

**DIVISION FENCE BY-LAW  
PROCEDURES FOR ENFORCEMENT**

**Step 1: Attempt to reach agreement:**

Attempt to come to agreement with your neighbour regarding the type and cost sharing of a division fence. If an agreement is not reached, proceed to **Step 2**.

**Step 2: No agreement, proceed per by-law Sec. 3.3, 14 business days in advance of commencing construction:**

Send a Notice of Intent (letter format) by registered mail to your neighbour, stating that construction of the division fence will commence in 14 BUSINESS DAYS FROM DATE OF MAILING THE LETTER, the intention to seek a contributory payment for the work to the Division Fence from the adjoining owner in accordance with By-law 2012-66, and include a copy of the by-law along with 3 written quotes for actual and/or basic cost for the fencing work being undertaken. The Notice must include a paragraph stating the Adjoining Owner may obtain 3 additional quotes to present to the Owner not later than 10 business days from the date of mailing the Notice of Intent. Construction can proceed if the above was administered. Proceed to **Step 3**.

**Step 3: Recovering the costs of building the fence:**

If your neighbour does not pay **within 90 days of completion** of the fence, you must serve him/her with another notice (again, it may be a letter), by registered mail, requiring your neighbour to comply with the by-law by means of payment of the adjoining owner's portion of the basic cost. This notice should again set out the provisions of the by-law, a breakdown of the costs of the fence (including copies of invoices/estimates) and conclude with a request for payment within 30 days of receipt of the notice. **The notice must also state that if the payment is not received within 30 days after service of the notice, you may take appropriate proceedings under Part IX of the Provincial Offences Act to recover the proportionate share of the cost of the work from the defaulting person.** If payment is received, the matter is at an end. If payment is not received, you may elect to proceed to **Step 4**.

**Step 4: No payment, obtaining court order:**

Attend at the Court Office located at 465 Davis Drive, Newmarket, and complete a Statement which you will sign in front of a Justice of the Peace. This Statement will briefly set out the facts. It concludes with a request that the court make an Order that your neighbour pay his/her proportionate share of the cost of the work. The Police will serve the Statement on your neighbour, together with a Summons to appear in court. Proceed to **Step 5**.

**Step 5: Your court date:**

On the court date, your neighbour (defaulting person) will be asked if he/she wishes to dispute the making of the Order. If he/she does, a "trial" will be held. You will have to prove that you correctly followed the procedural steps in the by-law. In that event, the Order will be granted and your neighbor (defaulting person) will be given a certain amount of time to pay. There is no "defence" as long as the steps in the by-law are followed. When payment is made, the matter is at an end. If payment is not made, you may elect to proceed to **Step 6**.

**Step 6: Enforcing your court order if no payment:**

Other than your time, there are no costs involved in all of the steps leading up to Step 6. In the rare instance when your neighbour continues to default in his/her obligations under the by-law and subsequently defaults in payment pursuant to a court Order, you can enforce the court Order by (for example) garnisheeing wages, or instructing a bailiff to seize assets. To do this, you obtain a "Certificate of Default" from the court at 465 Davis Drive, Newmarket, and file it with the Small Claims Court at 50 Eagle Street, Newmarket. There are small fees involved when embarking on enforcement through the Small Claims Court, however, these costs are added to the debt that is recoverable from your neighbour. The court administrative staff at the Small Claims Court at 50 Eagle Street, Newmarket, cannot give legal advice, but they are very helpful in the event you need procedural assistance with any step in the process.