

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

For queries, please contact the Citizens Advice Bureaux.

Full text for the act is available at the Government Printing Office or at a library where statutes law is maintained.

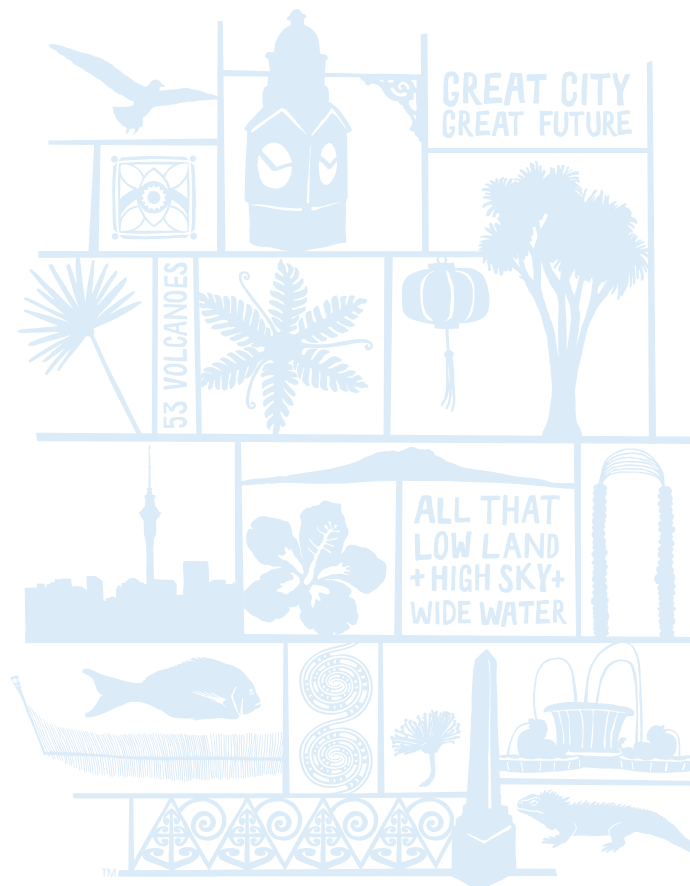


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What you should know about fencing law

Fencing Act 1978

Find out more: phone 09 379 2020
or visit www.aucklandcity.govt.nz/building



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If you want to build a fence between your property and the neighbour's, you don't need to argue about how it should be done and who will pay. This pamphlet is a guide only (not a legal document). The Fencing Act 1978 sets out everybody's rights and obligations, and should be referred to before taking any action.

Here are answers to some typical questions

1 I want a fence between my neighbour's property and mine. Who pays?

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

2 What do I do first?

It's best to meet face to face with your neighbour to discuss the matter. Make your proposal realistic. Don't think you've got the final word, as neighbours can quite reasonably disagree about what is appropriate. Some fencing disputes can get out of hand and end up in courtroom disputes.

3 What if they won't cooperate? Can I just put up the fence and send them the bill?

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 any 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 communications 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.

4 Can my neighbour refuse to pay?

In certain circumstances, yes. If they don't own the property, 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 courts or the Disputes Tribunal. The neighbour should sign and date the cross-notice.

5 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.

6 How high can the fence be?

You can usually build up to two metres in height without getting a planning consent from the council, except in areas referred to in the district plan as "special character areas". For something higher than two metres or located in the front yard, you should talk to the council.

7 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 doesn't 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.

8 Can fence builders be stopped from entering both properties?

No. The people building the fence can obtain authorisation from the District Court or Disputes Tribunal for right of access at reasonable times to do what is reasonably required to build the fence. This is the case even if the neighbour is not contributing to the cost of the fence.

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

Yes, if the fence needs immediate repair or replacement, eg after a storm, you can fix the fence. In this case, you are entitled to 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 that is not covered by the act, that person must pay the full cost of repair. This might be when your neighbour has a tree that is pushing the fence over, or when a truck runs off the road and demolishes the fence. In both cases the person responsible must pay.

10 What if we just can't agree?

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

11 Can I build a fence on my own property?

Yes. If you and your neighbour can't settle the matter and don't wish to take it 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.