Neighbours and the LAW

- Ownership and Other Interests in Land
- Trees
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- Other Boundary Issues
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This booklet focuses on legal issues between neighbours. It looks at some of the common disputes between neighbours such as boundary positions, fencing work, neighbourhood noise and pet animals. Each section covers what a person’s rights are and what steps, both legal and practical, you can take to address a problem.

Unless you live on a boat, and probably even then, chances are that you have neighbours, and you are a neighbour to someone else. Neighbours can be great sources of friendship and assistance, and people can find that they have more in common with their neighbours than just a boundary fence.

The law imposes many obligations on landowners and occupiers. Likewise, the law confers rights on owners and occupiers of land. Those rights and obligations come from a variety of sources and in the modern social order the landowner or occupier faces a maze of principles, laws, statutory provisions, regulations, by laws and codes.

NEIGHBOURHOOD DISPUTES

A dispute with a neighbour can be particularly difficult. The close proximity of your neighbours means that you are likely to have frequent contact with them. There are many benefits to having good neighbours, and so it is helpful to maintain a good relationship. If you have a problem with a neighbour, it is always best to talk to your neighbour and attempt to sort out the problem through informal communication before taking any legal steps.

Litigation can be expensive and stressful and often results in parties developing resentment towards each other and as a result, being even more unwilling to reach a reasonable compromise.

If talking to your neighbour is not working at all, before taking legal action, consider taking your dispute to a Community Justice Centre (CJC). See Mediation and Community Justice Centres, p 13.
Ownership and Other Interests in Land

To understand what rights you have in relation to your property or apartment and what rights you have in relation to your neighbour, it is important to first find out what is the nature of the title to your property. It may be important to know what your neighbour’s rights are and whether they are the ‘owner’, a ‘tenant’, a fellow strata title unit holder etc.

The law relating to property and title is fairly complicated but the following summary provides an overview of the some of the main kinds of titles.

FREEHOLD
If the interest in your land is freehold, it means you are the ‘owner’ of the land and any buildings on it. You can own the land under either old system or Torrens title.

LEASEHOLD
A lease or tenancy is an interest in land given by a landowner to another person for a fixed period of time. As a tenant your rights are governed by a lease agreement with the ‘lessor’ (the landlord). As a tenant you have a right to be the exclusive occupant of the property.

The Residential Tenancies Act 1987 (NSW) sets out the rights and responsibilities of tenants and landlords. The Act also covers the powers of the Consumer, Trader and Tenancy Tribunal in dealing with disputes between landlords and tenants.

The owner may also impose obligations on the tenant under the terms of a lease. For example, a landlord can require that no pets be kept on the property. It is important to carefully read the terms of the lease to see what your rights and obligations are in relation to the property.

In relation to dealings with neighbours, there are some things a tenant needs permission from the owner to do. For example, a tenant needs permission from the landlord to consent to an access order to enter land.

The Tenants Union NSW can help with information in relation to tenants’ rights and responsibilities, see p 50 for contact details.
Another form of home unit ownership is company title, which involves ownership of shares in a company that owns the land and building. This is an older form of unit ownership than strata title. Under company title, a unit owner does not own land, only shares in the company. Instead of holding a title deed, they have a share certificate as evidence of ownership. A person’s right to sell or transfer the shareholding is subject to the approval of the company, which can be withheld. This can be an advantage to other shareholders, as it gives them some control over who their neighbours will be.

Rules concerning the occupation of and the right to lease the flat may be made by a majority vote of the company’s shareholders.

The English system of real property law and conveyancing, although adopted by the Australian colonies, was not entirely suited to the conditions of the new settlement. English land law was complex and establishing title often involved tracing title back through a chain of events and documents. If one document was deficient in some way, then there would be a defect in title. This means that title was only as strong as the weakest document in the chain of title.

Sir Robert Torrens, who emigrated to South Australia in 1840, recognised the problems with the old system of title and its obvious unsuitability to Australia, and devised a new system of registration.

Torrens’ proposals included a single document evidencing title to each parcel of land – the ‘certificate of title’. All transactions affecting the land would be recorded on this document. This document would be held by the Registrar-General and would be available for public inspection, with a copy given to the landowner.

The legislation implementing Torrens’ reform proposals, the Real Property Act 1858 (SA), came into operation in South Australia on 1 July 1858. It was slowly taken up by other states and introduced into New South Wales by the Real Property Act 1862 (NSW). This was replaced by the Real Property Act 1900 (NSW).

Today, most land is held under Torrens title although there is still some land subject to the old system of land title.

If you purchase old system title, however, it is automatically converted to ‘qualified’ Torrens title. This conversion occurs without charge to either buyer or seller.

1. P Butt Land Law.
STRATA TITLE

A strata title is the most common title associated with apartments and town houses and is evidence of ownership of a unit, which is called a ‘lot’, in a strata plan. A strata plan divides a building and its associated land into lots, each of which has a strata title, and usually common property.

Strata schemes are governed by the Strata Schemes Management Act 1996 (NSW). The registered owners of all the lots in the strata plan form the ‘owners corporation’ which has powers and responsibilities to administer the building and care for common property.

By-laws are the rules and regulations, which define the powers and obligations of the owners corporation and lot owners. It is an obligation of each unit owner to comply with the by-laws and, in particular, to behave in a manner which will not offend other residents or interfere with their peaceful enjoyment of that property. Additional obligations include not carrying out alterations to the lot without consent from the owners corporation and local authority when that consent is required by law. Some by-laws place restrictions on the behaviour of residents, for instance not allowing them to keep pets. Within some limits the owners corporation can alter add or delete by-laws.

The Strata Schemes Management Act sets out a process for resolving disputes between occupants of strata schemes, or between the owners corporation and an occupant. If discussion with each other does not work, you need to attempt to resolve the dispute via mediation before a dispute can go to the Strata Schemes Adjudicator. If mediation fails, you can apply to the Adjudicator for an order. Adjudicators are Members of the Consumer, Trader and Tenancy Tribunal.

If you are unhappy with the decision of an Adjudicator you can appeal the decision within 21 days to the Consumer, Trader and Tenancy Tribunal (CTTT). The CTTT can either dismiss the case if it considers the Adjudicator’s order appropriate or it can make a different order.

COMMUNITY TITLE

This form of land ownership is similar to strata title. Community title is regulated by the Community Land Management Act 1989 (NSW) and the related regulations. Under this legislation, large parcels of land can now be developed with a common theme. The developer acquires the land and provides for the roads and amenities, which may include a children’s playground or a tennis court.
The land is divided into small lots or into neighbourhoods and the community assumes responsibility for looking after the parcel once the development is completed. Individual lot owners are responsible for the care and maintenance of their own homes and the curtilage around it.

Under legislation, a number of associations are formed to administer the developed areas of the projects as these occur. These associations can make by-laws which govern the rights and obligations of each proprietor in the Community Title Scheme.

The by-laws for a scheme may relate to the control or preservation of the essence or theme of the development under the scheme by:

- limiting occupancy under the scheme to persons of a particular description
- fixing the architectural, building or landscaping styles permitted
- limiting the kind of materials that may be used in buildings and other structures
- requiring that specified association property be used only for particular purposes
- imposing any other kind of restriction.

The community titles legislation also sets out dispute resolution procedures. These involve mediation, adjudication and any appeals are taken to the Consumer, Trader and Tenancy Tribunal.

**CO-OWNERSHIP**

Where two or more people simultaneously share the same interest in property they can do so either as joint tenants or tenants in common.

**Joint tenancy**

A joint tenancy is a common way for people to share an interest in property. Joint tenants possess a right of survivorship. This means that the interest of a deceased joint tenant passes to the surviving joint tenant(s).

To create a joint tenancy four ‘unities’ must be present:

1. Unity of Time: all the joint owners must acquire their interest in the property at the same time.
2. Unity of Title: all the joint owners must acquire their interest from the same transaction.
3. Unity of Interest: all the joint owners interests must be identical in nature, extent and duration.
4. Unity of Possession: each joint owner has equal right to possession of the entire property.
Tenancy in common

Tenants in common own distinct shares in one property. Such shares may be of unequal proportion. Each tenant has an equal right to possession of the whole property, but not a right to exclusive possession of a particular part. A tenant in common may deal with their respective shares as they wish and this will affect the tenancy of the other co-tenants.

WHO IS THE OWNER OF THE LAND?

To find out who is the owner of a property, you can make a search at the Department of Lands Head Office in Sydney (for contact details, see p 52). The Department of Lands keeps ownership records for all the property in New South Wales. You can also search the website: www.lands.nsw.gov.au. There is a fee to make a search.

The search will also show whether the owners are joint tenants or tenants in common. It will also show the name of anyone else with a registered interest in the property, such as a mortgage or a lease.

The local council will also have a record of the owner as a ratepayer.
Residential Parks, Retirement Villages and Public Housing Tenancy

RESIDENTIAL PARKS

Residential Parks include caravan parks, manufactured home estates and establishments often called ‘mobile home villages’ or ‘relocatable home parks’. The Residential Parks Act 1998 (NSW) and the Residential Parks Regulation 2006 (NSW) regulate many aspects of residential parks.

If you live in a residential park, your rights and responsibilities in relation to your neighbours and the park itself will be, to a large extent, governed by the agreement you and the park owner enter into when you move into the park, and the park rules. There are different types of agreements depending on whether you are renting a site for your caravan or moveable dwelling, or renting one of the park’s caravans or homes.

Park rules

The park owner may make park rules about the use, enjoyment, control and management of the park. All park rules must be in writing, and the law requires the park owner to give you a copy of any park rules at or before the time you sign the agreement.

Park rules can cover:

• noise limits
• motor vehicle speed limits within the park
• parking
• garbage disposal
• pets
• playing games and other sporting activities
• use and operation of park facilities
• maintenance standards for a home you own yourself
• reasonable landscaping rules for the site
• or any other matter prescribed by the regulation.
Park rules form part of the agreement but must not conflict with residential parks laws or any other laws.

The park owner can change any park rules but must first give each resident written notice of the change (*Residential Parks Act 1998*, section 64). Residents must have 60 days notice of the change except for changes that affect use of recreational facilities, which only require seven days notice.

**Challenging park rules**

A resident may apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for an order that a new or amended park rule is unfair.

The tribunal has the authority to:

- set aside the rule
- modify the operation of the rule in its application to some or all or the residents of the park
- uphold the rule.
The tribunal can also hear disputes about the legal validity of existing park rules.

**Park liaison committees**

Under the *Residential Parks Act 1998* (NSW), a park owner must set up and maintain a Park Liaison Committee if:

- the park has 20 or more sites occupied by persons under tenancy agreements, or
- a majority of those residents request it (section 66).

Residents choose their own representatives and have a majority on the committee.

The Park Liaison Committee is designed to be a consultative and advisory body, to assist management in making decisions which affect residents. The types of matter a Liaison Committee deals with include:

- preparation of new park rules
- observance of current park rules
- provision of private mail facilities
- provision of rent payment facilities
- development of behaviour standards
- policy on the trimming of trees
- other functions that may be prescribed by the regulations.

The Office of Fair Trading has published guidelines on the procedures for the operation of Liaison Committees and the election of resident representatives. Copies can be obtained from Fair Trading Centres.

**RETIREMENT VILLAGES**

A retirement village is a complex containing residential premises that are predominantly or exclusively occupied by retired persons who have entered into village contracts with an operator of the complex. The *Retirement Villages Act 1999* and the *Retirement Villages Regulation 2000* govern the operation of retirement villages and the rights and duties of owners and occupiers.
**Village rules**

Written rules relating to the use, enjoyment, control and management of a retirement village may be made by the operator of the complex. The rules can relate to:

- persons other than residents or employees of the village living in the village
- visitors, including overnight or short-stay guests
- noise
- parking motor vehicles
- disposal of refuse
- keeping pets
- gardening and landscaping
- use and operation of services or facilities (including restrictions on their use)
- any other matter prescribed by the regulations

The operator of a retirement village must propose an amendment to the village rules if:

- minimum of five residents, or ten per cent of the residents, (whichever is the greater) of the village (or, if the village has fewer than ten occupied residential premises, residents from a majority of the occupied residential premises), or
- the Residents Committee of the village request (in writing) that the operator do so.

Alternatively, the operator may propose an amendment to the village rules even if there has been no request.

A proposed amendment is not to be made unless the residents of the village, by a special resolution, consent to the amendment. If consent is given, the amendment takes effect seven days after the date on which the special resolution concerned is notified to the operator.

The operator does, however, have a right to make an application to the Consumer, Trader and Tenancy Tribunal (CTTT), within that period of seven days seeking an order to prohibit the amendment. The CTTT can either prohibit the amendment or order it to take effect.

An operator who receives a request must call a meeting of the residents of the village, to be held no later than 28 days after the receipt of the request, for the purpose of considering a special resolution concerning the proposed amendment.
Residents committees

Under the Retirement Villages Act 1999, residents of a retirement village are allowed to set up a Residents Committee. A Residents Committee is a group of residents, elected by their fellow residents, to represent their interests and to carry out specific functions under the Act. Residents committees also act as an intermediary between all of the residents and the operator.

Residents committees have a wide range of functions and rights such as:

- calling and conducting meetings of residents to consider and vote on matters requiring consent
- taking or defending matters before the CTTT on behalf of some or all residents
- proposing amendments to the village rules or the level of village services and facilities
- meeting with the operator

Residents committees are not decision-making bodies. They cannot make decisions on behalf of residents on matters requiring consent. They can, however, put recommendations to a general meeting of residents.

Residents to respect rights of other residents

Under section 83 of the Act, it is a term of every residence contract that the resident will respect the rights of other residents of, and other persons in, the village. In particular, a resident:

- must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of another resident
- must respect the rights of the operator of the village, and agents and employees of the operator, to work in an environment free from harassment or intimidation
- must not act in a manner that adversely affects the occupational health and safety of persons working in the village.

If the operator of the retirement village believes that a resident of the village has contravened section 83, the operator may apply to the CTTT for (and the CTTT may make) an order directing the resident to comply with section 83.
PUBLIC HOUSING TENANTS

Public housing tenants have rights and responsibilities set by the Residential Tenancies Act 1987. A public housing tenant must sign a Tenancy Agreement with the Department of Housing when he or she moves into public housing. This Tenancy Agreement will also regulate a tenant’s rights and responsibilities.

The good neighbour policy

The Department of Housing has a ‘good neighbour policy’ that aims to create a more peaceful environment for public housing tenants. The department can use this policy to help public housing tenants deal with problems such as harassment, nuisance, annoyance, violence and crime.

If you have evidence of any of the above problems, the department can take the following steps:

• give a warning to the tenant/s responsible
• apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for orders for the tenants to follow the conditions in the tenancy agreement, by not disturbing their neighbours
• apply to the CTTT for orders of termination and possession, that is eviction, for disturbing the neighbours.
Barking dogs, noisy kids, tree roots coming up through your driveway, old rotting fences, head pounding music … sound familiar? Could this be your neighbourhood?

Neighbourhood disputes can be very stressful. Sometimes it becomes so bad, the police are called or you might end up in court, all the time knowing that you have to go back home to the same neighbourhood at the end of the day.

So, is there another way to deal with a neighbourhood dispute?

**MEDIATION AS AN ALTERNATIVE**

Mediation is people coming together to discuss the issues in dispute. Mediation sessions are conducted by mediators. The mediators are trained and impartial. They do not provide legal advice and they do not take sides. The mediators manage how the session is run, but the people in dispute decide what is discussed and what is agreed upon. A mediation allows for people to reach their own commonsense solution to their own dispute. This process is extremely effective and provides a level of ownership and accountability for the participants over their dispute. It is a free service and is confidential.

**COMMUNITY JUSTICE CENTRES**

In 1983, the *Community Justice Centres Act (NSW)* came in to being. The Act allowed for the establishment and operation of Community Justice Centres (CJCs) in New South Wales to provide mediation services in connection with certain disputes.

Today, CJCs is a business centre of the NSW Attorney General’s Department. Its objective is to provide free and accessible mediation services to the people of New South Wales.

CJCs provide mediation through a co-mediation system. That means that two mediators are assigned to most disputes. This measure assists with quality control as well as peer support and assessment.
THE PROCESS

Let’s go back to that barking dog.

One neighbour, we’ll call her Sue, is becoming increasingly frustrated that she can’t sleep at night because her neighbour, John, has a dog that just barks non-stop. Sue is an elderly lady, who doesn’t feel so confident knocking on John’s door to speak to him about his dog. However, she rings her local council. They tell her that there are rules about pets, but they suggest she talks to her neighbour. They refer her to Community Justice Centres.

Sue calls Community Justice Centres. She says she’s been referred but she’s not really sure why. The mediation advisor at CJC’s will explain what mediation is, how the process works and decide if the issue is suitable for mediation. This includes explaining that mediation is free and voluntary – meaning that both parties need to agree to mediate. If Sue feels confident to proceed, then the CJC’s will write to John inviting him to contact CJC to discuss the option of mediation.

John may say ‘No’ and that’s where the mediation process may end. In those circumstances, Sue may have to look at legal advice and perhaps even legal proceedings. However, if John says yes, then a mediation session will be arranged. John and Sue can sit down with two unbiased, trained mediators who will facilitate an open discussion between the two of them.

What is likely is that John will not have been aware of how Sue was feeling. He probably wasn’t aware she was having trouble sleeping nor that the lack of sleep and the anxiety of the thought of having to confront her neighbour was causing Sue considerable stress.

Sue gets to explain how she’s feeling. John gets to hear about his neighbour’s feelings but also gets to say how he’s feeling.

In openly talking about how they’re both feeling and with the help of trained people to keep them both on track the neighbours are likely to realise that they can reach an agreement.

LIKELY OUTCOME

It is highly likely that with skilled facilitation the parties will reach an agreement. That agreement could be that the dog’s kennel is moved so that it is not so close to Sue’s house and so, even if the dog barks, Sue won’t hear it as much.
John might even agree to take the dog to training, so that the barking can be addressed.

Whatever the parties decide, their agreement can be written up and they can both sign.

The important thing is that the agreement is made by the parties – they both decide the terms and conditions and in so doing foster an environment in which the promises they make to each other, are more likely to be kept.

Agreements made in the course of a mediation are not court orders. They are not legally binding. They are agreements that parties make in good faith. So, in effect both parties make a promise or promises to each other about how they will behave in the future.

**CONCLUSION**

In October 2004 the Law Reform Commission produced a Research Report.¹ In undertaking the research a number of people who had used CJC’s were interviewed. Almost half those interviewed had mediated over a neighbourhood dispute.

For most of the participants interviewed the outcome of the mediation was either an agreement or partial agreement. The majority of participants reported they were either satisfied or partially satisfied with the outcome of the mediation. Certainly most participants felt that the mediation improved their situation.

The CJC’s own data collection shows that when people actually come to the table to mediate, there is a 70-80 per cent agreement rate regarding some or all of the issues.

Mediation is an alternative means of resolving a dispute. It provides an opportunity for parties to talk with each other, own their dispute, be accountable for it and resolve it by coming to an agreement together that fits their respective needs.

For more information about mediation go to: www.cjc.nsw.gov.au and see page 50 for further contact details.

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Trees

Problems with trees result in many disputes between neighbours. Generally, there are no restrictions on the type or number of trees that land owners or occupiers may plant or allow to grow on their land. The law provides for the control and eradication of noxious plants, but apart from this the main aim of regulation has been to preserve trees.

On 2 February 2007, a new law, the Trees (Disputes Between Neighbours) Act 2006 commenced. The Act was designed to provide a simple, inexpensive and accessible process for resolving disputes between neighbours about trees. Previously the law relied on areas of the common law to resolve issues regarding trees. ‘Nuisance’, was a common law protection of the right of a land owner to enjoy their property without interference. ‘Abatement’ is a common law remedy for nuisance, that allowed the landowner whose enjoyment was being interfered with to take matters into their own hands. These areas of law were not considered to be well-suited to resolving disputes between neighbours in the urban environment.²

PLANTING TREES

The Noxious Weeds Act 1993 prohibits the planting or growing of ‘noxious’ plants in your garden. Under this Act, occupiers must also control noxious weeds on their land. You can find a list of ‘noxious weeds’ at www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/noxweed. Local councils are responsible for the control of noxious weeds in their local government area and may issue a ‘weed control notice’, requiring an occupier to carry out weed control.

Apart from noxious weeds, you do not need to get council approval before planting a tree or plant. However, as trees can block drains, damage buildings or block views, it is best to carefully consider where you will plant a tree to avoid future problems.

TREE PRESERVATION ORDERS

Local councils have the power to make orders for the protection of trees in their local government area. ‘Tree Preservation Orders’ (TPOs) are Environmental Planning Instruments made under the Environmental Planning and Assessment Act 1979 (NSW). Tree Preservation Orders may prohibit, unless the council has consented, the ring barking, cutting down, lopping, removing, injuring or wilful destruction of any tree or trees specified in the TPO. The council may impose any conditions it thinks fit on giving that consent. The council must publish TPOs in the NSW Government Gazette and publicise them in the local newspaper. Many councils have provisions about tree preservation as part of their Local Environmental Plans. These may include detailed provisions about applying for consent.

It is important before pruning or lopping a tree to find out if the tree is protected by a TPO. Contact your local council for a list of protected trees in your area. There are heavy fines for breaching a TPO.

If the tree is protected, approval may be obtained from the local council to prune or remove it if:

- the tree is dead or damaged or about to fall or cause some other immediate damage
- there are problems with roots blocking sewerage or other pipes
- the tree is threatening a building or structure
- the tree is on a boundary and you or your neighbours want to erect a dividing fence
- branches are threatening roof tiles or some other damage, or if overhanging branches are causing a nuisance
If the council does not grant approval to prune or remove a tree subject to a tree preservation order, you can appeal to council to review their decision. If the council rejects your appeal, you can appeal to the Land and Environment Court.

The local council is responsible for any trees in a public area so any problems should be referred to the council.

**TREES (DISPUTES BETWEEN NEIGHBOURS) ACT 2006**

The new legislation only applies to trees in areas that are zoned under an environmental planning instrument as:

- residential
- township
- industrial
- business.

Your local council can help you with information about zoning. Trees that are on land owned or managed by local council are currently exempt, but it is expected that they may be covered by the scheme, possibly after the legislation is reviewed in 2009.

The Trees (Disputes Between Neighbours) Act removes the previous action for ‘nuisance’ as a result of damage caused by a tree (section 5). An owner (or occupier) of land may apply to the Land and Environment Court for orders to:
- remedy, restrain or prevent damage to property
- prevent injury to any person

as a consequence of a tree on an adjoining property. The court must be satisfied that the person who is applying for the order has made a reasonable effort to reach an agreement with their neighbour. (See page 13 for information on Community Justice Centres and mediation.)

The person applying for the order must give 21 days notice of the application to the owner of the land on which the tree is situated, the relevant authorities and anyone else they believe would be affected by the order. If the court considers it appropriate to do so, it may waive this requirement if, for example, it is considered urgent for safety reasons.

The first hearing of the application will involve an informal conciliation conference aimed at resolving the dispute.
The court can order that:
• action be taken to remedy damage to property; or to prevent damage to property, or to prevent further damage where damage has already occurred
• action be taken to prevent injury to any person
• an application to obtain consent be made
• entry on to land is authorised for the purposes of carrying out an order (including for obtaining quotations for carrying out the work)
• costs associated with carrying out an order be paid
• compensation for damage to property be paid
• a tree that is removed by court orders is replaced, and that the new tree is maintained to a mature growth.

The court can only make an order if it is convinced that the tree in question has caused, is causing or is likely to cause in the near future, damage to the applicant’s property, or is likely to injure someone. (As mentioned earlier, the court must also be satisfied that the applicant has made a reasonable effort to resolve the dispute with their neighbour, and that 21 days notice of the application has been given.)

CASE STUDY
The case concerned (in part) the falling of leaves and small pieces of deadwood from a tree onto the applicant’s Erina property. The applicant wished to have the tree removed as he found the maintenance required too difficult for him to carry out personally. The court formed the conclusion that the tree was healthy and not defective, and that the amount of material it dropped was quite normal. The court stated as a principle to be applied in similar cases:

“For people who live in urban environments, it is appropriate to expect that some degree of house exterior and grounds maintenance will be required in order to appreciate and retain the aesthetic and environmental benefits of having trees in such an urban environment. In particular, it is reasonable to expect people living in such an environment might need to clean the gutters and the surrounds of their houses on a regular basis.

The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree.”

Barker v Kyriakides [2007] NSWLEC 292
The court takes into consideration a wide range of matters under section 12 before making an order. The section includes such things as:

- the location of the tree in relation to the land boundary,
- whether the tree has any historical, cultural, social or scientific value,
- the contribution of the tree to the local landscape, ecosystem and biodiversity,
- its public amenity value
- impact on soil stability and the water table
- other factors that could contribute to the damage or danger posed by the tree
- any steps taken by the landowner to prevent the damage or injury

Any orders made by the court remain with the land, so if the land is sold without the work having been carried out, the new owners will have to carry out the work if they are given notice of the orders.

Where the landowner does not carry out the work, the council may choose (but is not obliged) to arrange for the work to be carried out and can take court action to recover reasonable costs for carrying out the work.

It is considered that the Land and Environment Court is better suited to dealing with disputes over trees, as it is a specialist environmental court. The court’s judges and commissioners have extensive experience in dealing with matters relating to trees and vegetation, as well as in dealing with local environmental planning instruments.

The Act does not specifically cover disputes between neighbours over light access and views. The NSW Government stated when the Act was introduced that these matters would be kept under review.³

³ NSW Legislative Assembly Hansard.

The Land and Environment Court website has information about applications and details about applications that were successful or unsuccessful. Application forms are also available from the Land and Environment Court webpage which is part of the Attorney-General’s Lawlink website. Go to www.lawlink.nsw.gov.au and select ‘Courts & tribunals’ from the left side; then select ‘Land and Environment Court’ under NSW. Click on ‘Tree disputes’ in the Quick Links box. Local council can help you with the lot and deposited plan (DP) numbers that are needed to fill out an application (they are also on council rate notices).
Dividing Fences and Retaining Walls

FENCES
The *Dividing Fences Act 1991* (NSW) addresses how the cost of a dividing fence is shared between adjoining land owners where an owner wants to erect a dividing fence or repair or renovate an existing dividing fence. It sets out the minimum requirements and owners may always agree to an arrangement exceeding those requirements. The Act also details the procedure for resolving disputes involving the cost, type and position of a fence.

Under the Act, a dividing fence means a fence separating the land of adjoining owners, whether on the common boundary of adjoining lands or on a line other than the common boundary. The fence may be a structure, ditch or embankment, or a hedge or similar vegetative barrier and includes:

- any gate, cattlegrid or apparatus necessary for the operation of the fence
- any natural or artificial watercourse which separates the land of adjoining owners
- any foundation or support necessary for the support and maintenance of the fence.

**Note:** Up until now, retaining walls have been specifically excluded from the *Dividing Fences Act*. However, the *Dividing Fences and Other Legislation Amendment Bill 2008*, currently before NSW Parliament, will change that situation if it is passed. The Bill would allow a Local Land Board or Local Court to make a fencing order requiring construction or maintenance of a retaining wall, to the extent necessary for settling a fencing dispute. Also, it would add into the costs of related fencing work (see below) the cost of lopping or removing vegetation, again, only to the extent necessary for settling a fencing dispute. The Bill was introduced on 11 April 2008; check the Bill’s progress at www.legislation.nsw.gov.au.

The cost of a dividing fence includes the cost of all related fencing work, such as surveying, preparation of land, design, construction, replacement, repair or maintenance of the dividing fence. See note above on vegetation.
It is worth noting that the *Dividing Fences Act* only covers situations where a financial contribution is sought. If your neighbour wants to bear the whole expense of a fence on their land, you may not be able to influence the type of fence that they decide on. However, if the proposed fence requires council approval, you may have the opportunity to lodge an objection.

**Who do you have to talk to?**

Under the Act, an owner is one or more of the persons who own the land, or a tenant with a lease with more than five years left to run. A more specific definition of ‘owner’ is found in section 3 of the Act.

**Sharing the cost of a dividing fence**

Under the *Dividing Fences Act*, adjoining owners must share the cost of a ‘sufficient dividing fence’. This is a fence that is sufficient to separate the properties, for example a paling fence in a residential area, or a wire and steel star post fence in a rural area.

The factors considered by a court or local land board in determining whether a dividing fence is ‘sufficient’, as set out in section 4 of the *Dividing Fences Act* are:

- the standard of the existing fence (if there is one)
- the uses or intended uses of the adjoining lands which the fence divides
- privacy or other concerns of the land owners
- the kind of fence usual for the local area
- any local government policy or code, or environmental planning instrument relevant to the dividing fence and the locality

*image unavailable*
If an owner wants a fence of a higher standard than is required to sufficiently separate the properties, that owner must pay the additional cost.

A swimming pool fence may be used as a dividing fence on two sides of a boundary. The *Swimming Pool Act 1992 (NSW)* requires that pool fences are 1.2 metres high and child resistant. Swimming pool construction requires council approval, which will include requiring fencing.

If an existing dividing fence is damaged or destroyed by one owner or someone with that owner’s permission, that owner must pay for the work required to restore the dividing fence.

Public authorities with control over Crown lands, parks, reserves etc do not have to contribute to fencing costs. However people living next to such properties may be able to negotiate with the authority for a contribution.

**Practical steps**

If you want to build a fence or repair one you should consult the adjoining owner first. It is helpful to get several quotes so that you and your neighbour can both agree on a price. Discussions should also cover the type and height of the fence.

Council approval is generally required for fences over 1.8 metres high and for front fences. Sometimes there are restrictions on what style of fence can be built in particular areas, due to council codes or policies, heritage protection orders or restrictive covenants (e.g. a subdivision may have an agreement that all fences be of a particular type). It is advisable to check with local council before proceeding.

**Reaching an agreement**

(Information from Local Courts ‘Problems with Fences’)

If you and your neighbour both agree on the price and proposed construction of the fence, you should both put the terms of the agreement in writing and both sign the agreement.

The agreement should cover all relevant details of the cost and design of the fence including:

- height
- type of material
- colour
- cost
- position of fence
- provision for removal of existing fence
Both you and your neighbour should keep a signed copy of the agreement.

If the owner of the neighbouring land cannot be contacted, the court is able to make an order if satisfied that reasonable efforts have been made to contact the owner.

**If you cannot reach an agreement**

If you cannot reach an agreement, you can serve the neighbour with a ‘Notice to Fence’. This notice formally outlines your proposed fencing work and requests the owner to agree to pay a contribution.

A valid notice to fence needs to include:

- the position of the proposed fence
- the type of fence proposed
- the estimated cost of the fencing
- the proposed contribution of each neighbour

Keep a copy of the written notice for yourself and make a note of when you handed or posted the form to them. There is no standard form required, however an example is set out on the following page.

If after one month of serving the notice your neighbour still does not agree to your proposal, you may ask the Local Court or Local Land Board to make an order about the fencing work required. Alternatively, you can make use of the free mediation service provided by Community Justice Centres. See p 13 for details.

**Applying to the Local Land Board for an order**

Local Land Boards are community-based tribunals consisting of a Chairperson and two local community members who are familiar with the local area and have knowledge of land management practices.

A Local Land Board sits as a dispute resolution tribunal and conducts hearings in relation to a variety of matters including dividing fences. Applications should be lodged with Local Land Board Registrars. An application fee ($61 at the time of publication) is required. You can contact the Land Board Registrar at one of their Departmental offices: see p 52 for details.

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4. The Dividing Fences and Other Legislation Amendment Bill 2008, if passed, will allow a senior Chairperson to sit alone, or to direct a Chairperson to sit alone in residential dividing fence hearing.
A sample Fencing Notice.

FENCING NOTICE
(Dividing Fences Act 1991)

To: ________________________________

(name) ____________________________

(address) ____________________________

(name and address of adjoining land owner)

The fencing work described below is required between our adjoining properties. I would be pleased if you would share the cost as shown.

From: ________________________________

(name) ____________________________

(address) ____________________________

(Signed) ____________________________

(Date) ____________________________

Proposal:

1. Properties affected (street address):

   A ____________________________ owned by ____________________________

   B ____________________________ owned by ____________________________

2. Position of fencing work (on boundary line, or as shown on attached plan)

3. Fencing work proposed to be carried out (include length, height and type of materials)

4. Estimated cost: $ ____________________________

5. Sharing of cost:

   a. ____________________________ will pay for the fencing work and will be paid half the estimated cost

      by ____________________________ on completion, OR

   b. (insert other option) ____________________________

If you agree to this proposal, please complete the form of agreement hereunder and return a copy to me.

Section 12 of the Dividing Fences Act 1991 provides that if adjoining owners do not agree as to the fencing work to be carried out within 1 month after the service of this notice, either owner may apply to a Local Court or a Local Land Board for an order determining the manner in which fencing work (if any) is to be carried out.

AGREEMENT TO FENCING

Property A

I agree to the above proposal

(signed) ____________________________

(date) ____________________________

Property B

I agree to the above proposal

(signed) ____________________________

(date) ____________________________
Advantages of lodging an application at the Local Land Board rather than at the Local Court include:

- the Board can conduct on site inspections
- the Board's hearings are conducted less formally and are not bound by rules of evidence
- the application may be filed by post

**Applying to the Local Court for an order**
Application to the Local Court can be made, as part of its fencing order, to direct the other party to pay a contribution to the fencing construction. Lodging an application for a court order in the Local Court will incur a $70.00 application fee (at the time of publication).

The case will be listed before the Court in approximately four to six weeks so that a summons can be served on the other party. Contact your Local Court for more details on lodging applications.

**Urgent fencing work**
If a dividing fence has been damaged or destroyed and urgently needs to be repaired, it is not necessary to serve a Notice to Fence before carrying out fencing work. Adjoining owners must share equally the cost of that urgent work unless the damage was caused by one owner’s negligence.

Reasons for urgent fencing work include safety, security or to prevent stock loss. A Local Court or Local Land Board can review any dispute arising in these circumstances.

**Recovering money**
If the Court makes an order against the adjoining owner and this is not complied with, you will need to take additional court action to enforce the agreement or order.

You can initiate action through the Civil Claims jurisdiction of the Local Court to recover the money. You will have to file and serve a Statement of Claim.

**Entering the adjoining land**
An owner who is carrying out fencing work under the *Dividing Fences Act* is able to enter the adjoining land for that purpose at any reasonable time. This also applies to the owner’s employees and agents.
RETAIING WALLS

A retaining wall is a structure that supports excavated or filled earth on a property. As mentioned, the Dividing Fences Act does not currently cover retaining walls. This means that it is important to establish whether a structure is a dividing fence or a retaining wall, as disputes over retaining walls are heard in the Supreme Court, not the Local Court (where dividing fence matters are dealt with). An important case dealing with the distinction is Kontikis v Schreiner (1989) 16 NSWLR 706. A retaining wall that is positioned on a boundary is called a ‘common party wall’.

Note: The Dividing Fences and Other Legislation Amendment Bill 2008, currently before NSW Parliament would, if passed extend the jurisdiction of the Local Courts and Local Land Board to make orders for maintenance or construction of retaining walls, to the extent necessary to resolve dividing fence disputes. The Bill was introduced on 11 April 2008; check the Bill’s progress at www.legislation.nsw.gov.au.

The construction of a retaining wall will often require a Development Application. If you are planning to build a retaining wall, you will need to check with your Local Council.

Law of support

The NSW Law Reform Commission’s Report 84 (1997) The Right to Support from Adjoining Land pointed out deficiencies in the way common law dealt with supported land. The law only extended to land in its natural state, and so not to buildings or other improvements. It also did not include support to water or reclaimed land. The Conveyancing Act 1919 was amended by Conveyancing Amendment (Law of Support) Act 2000 to create a ‘duty of care in relation to the right of support for land’ see section 177(1). The action which had previously been available was the common law action of nuisance, which was abolished with respect to supported lands.

The new duty of care is created as an addition to the common law of negligence. It prohibits activity which:

- damages supported land
- makes supported land and its structures unsafe
- makes supported land unable to safely support any structures which may foreseeably be erected on it in future
It allows a person to bring an action in negligence for any damage caused by the removal of any natural support, or of any structure that has replaced that natural support. Supporting land includes the natural surface of the land, the subsoil of the land, any water beneath the land, and any part of the land that has been reclaimed.

**Excluding or modifying the duty of care**

The duty of care can be excluded or modified by agreement between the owners. For example, if the owner of supporting land wishes to do work on their land that will remove support, the owner of the supported land may agree to relinquish their right in exchange for money. Such an agreement does not bind subsequent owners unless it is an ‘easement for removal of support’\(^5\) is registered on the title of the supported land.

The change to the law was a recognition of the need to increase responsibility of neighbours in modern living conditions, especially in cases of semi detached houses, common party walls and retaining walls on sloping lands.

**Proposal for change**

There has been a proposal by the Department of Lands that Local Courts or Local Land Boards be given the power to deal with retaining walls in a similar way to dividing fences.\(^6\) However, a submission from the Property Law Committee of the NSW Law Society points out the significance of the difference between dividing fences and retaining walls, in that where dividing fences simply divide land, retaining walls affect the rights of adjoining landowners. The Committee suggested further requirements for proposed legislation to take account of the fact. See also ‘Note’ on page 27 about possible changes to the *Dividing Fences Act* (NSW).


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5. The standard form of words is in Schedule 8 to the Conveyancing Act.

Other Boundary Issues

If you and your neighbour are in dispute over where the common boundary of your respective properties lies, you can try to resolve the dispute by having a survey done by a licensed surveyor. Otherwise, an application can be made to the Registrar-General for the determination of the position of a common boundary: Real Property Act 1900 (NSW) Part 14A.

The application can be made by an owner of land on either side of the boundary and should include any information (for example, an identification survey or peg-out survey) or documents that support their position. Application forms must be lodged in person and a lodgement fee paid.

The Registrar-General will then give notice to the adjoining owner and invite the owner to make submissions in reply to the application. The Registrar-General must also consult a registered surveyor before making a decision and may decide that a survey or other investigation should be carried out. The applicant may be required to pay for additional surveys or investigations.

The decision will be made in light of all the evidence available to the Registrar-General. If the evidence is inconclusive, a decision may be made on the basis of what is ‘just and reasonable in the circumstances’. Notice of the determination will be given to both the applicant and the adjoining landowner.

If an owner on either side of the boundary is unhappy with the decision of the Registrar-General, they may appeal to the Land and Environment Court within 28 days of receiving notice of the decision.

ENCROACHING BUILDINGS

The Encroachment of Buildings Act 1922 (NSW) regulates situations where a building has been built across a boundary. The Act applies to a ‘substantial building of a permanent character’. This includes walls, overhangs and any part of a building above or below ground that crosses the boundary. If any question arises as to whether an existing building encroaches, or a proposed building will encroach beyond the
boundary, either of the owners may apply for a determination of the position of the boundary. This may be made either to:

- the Registrar-General under Part 14A (Boundary determinations) of the Real Property Act 1900 (but only if the application could be made under that Part apart from this section)

- the Land and Environment Court, if the application cannot be made under that Part or the Registrar-General refuses to make that determination.

The Court can respond to an application by making orders that it considers proper to determine, mark, and record the true boundary. The Court may refer to any registered land surveyor (within the meaning of the Surveying Act 2002 (NSW)) any question involved in proceedings on the application.

If a building encroaches, either owner may apply under the Act for relief. You make your application in the Land and Environment Court. Relief may include compensation, transfer or lease of the affected land, the removal of the part of the building causing the problem. (section 3(2)).

If an encroachment is caused by a development which was not in accordance with the approved building plan lodged with the Local Council, then the council can make an order that the extension be removed or altered to comply with the approved plans. Under Environmental Planning and Assessment Act 1979, anyone make take action to restrain or remedy a failure to follow approved plans.

**ADVERSE POSSESSION**

If a person has occupied a part or all of a parcel of land not belonging to them, the owner of that land may have lost the right to remove them under a legal principle called ‘adverse possession’.

Under the Limitation Act 1969 (NSW), if the period of occupation has continued for more than 12 years, the owner of the land may have lost the right to possession of the land. There are also all kinds of exceptions and qualifications to this rule. For example, to be sufficient to extinguish the documentary owner’s title, the possession must be ‘open, not secret; peaceful, not by force; and adverse, not by consent of the true owner’ see Mulcahy v Curramore Pty Ltd [1974] 2 NSWLR 464.

If you want to claim ownership of land based on adverse possession, you need to first work out:

- who owns the land (whether it is private land or government land); and
- title status (whether it is old system title or Torrens Title)
Finding out this information first is important:

- you cannot claim government-owned land
- there are different procedures for making a claim based on adverse possession depending on whether the title is old system or Torrens.

To find out the above information, you will need to do or get a professional adviser (a solicitor, licensed conveyancer or law stationer) to do a title search. See the Department of Lands NSW website (www.lands.nsw.gov.au) for more details.

If the land is Torrens title (see p 3), the neighbour who has been in occupation of the land may make an a ‘possessory application’ for ownership of the land. Such an application can only be in relation to the whole piece of land rather than a part.

If the land is old system title, you will need to make a primary application to claim ownership. Such an application can be made whether you have possessed the whole or only part of a block of land.
ENTRY INTO NEIGHBOUR’S PROPERTY
Under the law of trespass, you cannot enter your neighbour’s land without your neighbour’s consent. Nor can a Court order your neighbour to allow you onto the land.

An occupier can ask a trespasser to leave. If the person refuses, the occupier has the right to forcibly remove a trespasser, although if they use more force than is ‘reasonably necessary’, they can be charged with assault or sued by the trespasser. For this reason, it is better to call the police and ask for them to be removed.

An occupier can sue a trespasser for any damage and claim compensation for any damage caused. As most trespassing does not cause any damage, it will be more often the case that there is nothing to be gained from suing.

If, however, a person trespasses repeatedly, an occupier can seek an injunction from the Supreme Court requiring the person to stop trespassing. An injunction is a Court directing someone to do to or refrain from doing something. If person does not follow the Court’s order they will be in contempt of court and face serious consequences.

In an urgent case where there are serious consequences if the trespass continues to occur, you can obtain an ‘interim injunction’ from the Supreme Court. Injunctions are a technical area of the law and can be expensive to obtain.

Implied permission to enter
There is an implied permission (a licence) for people to come onto a property for the purpose of knocking on the front door or for delivering goods.

Under the Dividing Fences Act, it is also legal for a person to enter a neighbour’s land to do fencing work as long as the procedures under the Act have been complied with.

RIGHTS OF WAY AND EASEMENTS
A person may have a formal right of way to cross a neighbour’s land. This is legally known as an ‘easement’. It may be formally created and recorded on the certificate of title or it may arise out of a longstanding custom of crossing the land. Other easements may protect the flow of water, air, or enable a person to have drainage pipes over another’s land.

The creation and termination of easements is a very technical legal field, and you should seek legal advice if there is a dispute about the use or existence of an easement. Usually, a right of way can be ended only if
both landowners agree, or if the right of way is not used for more than 20 years. It can also be ended by agreement (sometimes with a payment of money) or by the order of the Court. Commonly, in older areas of Sydney, disputes arise over easements for ‘dunny lanes’ when these lanes have been appropriated for private use.

**ACCESS TO NEIGHBOURING LAND**

Under the Access to Neighbouring Land Act 2000 (NSW), a person is entitled to make an application to a local court for an order enabling that person to enter neighbouring land. There are two types of orders that you can apply for.

**Neighbouring land access order**

A neighbouring land access order entitles the applicant to enter neighbouring land for the purpose of carrying out work on the applicant’s own land. An applicant can be either the owner of the land or an occupier applying with the consent of the owner.

**Utility service access order**

A utility service access order enables a person who uses a utility service (eg, sewer, drainage, water, gas, electricity or telephone services) that runs through neighbouring land to enter that neighbouring land to carry out work on the utility service. For example, if a sewer line that services a house runs through a neighbour’s land and becomes blocked at some point of the line on the neighbour’s property, then the access order allows entry onto the property in order to fix the blockage.

Anyone entitled to use the utility service may apply for a utility service access order. An applicant for either order must give at least 21 days notice of intention to lodge an application and provide a copy of the terms of the order sought to the neighbour and anyone else affected by the order. Many access disputes may be resolved within this 21-day timeframe and the intended application may not have to be lodged.

**Protection against damage or injury**

An applicant granted an access order must, as far as possible, restore the land to the state it was in before the order was made. The applicant must also indemnify the owner of the land to which access is granted against damage to land or personal property arising from access.
The court can order an applicant who has been granted an access order to pay compensation to the owner of the neighbouring land for loss or damage caused by the access. Proposed changes to the Access to Neighbouring Land Act 2000⁷ would also mean that the applicant would usually have to pay the landowner’s legal costs, although the discretion would remain to make an order for costs considered appropriate in the circumstances.

Compensation may be sought by the neighbouring owner after the date that the access order is made, but must not be sought more than three years after the date on which the last access under the order occurred.

Appeals against a Local Court’s decision to grant or refuse an access order may be made to the Land and Environment Court within 30 days of the decision. An appeal may only be made on a question of law.

ENTRY OF ANIMALS
An animal can only be left on another person’s property with the consent of the owner. If permission is withdrawn, the animal must be removed immediately, or the owner of the animal can be sued for trespass.

If an animal is trespassing on land, the owner of the land can impound it and keep it for collection for up to four days. If it is not collected in that time, it must be taken to the council pound.

Within 24 hours, the land owner must ensure that there is food, water and shelter for the animal, and advise the animal’s owner if possible.

ENTRY OF WATER
If water is naturally flowing from one parcel of land onto another because of the lie of the land, there is no legal issue. Drainage easements are often granted when land is subdivided so that waste water may flow over another’s lane (or under it, in pipes) without causing difficulties. If, however, a flow of water is directly or indirectly caused by a neighbour’s activities and damage occurs, then an occupier may have a right to take legal action for compensation.

If the act is deliberate (for example, a neighbour deliberately directing a hose onto the land), the flow of water is a trespass. If it is an ongoing activity then the flow could constitute nuisance (for example, a leaking drainpipe). If the flow is a result of a neighbour’s carelessness, then there may be a case of negligence (for example, a careless construction of a drainpipe). In rural areas, there may be a particular problem if neighbours share a stream or river or other waterway.

Activities which pollute a waterway should be reported to the Department of Environment & Climate Change NSW (Environment Protection Authority). Call 131 555 (in NSW, except from mobile phones) or (02) 9995 5555.

**CREATING AN EASEMENT**

An easement is a legal right to utilise other land of different ownership in a particular manner or to prevent the owner of the other land from utilising his land in a particular manner. The right is annexed to the land, meaning that if the owner sells the land, the next owner will also enjoy the right. Examples of easements are:

- a right of way (for either pedestrians or vehicles)
- a right to drain water
- a right to have access over another person’s land for the purpose of erecting a building

An easement is exercised over land (the 'servient tenement') for the benefit of other land (the 'dominant tenement'). An easement does not give the owner of the easement the right to improve or modify the servient land.

**Application to the Supreme Court**

A person may apply to the Supreme Court for an order creating an easement over another person’s land if it is ‘reasonably necessary for the effective use or development’ of the land (Conveyancing Act 1919 (NSW), section 88K). Compensation is normally required, as is payment of the other person’s legal costs.

**Application in the Land and Environment Court**

A person may apply for an easement under the Land and Environment Court Act 1979 (section 40) where the court has issued a development consent and:

- the easement is reasonably necessary for the development to have effect in accordance with the consent, and
- use of the land having the benefit of the easement will not be inconsistent with the public interest, and
- the owner of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement, and
- all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.
The main piece of legislation regulating neighbourhood noise is the Protection of the Environment Operations Act 1997 (NSW). This Act places restrictions on the times that certain activities can be conducted. It also deals with noise being made over long periods. The Protection of the Environment Operations (Noise Control) Regulation 2008 (NSW) places restrictions on the use of certain noise-producing articles.

WHAT IS OFFENSIVE NOISE?
Under the Protection of the Environment Operations Act, ‘offensive noise’ means noise which is likely to be harmful to, or to interfere unreasonably with, people outside the premises from which the noise is emitting. The interference or harm could come from the level, or the type of noise. The Regulations prescribes particular times outside of which excessive noise is deemed to be offensive.

REMEDIES
If a neighbour’s noisy activity is bothering you, your first option is to discuss the problem with your neighbour. If this does not work, or if you do not feel comfortable approaching your neighbour on your own, you can contact a Community Justice Centre for help to resolve your dispute.

Noise abatement direction
In the case of urgent noise problems, such as late-night noise or burglar alarms, you can make a complaint to the Police. Police have the power to issue a noise abatement direction. In such a case, a police officer may direct the person believed to be the occupier of the premises or a person making or contributing to the noise to stop making the offensive noise. If a noise abatement direction is broken, the police can issue an on-the-spot fine.

Noise control notices
For non-urgent but persistent noise problems, it is best to make a complaint to your Local Council. Local Councils have the power to issue a noise control notice to prohibit the use of articles causing noise at certain times. Failure to comply with a noise control notice may result in an on-the-spot fine.
**Noise abatement orders**

This is a court order issued to stop offensive noise or to prevent offensive noise from recurring. Under the *Protection of the Environment Operations Act 1997*, a resident or person in a commercial or industrial premises who is affected by offensive noise can seek a noise abatement order. Contact your local court for more information on how to apply for a noise abatement order. There are fees for applying for a noise abatement order.

**Nuisance orders (for barking dogs)**

For persistent animal-related noise problems such as barking dogs, you can ask your local council to issue a nuisance order. Under the *Companion Animals Act 1998*, a council officer has the power to issue a nuisance order to the owner of the animal. The order can be issued to either the registered owner of the dog or to the person who normally keeps the animal. The dog can be declared a nuisance if they bark or make another noise that keeps occurring or continues to such a degree that it unreasonably disturbs neighbours.

The order remains in force for six months. If the owner does not comply with the order, the owner may face a fine of $550 or more.

**REMEDIES RELATING TO INTRUDERALARMS**

[Information from Department of Environment and Climate Change NSW; www.environment.nsw.gov.au/noise/alarms.htm]

The police should be contacted first to find out if theft is the cause of the sounding alarm. Both police and council officers can issue penalty notices for vehicle or building alarms that sound longer, either continuously or intermittently, than the period permitted under the Regulations. Council officers may also issue a prevention notice for a faulty alarm, requiring the owner to repair or replace it. Where a prevention notice is breached, the council may issue penalty notices (fines).

For faulty car alarm systems, the council or police can issue the owner of the motor vehicle with a vehicle defect notice under clause 26 of the *Protection of the Environment Operation (Noise Control) Regulation 2008*, requiring that the alarm system be repaired. If the notice is not obeyed, the vehicle’s registration can be cancelled or suspended under section 165 of the *Protection of the Environment Operations Act 1997*, and the owner fined.
### WHEN DO NOISE RESTRICTIONS APPLY?


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<tr>
<th>Noise Source</th>
<th>Restrictions</th>
<th>Relevant Clause</th>
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<tr>
<td><strong>Power tools or swimming pool pumps</strong></td>
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<tr>
<td>• gas or air compressors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• spa pumps</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8.00 pm-7.00 am on weekdays and Saturdays</td>
<td>cl 50</td>
</tr>
<tr>
<td></td>
<td>8.00 pm-8.00 am on Sundays and public holidays</td>
<td></td>
</tr>
<tr>
<td><strong>Musical Instruments and Sound Equipment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Means any electrical or battery powered device used to make or amplify sound such as:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• computers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• radios</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• televisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• tape recorders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• record players</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• compact disc players</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• digital video disc (DVD) players</td>
<td></td>
<td></td>
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<tr>
<td>• public address systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>12.00 midnight-8.00 am on any Friday, Saturday or any day immediately before a public holiday</td>
<td>cl 51</td>
</tr>
<tr>
<td></td>
<td>10.00 pm-8.00 am any other day</td>
<td></td>
</tr>
<tr>
<td><strong>Air conditioners</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10.00 pm-7.00 am on weekdays</td>
<td>cl 52</td>
</tr>
<tr>
<td></td>
<td>10.00 pm-8.00 am on weekends and public holidays</td>
<td></td>
</tr>
<tr>
<td><strong>Motor vehicles on residential premises</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(except when entering or exiting residential premises)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8.00 pm-7.00 am on weekdays</td>
<td>cl 14</td>
</tr>
<tr>
<td></td>
<td>8.00 pm-8.00 am on weekends and public holidays</td>
<td></td>
</tr>
</tbody>
</table>
The Regulation also restricts how long a car alarm or house alarm is allowed to sound, unless, in the case of a car alarm, the car has been involved in an accident, a window has been broken, or the car has been broken into.

<table>
<thead>
<tr>
<th>Type of Intruder Alarm</th>
<th>Restrictions</th>
<th>Relevant Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicle manufactured before 1 September 1997</td>
<td>Not more than 90 seconds after the alarm first sounds</td>
<td>cl 24</td>
</tr>
<tr>
<td>Motor vehicle manufactured on or after 1 September 1997</td>
<td>Not more than 45 seconds after the alarm first sounds</td>
<td>cl 24</td>
</tr>
<tr>
<td>Building intruder alarm installed before 1 December 1997</td>
<td>Not more than 10 minutes after it is activated</td>
<td>cl 53</td>
</tr>
<tr>
<td>Building intruder alarm installed on or after 1 December 1997</td>
<td>Not more than 5 minutes after it is activated</td>
<td>cl 53</td>
</tr>
</tbody>
</table>

**STRATA TITLE UNITS**

If you live in a strata title scheme, and you are affected by offensive noise from a neighbour who also lives in the strata title scheme, you can apply to the Strata Schemes and Mediation Branch for assistance in resolving the problem.

**DEPARTMENT OF HOUSING**

Department of Housing tenants can make a complaint to their local housing office if they are being unreasonably disturbed by the noise created by a neighbour, who is also a Department of Housing tenant. See p 7 for details of the Department of Housing’s ‘Good Neighbour Policy’.

**LIVING NEXT TO A HOTEL OR NIGHTCLUB**

If you are affected by noise from a nearby nightclub or hotel, you can make a complaint to the Liquor Administration Board, which has the power to order clubs and hotels to take measures to reduce noise levels in the neighbourhood.

If the board does not take action, it may be possible to make an application to the Licensing Court. This is a technical area of the law and it best to seek legal advice on this issue.
NOISE FROM ROADS, AIRPORTS AND WATERWAYS

The Road and Traffic Authority can deal with noise coming from the construction of main roads, and traffic noise from freeways, tollways and main roads. Complaints can also be made to the NSW Department of Environment and Climate Change (DECC), which now incorporates the Environment Protection Authority.

Airservices Australia handles complaints about noise from Kingsford Smith Airport and aircraft in flight (National Noise Enquiry Line 1300-302-240). Local councils deal with complaints relating to local council operated airports.

The Waterways Authority can deal with complaints about noise from ships, boats, pleasure craft and jet skis. The Ports Corporation deals with noise from naval vessels and container and passenger ships. The Waterways Authority Infoline is 131 256 or (02) 9563 8557.

[Some information in this section from Lawlink NSW fact sheet ‘Information on Noise Problems’]
The main piece of legislation relevant to pet animals is the Companion Animals Act 1998 (NSW). Under this statute, local councils can issue orders about animals kept on private property, including dogs, cats and birds.

For example, if animals are causing excessive smells or noise on a neighbour’s property, the council can order that the number be reduced or that they be moved.

ENTRY OF ANIMALS
An animal can only be left on another person’s property with the consent of the owner. If permission is withdrawn, the animal must be removed immediately, or the owner of the animal can be sued for trespass.

If an animal is trespassing on land, the owner of the land can impound it and keep it for collection for up to four days. If it is not collected in that time, it must be taken to the council pound.

Within 24 hours, the land owner must ensure that there is food, water and shelter for the animal, and advise the animal’s owner if possible.

UNCONTROLLED DOGS
If a dog comes onto someone’s land, the dog can be seized, injured or destroyed if it is considered reasonable and necessary for the prevention of damage to property or injury or death of any person (section 22 of the Companion Animals Act). If a dog is killed, the matter must be reported to council and to the owner of the dog. If the dog is seized, it should be delivered to its owner, or to the local council pound.

DANGEROUS DOGS
Complaints about dangerous dogs should be made to the local council. If a local council declares a dog to be a dangerous dog, the owner must meet strict obligations to control the dog. These include keeping the dog on a leash or chain in public, muzzling the dog in public and putting up warning signs where it is kept.

What is a ‘dangerous dog’?
Under the Companion Animals Act a dog is dangerous if it has, without provocation:
(a) attacked or killed a person or animal (other than vermin), or
(b) repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin).
Smoke, Smell and Air Pollution

Neighbourhood pollution can take the form of:
- smoke from chimneys or incinerators
- burning off in backyards
- hot air from air-conditioner exhausts
- smells caused by animals and birds
- chemical smells from factories.

CASE STUDY –
ENVIRONMENT PROTECTION AUTHORITY v CARGILL AUSTRALIA LTD [2004] NSWLEC 334

This case concerned a company operating a livestock slaughter and rendering plant. There was a history of complaints regarding odour being emitted from the plant into the surrounding area. The Environment Protection Authority took ‘odour measurements’ over several days to measure the intensity of the odour escaping from the plant at varying distances from the premises.

The offensive odour was caused by the failure of old plant equipment to adequately capture all odour produced in the rendering process and prevent the odour being released into the atmosphere.

The Environmental Protection Authority charged the company with an offence under the Protection of the Environment Operations Act 1979 (POEO Act) of causing the emission of an offensive odour which interfered unreasonably with the comfort of a person outside the premises (section 129).

The company pleaded guilty to the offence and was fined $32 000 in the Land and Environment Court.

Since the date of the offence, the company had carried out a number of works aimed at improving the odour-control abilities of the premises. The Court also considered whether to make an ‘environmental enhancement order’ under s 250 of the POEO Act. Such an order requires an environmental offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit. In this case, the company proposed donating land to the local council and putting the penalty money towards landscaping and amenities within the park.
The local council or DECC (the Environment Protection Authority) can be contacted for information and advice about the regulations relating to these problems and any possible remedies.

**INDUSTRIAL COMPLEXES**

Some types of premises that cause large-scale industrial pollution are scheduled under the *Protection of the Environment Operations Act*. If a complex is listed in a schedule, it must be operated according to certain standards and requirements. Schedule premises include most factories and industrial warehouses.

Complaints about pollution from such premises should be made to the DECC/EPA Hotline 131 555 or 9995 5555. Fines and other penalties can be imposed if there has been a breach of regulations.
Violence, Harassment or Intimidation

*If a neighbour is causing you distress or fear for your personal safety, you may apply for an apprehended violence order (AVO) from a Local Court.*

An AVO is an order made by a Local Court restricting the behaviour of the person you take the order out against. The purpose of an AVO is to protect you from violence, harassment or intimidation. An AVO usually states that a person cannot assault, harass, threaten, stalk, or intimidate you. Other orders can be included if necessary.

An AVO made where the people involved are not related is called an Apprehended Personal Violence Order (APVO), as opposed to an order made where the people involved are related (this is called an Apprehended Domestic Violence Order). If you seek an AVO against a neighbour, you can either go to the Police or make a private complaint.

If you are making a private complaint, you go to a local court and explain why you want an AVO to a Chamber Registrar. You will be required to swear an oath or make an affirmation about the truth of those reasons. The Chamber Registrar will then issue a summons requiring the defendant (the person you want the order taken out against) to go to court.

**LEGAL AID**

Legal aid is not available for an APVO but you can get advice by speaking to the duty solicitor. Duty solicitors are private solicitors who provide a service to Local Courts on behalf of Legal Aid. See www.legalaid.nsw.gov.au

**GOING TO COURT**

At the hearing of your application, you and any witnesses you have will give evidence and can be questioned by the defendant or his or her solicitor. The defendant and his or her witnesses then give evidence and you or your lawyer (or the police prosecutor, if it is a police complaint) can question them. The Registrar will then make an AVO if either:

- a defendant consents to an AVO being made or
- evidence is heard and it is proved that the person in need of protection in fact fears violence or harassment or some other behaviour by the defendant that justifies an AVO being made and there are reasonable grounds for those fears.
If the court makes an AVO, the Registrar may tell the defendant to pay your costs in bringing the case to court. However, if the AVO is not made, the Registrar may tell you to pay the defendant’s costs, but only if the defendant can convince the Registrar that your complaint was frivolous or vexatious.

When an AVO is made, the defendant will have to surrender any firearms he or she may have. If the defendant has a firearms licence, this is automatically revoked for a period of ten years.

**WHAT HAPPENS IF THE DEFENDANT BREACHES THE AVO?**

If the defendant does anything the AVO prohibits, the police can then charge the defendant with breaching the AVO. You may have to go back to court if the defendant pleads not guilty, but you will not need a lawyer for this, as you are a witness for the police prosecutor.

**HOW LONG DOES THE AVO LAST?**

The AVO will last for the period the court specifies. If the period of time isn’t specified, the order lasts for 12 months. Usually it is for two or three years. Before that period ends, you can apply for an extension of time, as long as you still have a reasonable fear of the defendant. If circumstances change between you and the defendant when the AVO is still in force, and you no longer want the defendant’s behaviour to be restricted, you can go back to court and change or cancel the AVO. Contact the Chamber Registrar about changing or cancelling an AVO.
Land Use and Development

If you want to do building work on your property or change the legal use of your land you may need to obtain development consent from your local council first.

WHAT IS A DEVELOPMENT CONSENT?
A development consent is a form of authority that must be obtained, usually from the local council, before undertaking activities such as:

- building a house
- major home extension
- subdividing land
- demolishing a building
- using a building as a shop, office or factory.

Environmental planning instruments and procedures for development consents are covered by the Environmental Planning and Assessment Act 1979 (NSW).

Development usually requires the consent of council, however consent may be granted by a private assessor called an ‘accredited certifier’, where it is a ‘complying development’. To find out whether a development needs or has consent contact your local council.

ZONING
Councils control development by zoning land for various purposes including residential, commercial and industrial purposes. Within each zone, councils have detailed requirements (eg, maximum building height) which are set out in zoning plans called local environmental plans and in documents called development control plans.

Zoning and development controls will determine whether a proposal requires consent. Staff at your local council can tell you how a certain property is zoned and the development controls which are likely to apply to development proposals in your area.
INPUT FROM NEARBY LANDOWNERS

For most types of development applications, it is up to the council whether nearby landowners will be notified or not. Notification of affected landowners and advertising in local newspapers is mandatory for applications for ‘designated developments’ – those developments which have the potential for significant environmental damage like heavy industry and development in sensitive areas.

Objections

Anyone can make objections or submissions to a council about a development application, whether they have been notified or not. People can object to a neighbour’s proposed land use or building on various grounds. For example, if the proposed development:

• does not consent with council requirements
• contravenes a private right of an adjoining owner (see below)
• may cause noise, air pollution, or damage to their land during construction
• may cause traffic and parking problems
• is out of character with the area
• is too tall
• is likely to block the sun or obstruct the view
• is too close to the boundary.

RESTRICTIONS IMPOSED BY COVENANTS AND EASEMENTS

A proposed development may contravene a private right of an adjoining property owner. These rights, which usually take the form of easements and covenants, are recorded on the certificate of title of the land.

An example of a covenant is an agreement between a number of landowners in a street not to build above a certain height. This kind of covenant is called a ‘restrictive covenant’.

To access current environmental planning instruments, including the local environmental plan which covers your area, go to www.legislation.nsw.gov.au

Click on the Browse A-Z in Force button. Scroll down until you find Environmental Planning Instruments in Force (this includes Principal State Planning Policies and Regional and Local Plans). Click on the relevant letter of the alphabet, for example, click on ‘B’ to find ‘Baulkham Hills Local Environmental plan’. Note: these are text only documents and do not include maps. Maps can be viewed at your local council.
Some properties have covenants to ensure open access to light. Such covenants provide protection against a neighbour erecting a building that could block sunlight.

There is also usually an implied or explicit agreement between owners of terrace houses to maintain shared supporting walls. This is called a ‘cross-easement for support’. It may or may not be recorded on the certificate of title.

If an easement or covenant is infringed, a person may go to court to seek compensation or an order to stop the offending activity.

WHAT COUNCIL MUST CONSIDER IN A DEVELOPMENT APPLICATION

Section 79C of the Environmental Planning and Assessment Act sets out factors which a local council must take into consideration when deciding whether or not to grant development consent. These factors include:

- the provisions of environmental planning instruments (such as local and state environmental plans)
- the likely environmental, social and economic activities of the development
- any objections or submission made about the proposed development
- the public interest.

You can also voice your objections to a proposed development application in your area by writing to a member of parliament. Local members can represent the interest of residents. You may also contact the minister responsible for regulation of building developments (eg, Minister for Infrastructure and Planning).

MAJOR PROJECT APPROVALS

Late in 2005, the NSW Government amended the Environmental Planning and Assessment Act 1979 by introducing a new Part 3A to deal with major projects and critical infrastructure. The Minister is the consent authority for all major projects and critical infrastructure.

Major projects are developments that, in the opinion of the Minister, are of State or regional environmental planning significance. Major projects are usually developments, government infrastructure proposals, specified projects on State significant sites or activities which have significant environmental and social impacts, such as hospitals, large-scale mining and extractive industry, sensitive coastal developments, industrial projects and construction projects.
Once a development or activity is declared by the Minister, or identified in the Major Projects SEPP as a major project, Parts 4 and 5 of the Environmental Planning and Assessment Act 1979 no longer apply to the project, nor do the provisions of Local Environmental Plans (LEPs) or Regional Environmental Plans (REPs). Part 3A also sets out different environmental assessment requirements for major projects.

**APPEALS**

If you are unhappy with a local council’s decision concerning a development application, you can only appeal against the merits of a decision if the development is a designated development. Otherwise, objectors’ rights to challenge development consents in the Land and Environment Court are limited to cases where the council fails to follow legal procedures. For instance, you could challenge a consent if it was issued for a development that was prohibited in the area.

If you believe that the development consent raises a serious legal issue or poses a serious threat to the environment or to the public, you can consult a community legal centre, the Environmental Defender’s Office. See p 51 for contact details.

**APPROACHING THE COURT**

If a neighbour continues to use land without council approval, and the council does not take action to prevent the illegal use, anyone can approach the court to obtain an injunction to stop the activity (section 123 of Environmental Planning and Assessment Act).

**CONDITIONS OF CONSENT**

Development consent is often issued subject to a number of conditions regulating how the land is used or how the building is to be constructed. For example, a local council may issue development consent on the condition that construction work is only undertaken during certain hours. Other conditions could relate to the colour of the exterior walls, noise, drainage or landscaping.

If these conditions are not observed and a resident is being inconvenienced by the development work, it is best to talk to the neighbour about complying with the conditions. If this is not successful, they can take a complaint to the council and request that action be taken to enforce compliance. Action may also be taken in the Land and Environment Court to enforce conditions of development consent.
Contacts and Further Reading

The Legal Information Access Centre (LIAC) can help if you need more information about the law, including cases and legislation. The service is free and confidential. We are located in the State Library of NSW and our hours are 10-5 Monday-Friday and Sunday, closed Saturday.

Tel (02) 9273 1558  
Fax (02) 9273 1250  
Internet: www.liac.sl.nsw.gov.au  
Email: liac@sl.nsw.gov.au

LawAccess

LawAccess NSW is a free government telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW.

Hours: 9am to 5pm, Monday to Friday (excluding public holidays)  
Tel: 1300 888 529  
Website: www.lawaccess.nsw.gov.au

WHERE TO GO FOR HELP

Community Justice Centres

Community Justice Centres (CJCs) are government-funded independent centres that specialise in mediation and conflict management services to help people resolve their own disputes. This includes resolving differences between neighbours which may avoid complicated legal processes.

Where appropriate, they will suggest mediation, which is where you meet with your neighbour and mediators appointed through CJCs to try and solve the problem. Two impartial trained mediators conduct each mediation session. They help people communicate and work together to reach an agreement. Mediation sessions can be arranged at convenient times during the day. It may also be possible to arrange mediation on evenings or weekends. This process is free of charge and reports positive outcomes in helping assist parties to reach agreements about their issues in dispute.

Hours: Mon-Fri 9-5  
Tel: 1800 990 777  
TTY: 1800 671 964  
Fax: (02) 4925 0300  
Email: cjc_info@agd.nsw.gov.au  
Website: www.cjc.nsw.gov.au

Tenants’ Union NSW

A specialist community legal centre, representing the interests of all tenants in NSW. It is the peak resource body for tenants advice and advocacy services across NSW.

1 Buckingham Street  
Surry Hills NSW 2010  
Hotline: (02) 8117 3750  
Freecall: 1800 251 101  
Website: www.tenants.org.au
SEEKING LEGAL ADVICE
If specific legal advice relating to any of the above is required, advice can be sought from one of the following sources:

Legal Aid
Legal Aid can provide limited free legal advice through either their head office in Sydney or one of their regional offices. Free legal advice is usually limited to 15 minutes. Legal Aid is available for public interest environmental law matters. Contact EDO or a solicitor for more information.
For further information contact Legal Aid.
323 Castlereagh Street
Sydney NSW 2000
Phone: (02) 9219 5935
Or visit their website, www.legalaid.nsw.gov.au

Chamber Registrars
Most local courts will assist in filling out forms etc. Contact your local court to arrange a meeting with the Chamber Registrar.

Community Legal Centres
Community Legal Centres can give free legal advice and provide help with problems not covered by Legal Aid. Phone 1800 806 913 or visit the NSW Community Legal Centres’ website to find out where your nearest Community Legal Centre is: www.nswclc.org.au/.

The Law Society of NSW – private solicitors
A private solicitor can provide you with legal advice and guidance through your dispute. The NSW Law Society can refer you to private solicitors or lawyers in your area.

It also provides information about private lawyers who do legal aid work.
Tel: (02) 9926 0300 or outside the Sydney metropolitan area 1800 422 713.
Website: www.lawsociety.nsw.com.au
You can visit the website for help with finding a lawyer and also for legal factsheets on different topics including neighbours.

OTHER CONTACTS
Department of Housing
The Department of Housing has a Good Neighbours scheme. If you are experiencing noise and nuisance problems from your neighbour, telephone your local office. (see White Pages under H)

Environmental Defender’s Office
Level 1, 89 York St
Sydney NSW 2000
Tel: (02) 9262 6989
Or 1800 626 239 (outside Sydney)
Fax: (02) 9262 6998
Website: www.edo.org.au
Email: edonsw@edo.org.au

Department of Planning NSW
Information Centre
23-33 Bridge St
Sydney NSW 2000
Tel: (02) 9228 6111
Fax: (02) 9228 6455
Website: www.planning.nsw.gov.au
Email: information@planning.nsw.gov.au
Neighbours and the Law

Department of Environment and Climate Change (NSW)
59-61 Goulburn Street, Sydney
PO Box A290
Sydney South 1232

Tel: 131 555 (NSW only – publication and information requests)
Phone: (02) 9995 5000 (switchboard)
Fax: (02) 9995 5999
TTY: (02) 9211 4723
Website: www.environment.nsw.gov.au
Email: info@epa.nsw.gov.au

This Department now incorporates the Environment Protection Authority. The website includes a range of information on noise, including the Noise guide for local government www.environment.nsw.gov.au/noise/nglg.htm

Air Pollution Information and burning restrictions
Sydney: 1300 130 520
Newcastle/Hunter: 1800 817 838

Department of Local Government NSW
Locked Bag 3015
Nowra NSW 2541
Tel: (02) 4428 4100
TTY: (02) 4428 4209
Fax: (02) 4428 4199
Website: www.dlg.nsw.gov.au
Email: dlg@dlg.nsw.gov.au

Department of Lands NSW
(formerly Land Titles Office)
The Department of Lands website provides many helpful factsheets relating to topics such as Dividing Fences Law, Access to Neighbouring Land and Claiming Ownership of Private Laneways and Passageways.
Level 3, 1 Prince Albert Road
Queens Square
Sydney NSW 2000
Tel: (02) 9228 6666
Fax: (02) 9223 4357
Website: www.lands.nsw.gov.au
Email: feedback@lands.nsw.gov.au

Heritage Office of NSW
Locked Bag 5020
Parramatta NSW 2124
Tel: (02) 9873 8500
Fax: (02) 9873 8599
Website: www.heritage.nsw.gov.au
Email: heritageoffice@heritage.nsw.gov.au

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000
Tel: (02) 9286 1000
Toll free: 1800 451 524
Fax: (02) 9283 2911
TTY: (02) 9264 8050
Email: nswombudsman@ombo.nsw.gov.au

For information on complaints about Councils and Fact Sheets on developments, see www.nswombudsman.nsw.gov.au/complaints/councils.htm

Local Land Board Registrars
You can contact the Land Board Registrar at one of their Departmental offices.

Local Land Board registrars
Parramatta (02) 8836 5332
Taree (02) 6591 3521
Tamworth (02) 6764 5113
Wollongong (02) 4428 9119
Maitland (02) 4937 9349
Far West (02) 6883 3004

Sydney Water
115-123 Bathurst St
Sydney NSW 2001

General Enquiries:
Tel: 132 092
Fax: (02) 9822 5688

Service and Emergencies:
Tel 1800 061 055
TTY: (02) 9828 8341
Contacts and Further Reading

Land and Environment Court NSW
225 Macquarie Street
Sydney NSW 2000
Tel: (02) 9113 8200
Fax: (02) 9113 8222
Website: www.lawlink.nsw.gov.au/lec
Email: lecourt@agd.nsw.gov.au

Office of Fair Trading NSW
Website: www.fairtrading.nsw.gov.au
Information on issues relating to property and tenancy including residential parks, retirement villages and strata title.

Local Courts
Contact details of your local court are in the White Pages under ‘Local Courts’ or on the internet at www.lawlink.nsw.gov.au. Registry staff or a Chamber Magistrate can advise on local court procedure.

**BOOKS**


*Strata living: what you should know about residential, commercial and other strata schemes*, NSW Office of Fair Trading, 2006.


* This title is part of the Legal Tool Kit available in all public libraries in NSW.
+ This title is part of the Law Books for Libraries collection in LIAC libraries throughout the state. Check with LIAC for details.
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