

FACT SHEET

FENCES, GATES & RETAINING WALLS

There is often confusion when it comes to who is responsible for the repairs and maintenance and replacement of fencing, gates & retaining walls.

We hope that with this Fact Sheet we can provide clarification on who is responsible for replacement, repairs and maintenance when it becomes necessary.

Dividing Fences & Gates

Under the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011, *Dividing Fence* is defined as a fence on the common boundary of adjoining lands.

Firstly, it is important to note that Dividing Fences is a maintenance issue that is not specifically covered in the Body Corporate & Community Management Act, however Section 311 (1) & (3) states:

(1) *The body corporate for a community titles scheme is taken to be the owner of the scheme land for the following Acts –*

- Land Act 1994
- Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

(3) *However, for the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011, owners of adjoining lots included in a community titles are taken to be the owners of adjoining land.*

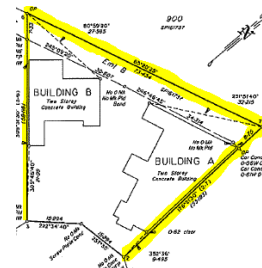
It is also important to identify the type of plan that your scheme is registered under – whether Building Format Plan (BFP) or Standard Format Plan (SFP) as this will define where the boundary of your lot is and will assist with determination of who is responsible for the dividing fence and / or gate.

There are generally 3 different dividing fence situations that can occur in a strata scheme, these include:

1. Boundary Fence

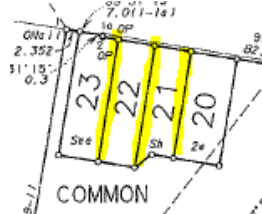
The fence that surrounds a scheme is defined as the boundary fence. This is the case even if the fence also forms the boundary of a lot.

In the majority of cases this is the responsibility of the Body Corporate and where there is a neighbour the cost is shared equally. This is the case regardless of whether the scheme is registered as a BFP or SFP. An example of this is:



2. Dividing Fence or Gate between two Lots

A dividing fence that separates two lots is the responsibility of both lot owners to share the cost equally. In relation to the gate this also extends to any associated hardware forming a part of the gate



3. Dividing Fence or Gate between a lot and common property

Where a fence or gate divides common property and the lot, the cost of the maintenance or replacement is shared equally between the Body Corporate and the Lot Owner. In relation to the gate this also extends to any associated hardware forming a part of the gate.



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Basic rules for Dividing Fences

The Queensland Government website, under Housing and Neighbours notes the following:

1. There should be a 'sufficient' dividing fence between properties if an adjoining owner requests one – even if one or both pieces of land are empty
2. Usually neighbours must contribute equally to the cost of building and maintaining a dividing fence
3. You should not attach anything to a dividing fence that could damage it
4. In most cases, issues about dividing fences need to be solved by the owners of the properties. If you are a tenant, unless you have a long-term lease on the land, you should refer queries over a dividing fence to the property owner or agent.

A 'sufficient' dividing fence is considered to be;

- Between 0.5 metres and 1.8 metres high
- constructed mainly of prescribed material including wood (e.g. timber palings and lattice panels), chain wire, metal panels or rods, bricks, rendered cement, concrete blocks, hedge or vegetation and other materials that fences are ordinarily constructed from.

When fencing works is needed, you should give your neighbour a letter telling them about the fence, how it will be built and the estimated cost – including their contribution. This is called a Form 2 - Notice To Contribute for Fencing Work and should be accompanied by at least 1 quote – but as a matter of

courtesy you should supply 2. If the neighbour believes that the quotes are too high, they can obtain their own quotes.

It should also be noted that if either party want to undertake more work than is necessary e.g. replace a sufficient timber fence with a colorbond fence, they should pay the extra cost.

If an agreement cannot be reached with your neighbour regarding the fence or gate, the Queensland Government have tips on how to resolve these disputes, or as a last resort, the Queensland Civil and Administrative Tribunal (QCAT) can help resolve these disputes up to a value of \$25,000.00

Retaining Walls

Retaining walls are not classed as fences under the *Neighbourhood Disputes (Dividing Fences & Trees) Act 2011* and are generally built to support built up or excavated earth. They are generally not a matter of joint responsibilities for neighbours as they usually benefit one neighbour more than the other.

However, QCAT can make orders about carrying out fencing work that includes work on a retaining wall only if the repair of the fence is dependent on the work for the retaining wall.

If your dispute is in regards to a retaining wall, we would recommend that you obtain legal advice.

SOURCES

<https://www.legislation.qld.gov.au/view/pdf/2017-07-03/act-1997-028>

Body Corporate and Community Management Act 1997, section 311, Current as at 3 July 2017, Page 271-272

<https://www.legislation.qld.gov.au/view/pdf/2017-07-03/act-2011-025>

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011, section 12, 19, 21, Current as at 3 July 2017, Page 11, 15, 16

<https://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/avoiding-fence-tree-and-building-disputes/your-responsibility-as-a-fence-owner>

https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/180483/form-2-ndr.pdf

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