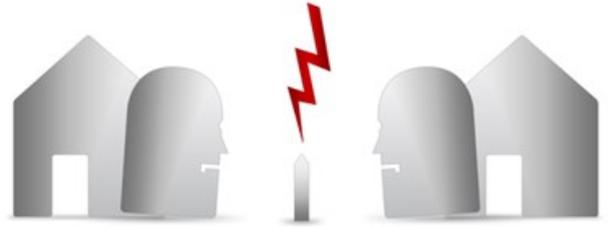




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## LawTalk Blog



# How can encroachments be fixed by agreement?

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Property boundaries in South Australia are generally accepted as being well defined. When you purchase land, your interest in that land is recorded in a Certificate of Title and that document has a plan on the reverse which shows the dimensions of your land.

Over time, however, some of those plans show boundaries which are no longer accurate.

Further to that, neighbours by agreement or by mistake have placed [fences or structures](#) in areas which are in fact not the true surveyed boundaries of the land and therefore encroach onto neighbouring property.

Whilst an incorrectly placed fence does not change the legal boundaries of the land and any issues which arise can be easily cured by moving the fence, more substantial structures such as houses, sheds, verandas and driveways pose a more difficult problem.

The *Encroachments Act* 1944 ("the Act") regulates what happens if an encroachment is discovered. Under the Act, either party (being you or your neighbour) can apply to the Land and Valuation Court in respect of the encroachment.

That Court can make any orders it deems fair and just. The orders which are usually made involve:

1. the payment of compensation to the encroached upon owner; or
2. the conveyance or lease of the land to the encroaching party, however, with fair market value being paid to the encroached upon party; or

3. the removal of the encroachment.

*"...if a party deliberately or negligently encroaches on an adjoining property, the Court can order up to three times the market value of the encroached upon land being paid"*

The Court attempts to find a reasonable solution in the circumstances. For instance, if the encroachment has been in existence for decades and does not cause any true loss or inconvenience to the encroached upon party, the Court is unlikely to make an order for the extinguishment of the encroachment, especially if that would cause significant impact on the encroaching party.

On the other hand, if a party deliberately or negligently encroaches on an adjoining property, the Court can order up to three times the market value of the encroached upon land being paid; assuming that the Court does not outright order the removal of the encroachment.

It is our experience that neighbours with an encroachment issue and who are on reasonably good terms with their neighbours are best served by reaching an agreement about any encroachment, rather than going to Court. It may be that the encroached upon neighbour agrees to lease the land or otherwise allow the encroaching party to occupy the land. A licence to occupy can be prepared, which gives the parties legal certainty about their rights and the nature of the agreement.

Alternatively, the parties can agree to have the land surveyed and for the boundary to be realigned and corrected on the Certificate of Title. Our [Conveyancing](#) department and our contacts with quality surveyors allow us to assist you in the subdivision of property and the re-alignment of boundaries.

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