

TOWNSHIP OF UXBRIDGE DIVISION FENCE COST SHARING BY-LAW

PROCEDURE FOR ENFORCEMENT

Step 1: Attempt to reach agreement:

Attempt to come to agreement with the adjoining owner 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:

You do not need a lawyer to proceed further, but you may choose to use a lawyer or paralegal to ensure compliance with the Division Fence Cost Sharing By-law (By-law). Send a notice by registered mail to the adjoining owner, at least nineteen (19) DAYS PRIOR TO COMMENCING WORK OR SIGNING AN AGREEMENT for the fence, advising of your intention to build (or repair) the division fence. The notice shall include a copy of the By-law and a breakdown of the costs of the fence (including not less than two copies of any estimates) and a request for payment calculated as set out in the By-law. Whether or not the adjoining owner makes payment, you may proceed to construct the fence upon the expiration of the nineteen (19) day period. You will have to pay the person who constructs the fence, and then proceed to Step 3.

Step 3: Recovering the costs of building the fence:

If the adjoining owner does not pay within ninety (90) days of completion of the fence, you must serve him/her with another notice by registered mail, requiring the adjoining owner to comply with the by-law. This notice shall 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 thirty (30) days of receipt of the notice. The notice must also state that if the payment is not received within thirty (30) days, 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 adjoining owner. 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 located at 605 Rossland Road East, Whitby, 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 the adjoining owner pay his/her proportionate share of the cost of the work. The Police will serve the Statement on the adjoining owner, together with a Summons to appear in court. Proceed to Step 5.

Step 5: Your court date:

On the court date, the adjoining owner 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 the adjoining owner 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 (Unless you chose to use a lawyer or paralegal to ensure compliance with the By-law in Step 2). In the rare instance when the adjoining owner 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 605 Rossland Road East, Whitby, and file it with the Small Claims Court at 605 Rossland Road East, Whitby. 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 the adjoining owner. The court administrative staff at the Small Claims Court at 605 Rossland Road East, Whitby, cannot give legal advice, but they are very helpful in the event you need procedural assistance with any step in the process.