

Can fence builders be stopped from entering both properties?

No, the people building the fence have a right to access at reasonable times to do whatever is reasonably required to build the fence. This is the case even if the neighbour is not contributing to the cost of the fence.

Can I pay for the repair of a fence while my neighbour is away?

Yes, if the fence needs immediate repair or replacement, for example, after a storm. You can fix the fence and recover half the costs from the other owner. Of course, if the fence must be replaced it should be with a comparable fence, not a much more expensive one. However, if the fence is damaged or destroyed by someone liable in any way and not covered by the Act, that person must pay the full cost of the repair.

This might be when your neighbour has a tree that is pushing the fence over, when a truck runs off the road and demolishes the fence. In both cases the person responsible must pay.

What if we just can't agree?

If your negotiations with your neighbour reaches an impasse you can take the matter to the Disputes Tribunal or the District Court.

Can I build a fence on my own property?

Yes, if your neighbour is hopelessly difficult to deal with and you can't face taking the matter to Court, you can simply build the fence inside the boundary on your own property but you will have to pay for it all yourself.

Fences adjoining Road Reserve

Under the Fencing Act and Local Government Act, Councils and NZ Transport Agency are exempt from sharing any fencing costs with properties adjoining Road Reserve.

The Fencing Act 1978 is administered by the Department of Justice.

For further information Contact:

Citizen Advice Bureau
116 Bright Street, Gisborne
Telephone: 0800 367 222 - (06) 867 2606
OR Neighbourhood Law Office

Full text of the Act is available at Government Printers or at a Library where Statutes Law is maintained.



15 Fitzherbert Street, PO Box 747, Gisborne
PHONE 06 867 2049 • FAX 06 867 8076
EMAIL service@gdc.govt.nz • WEB www.gdc.govt.nz

Fencing Law



What you should know.



A532846

Introduction

The environmental effects of land use activities are controlled through the provisions of the Resource Management Act (1991). The Resource Management Act embraces the sustainable management of natural and physical resources, focusing on the effects that land use activities have on the receiving environment.

Fencing

If you want to build a fence between your property and the neighbours, you don't need to argue forever about how it should be done and who will pay. The Fencing Act 1978 sets out everybody's rights and obligations.

Here are some answers to typical questions

I want a fence between my neighbour's property and mine, who pays?

Generally, if you want to build a fence on a common boundary with a neighbour, or upgrade an existing fence, you and the owner of the neighbouring property must go halves on the cost.

What do I do first?

It is best to meet face to face with the owner of the next-door property to discuss the matter. Make your proposal realistic. Don't think you have your neighbour over a barrel, as neighbours can quite reasonably disagree about what is appropriate. Some fencing disputes can get out of hand and end up in courtroom disputes.

What if they won't co-operate? Can I just put up the fence and send them the account?

No, there is a formal procedure that must be followed. First, you must give your neighbour the details of your proposal in writing. This is called "serving notice".

The notice must state that it is served under the Fencing Act 1978 and must contain the names and addresses of both owners, a description of the fence, where it will go and how it is to be built, the estimated cost, how materials are to be purchased and the start date for the work. The notice must also state that the neighbour has 21 days to object to any aspect of the proposal and make any counter proposals.

It must say that if the neighbour does not accept liability, you must be told within 21 days the reason why and given the name and address of whoever the neighbour believes is liable.

The notice must say that if the neighbour makes no communication within 21 days, they will be deemed to have agreed to the proposals and will have to share the cost. You should sign and date the notice and keep a copy for yourself. You cannot start work during the 21 day period while you wait for a reply.

Can my neighbour refuse to pay?

In certain circumstances, yes. If they do not own the property or believe the existing fence is adequate or think your proposal is excessive, they can serve you with a cross-notice. This cross-notice must reach you within 21 days and should detail the objection and any counter proposals. It should state that it is served under the Fencing Act 1978 and that any persistent dispute in the matter will have to be sorted out by the District Court or the Disputes Tribunal. The neighbours should sign and date the cross-notice.

If I buy a house, can I be held responsible for a previous owner's fencing commitments?

No. If either party sells before all matters are dealt with, the arrangement lapses.

How high can a fence be?

You can build a fence up to two metres high in the Residential Zone General Plan (Proposed Plan). Fences higher than two metres require planning and building consent. If not in the General Residential zone you should consult the Council if a proposed fence:

- is on a ridgeline
- is above a retaining wall or
- is on ground raised by earthworks.

Where should the fence go?

Normally the middle of the fence must be on the boundary line. A fence cannot unduly encroach on either property without the owner's permission. But there are exceptions. These can occur when a court order recognises that there is no practical alternative, the degree of encroachment is minimal and it does not adversely affect the owner's use and enjoyment of their land. If, in your opinion, the fence does unjustifiably encroach on your property, you can apply to the District Court to have it removed. None of these provisions apply to fences built before the Act came into force on 1 April 1979.