

Looking for Options: When there's adverse possession

For a full explanation of adverse possession we suggest you first read the Information Sheet from the Law Reform Committee.

A dispute over the position of the boundary will delay construction of a new fence. The costs involved in resolving a dispute can be quite high, particularly if the matter goes to court as an adverse possession claim. These claims are heard in the Supreme Court because a claim (even one for a tiny strip of land) affects the whole value of a property, and costs are calculated accordingly.

In addition, there are a number of options open to you when there's adverse possession:

- locate the boundary line
- borrow or lease the land in dispute
- title rectification
- make an exchange
- leave the fence where it is
- mediation

These may help you reach a compromise with your neighbour. But these are suggestions only. Before considering any of these you need to consider your circumstances and get legal advice.

Locate the original boundary line

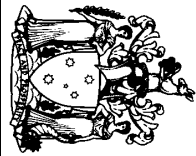
If you or your neighbour claim the fence is not on the original boundary line, you should first check the accuracy of the claim. To avoid misunderstandings and future disagreement, you should hire a land surveyor to do this.

Rather than each neighbour hiring separate surveyors it's a good idea to first talk to your neighbour to reach an agreement on sharing the costs for one surveyor you both trust. You should each agree to be bound by the surveyor's report.

Borrow or lease the land in dispute

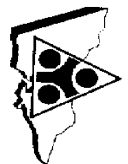
If the fence is in the wrong place it may be difficult to relocate to the original boundary, even if you and your neighbour agree that's the best thing to do.

For example, there may be a garage wall on the boundary. To avoid the additional expense of moving the garage, you and your neighbour could agree that the fence should stay where it is, and sign a lease or an agreement acknowledging that one neighbour is occupying the other's piece of land under licence. This licence should disclaim any rights of possession that might otherwise arise from occupancy. Possession of the land continues but it's no longer adverse.

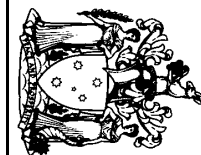


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Title rectification

Title rectification is administered through the Titles Office. However, exchange for this consent will cost upward of \$1,200. Generally the neighbour who has the benefit of the land agrees to bear the cost of this process.

Make an exchange

If the value of the land involved is small and of little use, it may not be worth the time, money and stress involved in fighting the matter in court, so you and your neighbour could agree to an exchange.

For example, if you want to reclaim land on your neighbour's side of the fence, you could:

- offer to pay the total costs of the new fence, to ensure that it's built where you want
- you could offer to give your neighbour a hand to remove a large tree, or help out with some other task in exchange for their agreement on the location of the new fence

Leave the fence where it is

If the value of the land involved is small and of little use it may not be worth the time, money and stress involved in fighting the matter in court, so you and your neighbour could agree to leave the fence where it is.

But be careful. You may have resolved the fence issue, but have you resolved the property issue?

It's still worth obtaining legal advice and documenting your agreement to prevent future disputes. For example, the potential adverse possession claim may continue until someone takes formal steps to change the boundary on the land titles and if either property changes hands the disagreement could start again.

Mediation

Mediation is a process in which a neutral person (the mediator) helps neighbours to negotiate with each other to resolve their dispute.

- Mediation is confidential.
- Everyone involved in the dispute comes together for a face-to-face meeting.
- The mediator runs the process but the neighbours in dispute decide what they want to talk about.
- The mediator helps identify issues and possible options.
- The neighbours in dispute work out a solution with the help of the mediator.
- Mediators don't impose a decision.

The Dispute Settlement Centre of Victoria provides a free mediation service and can be contacted on 9603 8370 (or 1800 658 528 for STD callers).

This information is of a general nature only and is not intended to be a substitute for independent legal or other professional advice.