



FENCING LAW IN VICTORIA: FREQUENTLY ASKED QUESTIONS

With new changes to the *Fences Act*, property owners and their neighbours have equal responsibility for dividing fences.

What is a dividing fence?

A dividing fence separates two pieces of adjoining land. It generally runs along the common boundary but sometimes not; for example, if there's something in the way and you both agree to build around it.

A dividing fence is not a retaining wall or any wall that is part of a house, garage or other building. However, sometimes these can qualify as a fence for all or part of your boundary.

What should I do if I want to build a dividing fence or if I think mine needs repairing?

Start with an informal chat with your neighbour. If you both agree work needs to be done, on the type of replacement or repair, its placement, the contractor and who'll pay for it, things will be a whole lot easier. And you probably won't need to follow the processes in the *Fences Act*.

If your neighbour doesn't agree with your proposal, you can't build or begin repairs on an existing dividing fence until you issue your neighbour a Notice to Fence via registered post. This outlines a proposal to repair or replace a fence with one or more quotes for the work attached. You can download one [here](#). Once they get it, your neighbour has 30 days to respond. If they agree, you can build as per your proposal. If not, you need to negotiate a solution or go to court to have a magistrate decide for you. If they don't respond after 30 days, you have the right to proceed. You can then commence an action in the Magistrates' Court to recover their share of the costs.

I built a new fence without consulting my neighbour; do they still have to contribute?

No. If you don't consult first, the other party is not legally obliged to pay anything.

What if I don't know who the owner is?

Start by asking the current tenant or call your local council and say you want to send the owner next door a [Notice to Fence](#) but don't know who they are or where to send it. If they can't help, try www.landata.vic.gov.au to run a title search for a fee. If you still can't find the owner, we recommend you seek legal advice. If you want the owner to contribute financially you'll need a Magistrates' Court order.

What is a 'Notice to Fence?'

This formal document — download one [here](#) — sets out your proposal for construction or repair of a dividing fence or other works. You'll need to fill out information about:

- the line on which the works should be carried out (the boundary line)
- the type of works
- the contractor

- a cost estimate
- how much either of you should contribute.

You can hand the Notice to Fence to your neighbour personally but we recommend registered post, so you can show that you actually sent it and the day it was received.

Do I have to use a Notice to Fence?

No, not if you agree on everything. If they want to formalise this agreement many people simply sign the agreed quote for the job.

However, if you don't use a Notice to Fence, it's harder to prove you and your neighbour had an agreement if something goes wrong. Also, without a Notice to Fence any dispute will be settled under contract law and not the *Fences Act*. This makes it a lot harder to resolve a dispute.

What if my neighbour ignores my Notice to Fence?

If they don't respond within 30 days, you can proceed with the fencing works without their agreement and later take action in the Magistrates' Court of Victoria to recover their contribution.

However, be aware Magistrates' Court actions are expensive. It's worthwhile trying to negotiate a solution with your neighbour.

We offer a free mediation service that's confidential and we work with parties to help them resolve their disputes without the need to go to court. Call us on 1300 372 888 for more.

What if my neighbour responds to my Notice to Fence and doesn't agree to the works?

You can't proceed. You can either negotiate an agreement or wait 30 days after they received the notice and then initiate an action in the Magistrates' Court of Victoria. A magistrate will determine whether works are needed or not and, if so, the sort of fence, the time frame, who contributes what and other things you might need decided. Actions in the Magistrates' Court are expensive and take a while and you might not end up with the outcome you want. That's why you're much better off negotiating an agreed solution.

Instead of going to court, many people try mediation through the Dispute Settlement Centre of Victoria. It's free, confidential and we work with parties to help them resolve their disputes without the need to go to court. Call us on 1300 372 888 to learn more.

What if my neighbour gives me a Notice to Fence, but I don't agree with their proposal?

Talk to them and explain why. Then get your own quotes or some expert advice so you're fully informed, and let your neighbour know you plan to do this. You should also respond formally to the Notice to Fence by filling out the last two pages. Here you can state what you disagree with and any alternatives you want to suggest. From there you have 30 days to decide if you need to take the matter further.

What power does the Magistrates' Court of Victoria have?

The magistrate determines whether works are needed or not and, if so, the type of fence, the time frame of the works, who contributes what and other things. You can still negotiate or mediate at any point if a Notice to Fence hasn't helped you reach agreement.

What if we can't agree on the common boundary?

Either party can issue a boundary survey notice at the same time or after a Notice to Fence is issued. This sets out your intention to have the common boundary defined by a licensed surveyor. The process means only one survey is needed for the two properties.

The owner who receives the boundary survey notice can agree to the location of the common boundary, express their own view about its location, or engage a licensed surveyor to define it. If, after 30 days, the common boundary has not been agreed or defined by a licensed surveyor, whomever sent the boundary survey notice can engage a licensed surveyor and tell the neighbour what the outcome was. Generally, both owners cover surveyor fees 50/50.

The 30-day period after which you can commence court action is suspended until the location of the common boundary is agreed or defined by a licensed surveyor.

What if there are obstructions or obstacles in the way?

If you both agree, you don't have to build the dividing fence on the 'correct' boundary.

How do we split fence costs?

For a standard 'sufficient dividing fence' it's generally 50/50. If either of you want a higher standard one, like a taller fence or one made of more expensive materials, and both agree to this, then the party wanting this usually pays the extra cost. You can also agree to split it.

Here's a typical example:

*The fence you want costs \$2,000 but your neighbour wants the \$1,500 one.
Your neighbour pays \$750 and you pay \$1,250.*

What is a 'sufficient dividing fence'?

The *Fences Act* refers to what's known as a 'sufficient dividing fence'. What these words mean has been left up to the courts to interpret. The legislation doesn't state what a 'normal' fence is with regards to height, material etc. For some residential properties, a sufficient dividing fence might be a 1.8 metre paling fence. For some rural properties, it might be a wire and post fence.

To avoid putting the decision in the hands of a magistrate, you'll need to agree on something. If you and your neighbour can't agree on a sufficient dividing fence the magistrate will decide after considering the following:

- what the existing dividing fence looks like
- how you and your neighbour intend to use the land
- reasonable privacy or security concerns
- the types of fences in your local area.

Who pays to clear land to build a fence?

Neighbours must contribute equally to all fencing and associated works (known as 'subsidiary works' in the *Act*). This may include clearing land, removing the existing fence, surveyor fees and putting up temporary barriers.

What if there is a tenant renting my property? Do they have to pay anything?

Generally not, but some may be required to contribute. The *Fences Act* requires you to send them certain notices allowing them to participate in negotiations with you and your neighbour.

If your tenant falls into one of the categories covered by the *Fences Act* and has five or more years remaining on their lease, they are required to contribute, but they must be consulted first.

If they have between five and ten years left on their lease, they must pay half of your share.

If they have over ten years they must pay your full share.

What should I do if the fence needs urgent repair?

If it's urgent due to fire, flood, or damage, and you don't have time to issue your neighbour a Notice to Fence, you can proceed with the works without giving notice and without their agreement. However, we strongly advise you at least talk to them about what you're going to do.

If you want your neighbour to contribute, you need to give them an [Urgent Notice to Fence](#) listing the type of fencing works done, the cost, and why it was urgent. That way your neighbour has an opportunity to have a say. If they don't agree with what you did, you will have to go to the Magistrates' Court to get payment.

Which side should the posts and rails sit?

As with most fencing matters, if you and your neighbour can agree on where the rails and framing of the fence should face, then you can build as agreed. If not, the *Fences Act* provides the following guidance:

- If it's between residential land and commercial land, the rails and framing should face into the residential land.
- If it's between residential or commercial land, and land over which the public has a right of access, the rails and framing should face into the residential or commercial land.
- If the dividing fence is between two residential properties, or the above rules do not apply, then the rails and framing should go on the same side as the existing dividing fence if there is one.
- If there's no existing dividing fence, the rails and framing should go on the side least subject to weathering, which will depend on the circumstances.

If necessary, a fencing contractor can advise which side is least exposed to weathering but usually rails and framing will go on the same side as they are currently.

What do I do if someone is damaging my dividing fence?

If a property owner, or someone who has entered that land with the owner's express or implied consent (tradesperson, tenant or visitor), deliberately or negligently damages a dividing fence, that owner must pay for repairs. The owner can then recover payment from whomever damaged it. You can also get a Magistrates' Court order to have any party cease activity or conduct that's unreasonably damaging, or may unreasonably damage, a dividing fence.

What if I reach an agreement with my neighbour but they don't abide by it?

If you've used the processes in the *Fences Act* and reached agreement in a Notice to Fence, that agreement can be enforced. If your neighbour doesn't do what they said they would, either within a specified time in the agreement or within 3 months of making that agreement, you're allowed to carry out the agreed fencing works and then seek to recover your neighbour's agreed share. The same goes if there is a Magistrates' Court order. If your neighbour doesn't do what they were ordered to do, either within the time specified in the order or within 3 months of the order being made, you're allowed to carry out the agreed fencing works and then seek to recover your neighbour's agreed share.

If you did not give a Notice to Fence and reached a verbal agreement, that agreement may be subject to contract law and not the *Fences Act*.

If my property is next to a public park or government owned land, does the government have to contribute to the fencing works?

It doesn't have to but sometimes it will depending on the circumstances. You will need to call your local Council to see if they are willing to contribute.

[1] *Fences Act* is used in this document to mean the *Fences Act 1968* as amended by the *Fences Amendment Act 2014*, which brought in changes from 22 September 2014.