



Whose Fence Is it?

It is usual for Jamaican landowners to erect perimeter fences; whether for reasons related to privacy or security or to ensure that the boundaries or “property lines” of the land are clearly shown and preserved. Whilst it is in the best interests of persons to demarcate the boundaries of their land once, it is advised, this has been established or confirmed by a commissioned land surveyor, not many persons are aware that there is legislation in Jamaica which stipulates the parties who are responsible for bearing not only the cost of erecting boundary fences but also the cost to repair these fences.

Section 4 of the Dividing Fences Act 1888 states the general principle that the cost of erecting and maintaining a “sufficient” dividing fence should be borne equally by the “occupier” of the land and the occupier of the adjoining land.

It is noted that:

“occupier” is defined widely, in the Act, to include owners of land who may not be in actual possession of the land; related to the first point, where notices need to be served on an occupier of land which is vacant and the residence of the owner is unknown, the notices may be served by affixing them to some conspicuous part of the land; “fence” is defined in the Act to include walls, banks and hedges; a fence is deemed “sufficient” if it is high enough, strong enough and close enough to prevent the trespass of ‘ordinary’ animals, other than pigs and goats; as is usual with general principles, the Act provides for specified cases in which the general principle will not apply; for example, the Act does not apply in certain cases where the adjoining owner is the Crown or the Commissioner of Lands and also provides for one occupier to bear the full cost of repair of a fence in certain circumstances where the damage to the fence was caused by any animal which that occupier suffers to be on his land or was caused by fire which originated from the negligence of that occupier.

The Act gives occupiers the right to give written notice to the adjoining occupier(s) to call on them to come to an agreement in writing as to the kind of fence to be erected, where none existed before, or kind of repairs or work to be done to an existing fence which is now insufficient. Further, provided that there is no bona fide dispute between the parties as to the true boundary line, the Act gives the party giving the notice to sue to recover the one-half cost of the work should the adjoining occupier fail to come to an agreement within 14 days of the giving of the notice or, having come to an agreement, he fails to do something which he had agreed to do. It is noted, however, that the Court will not allow the plaintiff in such a law suit to recover more than one-half of the cost of a fence which is of a reasonable character or the reasonable cost of the work done to erect or repair the fence. Of special interest is the right given to occupiers, which extends to their servants and agents, when making or repairing fences to make them sufficient, to cut down or remove any trees, parts of trees, or roots, if they affect or tend to affect the fence.

In some cases, tenants may be obliged to bear the one-half cost of erecting or repairing the boundary fence if their tenancy agreement stipulates that the tenant is responsible for bearing the expense of erecting or repairing the dividing fence. The relevant provision in the Act goes further to state that the landlord may be entitled to charge the tenant additional rent calculated as a percentage of the amount paid by the landlord owner under the Act where, under the terms of the agreement between the landlord and the tenant, the landlord is not bound to erect or repair any dividing fence. Therefore, while the Act does not go so far as to state that tenant occupiers will be responsible for the one-half payment to erect or repair boundary fences, it appears that the landlord may be able to call upon the tenant for a contribution in the absence of any agreement as to who is responsible for bearing the cost of erecting or repairing boundary fences.

Whilst it does not appear that there is any recourse available to occupiers who have already expended amounts to erect a dividing fence to partially recoup a part of these costs, the issue concerning the repair of these fences may become pertinent if the fence is currently insufficient or subsequently becomes insufficient. Please feel free to call us if you wish further advice about your rights to request that your neighbours bear half the cost of erecting or maintaining boundary fences or if they have been called upon to pay these costs.

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