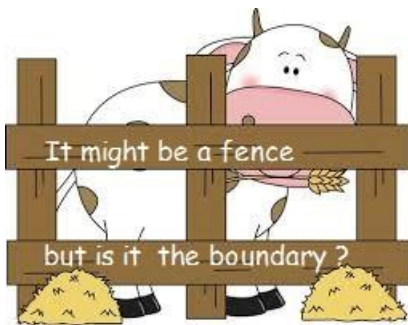


BUILDING ENCROACHMENTS – A GUIDE

Queensland



Oops! I built something over the neighbours' property

WHAT IS THE FIX? There are 4 common options:

Option 1: Pay compensation to the neighbour + have the section of land transferred to you

Option 2: Pay compensation to the neighbour + have an easement granted to you

Option 3: Pay compensation to the neighbour + lease that land

Options 1, 2 and 3 sounds expensive? They are and there are lots of things you need to get first including the neighbour's agreement on the amount of compensation, a formal valuation if there is a dispute, fees for new survey and plans, pay fees to the local council for consent to boundary changes, fees to register the new plan and re-issue new Title Deeds.

How much compensation? The law provides the compensation is the market value of the land being transferred or granted provided the encroachment was not intentional or negligent. If it was either, then the compensation is market value X 3.

Was it negligent?

The courts have held that land owners can't rely on a fence position or blame their contractors. Owners have the responsibility for ensuring their building works are on land they are entitled to use.

Option 4: Consider removing that something you built and restoring the neighbours land to the way it was.

If you can't come to an agreement and need to apply to the court for a remedy some factors that will be taken into consideration are:

- The situation and value of each parcel of land
- The value and character of the encroachment
- The cost of dismantling and demolition

It is a question of balancing these and all other relevant factors.

Prevention is better than the cure.

So, remember. It might be a fence but is it the boundary?

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