

CHAPTER 344

PARTITION FENCES

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344.01 FENCE VIEWERS. Supervisors in their respective towns, aldermen of cities in their respective wards, the commissioner of public works in cities having a commission form of government, and village trustees in their respective villages shall be fence viewers.

[R. L. s. 2748; 1921 c. 25 s. 1] (7248)

344.02 LEGAL FENCE; REQUISITES; VIEWERS OF PARTITION FENCES. All fences consisting of not less than 32-inch woven wire and two barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than four inches from the woven wire and the second barbed wire being above and not more than eight inches from the first wire; all fences consisting of not less than 40-inch woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than four inches from the woven wire; all fences consisting of woven wire not less than 48 inches in height, and one barbed wire not more than four inches above the woven wire firmly fastened to well-set posts not more than one rod apart; all fences consisting of not less than four barbed wires with at least 40 barbs to the rod, the wires to be firmly fastened to posts not more than one rod apart, the top wire to be not more than 48 inches high and the bottom wire not less than 12, nor more than 16, inches from the ground; and all fences consisting of rails, timbers, wires, boards, stone walls, or any combination thereof, or streams, lakes, ditches, or hedges, which shall be considered by the fence viewers as equivalent to any of the fences herein described, shall be deemed legal and sufficient fences. In all cases where adjoining land owners disagree as to the kind of fence to be built on any division line, the matter shall be referred to the fence viewers, who shall determine what kind of fence shall be built on such line and shall order the fence built according to law. When the lands of two persons adjoin, and the land of one of such persons is enclosed on all sides, except the side forming a division line between such lands, by a woven wire fence, then and in such case, each of such persons shall erect a fence of like character and quality along such division line for a distance of one-half of the total length thereof and thereafter maintain the same in equal shares.

[R. L. s. 2749; 1915 c. 282; 1917 c. 408 s. 1] (7249)

344.03 EXPENSE; EQUAL SHARES. The adjoining owners or occupants of lands in this state when the land of one or both of the owners is, in whole or in part, improved and used, and one or both of the owners desires his or their land to be, in whole or in part, fenced, shall build and maintain the partition fence between their lands in equal shares.

[R. L. s. 2750; 1913 c. 525 s. 1; 1915 c. 173] (7250)

344.04 NEGLECT TO BUILD OR REPAIR; RIGHTS OF COMPLAINANT. In case any person neglects to build, repair, or rebuild any partition fence which of right he ought to build or maintain, the aggrieved party may complain to the fence viewers who, after notice to the parties, shall examine such fence or into the need of such proposed fence; and, if they determine that the fence then existing

is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant, in writing, to that effect and direct him or them to build, repair, or rebuild the fence within such time as they deem reasonable, and if the delinquent fails to comply with such directions, the complainant may build, repair, or rebuild such fence at his own expense subject to reimbursement as hereinafter provided.

[R. L. s. 2751; 1915 c. 173] (7251)

344.05 REPAIR COSTS RECOVERABLE. When any such new or deficient fence built, repaired, or rebuilt by the complainant under the provisions of section 344.04 is adjudged sufficient by the fence viewers, they, after giving the occupants reasonable notice and an opportunity to be heard, shall ascertain the expense thereof and give to the complainant building, repairing, or rebuilding the same a certificate of their decision, under their hands, and of the amount of such expense, together with their fees; and thereupon such complainant may demand, either of the owner or the occupant of the land where the fence was wanting or deficient, double such ascertained expense, together with such fees; and, in case of failure to pay the sum so due within one month after demand, the complainant may recover the same, with interest, in a civil action.

[R. L. s. 2752; 1915 c. 173] (7252)

344.06 CONTROVERSY; DECISION AND DIRECTION BY FENCE VIEWERS. If a controversy arise in regard to the rights in partition fences of the respective occupants, or their obligation to maintain the same, either party may apply to the fence viewers, who, after due notice to the parties, may assign to each his share in such fence and direct the time within which the same shall be erected or repaired. The assignment may be filed for record with the register of deeds, and thereupon shall be binding upon the parties and upon all succeeding occupants of the lands.

[R. L. s. 2753] (7253)

344.07 FAILURE TO MAINTAIN; PRIVILEGE OF COMPLAINANT. In case any party fails to erect or maintain the part of any fence so assigned to him, the aggrieved party may erect and maintain the same, and shall be entitled to double the value thereof, to be ascertained and recovered as provided in the case of repairs.

[R. L. s. 2754] (7254)

344.08 DIVISION OF FENCES; RECORD; BINDING ON HEIRS AND ASSIGNS. All divisions of fences made by fence viewers under this chapter, or which shall be made by owners of adjoining lands, in writing, witnessed by two witnesses, signed and acknowledged by the parties, and filed for record with the register of deeds, shall be valid against the parties thereto and their heirs and assigns.

[R. L. s. 2755] (7255)

344.09 PARTY ERECTING MORE THAN SHARE. When, in any controversy between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants has voluntarily erected, or otherwise become the proprietor of more than his just share of such fence, before a complaint was made, the other occupant shall pay for so much thereof as may be assigned to him to repair and maintain, the value of which shall be ascertained and recovered in the manner in this chapter provided.

[R. L. s. 2756] (7256)

344.10 LANDS BOUNDED BY STREAM. When lands of different persons which are required to be fenced are bounded upon or divided by a stream or pond, which in the judgment of the fence viewers is not in itself a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for a partition fence to be made on such waters in the place where the true boundary line is, if the occupant on either side refuses or neglects to join with the occupant on the other side in making a partition fence on one side or the other, or if such occupants disagree respecting the same, the fence viewers, on application of either party, shall forthwith view such stream or pond, and, after giving due notice to the parties, shall determine, in writing, on which side thereof the fence shall be erected and maintained, or whether partly on one side and partly on the other. If either party fails to build or maintain his part of such fence according to such determination, it may

be built and maintained by the other party, and the delinquent party shall be subject to all the charges and costs as in other cases in this chapter provided, to be recovered in like manner.

[R. L. s. 2757] (7257)

344.11 LANDS OCCUPIED IN COMMON. When one of the occupants of enclosed lands belonging to different persons in severalty, which have been occupied by them in common without a partition fence, desires to occupy his part in severalty, and the other party refuses or neglects to divide the land with him or to build a fence on his part of the land when divided, the party desiring it may have the same divided and assigned by the fence viewers in the manner provided in this chapter.

[R. L. s. 2758] (7258)

344.12 VIEWERS TO FIX TIME FOR BUILDING. Upon such division and assignment being made, the fence viewers may in writing under their hands assign a reasonable time for building the fence, having regard to the season of the year; and, if either party fails to build his part thereof within the time so assigned, the other party may, after completing his own part thereof, build the other part, and recover therefor double the expense thereof, together with the fees of the fence viewers, to be ascertained as provided in this chapter.

[R. L. s. 2759] (7259)

344.13 RULE WHEN LANDS ARE FIRST ENCLOSED. When unenclosed lands are afterwards enclosed, the owner or occupant thereof shall pay one-half of the value of each partition fence extending upon the line between his land and the enclosure of any other owner or occupant. In case the parties do not agree, such value shall be ascertained by the fence viewers and stated, in writing under their hands; and, if such owner or occupant fails to make such payment within 60 days after the value is so ascertained and a demand made, the owner of such fence may recover such value and the cost of ascertaining the same in a civil action.

[R. L. s. 2762] (7260)

344.14 VIEWERS WHEN FENCE ON TOWN LINE. Where a partition fence is to be built on a line between towns, or partly in one town and partly in another, a supervisor taken from each town shall be the fence viewers thereof.

[R. L. s. 2763] (7261)

344.15 WHERE FENCE RUNS INTO WATER. Unless otherwise agreed by the parties, partition fences running into water shall be built in equal shares; and, in case either party fails to build or maintain the share belonging to him, similar proceedings shall be had as in the case of other fences and with like effect.

[R. L. s. 2764] (7262)

344.16 DIVISION OR RECORDED AGREEMENT RUNS WITH THE LAND. Where the line upon which a partition fence is to be built between unimproved lands has been divided by the fence viewers, or by the recorded agreement of the parties, the several owners thereof, and their heirs and assigns forever, shall erect and maintain such fences agreeably to such divisions.

[R. L. s. 2765] (7263)

344.17 NEGLIGENCE OF VIEWER TO PERFORM DUTY; PENALTY. Any fence viewer who shall unreasonably neglect to perform any duty required by this chapter shall forfeit \$5.00 to the town and be liable to the party injured for all damages consequent upon such neglect.

[R. L. s. 2766] (7264)

344.18 COMPENSATION OF VIEWERS. Each fence viewer shall be paid for his services by the person employing him at the rate of \$5.00 for each day's employment and the sum of \$5.00 for each fence viewer shall be deposited with the town treasurer before such service is performed.

[R. L. s. 2767; 1949 c 719 s 1] (7265)

344.19 VIEWERS IN COUNTIES NOT DIVIDED. In counties not divided into towns, the county commissioners shall be fence viewers and be governed by the provisions of this chapter.

[R. L. s. 2768] (7266)