



BOUNDARY FENCES

Repairing or replacing a boundary fence can be stressful and if not handled well might lead to a dispute between neighbours. However following some simple steps and seeking advice along the way can sort out any potential problems.

WHO PAYS FOR THE FENCE?

The general rule is that the owners either side of the fence will pay half each.

An owner may choose to pay for the entire cost of repairing or replacing a fence. In this case permission is not required of the other owner. However, if an owner is replacing the fence with a different type of fence it is recommended that they advise their neighbour out of courtesy and so as to possibly avoid any disagreement.

In some situations an owner must pay for the entire cost. This is the case if the fence requires repair or replacement due to a fire that originated on one property and the owner of that property was negligent. An owner must pay for the entire cost if the property borders on:

- Unoccupied Crown land;
- Public reserves;
- Local council roads;
- Land owned by Forestry Tasmania;

STEP ONE: TALK WITH YOUR NEIGHBOUR

If possible, talk directly with your neighbour to discuss a fence that you consider needs to be replaced or repaired. You may discover that your neighbour is thinking the same and you can work together or share the task between you. If you and your neighbour don't agree it might be quickest to attempt to talk about it together directly.

STEP TWO: GIVE NOTICE TO YOUR NEIGHBOUR

Following a simple template give notice to your neighbour of your intention to have the fence repaired or replaced. To complete this notice you will need the following information:

- Where the fence will be built (define the boundary);
- The type of fence you want to build and the materials you want to use;
- A plan for the fence;
- The cost of the fence – it is recommended that you have get two quotes;
- How the cost will be paid – ie. Will their need to be a deposit? Will you pay upfront and seek your neighbour to reimburse you, or do you want to each pay separately?
- How the work on the fence will be done

You can get a copy of this template from:

www.legalaid.tas.gov.au/factsheets/boundary-fences-fact-sheet/.

STEP THREE: ALLOW TIME TO RESPOND TO THE NOTICE

You must give your neighbour time to respond to the formal notice.

If your neighbour does not reply within 30 days of you giving them formal notice, you can repair or replace the fence and charge your neighbour for half the cost. If your neighbour objects to your notice or later refuses to pay their share of the costs, you and your neighbour can go to arbitration to come to an agreement. Contact Hobart Community Legal Service for help with arbitration.

FAQs

What if I am renting the property? A tenant generally does not pay for costs associated with fences, unless it is part of the lease. If you are renting and receive notice to repair or replace a fence, forward it immediately to your real estate agent or the owner.

What if my neighbour or I dispute the boundary? You may have to employ a surveyor to determine where the boundary is. Contact the Hobart Community Legal Service for assistance.

What if my neighbour and I agree? It is recommended that you put this agreement in writing, just in case there is any question later about the plans and how much each person has agreed to pay. This can be as simple as one of you completing the formal notice template (step two) and the other responding and identifying their portion of the cost that they agree to pay.

What if I receive notice from my neighbour and I do not agree? You have 21 days to object to any proposal to repair or replace a fence. This must be in writing and state the reasons why you object and sent to the person who gave you the notice.

What if my neighbour does not respond to my formal notice? Wait for 30 days. If you have received no objection you can recover from your neighbour half the cost of erecting the fence within 2 years from the date the fence was completed, plus interest.

What if my neighbour does not pay their share? Any disagreement about costs can go to arbitration. Contact Hobart Community Legal Service for advice.

What if I need to go onto my neighbour's property to repair or replace the fence? If there is no possible way to repair or replace the fence from your side of the boundary then you or your builders may go onto your neighbour's land to do this. Entry must be at reasonable times. If your neighbour's land is a crop, garden, orchard, plantation or shrubbery then you must get their permission first.

What if there is damage done to property as a result of the fence being repaired or replaced? Whoever causes the damage will have to pay compensation, even if the damage is done accidentally.

Notes:

Information taken from the Legal Aid Commission of Tasmania.

For further information visit www.legalaid.tas.gov.au or contact the Hobart Community Legal Service.

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This factsheet is intended to give general information about the law in Tasmania. While every effort has been made to ensure accuracy at the time of writing, the law is complex and constantly changing. Moreover, legal exactness is not always possible in a publication of this nature. The factsheet should not be used as a substitute for legal advice.

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