

Your Rights Trees, fences and your neighbours

Disputes over trees and fences are a common cause of ill feelings between neighbours - trees that block your sun, roots that choke your drains, fences that your neighbours want built or replaced - often at considerable expense. Your differences can usually be settled by talking to your neighbours and coming to a compromise. If you are forced into a stand-off, legal action may be your only option. This could cost you anywhere from hundreds to thousands of dollars and could destroy neighbourly goodwill.

Trees

Sections 332 to 338 of the Property Law 2007 provide property owners with legal remedies where their neighbour's tree presents an actual or potential risk to life, health, property or obstructs your view.

These remedies are only available through an order made by the District Court, so you need to decide first whether the nuisance is worth the risk of damaging your relationship with your neighbour. Try to work out a thoughtful solution first. Your neighbour may be happy to help you with any work that needs to be carried out because of their tree/s.

If you can't come to a compromise you may have to go ahead with legal action. You will need to ask your lawyer to organise an application for a court order. If your application is successful, the District Court will send a

notice to your neighbour ordering action to be taken within a set time or they will have to appear in court. They can order a tree or any part of it, to be removed or trimmed in order to prevent the risk or nuisance that it is creating.

If the roots or branches of your neighbour's tree encroach on your land, you can cut them back to the boundary line. If you are cutting out part of the tree's roots or branches take care not to damage the health and stability of the tree or the ground around it.

When cutting back branches you must not do any more work than is necessary and no damage should result from your actions. You should not trespass on your neighbour's property or create any other problems for your neighbour. You must not poison the roots or spray the tree with herbicide, as the consequences would extend beyond your property.

Cuttings and fruit belong to the tree owner. If these end up on your property you can either put these back on your neighbour's property, taking care not to cause any damage, or ask your neighbour to remove them. If the trunk of the tree extends over the boundary, this does not give you the right to cut it down. If the tree is planted on the boundary, you are probably a co-owner.

If you have incurred costs from cutting back the roots and branches on your side of the boundary, you will probably not be able to claim them back from the tree owner. But if the roots of your neighbour's tree have damaged your drains or a branch falls on your house, they may have to pay the costs of fixing up the problem as well as any compensation that may be owed.

If trees on a neighbour's property are blocking sunlight or views from your house and garden then you may be able

to take legal action. To take legal action you will have to convince a court that the trees are having an adverse affect on your property and your enjoyment of it. If the court agrees with you they will issue an order requiring the neighbour to cut these trees back.

If the court does agree to make an order in your favour it can impose any conditions it thinks fit, including requiring the defendant to pay for any damage to your land or property or requiring you to pay for the cost of undertaking works.

Fences

Your legal rights are covered by the Fencing Act 1978. Generally, if you want to build a fence on a common boundary, or upgrade an existing inadequate fence, you and your neighbour must share the cost of a basic fence.

Make sure you introduce yourself to your neighbour and be prepared to come up with a realistic proposal. Don't expect your neighbour to automatically have the same ideas on style, or budget as you.

If you can't reach an agreement, you can't just go ahead and put up a fence on the boundary line. You have to follow a process. First, you must serve a notice under the Fencing Act 1978 on your neighbour, giving the details of your proposal in writing. Your neighbour then has 21 days to serve a cross notice if they don't agree. You cannot start work during the 21-day period while you wait for a reply.

Schedule 1 to the Fencing Act 1978 contains a template notice which you should use; this can be viewed on the Government Legislation website.

If you reach a stalemate on notices and cross-notices, your options are to go to mediation, arbitration, the Disputes Tribunal or the District Court. Another option is to build a fence inside the boundary on your own property. You will have to pay for the entire fence yourself and your neighbour could still insist on a boundary fence at a later stage.

The height of the fence cannot be higher than two metres unless you get a building consent and, normally, planning consent from Council. The fence should be placed on the boundary line. If it is going to go more on one side than the other, this needs to be agreed by the owner on the other side.

If the owner doesn't agree you can seek a District Court order where there is no other practical alternative. The District Court may authorise you to enter the neighbour's property if this is necessary to build the fence, even if the neighbour is not contributing to the cost of the fence, and vice versa.

If a fence is damaged, you can pay to make immediate repairs to the fence and recover half of the costs from the neighbour. If it has been destroyed and you need to replace it, it must be replaced with something similar. If you are responsible for the damage, for example, you flattened it with your car, you will have to pay to replace or fix it.

Council involvement

Council has no jurisdiction in private disputes about trees or fences. This means the Council has no power to make you or your neighbour do anything where the dispute involves private property.

However, in the Matamata-Piako District several trees are listed as significant trees and are protected under the District Plan. There are substantial fines for ignoring protections, so before you start work on a tree, you should check with Council to see whether you need special permission.

If your tree is creating problems near a road or public land, Council can issue a notice ordering you to remove or trim it. This might happen if the tree is damaging roads, drains or other public amenities, or if it obstructs traffic or the view of road traffic. Several other statutory authorities also have this right.

If you want to challenge the Council's view you can apply to the District Court to have the notice set aside. But you will need to be quick: in some situations you will only have 10 days to do this. If you ignore the notice, Council can then enter your property and carry out the work. In this case you will have to accept the cost. In an emergency where there is danger to life, property or roading, then we can do this at your cost with only verbal notice being provided beforehand.

The Council must also look after its own trees and fences according to the same basic rules as everyone else. However, if you do live next to a Council reserve there will normally be a fencing covenant registered against the title to your land. This will prohibit you from asking Council to contribute to half the cost of a fence. You cannot ask Council, and Council cannot require you to contribute to the cost of a fence fronting a road.

If you do have any concerns in relation to Council land, the first step is to contact us to let us know there is a problem.

Resolving disputes

If a tree owner and a distressed neighbour can't agree on what to do, several courses of action can be taken.

Mediation and arbitration

Both mediators and arbitrators are available to help resolve a dispute. However, neither party can be forced to take part in either of these processes. A mediator will help you negotiate a solution to the dispute. An arbitrator will impose a solution. Mediation is less formal and usually less expensive, but cannot be enforced by a court unless you have included enforcement procedures in your agreement. An arbitrated settlement is backed by the courts.

Before you start, you should work out the likely costs. Mediation and arbitration are charged on a time basis. Both parties are expected to pay an equal share, unless another agreement is reached.

Disputes Tribunals

Disputes Tribunals can hear claims for damages to property for amounts up to \$15,000 (or \$20,000 if the parties agree). Typical examples are claims for damage to drains, driveways, foundations and fences.

Although a tribunal referee will generally not be able to hear claims when the dispute is over loss of light, sunshine, views, or involves removal or trimming of the tree. In this case, a referee can try to help the two sides reach agreement. If your neighbour decides to ignore this, you will have to go to the District Court to try to get the problem resolved.

District Court

Claims for any value, or claims that involve the loss of light, sunshine, views, or that involve the removal or trimming of trees, can be taken to a District Court. Claims through the District Court will almost certainly require the help of a lawyer and can be expensive.

To find out more about New Zealand Legislation go to:
www.legislation.govt.nz

Disclaimer

This publication is intended as a general guide and is not intended to be a substitute for advice from a legal professional. If a dispute arises that relates to any of the issues in this publication you should consult your lawyer.