

10 DISPUTES WITH NEIGHBOURS

10.1 Introduction

Disputes with neighbours can be distressing so it makes sense to try to avoid confrontation with neighbours. If talking with neighbours does not solve the dispute then you might like to seek the help of an independent person who can talk to you both and point the way to agreement. Community Justice Centres can help with this. You can find them by telephoning the main regional office and contact details are set out in Chapter 14.

If you are not in an area where there is a Community Justice Centre, then try asking a person who you both respect, like a religious leader or a member of a community organisation, to mediate. A solicitor could also mediate the dispute for you.



If you are unable to resolve the dispute amicably, you should try the remedies listed below.

Under the *Access to Neighbouring Land Act 2000*, Courts have power to make orders permitting access to land by persons not otherwise entitled to that access for the purpose of carrying out work on their own land or carrying out work on utility services on that land, and to provide for the payment of repair and maintenance costs relating to utility services by joint users of services.

10.2 Fence disputes

- (a) My neighbour wants to erect a fence which is too expensive for me.

Under the *Dividing Fences Act 1991* in NSW, owners of neighbouring land must share the cost of building and maintaining a sufficient dividing fence. However your neighbour should consult you first and obtain a quote. If the fencing suggested is too expensive then make your own suggestions and obtain your own quote.

If you are renting the property give the quote to your landlord since they will usually be responsible for the cost.

If you are unable to agree with your neighbour then they can ask the Local Court to order you to contribute towards the cost of the fence. If you receive a notice from the Court see a solicitor, Legal Aid or a Chamber Magistrate. Chamber Magistrates are at most Local Courts and can give you free advice.

- (b) My neighbour wants to build a fence outside the true boundary between our land.

If you are worried about where the boundary lies you may find that when you bought your house your solicitor (if you retained one) organised a survey which will show you where the boundaries are. If you do not have a survey you can ask a surveyor to do one. The cost is likely to be \$500 - \$700. You could ask your neighbour to share the cost of employing a surveyor.

You may prefer to discuss the matter with your neighbour and agree where the fence should be placed. It is important to make sure that, in reaching this agreement, you do not lose land which rightly belongs to you.

- (c) My neighbours wants to build an ugly fence.

If there is a dispute which cannot be resolved then the Local Court can make orders as to the type of fence to be built. The Court will consider your views as well as factors applying to your neighbourhood.

10.3 Noisy neighbours

- (a) My neighbour cuts the lawn, revs his car engine and plays loud music at all times of the day.

The *Protection of the Environment Operations Act 1997* places restrictions on the times that certain activities can be conducted, and also deals with noise being made over long periods.

Generally, these noises are not acceptable before 7.00 am and after 8.00 pm, although music can be played until midnight. If your neighbour disregards these time limits, or the noise is very loud, and you have been unable to resolve the matter by discussion or mediation, then you can ring the police who have the power to issue a Noise Abatement Direction. It is an offence to disobey such a Direction. In some circumstances, you can also apply to the Local Court to obtain a Noise Abatement Order.

You can also complain to your Local Council who can issue a Noise Control Order which, if breached, can result in an on the spot fine.

10.4 Animals

- (a) My neighbour's dog frightens me and I think I could be attacked.

If the dog enters your land uninvited you have the right to ask that it be removed and restrained from entering your land again. If the dog continually enters your land uninvited, makes a lot of noise, defecates on your property, damages your property or chases a person or another animal, it might be considered a 'nuisance dog'. A Local Council officer can issue a notice against a nuisance dog which requires the dog's owner to stop it causing the nuisance.

You could also seek a Court Order to stop the dog coming on your land. You would need to see a solicitor, Legal Aid or a Chamber Magistrate.

If the dog is outside your land and on a public street and your neighbour refuses to control it, then complain to the Local Council. This is another type of behaviour which is classified as a 'nuisance'.

You can also complain about cats which make a lot of noise or which damage property. You should make your complaint to the Local Council.

10.5 Overhanging branches

- (a) My neighbour's tree overhangs into my backyard.

First, check with your Local Council that the tree is not a protected one. You may break or cut off any branches which overhang, as long as you do so from your property. It is better to warn your neighbour that you intend to do this - they might offer to cut the branches for you. In any event, speak to the Local Council to obtain approval.

10.6 Unpleasant odours

- (a) My neighbour lights bonfires/barbecues in their backyard and the smoke blows onto my land.

First, contact your neighbour to ask them to stop. If that is not successful, you can complain to your Local Council or to the Environmental Protection Authority (see Chapter 14 for contact details).

10.7 Objectionable behaviour

- (a) My neighbour parks his/her truck/car in front of his/her house and blocks my driveway.

You have the right to demand that your neighbour remove the obstruction. If he/she refuses you can get a Court Order to prevent them from continuing to do so. You would need to see a solicitor, Legal Aid or a Chamber Magistrate. You can also complain to your Local Council.

- (b) My neighbour is repairing cars in his backyard or running a business which is interfering with my peace and quiet.

Check with your Local Council whether this activity is against the zoning for your land, especially if your area is zoned Residential. There might also be rules governing your area. When land is subdivided the developer often creates rules known as "covenants" preventing certain types of behaviour or use of that land. Check with a solicitor if you think covenants might apply.

10.8 Strata title units

- (a) My neighbours and I live next to each other in a strata titled unit and their behaviour is objectionable.

Attend an Owners' Corporation meeting and complain. Your neighbours' behaviour may breach the Strata Title By-laws. There are clear procedures to be followed when a dispute arises within a strata scheme, including the Owners' Corporation issuing a notice requiring your neighbour to stop their objectionable behaviour.

If the dispute cannot be resolved within the Owners' Corporation, you can try to mediate the dispute. The Office of Fair Trading provides a mediation service through the Mediation Services Unit.

If the dispute cannot be settled by mediation, you can go to an Adjudicator at the Office of Fair Trading who will look at all the documents involved (you can make submissions to him or her) and make a ruling. If you are not happy with the outcome, then you can appeal to the Consumer, Tenancy and Trader Tribunal. You do not need legal representation at the Tribunal, though you can ask the Tribunal for permission to be represented if you prefer. Contact details are listed in Chapter 14.