



Neighbourhood Disputes

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Under Review



1. Introduction

The best option: Sorting it out with your neighbour directly

The first step in solving any dispute with a neighbour should be to talk directly to them, and to give them the benefit of the doubt. The neighbour may not even be aware of the problem or of the hassle or distress it is causing. This approach gives the neighbour a chance to fix things up or contribute to a solution.

A solution that you both agree on will be a lot less hassle than what could be a lengthy, costly and bitter battle in court or the Disputes Tribunal.

Remember too that it is likely you will have to live next door to your neighbour long after the fence has been built or the trees have been trimmed. A good long-term relationship with your neighbour should be one of your objectives when you are trying to resolve the dispute.

When do neighbours have no rights?

There will be situations when as a neighbour you have no rights. Usually, for example, people cannot prevent their neighbours –

- storing rusty cars on their front lawn
- letting their grass grow and having a garden full of weeds
- keeping bees.

These neighbours are not breaking any law or council bylaw.

Sometimes, however, a property owner may have to follow requirements set out in their original Agreement for Sale and Purchase, relating to how their property must be maintained and presented. Further, if a property is part of a subdivision involving a body corporate or cross-lease, the property owner will usually have to follow some rules, which may cover issues such as vehicles on lawns and how gardens are presented. Check the title to your property to find out if you are subject to any requirements of this type.

2. Fences

Who is responsible for building or repairing a boundary fence?

Usually the costs of building or repairing a fence must be shared between neighbours. The Fencing Act 1978 sets out this general rule and the procedure for getting a neighbour to contribute to the cost.

However, if an existing fence has been damaged by one of the neighbours, that neighbour must pay for repairs.

How do I get a neighbour to contribute to the cost of the fence?

If you think a fence needs to be built or repaired, you should first talk to your neighbour about this and explain –

- why the existing fence needs to be repaired or a new fence built
- the sort of fence you want

- how much the work will cost.

What if the neighbour won't agree to pay?

There is a formal process to follow if the neighbour won't agree to share the cost of building or repairing the fence. The first step in this process is to give the neighbour a **fencing notice**.

What is a fencing notice?

This is a notice that contains the following information –

- names and addresses of both you and your neighbour
- a description of the fence and the boundary it is to be built along
- the estimated cost of the work
- how the costs are proposed to be shared – for example, equal shares or otherwise
- how the fencing materials are to be bought or supplied and how they are to be paid for
- a starting date for the work
- a statement saying that the notice is served under the Fencing Act 1978.

The notice must also tell your neighbour –

- that they have 21 days to object to any of your proposals by serving a **cross-notice**
- that if they don't own the property, they have 21 days to supply the name of the owner
- what the consequences are if they don't object – that is, your neighbour will be deemed to have agreed to the proposals, and you can go ahead with the fencing work and your neighbour will be liable to share the costs as set out in the notice.

The fencing notice must be signed and dated. A sample fencing notice is included in Appendix 1.

What if my neighbour objects to the fence?

If your neighbour objects to the proposal in your fencing notice, they have 21 days to give you a **cross-notice**, stating their objection. For example, they may think the existing fence is adequate or that the cost of the proposed fence is too much.

They can also give you a cross-notice if they do not own the property they live on. In that case they must supply the name of the owner.

What must be in the cross-notice?

Your neighbour's cross-notice must –

- state the neighbour's objection to the fence
- contain details of any counter-proposals your neighbour has
- state that the cross notice is served under the Fencing Act 1978
- state that if the two sides can't agree, the dispute will be referred to the Disputes Tribunal or District Court.

The cross-notice must be signed and dated. A sample cross-notice is included in Appendix 2.

What happens after my neighbour gives me a cross-notice?

If you haven't resolved your differences within 21 days after the cross-notice, you can take the dispute to a District Court or Disputes Tribunal.

What happens if my neighbour does not respond to my fencing notice?

If your neighbour doesn't give you a cross-notice within 21 days, they are presumed to have agreed with the proposal set out in your fencing notice. You can then start work on the fence and are entitled to recover costs from your neighbour according to the proposal in your fencing notice.

What if I've already started work on the fence?

Unless you have agreed otherwise with your neighbour, they do not have to pay for –

- any work you did on the fence before you gave them a fencing notice
- any work you did after giving them a fencing notice but before you received a cross-notice or, if they didn't give you a cross-notice, before the end of the 21-day period for giving a cross-notice
- any work you did after receiving a cross-notice but before the dispute was settled by agreement or by a District Court or Disputes Tribunal.

What if a fence needs to be built or repaired immediately?

If a fence is damaged or destroyed by a sudden accident or some other cause and needs immediate work, either neighbour can do the necessary work, without giving any notice to the other neighbour, and then recover half the cost of the work from the other.

Do I need a building consent to build a fence?

You do not need a building consent for a fence if it is less than two metres high. There may be exceptions to this, so you should check with your local council.

Can I build a fence at my own expense even if my neighbour doesn't agree?

You do not have to get your neighbour's permission to build a fence at your own expense so long as the fence is within the boundary and it complies with bylaws. Before you put up the fence, make sure you know exactly where the boundary is and that there is no dispute about the boundary.

3. Noise

What can I do about noisy neighbours?

If your neighbours are making excessive or unreasonable noise, you can complain to the Environmental Health section of your local council. These sections administer the noise control provisions of the Resource Management Act 1991.

You can also complain to the council after hours – check with them for their after-hours telephone number. (Most local councils employ security firms to handle complaints after hours.)



What can the council do about my complaint?

The council will send one of its enforcement officers to the address. An enforcement officer can issue either –

- a short-term “excessive noise direction” (for example, a loud stereo), or
- an indefinite “abatement notice” to control “unreasonable” noise (for example, factory noise)

“Excessive noise directions” for noisy parties and other short-term problems

Excessive noise directions last for only three days (72 hours). They are appropriate where the problem is easily resolved.

For example, if a neighbour is having a noisy party, the council can issue an excessive noise direction requiring them to turn the stereo down. If the noise level at the party increases again, you can ring the council back. The enforcement officer has the power to return with the Police and seize the stereo or any other source of noise.

Neighbours who use noisy equipment such as lawnmowers or power tools at night can be dealt with in the same way.

What exactly is “excessive noise”?

“Excessive noise” is defined in the Resource Management Act as any noise that is “under human control and of such a nature as to unreasonably interfere with the peace, comfort, and convenience of any person (other than a person in or at the place from which the noise is being emitted)”. But the definition excludes noise from –

- aircraft during flights (and immediately before and after flights)
- vehicles on the road
- trains.

Abatement notices for ongoing “unreasonable” noise (such as factory noise)

Unlike excessive noise directions, abatement notices are usually directed at ongoing problems of “unreasonable” noise that can’t be reduced immediately. These notices last indefinitely. An example might be noise coming from a factory or other commercial premises.

An abatement notice is usually issued only after the council has measured the noise levels over a period of time.

The notice will require the noise to be reduced to a reasonable level within a certain time. The notice lasts indefinitely until the council is willing to remove it or the notice is successfully appealed against to the courts.

For example, if a neighbouring factory is too noisy, you can contact the Environmental Health section of your local council. If the noise is unreasonable, the council can issue an abatement notice. But if the factory is in an industrial zone and already has acceptable noise control practices, it will be difficult to establish that the noise is unreasonable.

If an abatement notice is issued and the factory fails to comply with it, the owners can be fined up to \$10,000, plus \$1,000 per day for every day the unreasonable noise continues.

Enforcement orders from the Environment Court

You can also apply to the Environment Court under the Resource Management Act for an enforcement order to stop an activity that causes or may cause excessive or unreasonable noise.

If you are considering applying for an order you may need legal advice. Certainly you will need expert advice about the levels of noise to support your case.

What if the neighbour is a tenant?

Tenants have a responsibility under the Residential Tenancies Act 1986 not to interfere with the reasonable peace, comfort or privacy of any neighbours.

If a tenant is noisy – by having lots of loud parties, for example – a neighbour could complain to the landlord. The landlord can serve the tenant with a notice asking the tenant to stop having noisy parties. If the problem continues, the landlord can apply to the Tenancy Tribunal to end the tenancy.

What about noisy dogs?

The Dog Control Act 1996 gives local councils the power to deal with loud and persistent barking or howling by dogs. For more details, see section 8 of this infosheet, “Dogs / Barking dogs”.

4. Trees

What can I do if a neighbour’s tree is blocking the view or posing a hazard?

If your neighbour doesn’t agree to address the problem, you can ask the District Court to order them to trim or remove the tree.

The District Court will consider whether it is fair and reasonable to remove or trim the trees to prevent –

- current or potential danger to your health, life or property or that of anyone living with you
- any obstruction of your view
- any undue interference with your reasonable enjoyment of your land for residential purposes.

The Court can make the order only if the hardship this would cause your neighbour is less than the hardship you would be caused if the Court didn’t make the order.

Who pays for the work if the Court does make an order?

You, the person who applied for the Court order, must pay for the reasonable cost of carrying out the work, unless the Court thinks that because of your neighbour’s conduct it’s fair to require them to pay some or all of the cost.



What if my neighbour refuses to have the tree trimmed or removed after a court order?

The neighbour has one month to comply with the Court order, unless the Court allows a longer time than this. If the neighbour hasn't complied with the order within that time, you can ask the Court's permission for you or another person to go onto your neighbour's property and carry out the work on the tree. The Court can give you specific directions about exactly what you can do and how you can do it when you carry out the work.

After you've done the work, you are entitled to recover the full cost of the work from your neighbour.

What if tree roots or branches have already caused damage?

In that case you can claim compensation in the Disputes Tribunal or the District Court.

What can be done about overhanging branches or tree roots?

If the roots or branches of a neighbour's tree cross the boundary, you can cut or trim them.

But some trees are protected by the Resource Management Act, so you should check with your local council before starting the work.

Can costs be claimed for cutting back overhanging branches or encroaching tree roots?

The owner of the tree cannot be asked to pay for the cost of removing branches or tree roots over the boundary, unless the branches or roots were causing damage or nuisance (for example, damaging a fence). Then the Disputes Tribunal or the District Court can order the tree owner to pay some or all of the costs.

What if the tree is damaged?

A tree planted on a neighbour's land belongs to them. The other neighbours' rights to deal with the tree end at the boundary. If they do something like poison the tree roots on their side of the fence and the tree dies, the owner of the tree could claim compensation.

Who owns the fruit or flowers growing on overhanging branches?

They belong to the owner of the tree and neighbours should not pick them.

5. Fires and smoke

Outdoor rubbish fires

Most local councils have bylaws for outdoor rubbish fires to control pollution and ensure that the fires are safe.

These may include bylaws that –

- restrict the setting of outdoor fires to certain times of the year or to certain areas (For example, the Christchurch City Council banned open-air fires from November 2005 to

February 2006, while the Auckland Regional Council bans outdoor rubbish fires in urban areas at all time and places various restrictions on them in rural areas.)

- require you to have a council or Fire Service permit
- require you to ensure that a pressurised water supply connected to a hose is available
- ban fires within a certain distance of buildings, trees or fences
- ban fires at night
- require you to take steps to minimise smoke.

Outdoor cooking

Outdoor cooking fires such as hangi, umu and barbecues are usually permitted at any time, so long as you take adequate fire safety precautions. However, there may be specific restrictions in force for certain periods – during a particularly dry summer, for example.

Complaints about smoke from neighbours' fires

Complaints about smoke from neighbours' fires can be made to the Environmental Health section of your local council. It seems, however, that the council will be able to take action only if the smoke is a nuisance to health.

7. Damage to property

What can be done if a neighbour damages property?

If a person causes damage to their neighbour's property they will be responsible for the cost of repairing the damage – for example, if a sewer pipe bursts and floods a neighbour's garden. In that case the owner of the sewer should pay for the cost of removing the contaminated soil and replacing it with fresh soil.

If the neighbours can't agree about who pays for the damage, the dispute could be resolved in the Disputes Tribunal or the District Court.

What about "Acts of God"?

Other problems can be caused by so-called "Acts of God" – events such as earthquakes, storms and floods. An example may be where a tree is blown over in a storm and damages a neighbour's roof.

In these cases the damage to property cannot be blamed on either neighbour or anybody else. The neighbour whose roof is damaged could make a claim to their insurance company.

8. Dogs

What law covers dog control?

The Dog Control Act 1996 covers the care and control of dogs and damage caused by dogs.

The Act sets out the obligations of owners to register their dogs, keep them under control, give them proper care and attention, and take all reasonable steps to ensure they don't cause a nuisance – for example, by barking, or by harming any person, animal or property.



Local councils will also have bylaws that place restrictions and guidelines on the control of dogs, the areas where dogs are allowed, and requirements for keeping dogs.

Powers of Dog Control Officers and Dog Rangers to enter properties

Dog Control Officers, and anyone they ask to help them, have the power to go onto a property if they have “good cause” to suspect an offence against the Dog Control Act.

Dog Control Officers and Dog Rangers can also go onto properties to give dogs food, water or shelter. They can also remove the dog if they have reasonable cause to suspect that no-one else will be giving the dog food, water or shelter over the next 24 hours.

Barking dogs

If a neighbour’s dog is causing a nuisance by constant loud barking or howling, and talking to your neighbour hasn’t helped, you can complain to your local council.

A Dog Control Officer or Dog Ranger can give your neighbour a written notice requiring them to stop the nuisance, and if necessary to remove the dog from the property. In these cases the Officer or Ranger has the right to go onto the property (but not into the house) to inspect the conditions under which the dog is kept. Most councils will serve a notice only if they have received more than one complaint.

The neighbour has the right to object to the local council about the notice within seven days.

It’s an offence to fail to comply with the notice, with a penalty of a fine of up to \$1,500.

If a notice has already been issued and the council receives another complaint, a Dog Control Officer or Dog Ranger can go onto the property and seize the dog.

What can happen to dog owners who breach the Dog Control Act?

Dog owners can be disqualified from owning a dog or put on probation if they commit certain offences against the Act. They can also be fined up to \$3,000.

Who is responsible for damage caused by a dog?

The dog owner is responsible. If a dog damages a neighbour’s property – by digging up plants, for example – the neighbour can ask the dog owner for compensation. If the owner refuses, the neighbour could make a claim in the Disputes Tribunal.

9. Livestock and hens

Livestock

Livestock includes animals such as sheep, goats and cows. The owners of livestock must keep their animals secure on their property and are responsible for any damage their animals cause to neighbouring property.

Hens

Most local authorities have bylaws covering the construction, size and location of henhouses on suburban properties. For example, henhouses cannot usually be built against a boundary fence.



Hens cannot be allowed to wander onto neighbouring sections; the owners will be liable for any damage they cause.

Complaints about noise should be made to the local council (see above).

Most local councils ban the keeping of roosters on suburban properties.

Under Review

Our information sheets are intended to provide useful, practical information about the law, in a concise format. They cannot cover all aspects of a topic and should not be seen as a replacement for the relevant Act or Regulations, or for legal advice from a lawyer. No liability is assumed for any losses suffered by any person relying directly or indirectly on the information provided.

We revise and update these information sheets regularly. However, the law changes frequently, and therefore it is not always possible to ensure that an information sheet is up to date at any given time.

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Appendix 1: Fencing Notice

Sample Fencing Notice

[Use of this form is not obligatory but is given as a guide to the type of information that should be included.]

TO : [owner or occupier by virtue of a tenancy for not less than 10 years certain], of [address]

PLEASE TAKE NOTICE that I desire that a/the fence be erected/repaired between your said property and my adjoining property at [address], in accordance with the following particulars :

1. Further description of boundary to be fenced :
2. Type of fence : [if desired, specify one of the specimen fences in the Second Schedule to the Fencing Act 1978, or specify any other type desired]
3. Method of construction : [eg. by a contractor, or by one/both neighbours]
4. Estimated total cost : [to be shared half each or, if different shares are proposed, specify those shares]
5. How materials are to be purchased or supplied and how they are to be paid for :
6. Date of commencement of work :

Within 21 days after the date of receipt of this notice you may object to any of the above particulars and make your counter-proposals.

Within 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 be 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 this day of 20....

Signed :



Appendix 2: Cross-Notice

Sample Cross-Notice

[A Cross-Notice must be in this form or very similar.]

TO : [the giver of the original notice]

Please take notice that I object to your Fencing Notice dated the ... day of 20...

The particulars of my objection are as follows : [set out the proposals to which you object. If you object to all the proposals, a statement to this effect will do]

I make the following counter-proposals * : [set out any counter-proposals in the same way that is required for a Fencing Notice]

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 by this Cross-Notice, the matter in dispute may be determined by a Disputes Tribunal or District Court.

Dated this day of 20....

Signed :

[* delete if no counter-proposals are proposed]

