighbour has one month after the service of your notice to fence to agree to the proposal. If you and your neighbour cannot agree, then you will have to reach a compromise by mediation or go to the Small Claims Tribunal or Magistrates Court and ask for an order about the fence.

What is mediation?

Mediation is where a mediator, who acts as a go-between between you and your neighbour, helps you to arrive at a decision, if possible. Both you and your neighbour must agree to mediation.

A mediator will help you to negotiate with each other to attempt to reach an agreement.

The Dispute Resolution Centre of the Department of Justice & Attorney-General provides a mediation service. For more information phone the Dispute Resolution Branch on (07) 3239 6269 or 1800 017 288 (from outside Brisbane).

Which court will hear my case?

If the total cost of your fence is less than \$7,500.00, you can make your application to the Small Claims Tribunal (which is part of the Magistrates Court) for an order that your neighbour pay half the cost of a fence. The Tribunal will also make an order setting out the type of fence, the height of the fence and where the fence will be built.

If the total cost of your fence is more than \$7,500.00, you will have to make your application to the Magistrates Court.

Where is the Small Claims Tribunal or Magistrates Court?

The Small Claims Tribunal is at Ground Floor, 363 George Street, Brisbane. This is the place where you will file a claim relating to a fence that costs less than \$7,500.00 and if the property is in the Brisbane area. For a fence that costs more than \$7,500.00, and the property is in the Brisbane area, you can file your claim at the Magistrates Court, Ground Floor, 363 George Street, Brisbane.

You must make sure that the Court or Tribunal has the power to make a decision about land in your area. This depends on precisely where your property is situated. Before you go to the Tribunal or Court to file your documents, you should telephone the Small Claims Tribunal (for a fence costing less than \$7,500.00) or the Brisbane Magistrates Court (for a fence costing more than \$7,500.00), and ask which Tribunal or Court is appropriate for your property.

How to apply for an order for a fence costing less than \$7,500.00

You must make a claim in the Small Claims Tribunal. A sample claim form is attached to this kit (Attachment A). Apart from a claim form, you will also need a step-by-step guide and possibly an affidavit. The guide is available free of charge from the Small Claims Tribunal (contact details are at the back of this kit) or from your local Magistrates Court or Legal Aid office. The guide shows you how to complete the form and explains how to gather evidence to support your case. You should also complete an affidavit (Attachment B).

What is an affidavit?

An affidavit is your written evidence. It must be prepared in a format that is acceptable to the Tribunal. A sample affidavit is attached to this kit (Attachment B).

What should you say in your affidavit?

Your affidavit should set out the details of the order that you want the Tribunal to make and why you want the Tribunal to make that order. For example, if you want a paling fence because all the other fences in your street are paling fences, and you want to be consistent, you should set this out in your affidavit.

Your quotes and any other documents that you think are relevant should be attached to the claim. For example, you may attach a photograph of the existing fence, showing that it needs to be replaced. You may also attach a photograph of your other boundary fences. For example, if your other two boundary fences are paling fences, and you want your new dividing fence to match those fences, you may include a photograph.

If you have written a letter to your neighbour asking your neighbour to contribute to the fence, you should include a copy of that letter with your affidavit.

What do you do next?

Once you have completed your claim and your affidavit, you should make two photocopies of each document.

You should then take the claim, your affidavit and the photocopies to the Small Claims Tribunal for filing. The filing fee for dividing fences disputes in the Small Claims Tribunal is currently \$62.00.

Who tells my neighbour about the claim?

The Small Claims Tribunal will send a copy of your claim and affidavit to your neighbour, together with a Notice of Hearing. The Notice of Hearing will tell your neighbour when and where the Tribunal will hear your story and your neighbour's story and make a decision.

How will you know about the date of the hearing?

The Tribunal will send you a copy of the Notice of Hearing at the same time they send a copy to your neighbour.

What happens at the hearing?

The Tribunal referee will hear your story and your neighbour's story and make a decision.

You should take with you the originals of your quotes, proof that you own your property and any other relevant documents.

What orders will be made?

The referee will consider what type of fence already exists in the neighbourhood, what the neighbouring land is used for and the reasonableness of your fencing proposal.

The referee will then make an order about the type of fence, the height of the fence, where the fence is to be built and how much each neighbour should pay towards the cost of the fence.

How to apply for an order for a fence costing more than \$7,500.00

You must file a claim in the Magistrates Court. You can obtain the forms that you need from your local Magistrates Court.

You should also complete an affidavit.

What should my affidavit contain?

Your affidavit should set out the details of the order that you want the Court to make, and why you want the Court to make that order.

For example, if you want a paling fence because all the other fences in your street are paling fences, and you want to be consistent, you should set this out in your affidavit.

What do you do next?

Once you have completed your claim and your affidavit, you should make two photocopies of each document.

You should then take the claim, your affidavit and the two photocopies to the Magistrates Court for filing.

When you file the claim, the Magistrates Court clerk will write on the document the date on which your complaint is to be heard. This is the day you have to go to Court and tell your story.

Who tells my neighbour about the claim?

You will have to arrange for the complaint and the affidavit to be given to your neighbour. This is known as 'serving' the documents. The date when the matter is to be heard will be written on the complaint.

How do you serve the claim on your neighbour?

When you file the documents in the Magistrates Court, you can inquire whether there is a bailiff available to serve the documents for you and if so, what the fee would be.

If there is no bailiff available, you will have to serve the documents yourself or arrange for a private process server. You may find it easier to arrange for a

process server to serve the documents. Look under 'process server' in the Yellow Pages for contact details.

If your neighbour does not attend at Court on the day of the hearing, you will have to prove that your neighbour has been served with the documents.

How do you serve the claim and the affidavit?

You will have to hand one copy of the claim and one copy of the affidavit to your neighbour. You will then have to complete the Affidavit of Service, sign it and have your signature witnessed by a Justice of the Peace.

What happens at the hearing?

The Magistrate will hear your story and your neighbour's story and make a decision.

You should take with you the originals of your quotes, proof that you own your property and any other relevant documents, including any letters you have written to your neighbour. Also, you should take any photographs that help explain to the Court why you want the orders you have asked for.

What orders will be made?

The Magistrate will consider what type of fence already exists in the neighbourhood, what the neighbouring land is used for and the reasonableness of your fencing proposal.

The Magistrate will then make an order about the type of fence, the height of the fence, where the fence is to be built and how much each neighbour has to pay for the fence.

What about repairs to an existing fence?

Repairs to an existing fence should be paid equally by both neighbours, unless the fence has been destroyed because of the negligence of one neighbour. You should talk with your neighbour about sharing the costs of the repairs. You should obtain two quotes to repair the fence and an agreement with your neighbour about paying for the repairs.

If you do agree, you should both write on the quote that you have agreed, and how much each neighbour will pay. You could record the following on the bottom of the quote:

"We agree to repair our fence as per the above quote and will both pay one half of the cost."

Each neighbour should then sign.

What if we cannot agree?

If your neighbour cannot agree, you should send to your neighbour a notice to repair. There is no special form of notice to repair. For a sample notice to repair see below.

Insert the date

*Insert your name
and address*

*Insert your neighbour's name
and address*

Dear *insert your neighbour's name*,

I have noticed that the dividing fence between your property at (*insert your neighbour's address*) and my property at (*insert your address*) is in need of repair.

As you will have noticed, 25 of the palings have become rotten and are falling off. I propose that those 25 palings be replaced.

I have obtained two quotes. Copies are enclosed. I propose accepting the lower quote of \$350.00 from Harvey's Fencing Pty Ltd. I believe that we should share the cost of repairing the fence, that is \$175.00 each.

If you agree with this proposal, please sign the copy of this letter, which I have enclosed, and return it to me within one month.

If you dispute the need to repair the fence or the cost of the repairs we have proposed, you will need to make an application to the Small Claims Tribunal within 14 days, asking the Tribunal to determine whether the fence requires repair, the cost of the repairs and the proportion of those repairs to be paid by you.

If you have not replied within one month I will proceed to have the repairs carried out and seek payment from you for one half of the cost of the repairs. I am happy to discuss this with you if you would like to.

Yours faithfully
sign your name

The notice to repair should set out what repairs have to be done and the cost of the repairs. Copies of the two quotes should be enclosed. You should ask your neighbour to contribute one half of the cost of the repairs.

If after one month, your neighbour has not replied to your notice to repair, you can carry out the repairs and write to your neighbour demanding one half of the cost of the repairs.

If, within 14 days of giving your neighbour a notice to repair, your neighbour replies disputing the need for repair or the cost of the repairs, either you or your neighbour will have to apply to the Small Claims Tribunal (if the repairs cost less than \$7,500.00) or the Magistrates Court (if the repairs cost more than \$7,500.00) for an order. The Court will decide whether the fence needs repairing, the cost of the repairs and the proportion of the cost of those repairs to be paid by each neighbour.

For more information contact:

Caxton Legal Centre

28 Heal Street
NEW FARM Q 4005
Tel: (07) 3254 1811
www.caxton.org.au

Small Claims Tribunal

Ground Floor, Central Courts Building
363 George Street
BRISBANE Q 4000
(07) 3247 4578
www.justice.qld.gov.au
(fact sheets are available on-line)

Brisbane Magistrates Court

1st Floor, Central Courts Building
363 George Street
BRISBANE Q 4000
Tel: (07) 3247 5598

Other Magistrates Courts are listed in the White Pages
or at www.courts.qld.gov.au

Dispute Resolution Branch

Department of Justice & Attorney-General
Level 1, 363 George Street
BRISBANE Q 4000
Tel: (07) 3239 6269
1800 017 288

Other mediation services are listed at
www.justice.qld.gov.au/mediation/contacts.htm

The *Dividing Fences Act* 1953 (Qld) covers the law of building and maintaining fences on adjoining residential land. You can access this Act at www.legislation.qld.gov.au

For further information about fences and other neighbourhood disputes, please refer to the *Queensland Law Handbook*, 8th edition. (published by Caxton Legal Centre Inc. and available for sale).

Attachment A

Form 1
Queensland
Small Claims Tribunals Act 1973 (Qld) (section 24)
Small Claims Tribunals Regulations 1993 (Qld)

CLAIM NO: ____ / ____
DATE FILED:
FEE:
RECEIPT NO:
INITIALS:

CLAIM

Please print or write clearly and use full names where possible.

CLAIMANT (Mr/Mrs/Ms/Miss): CLAIMANT No. 2 (if any):
Jill Brown Bill Brown

ADDRESS: (show both, street address and PO Box) ADDRESS:
3 Smith Street 3 Smith Street
Brisbane Q 4000 Brisbane Q 4000
Tel (work) Tel (work)
(home): 3312 3456 (home) 3312 3456

RESPONDENT (Mr/Mrs/Ms/Miss): RESPONDENT No. 2 (if any):
(Trader/Driver)
(If a company or firm, include correct trading name)

Neil Neighbour
ADDRESS: (show both, street address and PO Box) ADDRESS:
1 Smith Street
Brisbane Q 4000
Tel (work)
(home) 33123445

Date and place of Transaction/Incident/Contract: _____
PLEASE COMPLETE AND SIGN BACK OF FORM

OFFICE USE ONLY

Hearing Date: / / Time: am/pm Court No.:
--

Attachment A continued

FULL PARTICULARS OF CLAIM

- A Goods and Services – Include description of goods or services involved, nature of defect or fault and all other relevant particulars.
- B Property Damage (Motor Vehicle Incident) – Include description of incident, details of other vehicle, details of property damage and all other relevant particulars.
- C Dividing Fences – Include details of when Notice to Fence was served, location details and cost of proposed fence.

Attach additional pages if there is insufficient space.

We want to build a new dividing fence between our property at 3 Smith Street and the respondent's property at 1 Smith Street.

We want to build a five feet paling fence because that is what is mostly built in the area.

The fence will cost \$2,750.00. We propose that we each pay one half.

We sent a notice to the respondent on 12th March 2005 but he has not contacted us.

PLEASE NOTE – Once the issue is heard and resolved by the Small Claims Tribunal, that issue cannot be taken to another court.

AMOUNT OF CLAIM: \$ 1,375.00
(Place 'X' in appropriate square)

Payment: Relief from Payment: Return of Goods: Rectification of Work:

I, the above named claimant, hereby give notice that I wish to refer the above small claim to a Small Claims Tribunal.

SIGNATURE OF CLAIMANT/S: _____ DATE: 20/05/05

Attachment B

AFFIDAVIT

(section 33(2) of the *Small Claims Tribunals Act 1973* (Qld))
In the Small Claims Tribunal in Queensland

I, Jill Brown of 3 Smith Street, Brisbane, in the State of Queensland take an oath and say as follows.

1. I own 3 Smith Street with my husband, Bill Brown.
2. The respondent owns 1 Smith Street, Brisbane.
3. The dividing fence between our properties has fallen down and is not worth repairing.
4. My husband and I want to build a new dividing fence to ensure our daughter stays in the backyard.
5. I obtained two quotes, the cheapest was from Harvey's Fencing. A copy of that quote is attached and marked 'A'.
6. I sent the respondent a notice to fence on 12 March 2005. A copy of that notice is attached and marked 'B'.
7. The respondent has not responded.
8. The fence I wish to build is standard in the area, namely a five foot paling fence.

Signed and sworn before me at Brisbane this _____ day of _____ 20_____.

Deponent

Justice of the Peace