

Dividing Fences: A Fact Sheet

What is a dividing fence?

A dividing fence is a fence that divides two properties. It usually lies on the common boundary of adjoining pieces of land, though it can lie mainly or completely in one property. A retaining wall is not classed as a dividing fence.

A dividing fence is legally the joint property of both property owners, which means anything that one owner does to it affects the other and may require cost-sharing. Dividing fences are governed by the Dividing Fences Act 1961 and local government by-laws. These fences are the responsibility of the property owners, so if you rent, you need to talk to your landlord about any problems with your fence.

I want to put up a dividing fence between my property and my neighbour's property. How do I go about this?

You can only put up a new dividing fence if there is currently no fence dividing your properties **or** the current fence is not a "sufficient fence" for your area. Your local council will be able to tell you what a sufficient fence is.

Before you put up a new dividing fence, you should give written notice to the neighbouring property owner, including a request for them to pay half of the construction costs. You need to give them 21 days to respond.

What is a "sufficient fence"?

A "sufficient fence" is one that meets the minimum standards for a sufficient fence set out by an area's local government by-laws. The standard test is whether the fence would be capable of containing cattle. Your local council will be able to tell you what a sufficient fence is in your area.

Who pays for the construction or repair of a dividing fence?

As a general rule, neighbouring property owners are each responsible for paying half the cost of erecting or repairing a dividing fence between their lands.

Can my neighbour and I make our own agreement about constructing a dividing fence?

Yes, you can, and it's a good idea for you to do that. Any agreement you make with your neighbour about your dividing fence overrides the provisions of the Dividing Fences Act. You should get this agreement in writing and signed.

I'm not happy with the existing sufficient fence and want to erect a new fence. Who pays for this?

If the existing fence is sufficient, then you bear the whole cost of putting up a new fence.

I want to erect a dividing fence but I don't agree with the boundary line claimed by my neighbour. What can I do?

If you want to check the boundary line between you and your neighbour's property, you should give your neighbour written notice that you're intending to review it. Either you or your neighbour then needs to hire a land surveyor, licensed and registered with Landgate, to define the boundary line. You should give the other owner notice you've done that and request payment for half the survey cost.

If the survey finds the current boundary line is correct, you bear the whole cost of the survey. If the boundary line is incorrect, both of you share the survey cost.

The land adjoining my property is vacant. Do I have to get the owner's permission before I erect a dividing fence?

No, you don't – you can put up a fence without your neighbour's permission. However you can only make a claim for half the cost of the new fence from them once they've erected a substantial building on the vacant land.

Years ago, I built a dividing fence separating my property and the vacant land next door. Now the neighbouring owner has constructed a substantial building on that land. How much can I claim from the new owner and how long do they have to pay me?

You can claim from them half the value of the fence **as it was estimated at the date of the claim**, but not at its current market value. The new owner has one month to pay their half of the cost, unless you both agree on a different timeframe.

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Dividing Fences: A Fact Sheet continued...

I erected a dividing fence when the block next door was vacant and then sold my land. Later my neighbour built a house on their formerly vacant land. Can I claim half the cost of the fence from them, or can I pass my claim for half the cost on to the new owner of my property?

No, you can't do either. You only have the right to claim half the fence cost from your neighbour if you own the property and it has a substantial building on it at the time of making the claim. Your neighbour's share of the cost can't be passed on to the new owner of your property, either if the new owner has purchased a vacant block and there is no substantial building on it.

I recently bought a house and my neighbour is asking me to pay half the cost of the fence they previously put up when the house was owned by someone else. Should I pay?

Yes, if your neighbour didn't recover half the cost of the fence from the former owner and you have put up a substantial building on the previously vacant block then you do have to pay it. That share is passed on to you as the next owner.

My neighbour has erected a brick wall and they are asking me to pay half the cost of it. Should I pay?

Brick walls are not covered by the Dividing Fences Act; they're only governed by local council by-laws. This means you only need to pay half the cost if your local council states that a brick wall is the minimum standard for a sufficient fence in your area. If it isn't, your neighbour bears the whole cost of putting up the brick wall.

If my dividing fence is damaged, who pays for it to be repaired?

If your fence is damaged and needs repairing, the general rule is that you and your neighbour share the costs of repairs. You should give each other notice beforehand. Some situations that are exceptions to this are if:

- The fence was built partly by one owner and partly by the other. If this applies, each owner is responsible for repairing the parts they built;
- The fence is damaged by a natural act such as a storm, fire, flood, or lightning. Then either owner can repair the fence without notice and recover half the repair cost from the other later on.
- The fence is damaged by a falling tree or branch or a fire as a result of one owner's actions. If this applies, the owner whose neglect caused the incident must pay for the fence's repairs.

I want to repair a damaged fence. What things should I take into account?

If you're repairing a dividing fence, it's important to note the type of fence you want to replace it with. If the new fence is the same type as the old one (for example, a picket fence replacing a picket fence) it's considered a repair under the Dividing Fences Act. This means that both property owners pay half the cost each and you should follow the procedures for repairs the Act sets out. Before starting repair work, you should tell your neighbour about the work you're going to do – including that you may need to go onto their land to do repairs – and get their permission. Be careful not to enter or interfere with their property unless it's necessary to carry out the work and you have permission, otherwise you could be liable for trespass.

If the replacement fence is a different type from the old one (for example, a picket fence replaced by a cement fence, which is now the area's minimum standard for a sufficient fence) it's considered erecting a new fence under the Act. If this applies, you need to follow the same procedures as if you were putting up a dividing fence from scratch.

The dividing fence in place is too low and doesn't give me enough privacy. What can I do?

Local councils set minimum requirements for the height of dividing fences in their area. If you want to build a fence higher than the minimum height, you should contact your local council. However, if you do build a higher fence then your neighbour only needs to pay half the cost of the **minimum** fence height and you bear the rest.

You may also be able to add lattice to a fence or a privacy screen to solve the problem of lack of privacy. Check with your local council whether this is possible.

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My neighbour is refusing to pay half the cost of the dividing fence I've put up or repaired. What can I do?

It's always best to talk to your neighbour and try to reach an agreement between yourselves first. You can even write them a letter. This letter should include:

- your intention to erect or repair a fence;
- two quotes for constructing the fence;
- an invitation for your neighbour to contact you for any further discussion; and
- a timeframe for their response (typically 21 days).

You can deliver the letter in person or send it to your neighbour's current residential address by registered mail.

If this doesn't work, mediation is a good option. CAB offer a low-cost Community Mediation service where the parties can sit down together and, guided by a trained mediator, negotiate a practical and fair solution to their problem. It's an alternative way of resolving your issue while maintaining a good relationship with your neighbour.

If you can't reach a solution in mediation, you can start legal proceedings by going to the Magistrates Court and filling in the relevant forms. If you're trying to recover costs for putting up a new fence, the Court may make an order about that based on factors such as the usual type of fence in the area, how the land is used, and any local fencing regulations. It's a good idea to get legal advice before you do any of this.

I don't know my neighbour's name. How can I find this out?

Before you can make a neighbour dispute appointment with CAB, we'll need to know your neighbour's full name. If you don't know their name, there are a few ways you can find it:

- if the property is rented or leased, ask the tenant, real estate agent, or property manager;
- do a land title search through Landgate (note that this incurs a fee); or
- contact your local council or shire – subject to you proving ownership of your property, they may provide you with your neighbour's name.

Need Legal Advice?

Contact Citizens Advice Bureau to make a low-cost appointment at our Perth office, or for details of how to make an appointment at your nearest branch or by telephone.

(08) 9221 5711 (Lines open Mon-Fri 9:30am-4:00pm) **Level 1, 25 Barrack Street, Perth WA 6000**

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