



AULD BREWER MAZENGARB & MCEWEN

Lawyers and Notary Public

Good Fences Make Good Neighbours!

There is an old saying- “You can choose your friends, but you can’t choose your neighbours.” Boundaries and fencing disputes are a common source of frustration for property owners. Why do we have boundaries anyway, and why do neighbours want to fence the boundary?

Boundaries

Boundaries delineate our property rights. We feel more comfortable knowing the point on our property where our rights stop. When you purchase your property you should ideally try to check the physical boundaries and locate the boundary pegs. This is often easier said than done. Boundary pegs often get knocked out or covered over. You may need a surveyor to help you.

Fences

Fences more clearly define our property rights. We like to have rules to protect our rights, and there are plenty of rules - covenants with neighbours; local authority requirements, exemptions by sub-dividers. Some residential developments specify the type of fence, its height, its method of construction, and where you can and can’t build it. If your property adjoins a reserve you may not be allowed to fence the reserve off.

Where there is not an adequate fence between adjoining properties, the adjoining owners are liable to contribute in equal shares to work on a fence. Developers of new subdivisions usually exempt themselves from contributing to this cost.

There are rules about fencing around swimming pools as well. These are driven by safety concerns.

What’s the reason for the fence?

Fences keep people and animals in and out. People build boundary fences for different reasons – the need for privacy, security, shelter from the elements, protection from stock, or screening of unsightly views. The first officially approved fence to stop rabbits moving from Northern Wairarapa to the Hawkes Bay, was 64 kilometres long!

What type of fence?

To build a new fence or upgrade an existing one, an “adequate” fence is one that is “reasonably satisfactory”. It is a good idea to discuss your plans with your neighbour before you start putting in fence posts. Try to keep the proposal reasonable. Neighbours can object if they disagree about what is appropriate. Some neighbours like a fortified look but others don’t.

For urban properties, the Act allows for these types of fences; Post and rail, Close boarded, Paling, Panel, Masonry wall.

How high can my fence be?

As a rule you can build up to two metres in height without having to obtain resource consent from your local Council. It pays to check however.

Where does it go?

You should place the fence posts exactly on the boundary line with your neighbour or as near as possible to it, although some “give and take” is allowed where the true boundary is difficult to fence.

What if we can’t agree?

There is a formal process you can follow, but first you must serve your neighbour with a notice that describes the boundary to be fenced, the type of fence to be built, who will build the fence, the estimated total cost, how materials are to be purchased, the start date for the work.

Remember to sign and date the notice. Your neighbour has 21 days to object and make any counter proposals. Your neighbour can object to the cost or the request for a new fence, or the need for one at all.

What next?

You could build the fence back from the boundary on your side, but your neighbour can insist on it being on the boundary.

Who decides?

The Disputes Tribunal and the District Court both have powers to rule on any disputes involving construction and repair to boundary fences, but the Tribunal doesn’t have the power, which the District Court has, to authorise one owner to enter the other’s property.

If the parties have made their own agreement, the Tribunal has its normal power to hear claims in contract. If there has been no agreement, the Tribunal’s orders will be pursuant to the Fencing Act.

By this stage however, you and your neighbour may be further apart in more respects than just the fence itself! ♦♦



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If you would like further information on any of the topics in this article, please contact the writer.

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