



SOLICITORS

FENCING

Fencing can often be a source of disagreement between neighbours. Fences, by their nature tend to be divisive but they do keep out wandering dogs and create privacy. We would ask you to remember though that legal rights should always be tempered with common sense and understanding. Otherwise you may end up with "The Neighbours from Hell"

Our philosophy is that honest and direct communication is to be preferred to a court room of lawyers. Obviously the best way to arrange fencing is to chat with the neighbour and come to a mutual understanding. They may be able to procure materials more cheaply than you. You may be able to build it yourself or you both may decide to share the painting. I strongly recommend that the whole process should be organised over a friendly drink or cup of tea. Who knows, the neighbours may not really be that bad.

After all, even the Berlin wall was eventually pulled down.

When fencing your property you do have the right to seek contribution from your neighbour. This right will apply to the erection, construction or maintenance of a **suitable** fence. A lot of people presume that the standard of the fence is limited to the cost of a post and rail or wire mesh fence however the standard of fence must be construed in the light of the standard fence in the area. If everyone has a wooden picket or paling fence then that is the standard. Obviously the type of fence suitable on acreage will be totally different to the type of fence in the Inner City.

Your right to contribution is dependant upon you providing the neighbour with a notice under the Fencing Act. This notice does not have to be in any set form but must be in writing and must contain:-

1. A clear indication of the measurements and boundary to be fenced
2. Details of the type of materials to be used
3. Quotes (we suggest two are enough) showing the cost involved

If you do not do this **before** you build the fence you will lose all rights to recover the costs of construction. We recommend that you obtain the agreement of your neighbour **in writing** before proceeding with construction. This will avoid any problems.

If your neighbour objects or does not respond within one month of your delivery of the notice you will have the right to pursue recovery through the Magistrates Court system.

In any case please do not start construction until you have obtained approval from the neighbour or the Court Order.

If you wish to construct a fence that is more expensive than the "standard" in the area then you will have to contribute difference in the cost yourself.

If the fence contains any element of retaining wall then there are different rules as to who is responsible for the additional structural costs and it may be that approvals have to be obtained from the City Council.

It is always best to ensure that the fence is erected exactly on the boundary and the costs of a survey to ascertain this (if necessary) can also be the subject of contribution from neighbours. This survey will also help to ascertain if there are any encroachments either on or by neighbours.

The information contained above is only of a general nature. Should you have more specific enquiries then you should seek legal advice and not rely solely on this information. Please feel free to contact Myles directly for an obligation free advice on any issues raised above or indeed for any issue of law generally.

