

Commercial Dispute Resolution Update

Introduction

The State Parliament has enacted the *Neighbourhood Disputes Resolution Act 2011* (Qld). The new Act provides rules about each neighbour's responsibility for trees, dividing fences and the resolution of any disputes.

Queensland Civil and Administrative Tribunal (**QCAT**) has full jurisdiction to hear and decide any disputes that may arise under the Act.

The Act replaces the *Dividing Fences Act 1953* (Qld) which will only survive to the extent of dealing with existing notices, proceedings or orders affecting fences.

Dividing Fences

"Building, Maintenance and Contribution"

Neighbours are expected to contribute equally to the building and maintenance of a "sufficient dividing fence".

If land owners seek contribution, they are expected to provide a formal notice to the adjoining land owner to contribute, in the approved form and accompanied by a copy of at least one written quotation.

Either landowner will be able to apply to QCAT about fencing work if they have not reached agreement within two months of service of such a notice.

Unless work is urgent or approval has been given by QCAT, there must be an agreement between land owners before any fencing work commences.

"Fence"

The new Act expands the definition of "fence" to mean a structure, ditch or embankment, hedge or similar vegetative barrier, enclosing or bounding land, whether or not continuous or extending along the entire boundary.

Interestingly, gates, cattle grids, watercourses and foundations built solely to support and maintain the fence fall within the definition.

Retaining walls or walls that form part of a house, garage or other building do not fall within the definition.

"Dividing Fence"

What will be sufficient will depend on the type of land involved. For residential land, a dividing fence will be sufficient if it is between 1.5 metres and 1.8 metres high and consists substantially of "prescribed material". Prescribed material means any of the following provided they comply with relevant local laws:

- Wood, including timber palings and lattice panels;
- Chain wire;
- Metal panels or rods;
- Bricks;
- rendered cement;
- concrete blocks;
- hedge or other vegetative barrier;
- other material of which a dividing fence is ordinarily constructed.

For pastoral land, a dividing fence will be sufficient if it can restrain livestock grazing on each parcel of land.

Adjoining owners may agree that a dividing fence is sufficient regardless of the prescribed materials.

Trees

"Tree-keeper"

Under the new Act, an owner, lessee or body corporate of land which contains tress will generally fall under the term "tree-keeper."

A tree-keeper is responsible for the proper care and maintenance of any trees located on their property which includes cutting and removing any branches of the tree that overhang a neighbour's land to avoid:

- serious injury to a person;
- serious damage to a person's land or any property on a person's land; or
- substantial, ongoing and unreasonable interference with the neighbour's use and enjoyment of the land.

"Removal of trees"

Land owners are entitled to serve a notice on a tree-keeper requiring the removal of overhanging branches. If a tree-keeper fails to act on the notice, the land owner may, subject to any State or Local Government orders, remove the offending branches and decide whether the branches removed be returned. The tree-keeper will be liable for such reasonable expenses of removal, but only to a maximum of \$300.

"Seller's Disclosure"

Under the new Act, when selling a property, the existence of any applications or orders affecting trees on the seller's land must be disclosed to potential buyers. If there is a failure to disclose, a buyer will have the right of termination at any time before settlement and a refund of any deposit paid.

"Obligations after the Contract Date"

The Act imposes obligations on the seller to advise the buyer of new notices, proceedings or orders arising after the contract. Further, the buyer must consent to the seller taking action in relation to the property which may be binding on the buyer after settlement.

REIQ contract

The standard contract is being reviewed to take into account the new Act.

Conclusion

Although dealing with concepts which are routine, and fairly simple in nature, neighbourhood rights and responsibilities are important in a range of contexts and can be quite complex. It is certainly an area that applies to daily living arrangements for many of our citizens. The new Act seeks to provide a practical, low cost and informal process to deal with the issues.

This article was produced by Herbert Geer Lawyers.
It is intended to provide general information in summary form on legal issues.
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