CHAPTER 344

PARTITION FENCES

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344.01 FENCE VIEWERS.

Supervisors in their respective towns, city council members in their respective wards, commissioners of public works in cities having a commission form of government, and city trustees in statutory cities are fence viewers.

History: *(7248) RL s 2748; 1921 c 25 s 1; 1973 c 123 art 5 s 7; 1985 c 265 art 6 s 1*

344.011 EXEMPTION.

A home rule charter or statutory city council or town board may, by resolution, exempt adjoining owners or occupants from this chapter when their land considered together is less than 20 acres.

History: *1982 c 616 s 1; 1985 c 265 art 6 s 1; 2016 c 102 s 1*

344.02 KINDS OF PARTITION FENCES.

Subdivision 1. **Legal and sufficient fences.** The following are legal and sufficient fences:

(a) fences consisting of at least 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;

(b) fences consisting of at least 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;

(c) fences consisting of woven wire at least 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;

(d) fences consisting of at least four barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire 12 to 16 inches from the ground; and

(e) fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those materials, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.

Subd. 2. **Determination of kind of fence.** If adjoining land owners disagree as to the kind of fence to be built on any division line, the matter must be referred to the fence viewers, who shall determine what kind of fence should be built on the line and order it built.

Subd. 3. **Special case.** If the lands of two persons adjoin and the land of one is enclosed by a woven wire fence on all sides except the side forming a division line between the lands, each person shall erect and maintain a fence along one-half the total length of the division line. The fences must be similar in character and quality.

History: *(7249) RL s 2749; 1915 c 282; 1917 c 408 s 1; 1985 c 265 art 6 s 1*

344.03 EXPENSE; EQUAL SHARES.

Subdivision 1. **Adjoining owners.** (a) Except as provided in paragraph (b), if two adjoining lands are both used in whole or in part to produce or maintain livestock for agricultural or commercial purposes and one or both of the owners of the land desires the land to be partly or totally fenced, the land owners or occupants shall build and maintain a partition fence between their lands in equal shares.

(b) The requirement in this section and the procedures in this chapter apply to the Department of Natural Resources when it owns land adjoining privately owned land subject to this section and chapter and the landowner desires the land permanently fenced for the purpose of restraining livestock.

(c) For purposes of this section, "livestock" means beef cattle, dairy cattle, swine, poultry, goats, donkeys, hinnies, mules, farmed Cervidae, Ratitae, bison, sheep, horses, alpacas, and llamas.

Subd. 2. [Repealed, 1989 c 335 art 4 s 109; 1Sp1989 c 2 s 8]

History: *RL s 2750; 1913 c 525 s 1; 1915 c 173; 1965 c 717 s 1; 1969 c 1129 art 3 s 1; 1971 c 24 s 38; 1985 c 265 art 6 s 1; 1989 c 335 art 4 s 109; 1Sp1989 c 2 s 8; 1994 c 623 art 1 s 40; 2017 c 88 art 2 s 77*

344.04 FAILURE TO BUILD OR REPAIR; RIGHTS OF COMPLAINANT.

If a person fails to build, repair, or rebuild a partition fence which the person is required to build or maintain, the affected party may complain to the fence viewers. The fence viewers shall give notice to the parties and examine the fence or look into the need for a proposed fence. If they determine that an existing fence is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant in writing to that effect and order the owner or occupant to build, repair, or rebuild the fence within a reasonable time. If the delinquent fails to comply with the order, the complainant may build, repair, or rebuild the fence and obtain reimbursement pursuant to section 344.05.

History: *(7251) RL s 2751; 1915 c 173; 1985 c 265 art 6 s 1*

344.05 REPAIR COSTS RECOVERABLE.

If a complainant builds, repairs, or rebuilds a fence according to section 344.04 and the fence viewers consider it sufficient, they shall give the occupants reasonable notice and an opportunity to be heard, determine the cost of the fence or repair, and give to the complainant who built, repaired, or rebuilt the fence a signed certificate of their decision and of the cost of the fence or repair and the viewers' fees. The complainant may demand, either of the owner or the occupant of the adjoining land where the fence was wanting or deficient,

the viewers' fees and double the amount of the ascertained expense. If the owner or occupant does not pay that amount within one month after demand, the complainant may recover the amount, with interest, in a civil action.

History: *(7252) RL s 2752; 1915 c 173; 1985 c 265 art 6 s 1*

344.06 CONTROVERSY; DECISION BY FENCE VIEWERS.

If a controversy arises concerning the rights in partition fences of the respective occupants or their obligation to maintain the fences, either party may apply to the fence viewers, who, after due notice to the parties, may assign to each a share in the fence and direct the time within which the fence must be erected or repaired. The assignment may be recorded with the county recorder after which it is binding upon the parties and upon all succeeding occupants of the lands.

History: *(7253) RL s 2753; 1976 c 181 s 2; 1985 c 265 art 6 s 1; 2005 c 4 s 64*

344.07 FAILURE TO ERECT OR MAINTAIN.

If a party fails to erect or maintain the part of a fence assigned under section 344.06, the aggrieved party may erect and maintain the fence, and be entitled to double the cost of the construction and maintenance as ascertained and recovered in section 344.05 in the case of repairs.

History: *(7254) RL s 2754; 1985 c 265 art 6 s 1*

344.08 RECORDED DIVISION; BINDING ON HEIRS AND ASSIGNS.

All divisions of fences which are made by fence viewers under this chapter, or which are made by owners of adjoining lands, in writing, witnessed by two witnesses, signed and acknowledged by the parties, and recorded with the county recorder, are valid against the parties to the divisions and their heirs and assigns.

History: *(7255) RL s 2755; 1976 c 181 s 2; 1985 c 265 art 6 s 1; 2005 c 4 s 65*

344.09 PARTY ERECTING MORE THAN SHARE.

If there is a controversy between occupants of adjoining lands as to their respective rights in any partition fence and the fence viewers decide that either occupant has voluntarily erected or otherwise become the proprietor of more than that occupant's just share of the fence before a complaint was made, the other occupant shall pay for the share of the fence assigned to the other to repair and maintain. The value of the fence must be ascertained and recovered pursuant to section 344.05.

History: *(7256) RL s 2756; 1985 c 265 art 6 s 1; 1986 c 444*

344.10 LANDS BOUNDED BY STREAM.

If lands of different persons must be fenced and 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 if the viewers determine that it is impracticable, without unreasonable expense, for a partition fence to be made on the waters at the true boundary line, and if the occupant on either side fails to join with the occupant on the other side in making a partition fence on one side or the other, then the fence viewers, on application of either party, shall view the stream or pond, and, after giving due notice to the parties, determine, in writing, on which side of the stream or pond the fence must be erected and maintained, or whether partly on one side and partly on the other. If either party fails to build or maintain the assigned part of the fence according to the viewers'

determination, the other party may build and maintain the fence, and the delinquent party must pay the charges and costs provided for in other cases in this chapter.

History: *(7257) RL s 2757; 1985 c 265 art 6 s 1*

344.11 LANDS OCCUPIED IN COMMON.

If 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 that the part occupied by that person be occupied in severalty, and the other party fails to divide the land or to build a fence on part of the land when it has been divided, the party desiring it may have the land divided and assigned by the fence viewers in the manner provided in this chapter.

History: *(7258) RL s 2758; 1985 c 265 art 6 s 1; 1986 c 444*

344.12 VIEWERS TO FIX TIME FOR BUILDING.

If fence viewers have divided land and assigned fence responsibilities, they may set in writing a reasonable time for building the fence, having regard to the season of the year. If either party fails to build part of the fence within the time assigned, the other party may, after completing part of the fence, build the other part, and recover the viewers' fees and double the cost of building the other part, as determined pursuant to this chapter.

History: *(7259) RL s 2759; 1985 c 265 art 6 s 1*

344.13 LANDS FIRST ENCLOSED.

When unenclosed lands are afterwards enclosed, the owner or occupant of the lands shall pay one-half of the value of each partition fence extending upon the line between that person's land and the enclosure of any other owner or occupant. If the parties do not agree, the value must be ascertained by the fence viewers and stated in writing. If an owner or occupant fails to pay within 60 days after the value is ascertained and a demand made, the owner of the fence may recover the value and the cost of ascertaining it in a civil action.

History: *(7260) RL s 2762; 1985 c 265 art 6 s 1*

344.14 VIEWERS WHEN FENCE ON TOWN LINE.

If a partition fence is to be built on a line between towns, or partly in one town and partly in another, two supervisors, one from each town, shall be the fence viewers.

History: *(7261) RL s 2763; 1985 c 265 art 6 s 1*

344.15 [Repealed, 1974 c 116 s 1]

344.16 DIVISION OR RECORDED AGREEMENT RUNS WITH THE LAND.

If 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 landowners, and their heirs and assigns forever, shall erect and maintain fences in accordance with the divisions.

History: *(7263) RL s 2765; 1985 c 265 art 6 s 1*

344.17 FAILURE OF VIEWER TO PERFORM DUTY; PENALTY.

A fence viewer who unreasonably fails to perform a duty required by this chapter shall forfeit $5 to the town or city and be liable to the injured party for all resulting damages.

History: *(7264) RL s 2766; 1985 c 265 art 6 s 1*

344.18 COMPENSATION OF VIEWERS.

Fence viewers must be paid for their services by the person employing them. The town board may by resolution require the person employing the fence viewers to post a bond or other security acceptable to the board for the total estimated costs before the viewing takes place. The total estimated costs may include the cost of professional and other services, hearing costs, administrative costs, recording costs, and other costs and expenses which the town may incur in connection with the viewing.

History: *(7265) RL s 2767; 1949 c 719 s 1; 1979 c 89 s 1; 1985 c 265 art 6 s 1; 2009 c 152 s 6*

344.19 VIEWERS IN COUNTIES NOT ORGANIZED INTO TOWNS.

In counties not organized into towns, the county commissioners are fence viewers and are governed by this chapter, except that county commissioners shall not receive the per diem provided in section 344.18 but may be paid a per diem pursuant to section 375.055, subdivision 1, and their necessary expenses, including mileage in accordance with section 471.665.

History: *(7266) RL s 2768; 1975 c 301 s 6; 1985 c 265 art 6 s 1*

344.20 CITY OR TOWN OPTION.

(a) If eight or more landowners in a home rule charter or statutory city or town petition the governing body for a vote on a partition fence policy, the governing body may adopt its own policy and procedures for dealing with partition fences, including enforcement procedures. When a town board adopts a partition fence policy, the policy must be approved by the electors of the town at an annual or special town meeting, in which case this chapter does not apply in that town.

(b) This chapter applies to any partition fence lying on the boundary between a political subdivision that has adopted its own partition fence policy and any other political subdivision unless the other political subdivision has adopted a similar policy.

History: *1982 c 616 s 2; 1985 c 265 art 6 s 1; 2004 c 228 art 2 s 9; 2016 c 102 s 2*