

**Publication Date: 17 January 2017**  
**YSP Podcast Transcript: Episode 044. How to Deal With Boundary Fences in Strata**  
**(references to NSW law)**

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**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. Today I have Savina Yang joining me. Hi, Savina.

**Savina Yang:** Hi, Amanda.

**Amanda Farmer:** How are you today?

**Savina Yang:** Good. Thank you. How are you?

**Amanda Farmer:** Excellent. Thank you. Now for long time listeners of the show you'll know that Savina is a lawyer with my practice Lawyers Chambers. She's been working with me for many years now and she has previously been a guest on the show; Episodes 08 and Episode 016.

So Savina joining us to talk all things strata and I like to bring Savina on to talk about a particular area that she's been working on in her day to day practice. Episodes 08 was about the process of enforcing by-laws and Episode 016 was about how we can increase the value of our strata units by extending into common property.

And I've invited Savina on the show today to talk to us about boundary fences sometimes called dividing fences here in New South Wales and Savina, first question for you what is the relevance of boundary fences to strata living?

**Savina Yang:** Let's imagine we have 2 puzzles of land that's called the first one Land A and it may have a strata building on that piece of land. Next to it is Land B and Land B might have a building that is a strata building or not a strata building. Between the lands there is a dividing fence, and that dividing fence is governed by the Dividing Fences Act.

So in this case, we are not talking about a common property fence, such as a fence that divides lots, different lots within a strata scheme or a fence that divides common property and the lot within the same strata scheme. We are talking about a fence that divides one piece of land to another and sometimes that fence may not exist.

So the neighbours may need to construct a new dividing fence or sometimes the fence falls under repair due to weather such as storm and in order to decide who is liable to construct that dividing fence or repair that dividing fence, we need to look at the Dividing Fences Act.

**Amanda Farmer:** Okay, right. So that's the Dividing Fences Act in New South Wales and I'm aware that there is similar legislation in other states dealing with dividing or boundary fences.

So we are talking about fences between 2 puzzles of land whether we've got on Puzzle A, a strata scheme on Puzzle B maybe a house or some other Torrance titled property.

**Savina Yang:** Yes.

**Amanda Farmer:** or even a vacant block of land that's about to be developed or even another strata scheme. I know some other matter Savina that we having working on recently have been dealing with boundary fences between 2 strata schemes.



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**Amanda Farmer:** That fences gotten really old or there's been a storm and it's been pushed over. How do this 2 strata schemes deal with that fence. So, what steps do they take to deal with that fence successfully?

**Savina Yang:** First of all, there is no magical formula that will guarantee a win because each case is unique and so what works in one case may not work in another. Having said this, there is a general approach on how to maximise a party's chance of resolving a boundary fence dispute. As the first step we generally recommend that you approach your neighbour.

**Amanda Farmer:** Yes.

**Savina Yang:** You don't want to initiate litigation from the outset because at the end of the day you want to you know, be courteous and you want to live there you know long term; think of the long term.

So first step write your neighbour or approach them verbally about your fencing issue and see if you can reach an agreement or at least narrow the issue. If you and your neighbour come to an agreement you should put those details in writing so you can avoid any confusion later on.

**Amanda Farmer:** Can I just jump in here? I think.

**Savina Yang:** Yes.

**Amanda Farmer:** When you're dealing with a joining strata schemes the way you are going to be doing that I suppose unless you actually know somebody in the building next door or you know who is in the committee and you can approach them directly I guess you're making this approach through your strata manager.

**Savina Yang:** Yes.

**Amanda Farmer:** So you're going to your strata manager saying hey you know the building next door do you know who manages them and often they will, if it's not the same strata management scheme that's helpful.

Can you please either put me in touch with their committee members or can you please send a letter to their strata manager letting them know that we want to have this discussion. So to be strata manager to strata manager.

**Savina Yang:** Yes.

**Amanda Farmer:** If you don't have a contact there with your neighbours.

**Savina Yang:** Yes, that's right and if you don't have a strata manager you can write to your committee and the committee members can contact each other.

**Amanda Farmer:** Yes.

**Savina Yang:** In that regard, yes. So if the informal discussion is not fruitful and you and your neighbour cannot reach an agreement then as the second step you can prepare and serve your neighbour a fencing notice.

Basically, this notice sets out what type of fence work is required, the estimated cost of work and an accurate description of where the fence will be located.

Although there's no particular form for the fencing notice the Dividing Fences Act requires certain details to be included in that notice so when you prepare that fencing notice make sure that you read the act and tick the boxes and make sure you have included all these mandatory requirements.

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**Amanda Farmer:** I'll make sure that there is a link in the show notes to the relevant section of the Dividing Fences Act which tells you what should be included in a fencing notice. Now, you said there, Savina you should be including the estimated cost of the work so I guess the committee is going out and getting a quote or 2.

**Savina Yang:** Yes.

**Amanda Farmer:** For the work so that you have an estimated cost and an important point there the location of the fence. I know some matters that we've worked on, there has been a question as to whether the fence was actually originally on the correct boundary and there has been the need to get a surveyor out to do a survey or an updated survey of the area.

**Savina Yang:** Yes.

**Amanda Farmer:** where the fences to go to make sure that it is going to be situated exactly where it should be and a building that I worked with recently had this experience where once they got the surveyor out they realise that the old fence had been encroaching on their property.

And the new fence was to be put back in a different position which their neighbour agreed to. But they needed the benefit of the survey to do that so keep that in mind as well.

**Savina Yang:** Yes. Okay. So, you've done your fencing notice, you've served your fencing notice on your neighbour but there's still no agreement within one month after the notice has been served.

So what happens after that is either owner can then apply for a fencing order at two forums: (1) is the New South Wales Civil and Administrative Tribunal or (2) the local court.

The difference between this two forums is that: if an application for a fencing order is filed at the Tribunal the next step is a conciliation and hearing. So what happens at conciliation is like a mediation but there is a conciliator who will assist the parties to develop a proposal to come into an agreement. Whereas, if the application is filed at a local court then the next step is generally just a court appearance.

We generally recommend our clients consider the Tribunal route because it's less formal and more efficient than courts.

anything to add to that Amanda?

**Amanda Farmer:** I agree with that. I think we do find it's a rare case that parties can't come to an agreement about a dividing fence and I have to say we are not serving too many fencing notices.

Usually, I think the issue comes down to cost, the type of fence that is being proposed; those are the usual sources of disagreement. What about in your experience, Savina? What would you say the common problems are when it comes to reaching agreement about boundary fences and how we are solving those?

**Savina Yang:** Yes. Like you've mentioned the type of fence to be built or to be repaired is actually considered a grey area because as I mentioned previously, you and your neighbour are only liable in equal shares to contribute into fencing working that will result in a sufficient dividing fence.

So that means if say you want a fence to be built to a highest standard then you have to be responsible for the cost of that additional work that renders the fence to more than just a sufficient standard.

The problem is that the Dividing Fences Act actually doesn't define what a sufficient dividing fence is. So to determine what a sufficient dividing fence is, the Tribunal member magistrate needs to consider all the circumstances of the case including if there is

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an existing dividing fence between the two puzzles of land, what is the purpose of the dividing fence and what is the purpose of the adjoining land; what are the used for or intended to be used, whether there is any policy adopted by the local council or any relevant environmental planning instrument. These factors, like I mentioned before what is considered sufficient in your situation, may not be sufficient in another situation.

**Amanda Farmer:** Yes, it's a good point and a building I was involved in recently exactly to this point- part of their boundary fence was actually a pool fence. It was an enclosing part of the pool. So it, of course, had a specific requirement that it had to meet as a pool fence and when it was being repaired those requirements had to be taken to an account.

So that goes to your point about what is the purpose of the fence and what is going on the land or on the other side and that all feeds into what constitute a sufficient dividing fence. So good point said remember.

**Savina Yang:** Yes. There's another common dispute when it comes to a dividing fence. This is a neighbour's refusal to contribute to the costs.

**Amanda Farmer:** Yes.

**Savina Yang:** Or a neighbour challenging whether the fence should be built, to begin with and in my view a lot of this issues arise because of a lack of knowledge of the law.

So for any listeners who are facing a similar problem or would like to avoid a similar problem occurring in the near future I suggest that they have a quick read of the Dividing Fencing Act to understand what your liability is and your neighbours' liabilities under the Act. It's actually quite easy to read, Amanda not like the Strata Schemes Management Act, but yes it's definitely not entertaining but it's easy to read.

**Amanda Farmer:** Yes and I think there's a good bit online as well. I'm not sure, Savina. You can tell me if I'm wrong, whether it's the local court website that has a page on dividing fences and maybe the Civil and Administrative Tribunal has that on their page as well. If I can track down those pages I'll put them in the show notes as well because they will be some good, easy to read guides to these general principles we are talking about.

**Savina Yang:** Yes. You read my mind because I do have a link for our listeners.

**Amanda Farmer:** Fabulous.

**Savina Yang:** It's law access. It has a very detailed page on how to deal with dividing fences issues.

**Amanda Farmer:** Okay. Wonderful. Can you give me that link now if you got it?

**Savina Yang:** Yes, I do. It's [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au) and I will put that link up on the website.

**Amanda Farmer:** Perfect. Thank you very much. Alright, so we might have some listeners out there today who are listening intently because they have a problem with a boundary fence and they think 'wow this great timing listening to Savina tell me all about this'. What would you say their first step should be to get started with solving their boundary fence problem today?

**Savina Yang:** Definitely just go over to your neighbour's house or approach your strata committee and initiate an informal discussion.

Just tell them what issues are, tell them what your obligation is whether obligations are under the Act and see if you can come to an agreement. At the end of day, nobody wants to spend their time you know in and out of courts or in and out of the Tribunals.

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**Amanda Farmer:** Except us maybe.

**Savina Yang:** Exactly. Like I said, it's in both neighbours' interests to resolve the issues courteously and in a courteous and friendly manner.

**Amanda Farmer:** Yes and as I said our experiences is that 90% of this issues are resolved exactly that way. It's only the 10% or less that need to go further and there's a lot of good information out there for you if you do need to go further. I'll make sure all those links are available.

Alright, Savina thank you so much for that. How do our listeners find out more about you and is there anything you want to add before we wrap up?

**Savina Yang:** The listeners can find me on [www.lawyerschambers.com.au](http://www.lawyerschambers.com.au) and if you have a question about a dividing fence I would like to know and send me an email at [savina@lawyerschambers.com.au](mailto:savina@lawyerschambers.com.au). One more thing before I go. I do want to mention that the community justice centres offer free mediation services.

**Amanda Farmer:** Yes.

**Savina Yang:** So if you're informal discussion doesn't work out and you don't really want to you know wanting to litigation you and your neighbour may consider this route because once the matter is in the hands of the court or the tribunal the decision will be out of your hands and your neighbour's hands.

**Amanda Farmer:** Yes.

**Savina Yang:** So make sure you know you deal with this issue under your control and the stats I think on the community justice website is 80% of the dividing fence issues get resolved.

Yes, using their mediation service and it's free. It's confidential so give it a go.

**Amanda Farmer:** Yes.

**Savina Yang:** If you're interested.

**Amanda Farmer:** For sure so that's the Community Justice Center and I think there's a few around depending on your local area and we'll put a link to that website as well in the show notes for this episode. Alright. Awesome, thank you very much for that, Savina. I shall catch you next time.

**Savina Yang:** Sounds good. Thank you, Amanda. Bye, everyone.

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