Caught in a Boundary Dispute? Know your rights

Fencing disputes are one of the most common types of disputes amongst neighbours across Australia. So what happens if you think the fence between your property and your neighbour's is in the wrong place?

The Dividing Fences Act 1991 (NSW) ('the Act') governs the rights, responsibilities and liabilities of owners and occupiers in relation to the boundaries and fences enclosing their properties. There are several sections which you should familiarise yourself with in the event that you find yourself stuck in the middle of a boundary dispute.

The requirement for notice to be given to carry out fencing work is described in section 11 of the Act. Importantly, an adjoining owner may require the other adjoining owner to contribute to the carrying out of fencing work by serving a notice in writing to that effect on the other owner. The notice must also contain the proposed boundary line, the type of fencing work and the estimated cost of the work. There is an assumption that this cost will be shared equally under section 7 of the Act unless specified otherwise in the notice.

It is important to keep in mind that an adjoining owner will not be liable to contribute to the cost of a dividing fence if proper procedure is not followed, namely – if work is carried out prior to notice being served, or before agreement on the terms of the works is reached.

The procedure for defining a boundary line is contained in section 18 of the Act. Extracted below:

> *"(1) An adjoining owner may give notice in writing to the other adjoining owner of his or her intention to have the common boundary line defined by a registered surveyor if the owners do not agree on the position of the common boundary line for the purposes of carrying out fencing work."*

Within 7 days after the service of the notice, the receiving owner is entitled to define the position of the common boundary line. This is traditionally done by the insertion of pegs into the ground along the boundary if satisfied with the proposed position, or to engage a surveyor to define the boundary.

If the owner receiving the notice has not engaged a surveyor within 1 month of receiving the notice, the owner giving the notice has the right to engage a surveyor.

It is essential to know your rights and obligations when engaging a surveyor. Under section 18(4) of the Act, if the registered surveyor defines the common boundary line as identical to the positioning of any pegs put in place by the owner who received the notice, that owner will be entitled to recover any costs incurred from the issuing owner.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
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Furthermore, if you cannot come to an agreement with your adjoining owner on the location of the boundary, you may be able to serve a 'Boundary Notice' on that owner. This involves a Determination of Title Boundary and is obtained by application to the Registrar General's Department. Once the correct boundary has been ascertained by an authorised surveyor and confirmed with the Registrar General's Department, you are entitled to commence works on moving the fence to the new and correct location. From this point on, the dispute should be resolved and the new boundary line should stand.

There is a set process defined in the Act that you must adhere to if you find yourself caught in a boundary dispute. It is important to follow this process to ensure that your rights are protected and you do not find yourself subject to any additional liability.

Bannermans Lawyers has considerable experience in boundary disputes and are happy to assist.

Key takeaways

- Fencing disputes are common among neighbours and governed by the Dividing Fences Act 1991 (NSW).
- Proper notice must be given before any fencing work can commence, or costs may not be recoverable.
- Adjoining owners can define the common boundary line through a registered surveyor if there is a disagreement.
- Failure to follow the correct procedures can lead to additional liabilities in boundary disputes.
- Bannermans Lawyers offers assistance in navigating boundary disputes effectively.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
4 May 2023

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
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