

Fencing Act: The Legal Framework for Defining Property Lines

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05 April 2024

INTRODUCTION

In 1963, South Africa enacted the Fencing Act 31 of 1964 (“the Act”) to address property boundaries, livestock control, and neighbourly disputes. In 1978, the Fencing Amendment Act 4 of 1978 (“the Amendment Act”) was introduced to clarify and expand on certain provisions in the Act. In this article, we explore the critical provisions of the Act and its counterpart, the Amended Act.

THE ACT

The provisions of the Act lay the foundations for certain property rights and neighbourly relations in South Africa. The key provisions of the Act include and can be summarised as follows:

1. The Act established standards and procedures for property owners to follow in erecting and maintaining fences along their boundaries;
2. The Act makes provision for sharing costs of boundary fencing. Landowners who agreed to install or repair a common boundary fence, were obligated to share expenses equally. The Act also provides for other beneficiaries such as lessees and servitude holders to contribute to the cost of erecting fences and in certain areas the state could declare that contributions are to be paid by everyone involved;
3. The Act outlines the dispute resolution procedures relating to fencing, encouraging amicable resolution while also providing for legal recourse and penalties, if needed; and
4. Local authorities were granted the power to ensure compliance with the Act’s provisions and standards.

THE AMENDMENT ACT

The Amendment Act was introduced to refine and expand upon the principles set out in the Act. The Amendment Act clarified certain definitions in the Act and in doing so ensured that the definitions are interpreted correctly. This included:-

1. Expanding the definition of “holding” to include other land that is vested in the state but not already mentioned in the original definition;
2. Expanding the definition of “owner” to include people who purchased land but have not yet registered the property in their names; and
3. Updating outdated titles of ministers.

COST-SHARING OF COMMON FENCES IN TERMS OF THE ACT

The Act provides that if you live in certain areas where contributions towards the costs of boundary fences are obligatory, you can demand a contribution to the cost of the boundary fence from your neighbour. However, where a landowner wants to alter the boundary fence in order to make it superior, such as adding electric fencing, the landowner altering the fence will be responsible for the cost thereof unless the fence benefits the neighbouring landowner. In such instances the neighbouring landowner will be liable to contribute the fence.

Landowners can always negotiate and agree upon how to share expenses based on factors such as the necessity of the features. This ensures that boundary fences can accommodate the diverse needs of landowners while maintain fairness.

MUNICIPALITIES (AND ROADS) AS NEIGHBOURS?

The Act regulates the fencing of boundaries of land but is silent in respect of fences that are adjacent to public roads. Although the relevant road authority has jurisdiction over the road reserves in South Africa, the ownership vests in the Municipality and would be considered your “neighbour”. The responsible party for maintaining or contributing to such fences where the municipality is a “neighbour” is generally determined by the relevant municipal by-laws or provincial road ordinances.

In certain municipalities such as Swartland Municipality, the property owner is solely responsible for the maintaining of the property, however in other

municipalities such as Ndlambe Municipality, the municipality will pay half of the cost, subject to certain conditions.

COST-SHARING OF COMMON FENCES IN TERMS OF MUNICIPAL BY-LAWS (“by-Laws”)

There might be additional guidelines or regulations that regulate the rules regarding common fences, depending on the Municipality that you are situated in. For example the by-laws for Johannesburg Municipality has additional regulations regarding fences being erected. In terms of the Johannesburg by-laws no owner or occupier, other than an owner or occupier of an agricultural holding, may erect any barbed-wire fence or any railing, paling, wall or other barrier which, by reason of spikes or other sharp or pointed protrusions or otherwise, may be dangerous, next to a public road. No person may erect an electric barrier next to a public road unless:-

1. the electric barrier is erected on top of a wall built of brick, cement, concrete or similar material, which wall may not be less than 1,8 metres high;
2. The barrier is designed and installed in accordance with any relevant specifications determined by the Council and any standard issued in terms of the Standards Act, 1993 (Act No. 29 of 1993); and
3. without the permission of the Metropolitan Municipality of the City of Johannesburg.

Every municipality has different by-laws containing different restrictions or requirements and as such you should consult your local municipality’s by-laws before erecting a fence or boundary wall.

CONCLUSION

The Act, complemented by the critical enhancements introduced by the Amendment Act, continues to serve as a valuable framework for property owners and neighbours in South Africa. Its provisions, which address fencing standards, cost-sharing and dispute resolution, promote not only property rights but also community harmony. As South Africa evolves, so does the relevance of the Act, adapting to changing landscapes and property boundaries, ensuring that the spirit of neighbourly cooperation endures.

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