
OVER THE FENCE ... ARE YOUR NEIGHBOURS



NEW ZEALAND
LAW SOCIETY

Contents

1. **Over the fence ... are your neighbours**
2. **Boundaries and encroachments**
3. **Fences**
4. **Nuisance and trespass**
 - **Animals**
 - **Noise, vibration and smell**
5. **Use of land and buildings**
 - **Resource management law**
 - **Buildings**
 - **Excavations**
 - **Water**
 - **Swimming pools**
 - **Trees and structures**
 - **Easements and rights of way**
 - **Landlocked land**
6. **Legal remedies against neighbours**
7. **How to prevent neighbourhood disputes**
8. **Do the right thing – see your lawyer first**

1. Over the fence ... are your neighbours

Disputes between neighbours can arise over:

- boundaries and encroachments;
- fences;
- nuisance and trespass;
- animals and noise;
- use of land or buildings;
- trees and structures;
- easements and rights of way; and
- landlocked land.

Ideally, you and your neighbour will be able to resolve any problem by discussing it together. However, if necessary, the law may be able to help resolve the matter. While the law provides a remedy in many instances, it does not cover every case in which disagreements arise between neighbours. Your lawyer can advise you about your rights and any remedy available to protect you from your neighbour's conduct.

2. | Boundaries and encroachments

When you bought your property, your lawyer probably gave you a plan taken from the title showing the boundaries of your land. These boundaries were fixed by survey when the land was first subdivided and cannot be altered without your consent and the consent of anybody else whose property is affected. In the event of a dispute, a surveyor can always establish where the boundary line runs and, if necessary, can replace survey pegs which have been lost or removed. When purchasing the property it is always important to check the physical boundaries and to establish the boundary pegs.

An encroachment can occur when a building or a fence is over the boundary. This is technically a trespass for which the encroaching owner is legally responsible, whether or not they erected the building or fence. The court has certain powers to help in the case of encroachments. Your lawyer can advise you about these.

3. | Fences

Most of the law relating to fences is contained in the Fencing Act 1978. Property owners can enter into agreements or covenants concerning fencing matters. These may be registered against the titles of the affected land so that subsequent owners will be bound for up to 12 years after registration. This can be a useful way to safeguard against future misunderstandings.

Unless there is an agreement otherwise with your neighbours:

- Fences must be on the boundary line, though there is provision for give and take where the true boundary is difficult to fence.
- The cost of building or repairing a fence is borne equally between adjoining owners, unless one owner damages it, in which case the cost of repairs will fall on that owner.

- You can compel your neighbour to contribute to the cost of the fence bordering your two properties by following the procedures set out in the Fencing Act. However, it is important to comply with those procedures **before** a fence is erected. This includes giving notice to any adjoining owner that work is to be done and that you would like adjoining owner to contribute to the cost of the work. You must also estimate the cost and specify consequences of failure to comply. If the correct procedure is not followed the occupier of any adjoining land will not be liable to contribute to the cost of the fence. The neighbour can object, in which case a District Court or Disputes Tribunal will decide the issue.
- Developers of new subdivisions usually exempt themselves from contributing to the cost of a fence.
- Under the Property Law Act 2007, it is possible to apply to a District Court for an order to remove or alter a fence that is detrimentally affecting land or obstructing a view. Usually the cost of any removal falls on the person applying for the order.
- Some district and regional plans regulate matters such as the height and colour of fences and how close they may be built to rivers, streams and lakes.

The court can deal with all disputes concerning a fence, such as its type and cost, but it is better to reach agreement if you can. Your lawyer knows the details of the Fencing Act and can advise you of your rights and obligations.

4. | Nuisance and trespass

Most people know that when they enter their neighbour's property without consent they are trespassing.

Interference with a neighbour's right to enjoy their land can amount to legal nuisance. The law has always been careful to balance one person's right to enjoy their land with a neighbour's right to be protected from interference. Generally a legal remedy is given when nuisances are unreasonable and substantial. Some examples follow.

Animals

In most cases the law regards keeping domestic animals as a person's natural right but if, because of their number or type, noise or smell, the effect on adjoining owners is severe and unreasonable, a legal remedy could be available. Most local councils have bylaws that control the keeping of domestic animals in towns and cities (including how many may be kept).

If your neighbour's domestic animals trespass on your land, you have certain rights to remove them or have them removed. The owner of an animal is liable for the damage it causes while trespassing, but there are special provisions for cats, dogs and stock, as follows:

- **Cats** are allowed to trespass and their owner is not liable for any damage they do unless they have a "mischievous propensity".
- **Dogs**, on the other hand, are closely regulated and generally the owner will be liable for any damage their dog does while trespassing or not under proper control. The control of dogs is usually dealt with in local council bylaws and the Dog Control Act 1996 requires dogs to be under direct control at all times. People in charge of a dog in public must use or carry a lead. A dog not under control may be impounded at the owner's cost. Dogs that attack people, domestic animals, stock or protected wildlife or rush at vehicles may be seized and destroyed by any witness or victim of such an attack; the dog owner is liable to be convicted and fined, and the court **must** order destruction of the dog unless the owner can establish exceptional circumstances. Local councils may classify dogs as 'menacing' or 'dangerous' – such dogs have to be muzzled in public and neutered. 'Dangerous' dogs must be fenced in so people can access the dog owner's house without exposing themselves to risk of attack. Certain types of dog must automatically be classified as 'menacing' and can no longer be imported (Brazilian Fila, Dogo Argentino, Japanese Tosa and American Pit Bull Terrier). All dogs registered from 1 July 2006 and all dogs classified as 'dangerous' or 'menacing' since 1 December 2003 will have to be micro-chipped. Local councils can require dog owners to remove faeces left by their dogs and dog control officers may require the owner of a persistently barking dog to curtail the nuisance or remove the dog.

- **Stock** owners are liable for any damage caused by their stock wandering onto the road if the presence of the stock on the road is due to the owner's negligence – that is, where the owner has not taken sufficient care to prevent stock wandering or to warn road users of the likely presence of stock. Where stock trespasses onto someone else's land, the occupier of that land may claim damages from the stock owner in circumstances outlined in the Impounding Act 1955. However, the occupier cannot recover damages unless the occupier's land is adequately fenced to keep out the stock or the lack of fencing did not contribute to the trespass.

Noise, vibration and smell

The law recognises that people have to live together in communities and there must be a certain amount of give and take before the right to a legal remedy arises. Playing a stereo loudly, machine noise or smoke from a rubbish fire are not legal nuisances if they occur only occasionally. It all comes down to a question of degree and, to some extent, intention. In many cases, actions by neighbours that interfere with the enjoyment of your property may be contrary to local bylaws or fire regulations. Your lawyer can advise you in this complex field.

The Resource Management Act 1991 provides various remedies in the case of persistent noise and other nuisances. In most situations a person can apply to the Environment Court for an enforcement order. Local council enforcement officers also can issue abatement notices or excessive noise directions to control noxious elements, adverse effects on the environment or unreasonable noise.

In addition, the Resource Management Act imposes a specific duty on occupiers of land or people using lakes, rivers and the coastal marine areas to avoid unreasonable noise and it allows enforcement officers to require occupiers to reduce noise to a reasonable level. Where a person fails to comply with an excessive noise direction, an enforcement officer or the police may take direct action and seize or render inoperative instruments, appliances, vehicles or machines.

Unpleasant smells or accumulations of rubbish, if persistent, may amount to nuisances under the Health Act 1956 or may be dealt with by way of enforcement orders or abatement notices under the Resource Management Act.

5. | Use of land and buildings

Resource management law

District plans and other laws control how a property can be used. Through its local council, each community has separate zones for residential, rural, commercial and industrial uses that limit what landowners can do with their land. The district plan helps protect you - for example by preventing your neighbour establishing a car-wrecking yard or a fish-and-chip shop next door without you having the right to object. When deciding what to use your property for, you should therefore check with the local council that the proposed activity is allowed by the district plan. If not, you may need a resource consent. If you need a resource consent and fail to obtain one, the local council can require you to cease your activities.

You are entitled to make inquiries at your local council about proposals your neighbours have submitted. Local council records relating to applications for resource consents and building consents are public records.

Where your property includes land within the coastal marine area or includes the bed of a lake or river, certain activities such as erecting structures, disturbing the beds or destroying plants may be governed by a regional plan or regional coastal plan, or may require a resource consent.

You should know the effect of the resource management laws so far as they affect your property. If you don't, your lawyer can tell you.

Buildings

Building work, building extensions and alterations to buildings must comply with the Building Act 2004 and national building code and, where appropriate, with the Resource Management Act. Usually a building consent issued by the local council is needed. A building consent is different from a resource consent, and both may be required. Neighbours cannot complain if the proper building consent has been issued and complied with, but if building consent has not been obtained the council can issue a notice requiring the owner to rectify the work (this can include removal). Failure to comply with a notice could result in the council entering the land to carry out remedial work. The owner may also have to pay substantial fines.

Where a building is dangerous or insanitary, a council can issue a notice requiring that work be carried out to correct the situation.

Excavations

Landowners are allowed to dig or excavate their own land, but neighbours are entitled to “natural support”, that is lateral support of the land in its natural position. Excavation that appears to remove support is not in itself sufficient to make the excavating owner liable - damage must have occurred by subsidence. On the other hand, buildings do not enjoy a right of support so an excavator will generally be liable only for damage to the building (or to the land if the building’s weight led to subsidence) when there is negligence. Local council requirements may require retaining walls to be erected when excavations are undertaken.

Water

A landowner must accept water flowing or draining naturally from neighbouring land but is able to take defensive steps as long as they don’t cause damage to neighbouring land. However, unless an easement has been granted, landowners need not accept water collected artificially on neighbouring land. Therefore the owner of a swimming pool which leaks or releases water over a neighbour’s property may be liable for resulting damage.

Swimming pools

Private swimming pools must be fenced with childproof fences according to the Fencing of Swimming Pools Act 1987. There are fines for non-compliance and the court can order the pool to be kept empty until the act is complied with.

Trees and structures

Where land is zoned and used for residential purposes, a District Court can make an order for a tree or structure to be removed if there is actual or potential danger to the applicant’s life, health or property, if there is undue obstruction of a view or if there is undue interference with the reasonable enjoyment of land. In each case the court is required to balance the “hardship” between the competing parties. Generally the cost of carrying out any work is borne by the person applying for the order.

Subject to these provisions, both you and your neighbours are entitled to plant and grow trees as part of your natural right of land ownership. If tree roots or branches cross or overhang the boundary, this amounts to nuisance and they may be cut or trimmed back to the boundary (but not further than that) by the owner of the adjoining land (unless the tree is protected because of historical or environmental significance). Such branches or roots or any fruit remain the property of the tree-owner, however. If roots of your neighbour's trees block drains on your land, you can apply for a court order to have the drain unblocked at your neighbour's cost or for damages.

Easements and rights of way

There may be arrangements between your property and neighbouring properties relating to rights of way, drains or other matters. These arrangements may require you to do something (a positive easement) or require you to allow something to be done (a negative easement).

The law now requires all occupiers of land who use a vehicular right of way to contribute to its cost, unless a contrary intention is expressed in the document creating the right of way.

Recent changes to the law have increased the court's power to decide issues and disputes in relation to easements and rights of way. The court may now modify or extinguish them.

Landlocked land

In appropriate circumstances the court can order that access be granted to landlocked land. Before allowing access, the court has to consider the type of access when the applicant acquired the land, how the land became landlocked, the conduct of the parties, hardship and other relevant factors. Access may be granted on conditions that can include compensation, land exchange, fencing, maintenance, survey or costs.

6. | Legal remedies against neighbours

There are several legal remedies available in neighbourhood disputes. When the argument is over fences, boundaries or encroachments, the Fencing Act or the Property Law Act applies. In cases of private nuisance, the court can grant an injunction (an order directing the nuisance to cease) and award damages.

If the activity is contrary to local bylaws or district or regional plans or other regulations, the local council concerned has responsibility to prosecute, but you may still need your lawyer's assistance to pursue your legal rights.

Neighbourhood disputes are ideally suited to mediation. Your lawyer can suggest a suitable mediator.

7. | How to prevent neighbourhood disputes

The essence of being a neighbour is neighbourliness - that combination of respect and consideration for others that enables most people to live on good terms with those next door. A dispute between neighbours can upset relationships and lead to discomfort and unhappiness.

While using your lawyer to advise you on your rights and remedies, remember it is often best to try to resolve any problems by discussion. Talk to your neighbours about it and, if necessary, write to them - but not in an abusive or unreasonable manner. With goodwill, most disputes between neighbours can be settled.

8. | Do the right thing – see your lawyer first

Lawyers deal with many personal, family, business and property matters and transactions. No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour as set out in their rules of conduct and client care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our brochure *Seeing a lawyer – what can you expect?*

This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer's skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter. There could also be other costs to pay, such as court fees.

You should discuss with your lawyer how you will pay for the work and advise if you don't want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The brochure *Seeing a lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer.

Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 (or at one of the offices listed below) or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate. You can also

check this on the register accessible through the website www.lawsociety.org.nz

If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, tel 0800 261 801.

If you don't have a lawyer:

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;
- check these websites:
 - www.lawsociety.org.nz/home/for_the_public/find_a_lawyer
 - www.familylaw.org.nz
 - www.propertylawyers.org.nz
- contact your local New Zealand Law Society branch:

Auckland (including Northland, South Auckland, Coromandel) (09) 304 1000

Waikato Bay of Plenty (including Taupo) (07) 838 0264

Gisborne (06) 867 1562

Hawke's Bay (06) 835 1254

Taranaki (06) 758 3238

Wanganui (06) 345 7092

Manawatu (06) 356 2214

Wellington (including Wairarapa) (04) 472 8978

Nelson (03) 545 2613

Marlborough (03) 578 7269

Canterbury-Westland (03) 366 9184

Otago (03) 477 0596

Southland (03) 218 8778

Law Awareness Programme

The New Zealand Law Society publishes this pamphlet as part of its Law Awareness Programme to inform you of your legal rights, the law and how lawyers can help you. The full list of titles in this series is:

- Buying or selling a property
- Over the fence ... are your neighbours
- Family violence
- What happens to your children when you part?
- Dividing up relationship property
- What happens when your relationship breaks up?
- Living together
- The family trust
- Making a will and estate administration
- Powers of attorney
- Motor vehicles, accidents and alcohol
- You and the police
- Giving evidence
- Going into business

Other brochures

The Law Society also publishes the following brochures outlining the standard of service that clients can expect from their lawyers and about the Lawyers Complaints Service:

- Seeing a lawyer – what can you expect?
- How to complain about a lawyer

Copies of the Law Awareness pamphlets and the other brochures may be obtained from the New Zealand Law Society, PO Box 5041, Lambton Quay, Wellington 6145, tel (04) 472 7837, fax (04) 473 7909, email pamphlets@lawsociety.org.nz or from Citizens Advice Bureaux or Community Law Centres. They are supplied free to individuals and non-profit community service organisations, and at a small charge to others. They are also available on the Law Society website – www.lawsociety.org.nz/home/for_the_public/how_can_we_help_you

Notes

To the best of the New Zealand Law Society's knowledge, all information in this pamphlet is true and accurate as at the date below. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this pamphlet. It is recommended that readers consult a lawyer before acting on this information.

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**PROPERTY
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